

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 12-29
SEZ2012-0002 La Ola Restaurant

WHEREAS, applicant Thomas List has requested a Special Exception in the DOWNTOWN zoning district to amend zoning approval for alcohol license type from 2COP to 4COP, hours of operation, and live music (amending conditions set forth in Resolution 04-14 and 11-21); and

WHEREAS, the subject property is located at 1035 Estero Boulevard, Fort Myers Beach, FL 33931; and

WHEREAS, the applicant has indicated that the STRAP for the subject property is 19-46-24-W4-0060B.0120 and the legal description of the subject property is BUSINESS CENTER BLK 8 PB 9 PG 9 LT 7 + LOT 6 LESS WLY 6 FT LESS ROW OR3539 PG3351; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on December 11, 2012; 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 December 17, 2012, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2012-018, 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 34-88.

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, LPA Resolution 2012-018, and the standards for granting special exceptions, 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 amend zoning approval for alcohol license type from 2COP to 4COP, hours of operation, and live music with such approval nullifying the conditions set forth in Resolutions 04-14 and 11-21. This approval is subject to the following conditions:

CONDITIONS OF APPROVAL:

1. *The applicant must obtain a yearly lease agreement with the Town of Fort Myers Beach to allow the placement of tables and chairs within the Times Square area.*
2. *Legible signs will be clearly posted for the areas not approved for on-premise consumption stating "Alcoholic Beverages are Prohibited Beyond this Point."*
3. *Lighting on the outdoor seating areas will be shuttered and shielded from the surrounding properties.*
4. *The hours for operation for consumption on premises shall be from 7am to 2am, 7 days a week.*
5. *The applicant and property owners must comply with the provisions of Land Development Code Sections 14-71 through 14-79 relating to the protection of Sea Turtles.*
6. *The outdoor seating area cannot exceed current building, fire and life safety codes for number of tables and chairs and will be re-evaluated on an annual basis for compliance.*
7. *No bars, tables, chairs, speakers or any other item may extend into the utility easement without written consent from the public utility(ies) entitled to utilize that easement.*
8. *Live music is permitted only between the hours of 1:00 pm and 11:00pm, 7 days a week and must comply at all times with applicable Town noise ordinances.*
9. *The principal use of the subject property shall remain as a restaurant, but incidental package sales shall be permitted.*

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 Town Council makes the following findings and reaches the following conclusions:

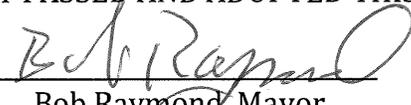
1. Changed or changing conditions **do** exist that make the requested approval, as conditioned, appropriate:
2. The requested special exception, as conditioned, **is** consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan:
3. The requested special exception, 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:

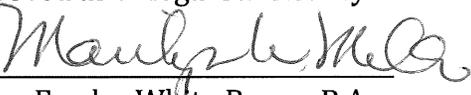
6. The requested special exception, as conditioned, **will** be in compliance with the applicable general zoning provisions and supplemental regulations pertaining to the use set forth in LDC Chapter 34:

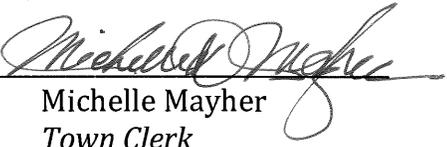
The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember **Kosinski** and seconded by Councilmember **List**, and upon being put to a vote, the result was as follows:

Bob Raymond, Mayor	AYE	Alan Mandel, Vice Mayor	AYE
Jo List	AYE	Joe Kosinski	AYE
Dan Andre	AYE		

DULY PASSED AND ADOPTED THIS **17th** day of DECEMBER, 2012.

By: 
Bob Raymond, Mayor

Approved as to legal sufficiency:
By: 
Fowler White Boggs, P.A.
Town Attorney

ATTEST:
By: 
Michelle Mayher
Town Clerk