

**RESOLUTION NUMBER 25-239**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20250046 TO ALLOW 1) CONSUMPTION ON PREMISES (COP) OUTDOORS WITHIN 500 FEET OF DWELLING UNITS; 2) NEW OUTDOOR ENTERTAINMENT IN THE COMMERCIAL BOULEVARD (CB) ZONING DISTRICT; 3) NEW LIVE ENTERTAINMENT IN THE CB ZONING DISTRICT; AND 4) NEW OUTDOOR SEATING THAT IS OPEN AFTER SUNSET IN THE CB ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 6425 ESTERO BLVD. GENERALLY IDENTIFIED AS STRAP NUMBER 34-46-24-W4-00046.0000; 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**, Applicant The Neighborhood Company, on behalf of the property owner, 6425 Estero LLC, is requesting four uses that require approval of a special exception:

- 1) Consumption on Premises (COP) outdoors within 500 feet of dwelling units
- 2) New outdoor entertainment in the Commercial Boulevard (CB) zoning district
- 3) New live entertainment in the CB zoning district
- 4) New outdoor seating that is open after sunset in the CB zoning district; and

**WHEREAS**, the STRAP number for the subject property is 34-46-24-W4-00046.0000; and

**WHEREAS**, the Property is located in the “Mixed Residential” category of the Future Land Use Map of the Comprehensive Plan and the “Commercial Boulevard” 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 June 10, 2025, 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 voted 6-0 to recommend approval with condition of the special exception request:

- 1) Consumption on Premises (COP) outdoors within 500 feet of dwelling units
- 2) New outdoor entertainment in the Commercial Boulevard (CB) zoning district
- 3) New live entertainment in the CB zoning district
- 4) New outdoor seating that is open after sunset in the CB zoning district; and

**WHEREAS**, on August 4, 2025 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 Section 34-88 of the Land Development Code (“LDC”); and

**WHEREAS**, the Town Council determined 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 meet its burden of proof that the requested special exceptions do meet the requirements of the Town Comprehensive Plan and LDC, and approving with conditions the special exceptions is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES WITH CONDITIONS the special exceptions as described herein.

Section 3. In approving with conditions the Special Exception, the Town Council has considered the following criteria set forth in Section 34-88 of the LDC for each of the requested approvals as stated in more detail in Exhibit A:

- A. Whether there exist changed or changing conditions which make approval of the request appropriate.
- B. The testimony of any applicant.
- C. The recommendation of staff and of the local planning agency.
- D. The testimony of the public.
- E. Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.
- F. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- G. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
- H. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- I. 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. The following conditions of approval shall apply to all requested special exceptions:

1. All music and entertainment on the property will be in compliance with the Town's noise regulations.
2. Hours of amplified music will be limited from 11 AM to 9 PM on weekdays and from 11 AM to 10 PM on Weekends.
3. No consumption of alcohol shall be permitted outside the entertainment and seating area, as depicted on the plan attached.
4. Games in the entertainment area cannot include loud electronic beeping, ringing, or buzzing.
5. The development must comply with the LDC sea turtle conservation requirements.
6. Redevelopment of the dock must receive an approved LDO or DO as determined by the Community Development Department.
7. The dumpster enclosure shall be refurbished, in coordination with the solid waste carrier, to allow closure of the doors. Solid waste pickup shall be provided six days a week (excluding Sundays).
8. Any violation of the conditions of approval shall render the special exception null and void.

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

Dan Allers, Mayor	<u>Aye</u>
Jim Atterholt, Vice Mayor	<u>Aye</u>
John R. King	<u>Aye</u>
Scott Safford	<u>Aye</u>
Karen Woodson	<u>Aye</u>

ADOPTED this 4<sup>th</sup> day of August 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

*Dan Aller*  
\_\_\_\_\_  
Dan Allers, Mayor

Dan Aller (Sep 29, 2025 14:28:40 EDT)

**ATTEST:**

  
\_\_\_\_\_  
Amy Baker (Sep 30, 2025 14:53:50 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 Stuparich (Sep 30, 2025 13:09:54 EDT)  
Nancy Stuparich, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: Sept 30, 2025.

**ATTACHMENTS**

Exhibit A –

1. Findings for Consumption on Premises (COP) outdoors within 500 feet of dwelling units
2. Findings for outdoor entertainment in the Commercial Boulevard (CB) zoning district
3. Findings for new live entertainment in the CB zoning district
4. Findings for new outdoor seating that is open after sunset in the CB zoning district

Exhibit B – Site Plan

Exhibit C– Conditions of Approval

## Exhibit A: Findings of Specific Special Exception Requests

Resolution 25-239

**SEZ20250046**

Evaluation of each special exception request per LDC criteria.

**#1 Special Exception for COP:** The code requires that all a bar or cocktail lounge use, within 500 feet of residences and outdoor bar or lounge space within 500 feet of residences, receive a special exception.

Section 34-88 Special Exception Criteria:

*Whether there exist changed or changing conditions which make approval of the request appropriate.*

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

*Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.*

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor bar space would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

*Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

The COP use will not create noise, vibration, smoke, dust, or lighting glare. The special exception request is required due to the locational standards of not being located within 500 feet of a residence.

*Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The proposed COP is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

*Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

The addition of a solid wall at the rear of the building, adjacent to the residential uses should reduce any impact to nearby residences. The applicant is also abiding by the Type C buffer requirement that includes 15 feet of landscaping and a solid fence.

*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.*

The proposed COP requires a special exception in the CB zoning district.

The Special Exception for a COP outdoors and within 500 feet of residences **does meet** the criteria found in Section 34-88.

**#2 Special Exception for outdoor entertainment:** The code requires that any new outdoor entertainment in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

*Whether there exist changed or changing conditions which make approval of the request appropriate.*

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

*Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.*

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor entertainment would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 4-A-3 States that the Town should protect residential neighborhoods from intrusive commercial activities. Some would consider outdoor entertainment to be intrusive, although the development is located adjacent to Estero Boulevard, not internal to the residential neighborhood.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

*Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

The outdoor entertainment use will create noise, but the volume will be required to comply with the Town's noise ordinance. The use will not create vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

*Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The proposed outdoor entertainment is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

*Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

The proposed outdoor entertainment may not be appropriate in this location. If music or amplified entertainment is too loud or at inappropriate times, could cause nuisance.

*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.*

The proposed use requires a special exception in the zoning district. If outdoor entertainment were previously existing on this site, it would not require a special exception.

The Special Exception for new outdoor entertainment in the CB zoning district **does not meet** the criteria found in Section 34-88. Outdoor entertainment may have nuisance impacts on adjacent properties.

**#3 Special Exception for live entertainment:** The code requires that any new live entertainment in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

*Whether there exist changed or changing conditions which make approval of the request appropriate.*

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

*Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.*

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed live entertainment would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 4-A-3 States that the Town should protect residential neighborhoods from intrusive commercial activities. Some would consider live entertainment to be intrusive, although the development is located adjacent to Estero Boulevard, not internal to the residential neighborhood.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

*Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

The live entertainment use will create noise, but the volume will be required to comply with the Town's noise ordinance. Additionally, live entertainment indoors would create very little noise. The use will not create vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

*Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The proposed live entertainment is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

*Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

The proposed live entertainment, if it is too loud or at inappropriate times, could cause nuisance. If the live entertainment were contained inside the building it would not have a detrimental impact on adjacent uses.

*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.*

The proposed use requires a special exception in the zoning district. If live entertainment were previously existing on this site, it would not require a special exception.

The Special Exception for new live entertainment in the CB zoning district **does meet** the criteria found in Section 34-88. The reason that outdoor entertainment does not meet the criteria and live entertainment does meet the criteria is because live entertainment could be provided indoors and have almost no impact on surrounding properties.

**#4 Special Exception for outdoor seating:** The code requires that any new outdoor seating that is open after dark in the Commercial Boulevard (CB) zoning district receive a special exception.

Section 34-88 Special Exception Criteria:

*Whether there exist changed or changing conditions which make approval of the request appropriate.*

Several of the surrounding residences were damaged or destroyed by hurricane Ian. The proposed use does not appear to be the result of storm damage.

*Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.*

Policy 4-A-1 Encourages the town's "human scale" in redevelopment. This proposed outdoor seating would create a human use—as opposed to an automobile use—at a human scale in a location that was previously designed for cars.

Policy 1-A-1 Recommends that improvements along Estero Boulevard should make walking more interesting. This proposed development, while set off the road, will add variety to the walk along the Boulevard.

*Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.*

The outdoor seating use will not create excessive noise, or vibration, smoke, dust, or lighting glare. The special exception request is required because it is a new use in the CB zoning district, which is a locational standard.

*Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The proposed outdoor seating is not within an environmentally critical area. It will be required to meet all turtle lighting requirements.

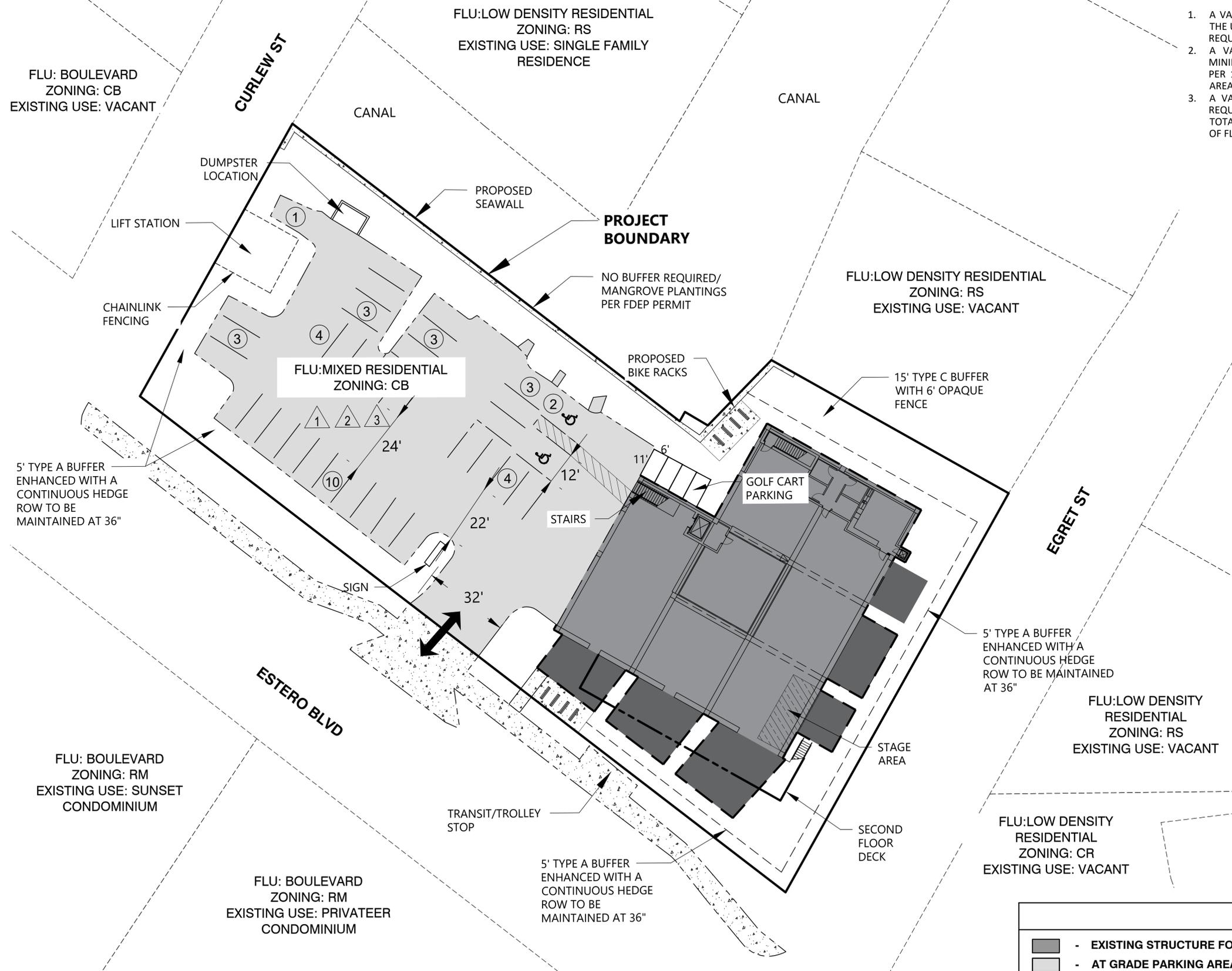
*Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

The proposed outdoor seating should not cause nuisance.

*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.*

The proposed use requires a special exception in the zoning district. If outdoor seating after dark were previously existing on this site, it would not require a special exception.

The Special Exception for new outdoor seating that is open after dark in the CB zoning district **does meet** the criteria found in Section 34-88.



**VARIANCES**

1. A VARIANCE FROM LDC SECTION 34-2020(b)(2) WHICH STATES THAT WHEN THE USE OF A BUILDING IS CHANGED TO A DIFFERENT USE, ANY ADDITIONAL REQUIRED PARKING SPACES MUST BE PROVIDED.
2. A VARIANCE FROM LDC SECTION 34-2020(d)(2)(h) WHICH STATES THE MINIMUM REQUIRED PARKING SPACES FOR RESTAURANTS IS EIGHT SPACES PER 1,000 SQUARE FEET OF TOTAL FLOOR AREA PLUS OUTDOOR SEATING AREA.
3. A VARIANCE FROM LDC SECTION 34-2020(d)(2)(h)(2) WHICH STATES THE REQUIRED MINIMUM PARKING IS EIGHT SPACES PER 1,000 SQUARE FEET OF TOTAL FLOOR AREA PLUS FIVE ADDITIONAL SPACES PER 1,000 SQUARE FEET OF FLOOR AREA USED FOR THE BAR.

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**THE NEIGHBORHOOD COMPANY**
  
 5618 WHISPERING WILLOW WAY | FORT MYERS, FL 33908
   
 WWW.THENEIGHBORHOOD.COM/PAGE

CLIENT:	ESTERO 4148 LLC
PROJECT:	6425 ESTERO BLVD
TITLE:	SITE PLAN

LEGEND	
	- EXISTING STRUCTURE FOOTPRINT AND UNDERSTORY OUTDOOR SEATING AREA
	- AT GRADE PARKING AREA
	- OPEN AIR OUTDOOR SEATING AREA
	- PROPOSED COP BOUNDARY
	- VEHICULAR INGRESS / EGRESS
	- VARIANCES

PROJECT NO:	220050.01.01
DATE:	01/25
DRAWN:	F.L.
DESIGN:	R.H.
SHEET NUMBER:	1 OF 2

## **CONDITIONS OF APPROVAL – SEZ20250046 & VAR20250047**

1. All music and entertainment on the property will be in compliance with the Town's noise regulations.
2. General hours of operation will be from 7 AM to Midnight. No food and beverage service prior to 10 AM at the ground-level restaurant.
3. Hours of amplified music will be limited from 11 AM to 9 PM on weekdays and from 11 AM to 10 PM on weekends. All amplified music will be distributed through a unified speaker system controlled by Management. A centralized sound system with distributed speakers, not individual speakers/amps for performers; live entertainment limited to single or duo acts; no cornhole. No bands (3 or more performers) or drums/percussion unless approved through the Town's special event permitting process.
4. Sound mitigation will be provided by concrete block walls and bi-fold glass doors (or other retractable door) as depicted on the attached Schematic Plan sheet D1.
5. No consumption of alcohol shall be permitted outside the restaurant, bar, and accessory game area delineated by the 36' Railing and depicted on the attached Schematic Plan sheet D1.
6. Games in the accessory game area cannot include loud electronic beeping, ringing, or buzzing.
7. The development must comply with the LDC's sea turtle conservation requirements.
8. ~~Redevelopment of the dock must receive an approved LDO or DO as determined by the Community Development Department.~~ (LDO and construction of dock already occurred)
9. At time of site development, signage will be installed on the dock stating that the dock is not open to the public and that it is for private use only.
10. The dumpster enclosure shall be refurbished, in coordination with the solid waste carrier, to allow closure of the doors. Solid waste pickup shall be provided at a minimum twice per week excluding Sundays.
11. The property owner will submit a shared parking agreement with the Dolphin Inn or other nearby properties per LDC 34-2183C prior to DO approval. Should the Dolphin Inn property be sold or redeveloped into any use other than parking, a shared parking agreement with another nearby property will be needed prior to the Dolphin Inn parking operations ceasing
12. All employees are required to park off-site. Off-site employee parking; must have valet parking available for opening; no parking signage on ROW; and shared parking agreement with Dolphin Inn per sec. 34-2018(c)3.
13. Valet parking service will be established when restaurant operations begin and will be

available as needed to meet peak parking needs.

14. The property owner will coordinate with Town staff to install “No Parking” signs along the right-of-way where the subject property abuts Egret and Curlew Streets.
15. At time of site development, the property must provide perimeter buffers as depicted on the approved site plan.
16. Any unremedied violation of the conditions of approval shall render the special exception null and void.