

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 13- 09
SEZ2013-0001 - The Beached Whale

WHEREAS, applicant Marty Harrity has requested approval of a Special Exception in the DOWNTOWN zoning district to permit outdoor consumption on premises to include 626 ± square feet of a proposed new deck at the front of the existing building on the subject property; and

WHEREAS, the subject property is located at 1249 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0060H.0300 and the legal description of the subject property is VENETIAN GARDENS BLK H PB 6 PG 70 LOTS 30 31+32+ PT LT 29; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on April 9, 2013; 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.

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on June 3, 2013, at which time the Town Council gave full and complete consideration to the request of the Applicant, LPA Resolution 2013-003, the 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 30-88.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL 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 variances, the Town Council makes the following findings of fact and reaches the following conclusions:

The Town Council **APPROVES** the applicant's request for a Special Exception in the DOWNTOWN zoning district to permit outdoor consumption on premises to include 626 square feet or less of a proposed new deck at the front of the existing building on the subject property subject to the following conditions:

CONDITIONS OF APPROVAL:

1. *Consumption on premises is limited to the building located on the subject property at 1249 Estero Boulevard and proposed new lower outdoor deck depicted on the attached Exhibit F.*

2. *Hours of operation for consumption on premises shall be limited to the hours of 7:00 AM to 2:00 AM, daily for inside the building and 11:00 AM to 11:00 PM daily for the lower outdoor deck area.*
3. *No live music is permitted. Outdoor televisions shall be limited to from 11:00 AM to 11:00 PM daily.*
4. *Any proposed roof overhangs and/or projections must meet the Commercial Design Standards set forth in LDC Section 34-991 and specifically Section 34-995(e).*
5. *All work proposed to be done will require Limited Review Development Order and any other permits determined to be necessary at the time of permitting.*
6. *No required parking spaces, including required ADA spaces, may extend into the Town or Lee County right-of-way.*
7. *The applicant shall provide an impervious retention area under the proposed outdoor deck to assist with stormwater retention.*
8. *The outdoor seating on the proposed outdoor deck will at all times comply with current building, fire and life safety codes for tables and chairs.*
9. *All doors providing access from the existing restaurant to the proposed outdoor deck must remained closed, aside from regular ingress and egress functions, when indoor music is being played.*

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. Changed or changing conditions **do not** exist that make the requested approval, as conditioned, appropriate;
2. The requested special exception, as conditioned, **is** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan;
3. The requested special exception, as conditioned, **meets or exceeds** all performance and locational standards set forth for the proposed use;
4. The requested special exception, as conditioned, **will** protect, conserve, or preserve environmentally critical areas and natural resources;
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;
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 foregoing Resolution was adopted by the Town Council upon a motion by Councilmember List and seconded by Councilmember Raymond, and upon being put to a vote, the result was as follows:

Alan Mandel, Mayor AYE
Jo List AYE
Dan Andre AYE

Joe Kosinski, Vice Mayor ABSTAIN
Bob Raymond AYE

DULY PASSED AND ADOPTED THIS 3rd day of **JUNE, 2013.**

By: Alan Mandel
Alan Mandel, Mayor

Approved as to legal sufficiency:

By: Maureen M. Milbr
Fowler, White, Boggs
Town Attorney

ATTEST:

By: Michelle Mayher
Michelle Mayher
Town Clerk