

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2010-02
FMBSEZ2010-0001 (Fort Myers Beach Hooters)

WHEREAS applicant Mauhi Enterprises, Inc. and Waterfront Concepts, Inc., by and through Paul Lynch, authorized corporate officer (collectively "applicant") have requested a special exception in the DOWNTOWN zoning district to allow consumption-on-premises of alcoholic beverages, to include beer, wine and liquor, in a restaurant providing an outdoor seating area that is within 500 feet of a dwelling unit under separate ownership; and

WHEREAS the subject property is located at 1600 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-02300.00CE and the legal description of the subject property is TROPICAL CENTER, a Condominium recorded in Official Record Book 1123, Page 323, Public Records of Lee County, Florida, Lots 2, 3, and 6, Block B, CRESCENT BEACH SUBDIVISION, as recorded in Plat Book 4, Page 45, Public Records of Lee County, Florida; and

WHEREAS a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on March 23, 2010; and

WHEREAS at the hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-88.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, as follows:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting special exceptions, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends that the Town Council **APPROVE** the applicant's request for a special exception to permit consumption on premises of beer, wine and liquor in the DOWNTOWN zoning district, with such approval subject to the following conditions

RECOMMENDED CONDITIONS OF APPROVAL:

1. The area of the subject establishment used for consumption on premises must be confined entirely to the building areas shown on the floor plan attached hereto and incorporated herein by reference as **Exhibit B**, including the interior of the building, and the two porch areas.
2. Music and other audible entertainment are prohibited in outdoor seating areas and must comply at all times with applicable ordinances.
3. Sales, service, and consumption of alcoholic beverages must not begin earlier than 11:00 am and must end no later than 12:00 midnight, Monday through Thursday; must not begin

earlier than 11:00 am and must end no later than 1:00 am on Friday and Saturday; and must begin no earlier than 12:00 noon and end no later than 10:00 pm on Sunday, in accordance with the applicant's request.

4. The use must comply at all times with the provisions of LDC Section 34-1264(k), as may be amended from time to time, and must at all times be licensed as a permanent public food service establishment with seating, in accordance with Chapter 509, Florida Statutes, and applicable state agency rules.

5. The use must comply at all times with lighting standards, including the regulations for the protection of Sea Turtles provided in LDC chapter 14, article II.

6. The special exception approved by Town Council in Resolution 02-04, and the special permit granted by the Lee County Hearing Examiner in case 94-09-29-SP-04, including any and all specific conditions attached thereto, are hereby declared null and void.

RECOMMENDED FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a special exception, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

1. The consideration of changed or changing conditions **is not applicable** to this request:

The location of the request was approved in 2002 for consumption of alcoholic beverages on the premises, including the same indoor and outdoor seating areas, in conjunction with a restaurant. The Comprehensive Plan and Land Development Code do not distinguish classes of restaurants that (in addition to non-alcoholic beverages and food) serve beer only, beer and wine only, or beer, wine, and liquor. The applicant's request does not implicate a change in use except insofar as the approved use was limited by special conditions attached to a prior special exception approval.

2. The requested special exception, as conditioned, **is** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan:

The subject property is in the Pedestrian Commercial FLUM category, near Estero Boulevard and the Lani Kai resort. Comp Plan Policy 4-B-6, regarding the Pedestrian Commercial FLUM, states that commercial activities must contribute to the pedestrian-oriented public realm. The beach and streets northward from the Diamondhead and Lani Kai to Lynn Hall Park are heavily traveled by pedestrian beachgoers. The existing restaurant is oriented toward this foot traffic, and also has its own parking areas for patrons arriving by automobile. The outdoor seating areas are located on raised porches separated by railings and elevation from the sidewalks and parking areas.

3. The requested special exception, as conditioned, **meets or exceeds** all performance and locational standards set forth for the proposed use.

A restaurant is a use permitted by right in the Downtown zoning district. Because dwelling units under separate ownership are located within 500 feet of the subject property, a special exception is necessary in order to allow an outdoor seating area.

Performance and locational standards for the restaurant use, site development, and remodeling to the building, were already addressed through the development order process for prior alterations to the building, and the requested use meets the applicable parking requirements under LDC Chapter 34, Article IV, Division 19. There are no specific performance or locational standards in Town regulations for a restaurant with outdoor seating areas that serves beer, wine, and liquor, that differ from the standards that apply to a restaurant with outdoor seating that serves beer and wine only.

4. The requested special exception, as conditioned, **will** protect, conserve, or preserve environmentally critical areas and natural resources:

Construction of additional structures in environmentally critical areas has not been requested or permitted. As conditioned, the use will be required to comply with current sea turtle protection standards.

5. The requested special exception, as conditioned, **will** be compatible with existing or planned uses and **will not** cause damage, hazard, nuisance or other detriment to persons or property:

The existing surrounding uses include dwelling units, a resort hotel, a large multi-family building, a seasonal parking lot, a convenience food and beverage store with fuel pumps, a shopping center, and some small retail stores. Within the Pedestrian Commercial Future Land Use Map category, adjacent dwelling units and vacant lots could potentially be redeveloped with commercial or mixed use buildings in accord with the regulations of the DOWNTOWN zoning district or through planned development rezoning. The recommended conditions clearly restrict the use to specific areas of the floor plan and prohibit its expansion to the grounds of the site or the parking areas. .

6. The requested special exception, as conditioned, **will** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

The existing restaurant use has already been required to comply with parking, lighting, and other similar requirements set forth in LDC Chapter 34. The consumption on premises of alcoholic beverages use, as conditioned, will be required to comply with the applicable standards in LDC Chapter 34, Article IV, Division 5, for consumption on premises in a restaurant regardless of the type or series of state license. The appropriate limitations on an outdoor seating area for consumption on premises that is allowed by special exception are for Town Council to determine through the hearing process, during which process they should find that the conditions are reasonably related to the special exception requested

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Ryffel and second by LPA Member Kaye, and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair aye
Carleton Ryffel, Member aye
Chuck Moorefield, Member aye

Bill Van Duzer, Vice Chair absent
Rochelle Kay, Member aye
John Kakatsch, Member nay

DULY PASSED AND ADOPTED THIS 23rd day of March, 2010.

LPA of the Town of Fort Myers Beach

By: Joanne K. Shamp
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

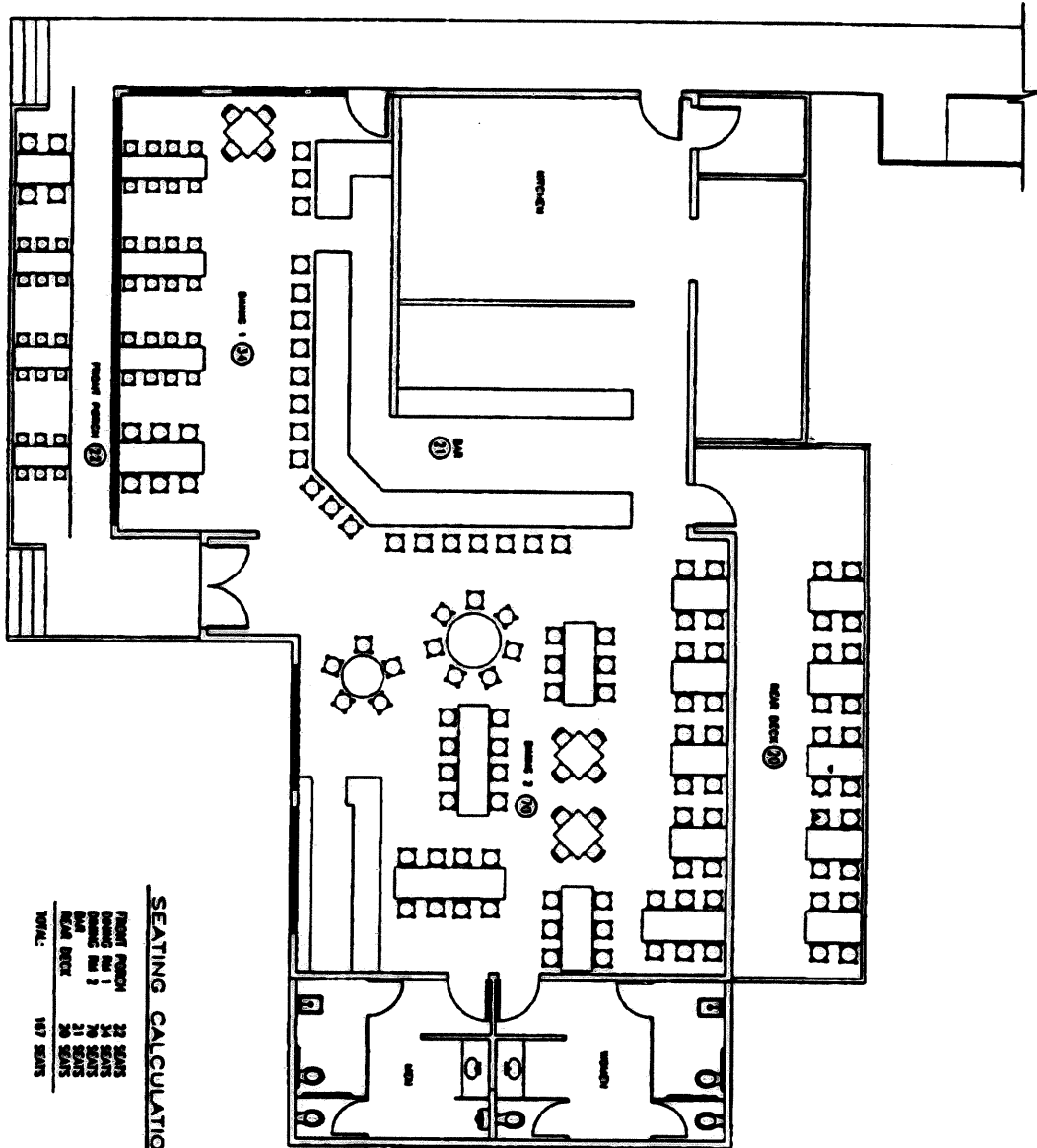
By: Anne Dalton
Anne Dalton, Esquire
LPA Attorney

ATTEST:

By: Michelle Mayher
Michelle Mayher, Town Clerk

SEATING PLAN

DATE: 11/11/97



SEATING CALCULATION

FRONT PORCH	22 SEATS
BAR	24 SEATS
TABLE 1	71 SEATS
TABLE 2	71 SEATS
TABLE 3	71 SEATS
TOTAL SEATS	260 SEATS
WALL:	187 SEATS

BUILDING CALCULATION

3,000 SQ. FT.



A.1

HOOTERS
1600 ESTERO BLVD.
FT. MYERS, FLORIDA

SEATING PLAN

MORAND ARCHITECTS, INC.
24501 DETROIT ROAD
WESTLAKE, OHIO 44145
OFFICE: 440-333-0200 FAX: 440-333-0202
E-MAIL: MORAND@MORAND.COM

ENCLOSURE