

**RESOLUTION NUMBER 24-41**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20230202, REQUESTING CONSUMPTION ON PREMISES TO ALLOW A BAR/COCKTAIL LOUNGE WITHIN 500 FEET OF A PARK, FOR THE PROPERTY LOCATED AT 1028 FIFTH STREET; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, BC III Masterpiece LLC, owners of the property situated at 1028 Fifth Street, is requesting a special exception which requires consumption on premises to allow a bar/cocktail lounge within 500 feet of a park; and

**WHEREAS**, the STRAP number for the subject property is 24-46-23-W3-00208.0080; and

**WHEREAS**, the Property is located in the "Pedestrian Commercial" category of the Future Land Use Map of the Comprehensive Plan and the "Downtown" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

**WHEREAS**, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on February 27, 2024, and at said 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 Section 34-88 of the LDC. The LPA found that the request is/ is not consistent with the comprehensive plan and the requirements of the LDC and voted 7-0 to recommend APPROVAL WITH CONDITIONS of the special exception; and

**WHEREAS**, on March 18, 2024, the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the applicant requested a continuance until April 1, 2024 which was granted; and

**WHEREAS**, on April 1, 2024, the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by 34-88 of the LDC; and

**WHEREAS**, the Town Council determined by a vote of 5-0 it is in the best interest of the Town to approve with conditions the request.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did/ did not meet its burden of proof that the requested Special Exception does meet the requirements of the Town Comprehensive Plan and LDC and approving with conditions the Special Exception is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, interested parties and public, the Town Council APPROVES WITH CONDITIONS a request for a Special Exception described in LDC 34-1264(2) which requires bars and cocktail lounges that cannot meet minimum food sales of 51-percent of total receipts, and within 500-feet of certain uses to obtain approval from Town Council.

Section 3. In approving with conditions the Special Exception, the Town Council makes the following findings and conclusions in accordance with the considerations of Section 34-88 of the LDC:

- (1) Whether there exist changed or changing conditions which make approval of the request appropriate.
- (2) The testimony of any applicant.
- (3) The recommendation of staff and of the local planning agency.
- (4) The testimony of the public.
- (5) Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.
- (6) Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- (7) Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
- (8) Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- (9) Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations pertaining to the use set forth in this chapter.

Section 4. If the Town Council approves the requested Special Exception, the following conditions of approval are imposed on the Applicant and the Property:

- A. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- B. The restaurant will continue to serve food, even during those times when food-sales receipts may drop below 51% of total receipts.

The foregoing Resolution was adopted by the Town Council upon a motion by Mayor Allers and seconded by Council Member Safford, and upon being put to a roll vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 1<sup>st</sup> day of April 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

  
Dan Allers (May 1, 2024 21:23 EDT)  
\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

  
Amy Baker (May 2, 2024 13:08 EDT)  
\_\_\_\_\_  
Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

  
Nancy Stupersich (May 1, 2024 21:40 EDT)  
\_\_\_\_\_  
Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 1<sup>st</sup> day of May 2024.