

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 04-08

WHEREAS, Seafarers Village Mall has requested an amendment to the Master Concept Plan (MCP) for the Commercial Planned Development (CPD) for Seafarer's Village Mall to increase the outdoor seating area and existing on-premise consumption of alcoholic beverages associated with an existing Restaurant (Chiggies) by 260 square feet; and,

WHEREAS, the subject property is located at 1113 Estero Blvd., Ft. Myers Beach, and the applicant has indicated the property's current STRAP numbers are: 24-46-23-W3-00006.0000, 24-46-23-W3-00206.0010, 24-46-23-W3-00206.0060, and 24-46-23-W3-00205.0070 and the legal description is attached hereto and incorporated herein by reference as Exhibit A; and,

WHEREAS, a public hearing was held and the Local Planning Agency recommends that the Town Council approve an amendment to the Master Concept Plan for the Commercial Planned Development for Seafarer's Village Mall to increase the outdoor seating area and existing on-premise consumption of alcoholic beverages associated with an existing restaurant (Chiggies), subject to the following conditions:

- 1 260 square feet with 16 outdoor seats on the second floor to be associated with Chiggies.
- 2 On-premises consumption of alcoholic beverages in the above-designated outdoor seating areas is prohibited in the absence of the availability of food service and at a minimum these areas must be closed between the hours of 12 a.m. and 10 a.m.
- 3 Live entertainment is limited to accordion and acoustic string instruments and is limited to the hours of 10 a.m. through 11 p.m. No other entertainment is permitted in the outdoor seating areas.
- 4 Recorded music may be piped into the outdoor seating areas between the hours of 10 a.m. and 11 p.m.
- 5 Any additional outdoor seating areas will require a public hearing amendment of the planned development.

WHEREAS a hearing was held and the council considered the following criteria, whenever applicable:

- a. Whether there exists an error or ambiguity which must be corrected.
- b. Whether there exist changed or changing conditions which make approval of the request appropriate.
- c. The impact of a proposed change on the intent of this chapter.
- d. The testimony of any applicant.

- e. The recommendation of staff and of the local planning agency.
- f. The testimony of the public.
- g. Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.
- h. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- i. Whether urban services are, or will be, available and adequate to serve a proposed land use change.
- j. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
- k. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- l. Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.

Findings. The town council finds that the requested zoning district complies with:

- a. The Fort Myers Beach Comprehensive Plan.
- b. Chapter 34, Zoning Districts, Design Standards, and Nonconformities
- c. Any other applicable town ordinances or codes.
- d. The proposed use or mix of uses is appropriate at the subject location;
- e. Sufficient safeguards to the public interest are provided by the recommended conditions to the concept plan or by other applicable regulations;
- f. All recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
- g. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:
 - 1. Policies 4-B-4 and 4-C-3 on commercial uses in the "Mixed Residential" category.
 - 2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "Boulevard" category.
 - 3. Policy 4-C-4 on building heights taller than the standard height limit.
 - 4. Policy 4-C-8 on density transfers.

5. Policy 4-E-1 on pre-disaster buildback.
6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

NOW THEREFORE BE IT RESOLVED THAT THE APPLICATION IS APPROVED SUBJECT TO THE FOLLOWING conditions and requirements that are necessary for the protection of the health, safety, comfort, convenience and welfare of the general public and that are reasonably related to the request:

1. Increase the outdoor seating area and existing on-premise consumption of alcoholic beverages associated with an existing restaurant 260 square feet with 16 outdoor seats on the second floor to be associated with Chiggies.
2. On-premises consumption of alcoholic beverages in the above-designated outdoor seating areas is prohibited in the absence of the availability of food service and at a minimum these areas must be closed between the hours of 12 a.m. and 10 a.m.
3. No entertainment is permitted in the outdoor seating area approved in this resolution.
4. Restaurant doors are to be closed during live entertainment except for use as ingress and egress.
5. Any additional outdoor seating areas will require a public hearing amendment of the planned development.

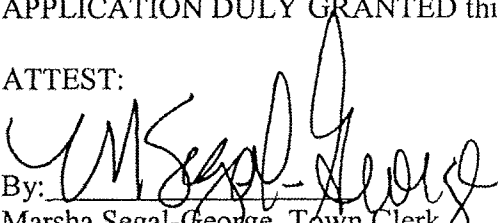
The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

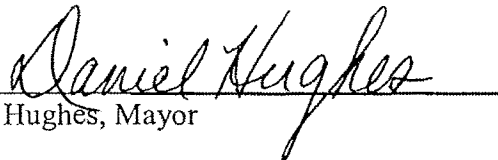
Howard Rynearson	aye
Daniel Hughes	aye
Bill Thomas	aye
W. H. "Bill" Van Duzer	aye
Terry Cain	aye

APPLICATION DULY GRANTED this 8th day of March, 2004.

ATTEST:

TOWN OF FORT MYERS BEACH

By: 
 Marsha Segal-George, Town Clerk

By: 
 Dan Hughes, Mayor

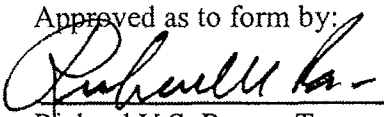
Approved as to form by:

 Richard V.S. Roosa, Town Attorney

Exhibit "A" — page 1 of 2
LEGAL DESCRIPTION

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DESCRIPTION: (TRACT "B")

Part of Block 6, Business Center Subdivision as recorded in Plat Book 9, Page 9, Public Records of Lee County, Florida and part of Section 24, Township 46 South, Range 23 East, Lee County, Florida, described as follows:

Commencing at the intersection of the Northeasterly right-of-way line of Estero Boulevard and the Southwest corner of Block "E", Crescent Park Addition as recorded in Plat Book 4, Page 46, Public Records of Lee County, Florida; thence run N.70°37'09"W. along said Northeasterly right-of-way line for 195.75 feet to the point of beginning; thence continue N.70°37'09"W. along said right-of-way line for 93.70 feet; thence run N.19°22'51"E. for 123.05 feet; thence run N.70°37'09"W for 50.02 feet; thence run N.19°22'51" E. for 35.01 feet to the Southeasterly corner of Lot 7, Block 6, of the aforesaid Business Center Subdivision; thence run N.70°37'09"W. for 100.05 feet; thence run N.22°23'59"W. for 80.04 feet to the Northwesterly corner of Lot 6, Block 6, of said Business Center Subdivision, being the Southerly right-of-way line of Fifth Avenue; thence run N.67°36'01"E. along said right-of-way line for 205.16 feet; thence run N.25°59'51"E. along the Southeasterly right-of-way line of said Fifth Avenue for 16.45 feet to a point on a curve; thence run Northeasterly along said right-of-way line for 75.05 feet along the arc of a curve concave Northwesterly, with a radius of 209.00 feet, a delta of 20°34'26", a chord bearing of N.35°32'37"E. and a chord distance of 74.65 feet to a point of reverse curvature; thence continue Northeasterly along said right-of-way line for 108.07 feet along the arc of a curve concave Southeasterly, with a radius of 151.00 feet, a delta of 41°00'25", a chord bearing of N.45°45'34"E. and a chord distance of 105.78 feet; thence run S.64°00'09"E. along the Southerly right of way line of said Fifth avenue for 45.46 feet (said line not radial to the previously described line) to a point on the Westerly right-of-way line of Crescent Street; thence run S.01°20'13"E. along the Westerly right-of-way line of said Crescent Street for 48.08 feet; thence run S.00°09'30"W. along said Westerly right-of-way line for 350.04 feet; thence run S.00°39'36"E. along said right-of-way line for 19.94 feet; thence run N.70°28'31"W. for 80.88 feet; thence run S.19°31'29"W. for 42.50 feet; thence run N.70°37'09"W. for 29.08 feet; thence run S.19°22'51"W. for 94.80 feet to the point of beginning.

Said tract contains 2.330 acres, more or less and is subject to easements, restrictions and reservations of record.

TOGETHER WITH: (TRACT "C")

DESCRIPTION:

Lots 7, 8 & 9, Block 5, Business Center Subdivision as recorded in Plat Book 9, Page 9, Public Records of Lee County, Florida, Said Lot 7 is less right-of-way taken by Florida Department of Transportation for State Road 865.

Said tract contains 9,041.5 square feet, more or less and is subject to easements, restrictions and reservations of record.

Bearings are based on the Northeasterly right-of-way line of Estero Boulevard as being N.70°37'09"W.

Exhibit "A" — page 2 of 2
LEGAL DESCRIPTION

TOGETHER WITH: (TRACT "E")

DESCRIPTION:

Lots 1, 2, 3 and 4, Block 6, of that certain subdivision known as Business Center, according to the Plat thereof recorded in Plat Book 9, Pages 9 and 10, Public Records of Lee County, Florida;

Also, a parcel in Government Lot 1, Section 24, Township 46 South, Range 23 East, Estero Island, Lee County, Florida, described as follows:

From the concrete monument (P.R.M.) marking the Southerly corner of Lot 1, Block 6 of the aforesaid Business Center subdivision, run North 20°06'00" East for 158.00 feet; thence run South 69°51'55" East for 100.00 feet; thence run South 20°07'40" West for 35.00 feet; thence run South 69°52'50" East for 50.00 feet; thence run South 20°06'50" West for 123.00 feet; thence run North 69°53'10" West for 150.00 feet to the Point of Beginning.

Less and except that part of the above described land shown as parcel 102 in that Order of Taking recorded in O.R. Book 1164, Page 102, Public Records of Lee County, Florida, and described as follows:

Commence at the Southwest corner of Lot 7, Block 8, of the aforesaid Business Center subdivision, thence run South 70°37'09" East 185.55 feet to a point of beginning; thence continue South 70°37'09" East 82.00 feet; thence North 60°15'10" West 83.36 feet; thence North 42°58'04" West 28.45 feet; thence South 22°23'59" East 37.82 feet to the Point of Beginning.

Bearings are from assuming the East line of the aforesaid Business Center subdivision to be North.

TOGETHER WITH: (TRACT "A")

DESCRIPTION:

A tract or parcel of land lying in Section 24, Township 46 South, Range 23 East, Lee County, Florida, described as follows:

Commencing at the intersection of the Northeasterly right-of-way line of Estero Boulevard and the Southwest corner of Block "E", Crescent Park Addition as recorded in Plat Book 4, Page 46, Public Records of Lee County, Florida; thence run N.70°37'09"W. along said Northeasterly right-of-way line for 77.82 feet to the point of beginning; thence continue N.70°37'09"W. along said Northeasterly right-of-way line for 117.93 feet; thence run N.19°22'51"E. for 94.80 feet; thence run S.70°37'09"E. for 29.08 feet; thence run N.19°31'29"E. for 42.50 feet; thence run S.70°28'31"E. for 80.73 feet to the West right-of-way line of Crescent Street as shown on Lee County Department of Transportation Project number 4965; thence run S.00°43'09"E. along said West right-of-way line for 103.86 feet; thence run S.54°21'33"W. along said right-of-way line for 48.28 feet (48.32 feet per right-of-way plans) to the point of beginning.

Said tract contains 16,452.7 square feet, more or less and is subject to easements, restrictions and reservations of record.

Bearings are based on the Northeasterly right-of-way line of Estero Boulevard as being N.70°37'09"W.