

TOWN OF LAUDERDALE-BY-THE-SEA

PLANNING AND ZONING REGULAR MEETING AGENDA

Town Commission Meeting Room

Wednesday, August 17, 2011

6:30 P.M.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE TO THE FLAG

III. APPROVAL OF MINUTES - Planning and Zoning Meeting of July 20, 2011

IV. PUBLIC COMMENTS

V. NEW BUSINESS

Item #1: Architectural Review Standards presented by Cecelia Ward
Priority No.1: Proposed changes to Code Section 30.9 Architectural Standards.

VI. OLD BUSINESS

Item #1: Conditional Use Application for Outside Seating in the B-1 and B-1-A Zoning District.
Tabled from the July 20, 2011 Planning and Zoning meeting.

VII. UPDATES/BOARD MEMBER COMMENTS

VIII. ADJOURNMENT

THE TOWN OF LAUDERDALE-BY-THE-SEA WILL FURNISH APPROPRIATE AIDS AND SERVICES NECESSARY TO AFFORD AN INDIVIDUAL AN EQUAL OPPORTUNITY TO PARTICIPATE IN MEETINGS OF THE PLANNING AND ZONING BOARD. IN DETERMINING WHAT TYPE OF AUXILIARY AID AND SERVICE IS NECESSARY, THE TOWN OF LAUDERDALE-BY-THE-SEA, WILL GIVE PRIMARY CONSIDERATION TO THE REQUESTS OF THE INDIVIDUAL WITH DISABILITIES. PLEASE CONTACT THE TOWN CLERK AT LEAST 48 HOURS PRIOR TO THE MEETING TO MAKE ARRANGEMENTS FOR APPROPRIATE AUXILIARY AIDS. (AUXILIARY AIDS AND SERVICES, 56 FED. REG. 35721, SECTION 36.160(B)).

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE PLANNING AND ZONING BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE/SHE WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSES MAY NEED TO INSURE THAT A VERBATIM RECORDING OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

TOWN OF LAUDERDALE-BY-THE-SEA

PLANNING AND ZONING REGULAR MEETING MINUTES

Town Commission Meeting Room

Wednesday, July 20, 2011

6:30 P.M.

I. CALL TO ORDER

Chairman Alfred Oldaker called the meeting to order at 6:30 P.M. Members present were Chairman Alfred Oldaker, Vice Chair Yann Brandt, Ben Freaney, Patrick Murphy and First Alternate Eric Yankwitt. Also present were Bud Bentley, Assistant Town Manager, and Town Attorney Kathryn Mehaffey. Board Secretary Colleen Tyrrell was present to record the minutes of the meeting.

II. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

III. APPROVAL OF MINUTES - Planning and Zoning Meeting of June 15, 2011

There being no additions, deletions or changes to the minutes, all voted in favor to approve the June 15, 2011 minutes as presented.

IV. PUBLIC COMMENTS

There were no public comments.

V. NEW BUSINESS

Item #1: Proposed Amendments to the Notice of Intent Regulations.

Chairman Oldaker asked Town Attorney Kathy Mehaffey to review the proposed amendments to the Notice of Intent Regulations.

Town Attorney Mehaffey said that the code as it is at this moment, has a provision that essentially provides additional notice for any amendments to the Land Development Code (LDC). Under statutory processes, any amendments to the LDC takes about two to three months with two meetings before the Town Commission and a meeting before the Planning and Zoning Board. The Notice of Intent procedures add additional hearings and notice by currently requiring first a meeting where they present the Resolution and the Notice of Intent followed by another meeting at which they have a public hearing on the Notice of Intent. At that point, then a land development change would move forward. That Notice of Intent procedure adds approximately two months to any amendment to the LDC process. It also has restrictions in terms of the requirement to stay within the confines of what was noticed. This item makes some changes to the Notice of Intent procedures which are intended to shorten and streamline the process to make it more user friendly and more amenable to the actual development of land development regulations. First it provides that the public hearing for the Notice of Intent be held on the same day as the Notice of Intent Resolution that was adopted by the Town Commission. So the primary time savings is by cutting that Notice of Intent process in half. It adds additional language to clarify that a land development regulation proposed for adoption underneath a Notice of Intent can be addressed in multiple ordinances. This helps the public to be more aware of the situation when they are following the Notice of Intent. It allows the Town Commission to provide a date for when those items are going to be heard in terms of a timeline or if the Town Commission does not identify a date, it provides a one year default. The Town Commission may extend the timeframe of an NOI by amending the approving Resolution.

Town Attorney Mehaffey distributed a draft change of the Ordinance beginning on line 156 and noted that the changes were indicated by the red text. Originally, the Town Commission could provide two extensions for six months. This change that was just passed out to the board eliminates those two extra extensions and puts a maximum timeframe of one year for a Notice of Intent. The reason for this change was due

to the recent legislative session that just closed; the legislature amended the Bert Harris Act and changed some of the definitions and provisions such that an inordinate burden is now found to occur as early as one year. Town Attorney Mehaffey said that we do not want this process to extend beyond a year so as to trigger any Bert Harris claims. If the Town Commission sets a six-month timeframe for a development regulation, they could still do an extension provided the extension does not exceed one year. If the default is for one year, then no extension can be granted beyond that year. Town Attorney Mehaffey ended her presentation and asked the board for comments.

Ben Freeny asked, with regards to the initial meeting, at that point the Town Commission develops and passes the Resolution and that would also be the public hearing.

Town Attorney Mehaffey confirmed his comments.

Mr. Freeny asked what kind of notification is required and what would be the state requirements for notification that would have to proceed that meeting and how could the commission do that if they don't do the Resolution until that meeting.

Town Attorney Mehaffey said that it would be a regular meeting notice and the Resolution is prepared on the agenda so that the notice of what is going to be at that meeting is in the agenda and the Resolution would be there and the Notice of Intent is attached. Town Attorney Mehaffey said that would put everyone on notice one month before anything starts getting developed with the Planning and Zoning Board.

Chairman Oldaker asked Town Attorney Mehaffey to go through the ordinance draft page by page and give a brief review of the changes.

Mr. Freeny referred to line 137 and said that they were removing the requirements to provide notice to anybody that is involved in the land development process and removing the notice by mail or certified mail and we would be relying strictly on the web-site and posting the notice in Town Hall. Mr. Freeny said that he was uncomfortable with that change and felt that basically everyone would have to stroll by Town Hall once a week or so just to see if they were going to have issues with a permit that has been issued or they may be in the process of negotiating or trying to develop a plan.

Chairman Oldaker asked how many applications would the Town have at any given time that would make it burdensome for the Town to mail a certified letter. Chairman Oldaker asked Mr. Bentley if he knew from experience how many applications would the Town have at any one time.

Mr. Bentley, Assistant Town Manager, responded that with the experience the Town has had this past year with this down economy, there were not many applications if any that were in the pipeline.

Town Attorney Mehaffey said that this entire thing requires that from and after the issuance of the Notice of Intent, which means that it applies to everybody that comes in. If something is in the pipeline already, most likely it would not apply. The purpose of the Notice of Intent is to put everyone on notice from that point forward that something was going to change.

Mr. Bentley said that if an application has been submitted, it would be processed according to the rules that are in place at the time of submission. So, if someone submitted a site plan application, they would not be affected by a Notice of Intent.

Mr. Freeny said that when he reads this, he could interpret it either way. For example, if yesterday he applied for a permit to put up a new roof, he would be an applicant. And, if today we have a meeting and he lives out of the country and his builder is going to take care of the roof for him, Mr. Freeny doubts that he would ever see a Notice of Intent at Town Hall. Mr. Freeny suggested that the language be made clearer that it's the applicants after that point in time from when we would have that initial meeting.

Town Attorney Mehaffey said that the language could be clarified but said just for the record, to go back and apply it retroactively creates significant legal impositions to the point that normal interpretation would not support that interpretation. Town Attorney Mehaffey said that she could make those changes as long as staff had no objection.

Town Attorney Mehaffey said that f.(2) could be reworded to say, "applicants making application from and after the issuance of the Notice of Intent".

Mr. Freeny said that he would prefer that change because when you read through the code there are a lot of unclear statements.

Mr. Bentley directed the board's attention to the first line that states "From and after the issuance of the Notice of Intent" and then the whole paragraph flows from that.

Mr. Freeny said that is why he could read it both ways. He could understand that angle but from and after that point in time, there is no definition on who the applicant is. Is the applicant someone that has an application that they just submitted yesterday? Is it someone that walks in tomorrow?

Mr. Bentley said that was an excellent point. Mr. Bentley said that if the application was submitted yesterday, and the Notice of Intent was approved tonight, then this applies the moment the notice is approved and after and would not be retroactive and there is a lot of case law that supports that. Mr. Bentley said that Mr. Freeny's suggestion is that the Town Attorney take a fresh look at this and try to strengthen the language about when the Notice of Intent would apply. Mr. Bentley said that staff is very supportive of doing that and asked that this be included in the board's motion.

Town Attorney Mehaffey continued to review changes page by page.

Mr. Brandt asked if we were afraid that a Notice of Intent is going to impose a yet-to-be finalized land development change on an existing application that came before the date of the Notice of Intent.

Town Attorney Mehaffey said that she believed that was the concern.

Mr. Brandt said that he sees words in the code that pieced together would get to that affect but it is definitely not the intent and he did not see how anyone would read it or any court would agree with that. Mr. Brandt did not see how a Notice of Intent by itself would impose rules on an existing application.

Mr. Freeny said that Mr. Brandt mentioned "an existing application" and said that those words were not in the document. Mr. Freeny said that he was leary because several years ago the Town passed height restrictions when we knew there would be legal problems and he is not only looking at today but at the future and if language could be clarified to explain what the code says, it leaves less leeway for interpretation by attorneys.

Mr. Brandt said that he thought in lines 56 through 66 it did say it and it was clear and states that "no proposed land development project affected by a pending regulatory change". So, no proposed land development means it has been proposed – it's been there and is in existence. Mr. Brandt said that in his opinion the reason why court cases fail in the suits against the Town was because there was nothing proposed and it might have been an idea in their boardroom and the Town was never noticed that a project was coming on. Mr. Brandt again said that this is clear and that really the intent of this whole thing was to just reduce the requirements and reduce the bureaucracy that the Town has to go through for a proposed land development change. Mr. Brandt did not see how anyone would want to impose the new proposed rule on an existing project.

Town Attorney Mehaffey asked if it would be clearer if it read (line 56 (3) "It is further the purpose of this section to ensure that no land development project proposed subsequent to the date or point of development approval process at which the proposed development regulations apply as designated in the Notice of Intent". Town Attorney Mehaffey said she could talk about this with staff and if this would be something that Mr. Freeny would like to include in his motion as a recommendation.

Mr. Freeny agreed.

Town Attorney Mehaffey continued the page by page review.

Mr. Brandt, for Mr. Freeny's purposes, asked if all of the changes and concerns would be fixed if line 122 was changed to state "all new applications must either i) conform to the pending regulation(s), or ii) be conditioned upon future compliances with the pending regulation(s). One word would fix it all.

Town Attorney Mehaffey said she did not have a problem with that.

Mr. Bentley said that he was so engrained that anything before this is not part of it and said that new applications would be fine and that is the intent.

Chairman Oldaker said that everything discussed in the prior pages would be disregarded and asked if Mr. Freeny was okay with adding the word "New" to line 122.

Mr. Freeny referred to paragraph 3 line 56 and said that he would like it noted in that section what this applies to because that is basically what it is telling us that it should apply to subsequent applications after the Resolution for the Notice of Intent.

Mr. Bentley said that when the Town Attorney reviews the document, she would be consistent in adding the word “new” to apply to where it is needed.

Chairman Oldaker said that if the board passes this forward, there would be an addition to add the word “new”.

Town Attorney Mehaffey said that it could be passed forward with clarifications to address that this applies to new applications.

Town Attorney Mehaffey continued the page by page review.

Chairman Oldaker referred to (g) Implementation time frame and asked why it was extended from six months.

Town Attorney Mehaffey said that it provided extension periods of six months. So, it actually provided for eighteen months. There is a one year implementation timeframe and then the Town Commission could do two time extensions for a total of an additional six months which would have been eighteen months. Now the total time cannot exceed one year.

Mr. Bentley asked Town Attorney Mehaffey to take a look at lines 164 through 167 in terms of putting back that language and just removing the dates and specify that it has no affect on any application pending approval prior to the Notice of Intent and then we would not have to deal with new applications, old or existing throughout the text.

Chairman Oldaker asked the board if a motion was in order.

Mr. Brandt made a motion, seconded by Mr. Yankwitt, to pass this on to the Town Commission with the Board's recommendation to approve the proposed Amendments to the Notice of Intent Regulations as presented by Staff. In addition the Town Attorney would modify the language to show that the Notice of Intent would not apply to existing applications.

In a roll call vote, the motion carried 5 – 0. All voted in favor of the motion.

Item #2: Conditional Use Application for Outside Seating in the B-1 and B-1-A Zoning District.

Chairman Oldaker asked Assistant Town Manager Bud Bentley for his comments on the conditional use application.

Mr. Bentley referred to the diagram that was included in the backup material provided to the board and said that there is an existing deck to the south of the pier restaurant and the applicant has proposed an addition to that existing deck and to use both deck areas for additional service area. Mr. Bentley said that the existing deck was permitted as a waiting area and subsequently the applicant began providing service in that area. At that time there was not an application for approval for that use which would have required additional required parking. Because during this time period the Town was talking about a parking exempt ordinance for restaurants, new restaurants or additions to existing restaurants this violation was put on hold pending the resolution of that. As the board is aware, the Town now has a parking exemption program for restaurants and expansion of existing restaurants. This would apply to the existing area and the new area. In April, the uses in the Town's code were amended and the conditional uses section consolidated and additional uses were included which included outdoor seating. The applicant has brought forth this application to cure the existing seating area and to receive approval for the additional seating. Once they have their conditional use can apply for the parking exemption. Mr. Bentley said that the staff report provided recommendations on page 2 that are suggested to be part of the conditional use. Mr. Bentley said that in reviewing the application that afternoon, there were two items that needed to be focused on that did not get the attention when it was initially submitted. The first is in the application that states that the service will be between the hours of 8 am to 10 pm. The conditional use recommendation is that the application is considered a part of the approval process and that anything stated in the application basically becomes a condition. Mr. Bentley explained that during the winter months they would not be able to provide outdoor seating at 7:30 in the morning and they would not be able to service past 10 PM even if it were a holiday weekend or for a special event. Mr. Bentley said that staff has not had a chance to discuss these issues with the applicant.

Mr. Bentley said that the applicant came by the office that day and said that they had conflicts and that they were relying on their attorney to represent them at the hearing. They just found out this morning that their attorney had a scheduling conflict and was not able to come to the meeting this evening. Mr. Bentley said that the application was agreeable to having this item tabled until the next scheduled meeting or the board could still continue to review the application for consideration. Mr. Bentley said that the applicant wants to make sure the board knows that they know this is on the agenda and that they gave staff as much notice as they could under the circumstances.

Mr. Bentley continued his comments and said that they have had live music in that outdoor seating area and if they close at 10 PM there was not really an issue but if the board or the Town Commission allows them to stay open later than that, then staff believes the music issue should

be evaluated since there is a residential property just south of the pier. Mr. Bentley said that these were the two items that staff would suggest there be some further discussion on or to table this item to the next scheduled Planning and Zoning meeting.

Chairman Oldaker said that he would like more information.

Mr. Brandt wanted to clarify a point that Mr. Bentley made that the time indicated on the application 8 am to 10 pm would be a concern that it would become a condition. Mr. Brandt said that if the board would make a recommendation it would still go to the Town Commission.

Mr. Bentley agreed with Mr. Brandt and said that the applicant could address those issues before the Town Commission

Mr. Brandt said that from the board's prospective, does the application comply with the intent of the code and said that he would be comfortable to basically black out the timing aspect of the application and say that it qualifies and let the Town Commission have a discussion with the applicant regarding the timing aspect. Mr. Brandt said that the times did not bother him and said that there is plenty of activity there after 10 pm anyway and did not think that if they had something after 10 PM would be a concern. Mr. Brandt said that the Town has noise ordinances that would deal with any impact from that. Mr. Brandt said that he would be comfortable dealing with this tonight if the board wished to continue and did not think that it was an issue that would garner its own meaning and would leave it up to the consensus of the board.

Chairman Oldaker referred to the diagram submitted in the backup material and asked if parking spaces 35 and 36 indicated the end of the property and was concerned that the extended deck would almost encroach on the other property and that if they set up some type of live music in that area there might be a noise issue .

Mr. Bentley said that Chairman Oldaker's point was well taken and they could on an ongoing basis take out that seating area on the south end of the new deck and place music there and they would have to comply with the noise ordinance.

Mr. Brandt said that this application was a new conditional use that the Town has created to expand outdoor cafes and sidewalk cafes.

Mr. Bentley confirmed Mr. Brandt's comment.

Chairman Oldaker commented that this is private property whereas some of the other properties were not.

Mr. Bentley said that part of the seating at Aruba on the south side next to the pavilion is on their property and some of it is a sidewalk café that is licensed from the Town. Mr. Bentley said that he knows of no restrictions on service hours for sidewalk cafes. If there were adverse effects from a sidewalk café licensed through the Town, the Town could easily revoke that license. This situation is different and this is a condition that runs perpetually with the land and as long as they are operating within the conditional use, even though they may have a negative impact on surrounding property, it could not be revoked.

Mr. Freeny said that in the documents it discusses the non-transferability of this permit and asked if the non-transferability would be between the property owner or from one piece of property to another. Mr. Freeny asked if the conditional use permit dies when the property is sold?

Town Attorney Mehaffey said that was the intent and that it could not be transferred to another property and as Mr. Bentley stated, conditional uses tend to normally run with the land. This condition has the effect of limiting it to this use.

Mr. Brandt said that the property is owned by the Anglin Family Trust whereas the applicant is the Anglin Beach Café. So does it stay with the property or the applicant.

Mr. Bentley said that it would stay with the applicant and he used as a distinction the business Diamonds and Doggies and said that if they moved out, the property owner would not have the conditional use and would not be able to remarket that as a boutique pet store. The new boutique pet store would have to come in and apply for a new conditional use permit.

Town Attorney Mehaffey confirmed Mr. Bentley's comments. However, if the business Diamonds and Doggies is purchased, the business would continue and would maintain this conditional use. In this situation, we have the business and if the business itself sells the property, the conditional use does not transfer.

Mr. Brandt said that the main thing the board should be considering is that the permitted decks (one that is already built and one that is getting built) would the board be okay with them complying with the code on the conditional use permit to have customer service area. Mr. Brandt

said that everything else is a legal question that the Town and the Town Attorney would have to address if it ever came up. Outside of that, does the Town want the sidewalk café to remain there?

Mr. Bentley said that staff recommends that this application be approved. If approved, staff will touch base with the applicant and be sure that they are committing themselves to a timeframe of 8 am to 10 PM and if they want to address the issue before the Town Commission.

Mr. Freeny said that he would like to propose that the board address as much as they can due to the fact that the Town Commission has long meetings and that he also has several questions. Mr. Freeny asked if any other restaurants have any time restrictions other than the general restrictions that the Town has established in the code for a business? Is this something that we could completely strike out?

Town Attorney Mehaffey said that she did not know of any time restrictions that would be imposed on any specific businesses but she was not familiar with any individual development approvals.

Mr. Freeny would like to propose that they strike the business hours and say that they meet any and all other Town general restrictions pertaining to the times that businesses could open and close because he suspects that the restaurants do not have a time that anyone has established for them and that leaves them the flexibility to move their opening time earlier or stay open later for diners to enjoy the music wherever it may be.

Mr. Brandt repeated that he stills feels that the time has nothing to do with the outdoor café and to leave it to the Town Commission. Mr. Brandt said that the board is being asked if they want an outdoor café there – yes or no.

Town Attorney Mehaffey said that staff has provided a report that contains conditions and the conditions say that subject to the applicant's letter of intent, and the letter of intent provides the hours of 8 am to 10 PM. So, in the board's motion, the board would by default be addressing the hours of operation either by virtue of leaving this condition as is or by virtue of recommending an alternate condition that would modify the hours of operation.

Mr. Bentley agreed with the Town Attorney and suggested that the board state that as a new condition #2 that the outdoor seating shall operate according to the timelines established in the Town code.

Mr. Freeny made a motion, seconded by Mr. Brandt with further discussion, to pass this on to the Town Commission with the board's recommendation to approve the Conditional Use Application for Outside Seating in the B-1 and B-1-A Zoning District with staff's conditions listed 1 through 5 and that a new condition #2 be added to state that the outdoor seating shall operate according to the timelines established in the Town Code.

Mr. Brandt said that he thought that the big win here was that they have a great success with this being one of the first parking exemption applications and was glad to see it was working out in their favor. Mr. Brandt said that he thought every restaurant should open a sidewalk café and thought this would be great.

Chairman Oldaker said that the only problem he has is with the diagram and asked if parking space 36 was the boundary line.

Mr. Freeny said that there was motion on the floor.

Town Attorney Mehaffey confirmed that there was a motion made to approve the conditional use to include staff's conditions and that a revision to the conditions be made to include the condition that the hours of operation shall be according to the timeframes established within the Town code. Town Attorney Mehaffey said that the board could continue to discuss further issues and make any amendments for recommendations to the motion.

Mr. Bentley said that if there were several possible amendments to this application, he would be confused and asked that the amendments be added one at a time.

Town Attorney Mehaffey said that if everyone wanted to withdraw their motion and the second, the motion could start over and then do each motion one by one.

Mr. Freeny withdrew his motion and Mr. Brandt withdrew his second to the motion.

Mr. Brandt made a main motion, seconded by Mr. Yankwitt, to pass this on to the Town Commission with the board's recommendation to approve the Conditional Use Application for Outside Seating in the B-1 and B-1-A Zoning District with staff's conditions listed 1 through 5.

Mr. Freeny made an amendment to the main motion to strike from the conditional use application and the site plan review and recommendations from staff the time restrictions of 8 am to 10 PM and replace that with the general hours of operation of a business based on the Town code.

Mr. Bentley said that he was uncomfortable with the board amending a document provided by the applicant. It was his suggestion that the board add a new condition 2 that states that the hours of operation for the restaurant shall be based on the timeframes established within the Town code. That would be a specific condition that would supercede the application.

Mr. Freeny rephrased his amendment to the main motion by amending the site plan review and recommendations by staff to allow restaurant hours of operation based on the Town's code which would remove the hours of operation from 8 am to 10 PM from consideration from the applicant. Mr. Yankwitt seconded the amendment to the main motion.

Mr. Brandt, the original motion maker, accepted the friendly amendment to the main motion.

Town Attorney Mehaffey said that the board could further discuss the amendment to the main motion or make additional amendments to the main motion.

Chairman Oldaker again referred to the diagram that was provided in the backup material and said that he did not know if it reflects a full submittal and felt the board should be concerned that there were no dimensions listed. There is a reference to the traffic service quarter but there is no dimension and they are just referencing spaces in a parking lot. Chairman asked if that was really on their most southern border line or as close as they could be to that. Chairman Oldaker said that he does not have a reference to the surrounding properties to say that these decks would be appropriate for that space.

Mr. Bentley said that the existing deck comes up to and incorporates the fence that is at the edge of the parking lot. So, we know that this is a matched boundary. The additional deck would have a frame of reference. Mr. Bentley said that the board was not approving the width of the travel area and that would be a building permit issue on whether or not they have sufficient area for that or the way they would have their chairs set and ADA requirements and so forth. The board is approving the conditional use to approve the existing and to allow the expansion of the service area. Mr. Bentley said that if the board needs additional dimensions on these things, then that would be a reason to table this until the next meeting.

Chairman Oldaker said that he was only one voice but felt that the board was representing not only the commercial interest of the Town but the residential interest of the Town and on the south side, they have not been presented with a café concept that would be that close to pure residential. Chairman Oldaker said that Aruba doesn't encroach, Village Grille doesn't, and 101 doesn't. This one on the south side which is not shown on the diagram is residential property which is not far away. By not seeing dimensions where the word corridor is, would it really be four feet or is it 24 feet which pushes that 66 square foot deck further down. So, is he just talking about the hours of operation or is he also looking at something that may be encroaching on the neighbors.

Mr. Bentley said Chairman Oldaker had an excellent point and asked the board to take a 3 minute break and he would pull the complete file. Mr. Bentley said that he thought the diagram was blown up from a larger plan set.

Chairman Oldaker said that he did not want to hold up the meeting for him to get the plans and asked if he was going down the wrong path and that Town staff is looking at this.

Mr. Bentley said he did not look at the traffic service corridor because he knew that would be a building permit issue. Mr. Bentley said that he thought it was appropriate for the board to look at the southern boundary of the new deck and how close that is to the property line and to the residential development to the south.

There was a 5 minute recess.

Mr. Bentley returned and provided the board with the site plan of the site reflecting the boundary of the property. Mr. Bentley said that this site plan came out of a different file and said that the applicant has submitted an application for paid private parking that would be before the board in the near future

Chairman Oldaker remarked that the site plan still did not have any dimensions and he was not comfortable moving forward.

Mr. Freeny asked if proper notice was being sent to property owners that lived within 300 feet of the site.

Board Secretary Colleen Tyrrell responded that the notice of the conditional use would be advertised and a mailing would be sent to the property owners within the 300 feet boundary of the site prior to the August 23, 2011 Town Commission meeting.

Mr. Freeny remarked that any of the property owners whether residential or commercial would have notice and hoped that if they had any comment they would come to the Planning and Zoning meeting or the Town Commission to add their input.

Chairman Oldaker said that the board is there to advise the Town Commission and not to push everything back to them and leaving all of the work up to them. Chairman Oldaker is concerned that what is being presented to the board is lacking information that the board needs.

Mr. Brandt asked Chairman Oldaker if he would be more comfortable if this matter is tabled until the next scheduled Planning and Zoning meeting.

Mr. Brandt withdrew his main motion and said that he would defer to the next meeting and asked that staff provide the dimensions from the edge of the parking lot to the southern end of the deck to the property line and maybe resolve the time issue as well and get a new application from the applicant on the time item.

Mr. Bentley asked if there were any further issues that staff should be aware of before the motion to defer was made.

Mr. Murphy asked if there was ever a study done on existing restrooms since there will be additional outdoor seating and particularly if there a code that requires a certain amount of stalls in a restroom when tables are added.

Mr. Bentley said Mr. Murphy was correct.

Mr. Murphy asked is this restaurant would be in compliance.

Mr. Bentley said that staff would include that information in the amended report for the next meeting.

Mr. Freeny said that he was looking at the original drawing that was provided in the packet and he was trying to determine what the shaded area meant and would like a recommendation on what was standard for a service area and he was looking for the calculation for the additional parking for the new area and also interested in the additional parking for the area that was constructed last year before the new parking regulations were put into effect. Mr. Freeny said that he did not know if there was allocation for parking for those spots and would like to understand that more fully.

Mr. Brandt said that there was a cap on the parking spaces that could be allocated and asked that not too many parking spaces be taken out of the program.

Mr. Freeny said that they would be exempt for the new construction area.

Mr. Brandt said they would be exempt but if the customer service area calculation is increased by including all of the area, then more parking spaces would be required to be exempt which would then reduce the overall amount of spaces in the program and thus reducing the amount of customer service area that the downtown area could have.

Mr. Freeny said that he did not feel that we should be playing games with what the definition of a customer service area would be for one group and the board should be fair to all groups.

Mr. Bentley said that he would go back and check that according to code.

Mr. Murphy asked if they could assume that the size of a parking space would be 12 to 15 feet in width.

Mr. Bentley said that one of the issues with this property is that the existing parking lot is on a separate parcel and it is also so old that it does not meet code and it has no landscaping. Mr. Bentley said they have been working with them because they want to submit a conditional use application for paid private parking and they are working on a striping diagram so that they will know how many parking spaces are in that lot.

Chairman Oldaker commented that because this is on the beach and if you follow the line between the deck and the front of the parking spaces all the way down to the south, were they allowed to do this and also to keep building out on to the sand?

Mr. Bentley said that they would have had to obtain permits through the state because it is east of the coastal construction line.

Chairman Oldaker said that Mr. Brandt made a motion to defer to the next Planning and Zoning meeting and asked for a second.

Mr. Freeny seconded the motion.

In a roll call vote, all voted in favor of the motion to defer the meeting. The motion carried 5 – 0.

VI. OLD BUSINESS

NONE

VII. UPDATES/BOARD MEMBER COMMENTS

Mr. Freeny wanted to remind the viewers that they could go on the Town web-site and pull up the program that the University of Miami put together to view the diagrams. Mr. Freeny said that the viewers would find it very interesting and he knew that the Town was planning to move on some of the projects next year and it should be very exciting.

Mr. Brandt thanked Vice Mayor Dodd and everyone that contributed to the 4th of July Event and said that it was a great success. Mr. Brandt said that he really enjoyed himself and hoped that everyone else did as well.

Mr. Brandt said that from a planning prospective, everyone should be at the budget meeting on Tuesday evening at 5 PM. Mr. Brandt said that there were some interesting things bring proposed by administration and by some of the commissioners and it was a concern to him. Mr. Brandt said that his taxes go up every year and that residences are being completely overlooked and this should be brought up at the budget meeting. Everything is on the commercial sector and what money was provided for programs in the residential areas, the money was never used and now that money is being used elsewhere. Everyone is seeing that government is getting very large in this Town and everyone should plan on being at the budget meeting Tuesday night.

VIII. ADJOURNMENT

There being no further business to discuss, the meeting adjourned at 8:10 p.m., July 20, 2011.

ATTEST:

Chairman Alfred Oldaker

Date Accepted: _____

Colleen Tyrrell, Board Secretary

NEW BUSINESS

AGENDA

ITEM #1



Town of Lauderdale-by-the-Sea

Development Services
4501 N. Ocean Drive
Lauderdale-by-the-Sea, FL 33308
Phone (954) 776-3611
Fax (954) 776-3431

To: Planning & Zoning Board
From: Bud Bentley, Assistant Town Manager *JB*
Date: August 10, 2011
Re: ***Planning Priority No. 1: Proposed Changes to Section 30.9 Architectural Standards***

STAFF REPORT

Planning Priority No. 1: *Proposed Changes to Section 30.9 Architectural Standards* is complete and Cecelia Ward has provided her report. The recommendations in the report have been incorporated in the attached draft Ordinance (**Exhibit 1**).

Background

At the April 20, 2011 meeting, the Planning and Zoning Board received a presentation from Cecelia Ward on her analysis of the Town's Planning & Land Development Regulations, and her recommendations for further action. A copy of the report, the minutes of the meeting and the video link are available at: <http://www.lauderdalebythesea-fl.gov/town/agendabackupminutesPZ.html>.

At the June 21st Budget Workshop, the Commission received a report concerning the Town's Planning Priorities & Cost to Address. A copy of the report and the video link for the meeting are available at: <http://www.lauderdalebythesea-fl.gov/town/agendabackupminutesNEW.htm>. Ms. Ward was authorized to proceed with Planning Priority No. 1.

In addition, at the July 12, 2011 Commission meeting, the Commission authorized Cecelia Ward to begin work on Planning Priority No. 2: *Encourage Investment in and Redevelopment of Existing Hotels*.

Recommendation:

Ms. Ward will present her report at the August 17th P&Z Board meeting.

Exhibits: 1. Draft Ordinance

ORDINANCE 2011-__

1 **AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-**
2 **THE SEA, AMENDING SECTION 30-9, OF THE CODE OF**
3 **ORDINANCES TO AMEND REQUIREMENTS RELATED**
4 **TO ARCHITECTURAL STANDARDS AND REVIEW**
5 **CRITERIA; PROVIDING FOR CODIFICATION,**
6 **SEVERABILITY, CONFLICTS AND AN EFFECTIVE**
7 **DATE**

8
9
10 **WHEREAS**, the Town Commission recognizes that changes to the adopted Code of
11 Ordinances (the “Code”) are periodically necessary in order to ensure that the Town’s land
12 development regulations are current and consistent with the Town’s planning and regulatory
13 needs; and

14 **WHEREAS**, Section 30-9 “Architectural standards”, of the Code, provides architectural
15 design elements and guidelines to facilitate harmonious and aesthetically compatible
16 development; and

17 **WHEREAS**, the Town has reviewed the Town Master Plan and completed several
18 visioning and inventorying programs to evaluate existing architectural development and future
19 Town goals; and

20 **WHEREAS**, the Town Commission desires to revise the architectural standards to foster
21 a sense of place and support compatible development which is efficient and architecturally and
22 visually appealing and preserves the essential character of the Town; and

23 **WHEREAS**, Section 30-531 of the Code requires issuance of a Notice of Intent prior to
24 the processing of any amendment to the land development regulations in Chapter 30 of the Code,
25 and such notice was given of this amendment on January 25, 2011; and

Exhibit 1

ORDINANCE 2011-__

26 **WHEREAS**, the Planning and Zoning Board, sitting as the Local Planning Agency, has
27 reviewed this Ordinance at a duly noticed hearing on August 17, 2011 and recommended its
28 adoption; and

29 **WHEREAS**, the Town Commission conducted a first and second reading of this Ordinance
30 at duly noticed public hearings, as required by law, and after having received input from and
31 participation by interested members of the public and staff, the Town Commission has determined
32 that this Ordinance is consistent with the Town's Comprehensive Plan and in the best interest of the
33 Town, its residents, and its visitors.

34 **NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF**
35 **THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AS FOLLOWS:**
36

37 **SECTION 1. Recitals.** The foregoing "Whereas" clauses are ratified and confirmed as
38 being true, correct and reflective of the legislative intent underlying this Ordinance and are
39 hereby made a specific part of this Ordinance.

40 **SECTION 2. Amendment.** Section 30-9, Architectural Standards, of Chapter 30,
41 Unified Land Development Code, is hereby amended¹ as follows:

42 **Sec. 30.9 Architectural standards.**

43 ~~(a) Samples of color in painting or awning work. Each applicant for, or holder of, a~~
44 ~~permit authorizing exterior painting, coloring, awning work or erection of a~~
45 ~~canopy shall be required to submit to the Board for its approval, prior to the~~
46 ~~execution of such work, a sample of the color or colors to be used in such work;~~
47 ~~and the Board shall require the use of appropriate and harmonious colors therein.~~

¹ Words in ~~strike through~~ type are deletions; words in underlined type are additions.

Exhibit 1

ORDINANCE 2011-__

(b) ~~Architectural style. All buildings in business districts B-1, B-1-A and B-2 zoned properties hereinafter constructed, reconstructed, altered or added to shall be of classical style of Spanish, Venetian, Italian, or other Mediterranean or similar harmonious architecture.~~

1. Purpose and Intent.

The purpose of this section is to encourage the local adaptation of the Mid-Century Modern architectural style, otherwise referred to as Miami Modern (MiMo), as the preferred architectural style of the Town, in that such architectural style is compatible with the essential character of the Town, supportive of efficient development, is architecturally and visually appealing, and fosters a sense of place in the preservation of the architectural and design characteristics of the Town's existing resort and residential buildings.

2. Typical Architectural Design Features and Characteristics.

Typical architectural design features and characteristics to be utilized to reflect the Mid-Century Modern (MiMo) Architectural Style shall include, but not be limited to:

- (a) the use of geometric patterns
- (b) emphasis on horizontal orientation
- (c) kidney and oval shapes
- (d) curves
- (e) stylized sculpture
- (f) cast concrete decorative panels and stonework particularly at the entrances

Exhibit 1

ORDINANCE 2011-__

- 69 (g) overhanging roof plates and projecting floor slabs with paired or clustered
- 70 supporting pipe columns
- 71 (h) round columns that taper to a smaller diameter as the column descends
- 72 (i) open-air verandas
- 73 (j) symmetrical staircases
- 74 (k) acute angles
- 75 (l) asymmetry in design
- 76 (m) awning windows
- 77 (n) built-in planters
- 78 (o) catwalks
- 79 (p) cutouts
- 80 (q) cantilevered beam and projections
- 81 (r) compressed arches
- 82 (s) concrete canopies
- 83 (t) curtain wall construction
- 84 (u) decorative railings
- 85 (v) egg crate facades
- 86 (w) eyebrow windows
- 87 (x) floating staircases
- 88 (y) intersecting planes
- 89 (z) louvers
- 90 (aa) large picture windows

ORDINANCE 2011-__

(bb) metal grilles

(cc) porte-cocheres

(dd) ribbon windows

(ee) rounded eaves

(ff) textured stucco

3. Typical Materials:

Typical materials to be utilized to reflect the Mid-Century Modern (MiMo) Architectural Style, shall include, but not be limited to:

(a) aluminum

(b) textured stucco

(c) field stone

(d) keystone

(e) mosaics (glass or ceramic)

(f) oolithic limestone

(g) plate glass

(h) roman brick

(i) slump brick

4. Applicability.

(a) All development, including new construction, reconstruction, alterations and additions within the B-1-A, B-1, R-5, RD-10, RM-25, and RM-50 districts of the Town shall comply with the architectural standards and architectural review requirements as provided by this section.

Exhibit 1

ORDINANCE 2011-__

(b) Alterations and additions to existing buildings with design elements that are not associated with the Mid-Century Modern style of architecture shall conform to the architectural style of the existing building.

5. Architectural styles.

(a) Mid-Century Modern.

The preferred architectural style of the Town shall be in accordance with the Mid-Century Modern (MiMo) or similar harmonious architecture, except that buildings the Town Commission has designated as a "historical landmark" shall conform to the architecture of the existing building.

(b) Alternative Architectural Styles.

(i) While the Mid-Century Modern (MiMo) architectural style is the preferred architectural style, it is not intended to be the exclusive architectural style of the Town. Alternative architectural styles and design concepts may be considered during the development review process. However, it shall be the applicant's burden to show that the proposed alternative architectural style and design concepts, to the maximum extent practicable, are compatible with the architectural style of adjacent existing or approved development on the same or abutting properties and street frontages, as further provided in this section.

(ii) Alternative architectural styles may be considered appropriate if it is found that:

(1) Such alternative styles are compatible with the architectural style of adjacent existing or approved development on the same or abutting property; and

Exhibit 1

ORDINANCE 2011-__

(2) That the architectural style of new development incorporates a scale, massing, and sufficient number of the same or similar design elements (e.g., horizontal or vertical building facade articulation, building facade articulation elements, facade materials, roof design, use and design of balconies, window design, door design, use and design of window or door shading devices, railing design, etc.) to create a clear and affirmative relationship or transition between the architectural styles of adjacent existing buildings or of adjacent approved development.

6. Review of Architectural Design.

~~It shall be the duty and responsibility of the Architectural Review Board to determine in each and every case whether or not the submitted plans comply with the type of architecture set forth herein above, and suggest to the designing architect such changes as would bring the plan into conformity.~~

~~The Architectural Review Board shall recommend such changes in the design of the structure so as to preserve the traditional aesthetic treatment and an excellence of design of the community.~~

a. It shall be the duty and responsibility of the Development Review Official to ensure that any application for a development permit, as required by Chapter 30, Article II., Development Review, of the Town Code of Ordinances and as required by this section, includes a review of architectural design, as provided herein.

Exhibit 1

ORDINANCE 2011-__

- b. The Town may retain the services of an outside consultant to conduct the Architectural review and shall recover the costs for such services in accordance with the provisions of Section 30-53(d).
- c. The primary purpose of the architectural review shall be to determine whether or not the submitted plans comply with the architectural design features and materials typical of the Mid-Century Modern (MiMo) Architectural Style or if the submitted plans are of an alternative architectural style that complies with the requirements of Section 30.9, paragraph 5(b), as set forth herein above, and to suggest to the designing architect such changes as may be necessary to bring the plan into conformity with MiMo or alternative architectural style.
- d. Elements to be Considered. The following elements shall be considered ~~In considering the design of the building, the Board shall consider and render a recommendation as to the feasibility of the following elements in the review of the plans design concept:~~
- (1) Trim
 - (2) Shutters
 - (3) Awnings and canopies
 - (4) Windows (Fenestration)
 - (5) Doors
 - (6) Texture of surface
 - (7) Colors

Exhibit 1

ORDINANCE 2011-__

- 175 (8) Roofs
176 a. Materials
177 b. Color
178 c. Slope
179 d. Overhang
180 (9) Planters
181 (10) Window boxes
182 (11) Walls, height, location, materials, and design
183 (12) Height of building
184 (13) Location of exposed piping, conduits and rain water leaders
185 (14) Horizontal or vertical building facade articulation
186 (15) Building facade articulation elements
187 (16) Facade materials
188 (17) Use and design of balconies
189 (18) Use and design of window or door shading devices
190 (19) Railing design

191 ~~The architectural type for a given location, unless specifically specified to the~~
192 ~~contrary, shall be in reasonable harmony with the architecture of the business district.~~

193 ~~Additions and alterations to buildings which have been designated by ordinance~~
194 ~~passed and adopted by the Town Commission as an "historical landmark" shall conform~~
195 ~~to the architecture of the existing building.~~

196 7. Compliance with Additional Design Standards.

197 All development subject to the requirements of this section shall also be required to
198 comply with the following additional design standards:

Exhibit 1

ORDINANCE 2011-__

~~(c) Compliance with standards required. All development, including new construction, reconstruction, alterations and additions within the B-1 A, B-1, R-5, RD-10, RM-25, and RM-50 districts of the Town shall comply with the following architectural standards.~~

~~(1) The architectural type shall be in accordance with the classical style of the Spanish, Venetian, Italian or other Mediterranean or similar harmonious architecture, except that buildings the Town Commission has designated as a "historical landmark" shall conform to the architecture of the existing building.~~

~~a. The use of mirrored glass shall not be permitted.~~

~~(2) b. Marked stucco to simulate shutters flanking window openings, and indiscriminate use of stucco "scoring" or "cut lines," shall not be permitted, unless they perform a function in the design, shall not be permitted.~~

~~(3) c. Where particular treatments such as scoring, slump brick or other architectural motifs are employed, these shall "return" on the abutting elevations.~~

~~(4) d. Indiscriminate use of brick shall not be permitted.~~

~~(5) e. Where wood or metal columns are used, the same shall be well-proportioned.~~

~~(6) f. Shutters shall be architecturally designed to enhance the structure and all tracks and housing shall be concealed from view when not in use.~~

~~(7) g. Rooftop equipment such as that used in air-conditioning and any other type of mechanical or service equipment shall be screened from view from the right-of-way.~~

Exhibit 1

ORDINANCE 2011-__

(8) h. Air cooled condensing and/or compressor equipment, watercooling towers and other type of mechanical equipment or apparatus installed on or attached to a premises shall be screened from view from the street, waterway, or adjoining properties by a wall and/or landscaping.

(9) i. Exposed concrete or masonry block shall not be permitted. ~~With the exception of red or other brick, crab orchard or other stone, and architecturally formed and detailed concrete, all masonry surfaces shall be stuccoed.~~

(10) j. If metal garage doors are used, they shall be painted.

(11) k. No exposed air conditioning ductwork or exposed solar tanks shall be permitted.

(12) l. Buildings and structures shall not be of a design that is plainly of an exhibitionistic character in form and coloring. By way of example, a milk bottle, bean pot, articles of food, clothing, a windmill or the like would be in violation of this provision.

(13) m. The materials, slope, construction, locations and design of awnings and canopies shall be subject to approval by the Town.

(14) n. Any building extending from street to street on inside lots shall have two fronts.

(15) o. Facade. Any building constructed on any lot shall be designed in such a manner as to present a facade of pleasing appearance facing all streets.

(16) p. The plans and specifications shall be in accordance with all other applicable code provisions.

~~(d)~~ 8. Preparation, Approval and Revision of Architectural Drawings.

~~The following approval and revising preliminary and final working drawings:~~

Exhibit 1

ORDINANCE 2011-__

(1)(a) *Architectural drawings.* All architectural drawings shall be prepared by and bear an impression seal of a registered architect ~~or registered engineer~~ qualified under the laws of the State of Florida to prepare such drawings.

(2) ~~*Approval in principle.* Preliminary "approval in principle" shall be obtained from the Architectural Review Board before proceeding with the final working drawings. The drawings for "approval in principle" shall preferably be a single line plan or plans and shall have a plot plan, floor plan and shall show all affected elevations. Photographs of adjoining properties [and] plans for additions or exterior alterations of all facades of the building where the alterations occur or to which the addition is attached shall be presented with the preliminary plans. Whenever the estimated cost of construction of any addition, exterior alteration and/or new construction will exceed \$25,000.00 such preliminary plans shall be submitted in duplicate.~~

(3)(b) *Approval of Architectural Design.* Board of architects. It shall be the duty of the ~~Architectural Review Board~~ The Development Review Official shall make the determination as to whether the architectural design reflected in the final architectural design drawings meets the intent of this Section in to preserve preserving the traditional aesthetic treatment of the community, and shall include such findings in accordance with the documentation required for development review and approval as set forth in Article II. Development Review.

(4) ~~*Revisions to preliminary plans.* When the designing architect and/or engineer revises preliminary plans in accordance with the suggestions of the Architectural Review~~

Exhibit 1

ORDINANCE 2011-__

Board, ~~he shall return the original drawings showing the Board's suggestions with the~~
~~revised drawings.~~

(c) Revisions to Approved Architectural Design Drawings: ~~final working~~
~~drawings.~~ Modification to the ~~After plans have been approved, no deviations from~~
~~the approved architectural design as reflected on the approved final architectural~~
~~design drawings shall be permitted without the approval of the Architectural~~
~~Review Board.~~ subject to the provisions for modifications to development plans
as provided in Article II. Development Review.

SECTION 3. Codification. This Ordinance shall be codified in accordance with the
foregoing. It is the intention of the Town Commission that the provisions of this Ordinance shall
become and be made a part of the Town of Lauderdale-by-the-Sea Code of Ordinances; and that the
sections of this Ordinance may be renumbered or re-lettered and the word "ordinance" may be
changed to "section", "article" or such other appropriate word or phrase in order to accomplish such
intentions.

SECTION 4. Severability. If any section, sentence, clause, or phrase of this Ordinance
is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding
shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 5. Conflicting Ordinances. All prior ordinances or resolutions or parts thereof
in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 6. Effective Date. This Ordinance shall become effective immediately upon
passage on second reading.

Passed on the first reading, this ____ day of _____, 2011.

ORDINANCE 2011-__

285 Passed on the second reading, this ____ day of _____, 2011.

286
287
288
289

Mayor Roseann Minnet

290		First Reading	Second Reading
291	Mayor Minnet	_____	_____
292	Vice-Mayor Dodd	_____	_____
293	Commissioner Clotney	_____	_____
294	Commissioner Sasser	_____	_____
295	Commissioner Vincent	_____	_____
296			

297 Attest:

298 _____
299 Town Clerk, June White, CMC

300 (CORPORATE SEAL)

301 Approved as to form:

302 _____
303 _____
304 Town Attorney, Susan L. Trevarthen

OLD BUSINESS

AGENDA

ITEM #1



Town of Lauderdale-by-the-Sea

Development Services
4501 N. Ocean Drive
Lauderdale-by-the-Sea, FL 33308
Phone (954) 776-3611
Fax (954) 776-3431

To: Planning & Zoning Board

Thru: Bud Bentley, Assistant Town Manager *B. Bentley*

From: Jeff Bowman, Zoning/Code Supervisor *J. Bowman*

Date: August 10, 2011

Meeting Date: August 17, 2011

Re: Fisherman's Pier Inc. /Conditional Use Application for Outside Seating in the B-1 and B-1-A Zoning District.

STAFF REPORT (AMENDED)

This Conditional Use Application was first considered by the Planning and Zoning Board on July 20, 2011. After discussion, the Board tabled this item to the August 17th meeting and asked that additional information be provided. This also gives the opportunity for the applicant to attend the meeting.

Following is the revised Staff Report.

The applicant is seeking approval to provide outside seating for the existing restaurant as a conditional use.

Background

The current use of the property is pier and restaurant. The proposed use will remain the same with the addition of outside seating. Fisherman's Pier is located at 2 Commercial Boulevard and is zoned B-1.

Conditional Use Application

Attached is the Revised Application (**Exhibit 1**), which includes a site plan showing the proposed outdoor café. The revised site plan changes the customer service calculations for the outdoor seating.

Fisherman's Pier proposes to provide outside seating on an existing wooden deck and a future deck expansion.

The attached copy of Section 30-56 of the Towns Code of Ordinances (**Exhibit 2**) outlines the specific criteria for approving a Conditional Use.

Criteria and Analysis

1. Land Use Compatibility.

The proposed use, including its scale, intensity, traffic generating characteristics, and off-site impacts are compatible and harmonious with adjacent land uses. There are predominately business uses with one residential use immediately adjacent to the property and the use, as proposed will remain the same.

The Oriana Condominiums is to the south of the Pier property separated by a 27 ft. alley. The distance from the south edge of the additional deck to the north property line of Oriana is about 70 feet.

Noise from the outdoor seating is regulated by the Town Code. The existing deck area has been used as a customer service area for a while and has included outdoor music both live and recorded. We have not received any complaints from the residents of the Oriana.

2. Sufficient Site Size, Site Specifications and Infrastructure

The use proposed will increase the customer service area of the restaurant by 676 sq. ft. The site is sufficient in size to accommodate the proposed expansion.

The Florida Building Code (Section 403) requires restaurants to provide restrooms based on the occupancy load and shall be composed of 50% of each sex. Restaurants are classified as A-2 Occupancy and require 1 facility per 75 for female and 1 facility per 75 for male. The Pier Café has two bathrooms, which can serve 150 people (75 female and 75 male). The existing occupancy load is 42 and with the additional outside seating of 34, the total calculated by the architect will be 76 people.

3. Compliance with the Comprehensive Plan and Code of Ordinances

The conditional use, as proposed, complies with the applicable regulations of the Code of Ordinances and is consistent with the Town's Comprehensive Plan and Land Development Regulations. The zoning is Commercial and the proposed use (Outside Seating) is an allowable conditional use within the Commercial Zoning District.

4. Proper Use of Mitigative Techniques.

Staff has proposed, and recommended conditions of approval to pro-actively address possible adverse impacts to the general public health, safety and welfare.

Site Plan Review and Recommendation

Notification will be published in the Sun-Sentinel and mailed to effected parties within 300 feet as required by the Towns Code of Ordinances 30-13 (d) (2).

The applicant would be required to provide 12 additional parking spaces for the expanded customer service area. The Town Commission's Restaurant Parking Exemption Program, Ordinance 2011-01, allows new restaurants and the expansion of an existing restaurant to not have to provide parking under certain condition. The applicant has made application for the waiver of the spaces, but will not be approved until the Conditional Use is approved.

Staff recommends approval of the Conditional Use with the following conditions:

1. The outdoor café use will be maintained and operated as provided in the attached applicant's application (**Exhibit 1**) received by the Development Services Department on June 28, 2011, as later revised, except as modified by the conditions established by the Town Commission.
2. The deck service area shown on the revised site plan is approved for a customer serve area of 676 sq. ft.
3. The hours of operation are not limited to the hours specified in the application but by Section 12-10 of the Town Code.
4. The Conditional Use Permit is specific to the applicant and is not transferable.
5. The outside seating area shall be kept clean at all times so as not to attract rodents, vermin, and pests.

Following are the specific questions asked by the Board and the responses.

1. **Question:** Are the service areas calculations correct?

Answer: The customer service area has been modified. The entire deck area will now be used for customer service area. The original application was for 266 sq. ft. and that has been revised to 676 sq. ft. as shown on **Exhibit 1**.

2. **Question:** What are the calculations for the number of required bathrooms? Does the additional seating require additional bathrooms?

Answer: The Florida Building Code (Section 403) requires restaurants to provide restrooms based on the occupancy load and shall be composed of 50% of each sex (36/36).

Restaurants are classifies as A-2 Occupancy and require 1 facility per 75 for female and 1 facility per 75 for male. Currently the Pier provides 1 facility for each sex.

The Pier Café has two bathrooms, which is sufficient for 150 people and the total occupancy load with the additional outside seating is indicated by the architect to be 76 people.

3. **Request:** Revise the plans to include the distance from the decking to the residential dwelling units to the south.

Response: The plans (**Exhibit 1**) were revised to include the distance, which is approximately 70 feet.

4. **Request:** Have the applicant provide a copy of the State approval for the decking.

Response: The applicant is out of Town and was unable to provide the document prior to the agenda packet being sent to the Board members. They have been asked to provide it for the Board meeting.

Exhibit 1

Conditional Use Permit Application

Development Services
Town of Lauderdale by the Sea
4501 Ocean Drive
Lauderdale by the Sea, FL 33308
www.lbtis-fl.gov (954-776-0576)

LAUDERDALE-BY-THE-SEA
RECEIVED
JUN 28 2011
DEVELOPMENT
SERVICES

Application # 2011-CU-06

06-23-11 P01:58 RCVD

Date application submitted

6/28/11

Date Application found to be completed

6/28/11

Planning and Zoning Date

7/20/11

Commission Date

Application fee paid

General Information

Applicants Name Anglin Beach Cafe Address 2 Commercial Blvd Phone # 954 465-7934

Owners Name if not the same as the Applicant Louis Macheles

Owners Address 4400 Ocean Dr LBTB, FL 33308 Phone # 954 465-7934

Property address where use will be conducted 2 Commercial Blvd LBTB, FL 33308

Current Property Information

Folio # _____ Zoning District _____ Lot _____ Block _____ Subdivision _____

Present Use Parking, Ice T / Restaurant

Hours of operation for each use

8am - 10pm

Existing total floor area per use (sq. ft.)

266

Required number of parking spaces for current use

5

Existing number of parking spaces

42

Proposed Use Information

Type of Use requested outside seating for restaurant

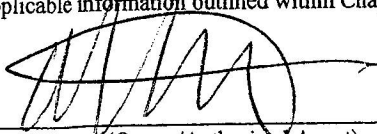
Hours of operation for the proposed use

8am - 10pm

Estimated number of individuals to be employed

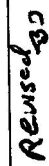
6

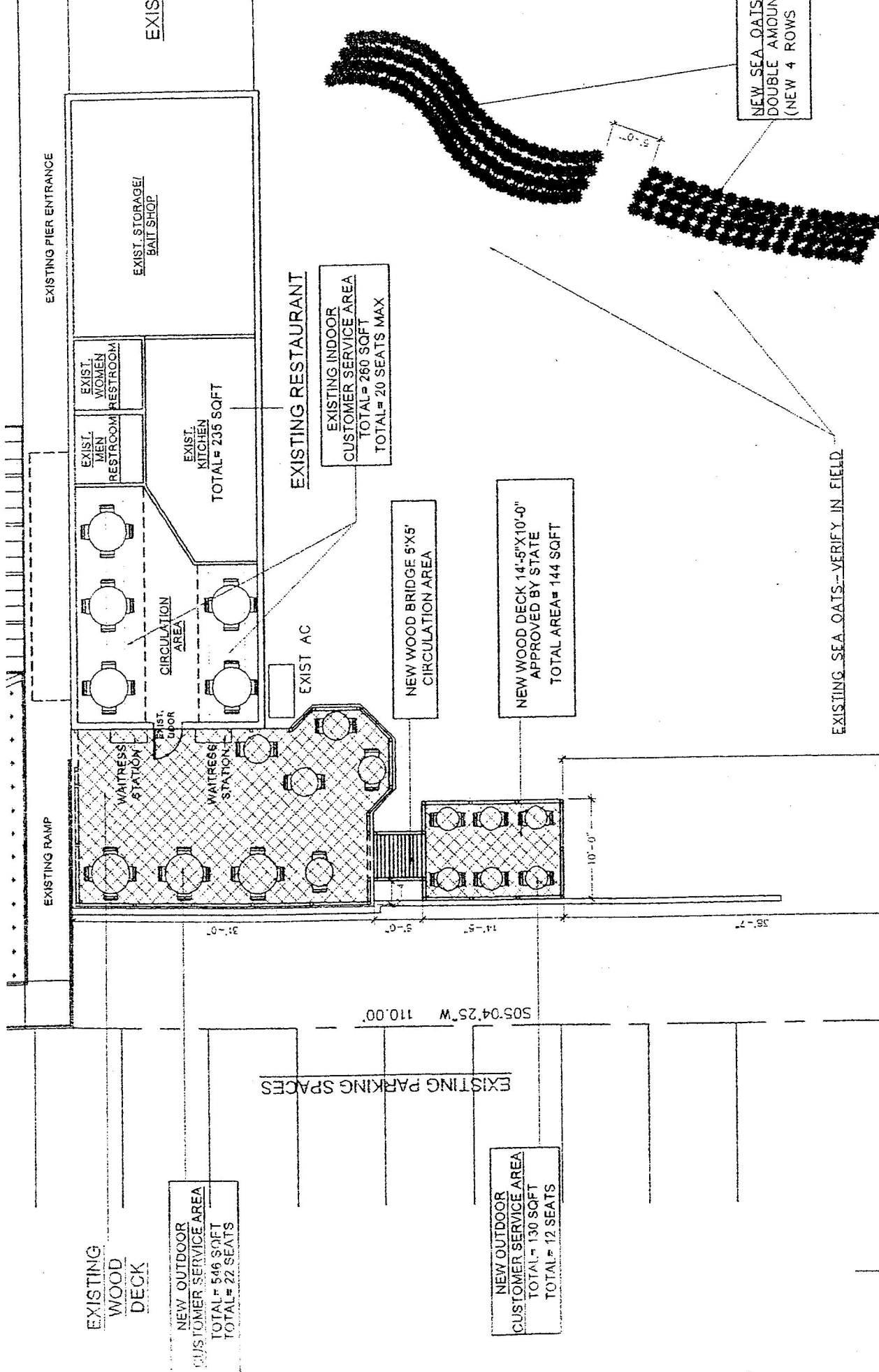
Applicant shall include a site plan and all applicable information outlined in Article IV of Chapter 30 of the Town's Code of Ordinances. Non applicable information outlined within Chapter 30 may be waived by the Development Services Director.


Signature (Owner/Authorized Agent)

Date 6/27/11

Louis Macheles
Printed Name





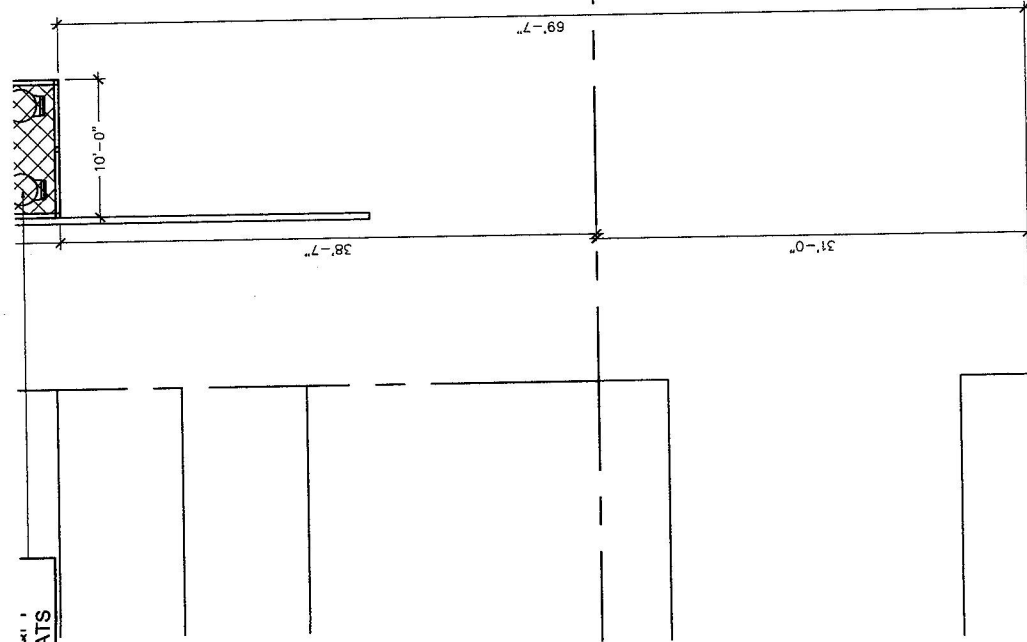
OCCUPANCY CALCULATIONS

(RESTROOM REQUIREMENT: 1 FOR EACH 75 MEN AND 1 FOR EACH 75 WOMEN AS PER FLORIDA PLUMBING CODE 2007-SECTION 403.1 ("403.1 Minimum number of fixtures. Plumbing fixtures shall be provided for the type of occupancy and in the minimum number shown in Table 403.1. Types of occupancies not shown in Table 403.1 shall be considered individually by the

NEW SITE

SCALE: 1/8" =

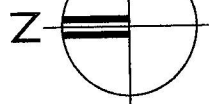
APPROVED BY STATE
TOTAL AREA= 144 SQFT



NEW SEA OATS
DOUBLE AMOUNT OF EXISTING SEA OATS
(NEW 4 ROWS WITH 28 AND 4 ROWS WITH 18

EXISTING SEA OATS-VERIFY IN FIELD

N84°55'35"W 128.70'



NEW SITE PLAN

SCALE: 1/8" = 1'-0"

OCCUPANCY CALCULATIONS

(*RESTROOM REQUIREMENT: 1 FOR EACH 75 MEN
AND 1 FOR EACH 75 WOMEN AS PER FLORIDA PLUMBING CODE 2007-
SECTION 403.1 (" 403.1 Minimum number of fixtures. Plumbing fixtures shall be
provided for the type of occupancy and in the minimum number shown in Table 403.1.
Types of occupancies not shown in Table 403.1 shall be considered individually by the
code official. The number of occupants shall be determined by the Florida Building
Code, Building. Occupancy classification shall be determined in accordance with the
Florida Building Code, Building.)

TABLE 403.1 MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES

OCCUPANCY A-2 Restaurants, banquet halls and food courts

water closets: 1 per 75 male and 1 per 75 female
lavatories: 1 per 200 people

OCCUPANCY = NUMBER OF SEATS + KITCHEN AREA /200

AS PER 2007 FBC- TABLE 1004.1.1

EXISTING INDOOR SEATING= 20 SEATS

EXISTING OUTDOOR SEATING= 20 SEATS

NEW OUTDOOR SEATING= 34 SEATS

EXISTING KITCHEN AREA (235 SQFT)/200 = 2 PEOPLE

TOTAL OCCUPANCY= 76 SEATS (50% MEN/50% WOMEN)

RESTROOM REQUIREMENT= 1 MEN/1 WOMEN

RESTROOM PROVIDED= 1 MEN/ 1 WOMEN

CUSTOMER SERVICE AREA CALCULATION

EXISTING INDOOR CUSTOMER SERVICE AREA= 260 SQFT
+
EXISTING OUTDOOR CUSTOMER SERVICE AREA= 115 SQFT
+
NEW OUTDOOR CUSTOMER SERVICE AREA= 676 SQFT
=
TOTAL= 1,051 SQFT OF CUSTOMER SERVICE AREA

Revised 2/13

Exhibit 2

465 (d) Height.

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469 (2) All passive recreational rooftop use requires a conditional use permit.

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i. Transient Uses. ~~Upon approval, a~~ A ~~Conditional use permit for transient~~ Conditional use permit for transient ~~uses such as a hotel, motel, apartment building, condominium, or time~~ uses such as a hotel, motel, apartment building, condominium, or time ~~share will be issued for the a period of one year. This permit shall be~~ share will be issued for the a period of one year. This permit shall be ~~administratively reviewed by Town staff annually. The transient use shall~~ administratively reviewed by Town staff annually. The transient use shall ~~apply for renewal of the permit annually to the Town Manager, prior to re-~~ apply for renewal of the permit annually to the Town Manager, prior to re- ~~issuance. The conditional use permit may be renewed if it is the Town~~ issuance. The conditional use permit may be renewed if it is the Town ~~determinesd that (a) the conditional use does not adversely impact~~ determinesd that (a) the conditional use does not adversely impact ~~neighboring properties and (b) it complies with the conditions of site plan~~ neighboring properties and (b) it complies with the conditions of site plan ~~approval. The conditional use permit is revocable, following notice to the~~ approval. The conditional use permit is revocable, following notice to the ~~permit holder and opportunity to be heard by three members of the Town~~ permit holder and opportunity to be heard by three members of the Town ~~Administration, designated by the Town Manager, when the use adversely~~ Administration, designated by the Town Manager, when the use adversely ~~impacts adjacent property or the permit terms and conditions are violated.~~ impacts adjacent property or the permit terms and conditions are violated. ~~An administrative decision not to renew a rooftop use may be appealed to~~ An administrative decision not to renew a rooftop use may be appealed to ~~the Town Commission by the property owner. An administrative decision to~~ the Town Commission by the property owner. An administrative decision to ~~renew a rooftop use may be appealed to the Town Commission by a~~ renew a rooftop use may be appealed to the Town Commission by a ~~neighboring property owner. The Town Commission's decision on appeal~~ neighboring property owner. The Town Commission's decision on appeal ~~shall constitute a final development order.~~ shall constitute a final development order.

ii. Non-Transient Uses. ~~A conditional passive recreational rooftop use permit~~ A conditional passive recreational rooftop use permit ~~for a non-transient residential property, other than a hotel, motel, apartment~~ for a non-transient residential property, other than a hotel, motel, apartment ~~building, condominium, or time share, is exempt from the annual review~~ building, condominium, or time share, is exempt from the annual review ~~process heretofore set forth for such roof tops for transient uses.~~ process heretofore set forth for such roof tops for transient uses.

~~Rooftop uses, as heretofore set forth, are permissible in RM-25 (south of Pine~~ Rooftop uses, as heretofore set forth, are permissible in RM-25 (south of Pine ~~Avenue) districts only when reviewed and approved by the Planning and Zoning~~ Avenue) districts only when reviewed and approved by the Planning and Zoning ~~Board and Town Commission pursuant to site plan review and approval as a~~ Board and Town Commission pursuant to site plan review and approval as a ~~conditional use.~~ conditional use.

~~For the purpose of this section, "apartment building" is defined as a residential~~ For the purpose of this section, "apartment building" is defined as a residential ~~rental property with four or more dwelling units.~~ rental property with four or more dwelling units.

502 **SECTION 5. Amendment.** Section 30-56, Unified Land Development Regulations, of

503 the Code of Ordinances is hereby created to read as follows⁴:

504 **Section 30-56. Conditional Uses Review.**

505 (a) **Generally.** A conditional use is a use that would not be appropriate without
506 restriction throughout the land use district, but which, if controlled as to number,
507 area, location, hours of operation, and relation to the neighborhood or impacted

⁴ All text in this section is new text. Additions in double underline were added between first and second reading. Deletions in ~~double strikethrough~~ were deleted between first and second reading.

vicinity, would promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity of the neighborhood. The purpose of this Section is to ensure that a conditional use shall only be permitted on specific sites as provided in a particular zoning district or as provided in this Code, where the proposed use may be adequately accommodated without generating adverse impacts on properties and land uses within the immediate vicinity.

This Section sets forth the procedures and criteria for approval of conditional uses on specific sites. A conditional use shall be permitted only upon a finding that the proposed use satisfies the specific review criteria of this Section and other requirements of this Code.

An approval of a conditional use does not eliminate the need for other approvals, which may be required under this Code, including but not limited to site plan review. Site plan approvals shall be processed concurrently with the conditional use application (and, if required, the site plan public hearing shall be held jointly with the conditional use public hearing).

(b) **Application.** A conditional use application shall provide the following information unless waived by the Development Services Director:

- i. A copy of any existing approved site plan;
- ii. If no previously approved site plan exists, a site plan, providing the information required in Article IV of Chapter 30 of the Land Development Code, except that the Development Services Director may waive individual components of the site plan requirements;
- iii. Traffic impact study meeting the requirements of Section 30-71(a)(4);
- iv. Square feet designated (indoors or out) for each specific use;
- v. Estimated employment;
- vi. Estimated number and type of service vehicles;
- vii. Any unique facilities or structures proposed as part of site improvements; and
- viii. A description of any mitigative techniques to abate any possible adverse impacts of the proposed use on properties in the immediate vicinity including smoke, odor, noise, and other impacts.
- ix. Application fee.

(c) **Review.** The Planning and Zoning Board shall review the application and provide a recommendation for approval, modified approval, or denial to the Town Commission. The Town Commission shall follow the quasi-judicial procedures in the Code of Ordinances and shall, prior to taking action on a conditional use application, hold a quasi-judicial public hearing. The Board and/or Commission may impose conditions and safeguards, in addition to those prescribed in the Code, as they determine are necessary for the protection of the surrounding area and to preserve the spirit and intent of the Town Code and Comprehensive Plan. Notice of the public hearing shall be given and the hearing shall be conducted as provided in the quasi-judicial procedures.

(d) **Specific Criteria for Approving a Conditional Use.** A conditional use shall be permitted upon a finding by the Town Commission that the proposed use, as proposed or with additional conditions or modifications, satisfies the criteria herein specified. A conditional use shall be denied if the Town Commission determines that the proposed use does not meet the criteria herein provided or is adverse to the public interest. The applicant shall demonstrate the following:

- (1) *Land Use Compatibility.* The conditional use, including its proposed scale and intensity, traffic generating characteristics, and off-site impacts shall be compatible and harmonious with adjacent land uses and shall not adversely impact land use activities and residential areas in the immediate vicinity.

For purposes of a conditional use review, compatibility is defined as a condition in which land uses or conditions can coexist in relative proximity to each other in a stable fashion over time such that no use or condition is unduly negatively impacted directly or indirectly by another use or condition. Compatibility of land uses is dependent on numerous development characteristics, which may impact adjacent or surrounding uses. They include: type of use, density, intensity, height, general appearance and aesthetics, odors, noise, smoke, vibration, traffic generation and nuisances. The Town Manager shall recommend whether the conditional use is compatible. Compatibility shall be measured based on all of the following characteristics of the proposed use or development in relationship to surrounding development in the immediate area:

- i. Permitted uses, structures and activities allowed within the land use category.
- ii. Building location, dimensions, height, and floor area ratio.
- iii. Location and extent of parking, access drives and service areas.
- iv. Traffic generation, hours of operation, noise levels and outdoor lighting.
- v. Alteration of light and air.
- vi. Setbacks and buffers such as fences, walls, landscaping and open space treatment.
- vii. The architectural and site design are compatible with the character of the surrounding area.
- viii. Any existing or proposed signs or lighting will not adversely affect surrounding areas or vehicular traffic.

- (2) *Sufficient Site Size, Site Specifications, and Infrastructure to Accommodate the Proposed Use.* The size and shape of the site, the proposed access and internal circulation, and the urban design must be adequate to accommodate the proposed scale and intensity of the conditional use requested. The site shall be of sufficient size to provide adequate screening, buffers, landscaping, open space, off-street parking, efficient internal traffic circulation, infrastructure and similar site plan improvements needed to mitigate against potential adverse impacts of the proposed use.

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- (3) *Compliance with the Comprehensive Plan and Code of Ordinances.* The conditional use shall comply with environmental, zoning, concurrency and other applicable regulations of this Code of Ordinances and shall be consistent with the Comprehensive Plan.
- (4) *Proper Use of Mitigative Techniques.* The conditional use and site plan shall incorporate mitigative techniques needed to prevent adverse impacts to adjacent land uses. In addition, the design scheme shall appropriately address off-site impacts to ensure that land use activities in the immediate vicinity, including community infrastructure, are not burdened with adverse impacts detrimental to the general public health, safety and welfare.
- (e) **Conditional Use Approval Amendments.** A conditional use approval is specific to the density and intensity of the proposed use, the particular site plan and any supplemental conditions approved. Unauthorized modification to a site plan or any of the specifics or conditions of the conditional use approval is a violation of the Town Code and subject to code enforcement action and/or revocation of the conditional use approved. Any proposed modification to the conditional use that affects density, intensity or minimum code requirements of the site development plan will require review and approval by the Town Commission.
- (1) The Town Manager shall determine if the request is a Level 1 Amendment or a Level Two Amendment. In deciding whether an application is a Level 1 or Level 2 Amendment, the Town Manager shall consider the requirements of Section 30-54(m)(4)c. of the Code.
- (42) ~~Level 1 Amendment: The Town Manager or his or her designee may approve minor changes and deviations to the an approved conditional use may be approved, approved with conditions or modifications, denied, or re-classified as a Level 2 Amendment, by the Town Commission, without Planning and Zoning Board Review. If the Town Commission determines the modification is a Level 2 Amendment, it shall be processed pursuant to Subsection (2) below. A change or deviation shall be classified as a Level 1 Amendment, if it meets the criteria of Section 30-54(m)(4)a. of the Code. All other requested changes and deviations shall be processed as a Level 2 Amendment.~~
- (23) *Level 2 Amendment:* Changes and deviations to an approved conditional use meeting the criteria of Section 30-54(m)(4)b. of the Code, shall constitute a Level 2 Amendment and shall require that the requested changes be subject to the same procedure as required for a new application.
- ~~(3) In deciding whether an application is a Level 1 or Level 2 Amendment, the Town Manager shall consider the requirements of Section 30-54(m)(4)c. of the Code.~~

656 (f) **Continuing Jurisdiction.** The Town Commission hereby reserves to itself the
657 jurisdiction and authority to review and revoke conditional use permits where the
658 use or the continuation of the use:
659

660 (1) Violates the conditions set forth by the Town Commission as a
661 requirement for the granting of the use;
662

663 (2) Is injurious to the health, safety or welfare of the community or of the
664 public;
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666 (3) Tends to attract vagrants, loiterers or habitually intoxicated persons; or
667

668 (4) Has a history of repeated Code violations.
669

670 (g) **Application Fees.** Fees for conditional use permits, and for Level 1 and Level 2
671 Amendments shall be established by the Town Commission by resolution.
672

673 (h) **Flexibility rules.** Flexibility rules allow the Town to revise and rearrange land
674 uses within a flexibility zone and allow the development of residential dwelling
675 units on properties designated for commercial land use in the Broward County
676 Land Use Plan, without requiring an amendment to that designation.
677

678 **(1) Definitions.**
679

680 i. Flexibility zones: Flexibility zones are fixed geographic areas within the
681 Town, designated on the Broward County Land Use Plan, which provide
682 limits on the number of additional dwelling units and additional
683 commercial acreage which may be permitted by the Town's
684 comprehensive plan.

685 ii. Flexibility units: Flexibility units are the total number of additional
686 residential dwelling units permitted by the Broward County Land Use Plan
687 above the total number of dwelling units allowed within the same flexibility
688 zone by the Town's comprehensive plan.
689

690 (2) Determination of available flexibility units. The Town Manager or designee
691 shall maintain a log of the number of available flexibility units in each flexibility
692 zone, the number of flexibility units assigned to parcels within each zone and
693 within the Town, and the reason for assigning flexibility units to a parcel.
694

695 (3) Assignment of flexibility units. If a sufficient number of flexibility units are
696 available, the Town may allocate flexibility units for mixed use development in the
697 B-1 zoning district, as provided in Section 30-271(e) Mixed Use Development,
698 provided that the County's flexibility rules and regulations are met and all other
699 applicable requirements of Chapter 30 of the Code are met.
700
701

702 **SECTION 6. Severability.** If any section, sentence, clause or phrase of this Ordinance is
703 held to be invalid or unconditional by any court of competent jurisdiction, then said holding shall in
704 no way affect the validity of the remaining portions of this Ordinance.

705 **SECTION 7. Conflicts.** All ordinances or parts of Ordinances and all Resolutions or
706 parts of Resolutions in conflict with the provisions of this Ordinance are hereby repealed.
707

707 **SECTION 8. Codification.** This Ordinance shall be codified.

708 **SECTION 9. Effective Date.** This Ordinance shall become effective immediately upon
709 adoption on second reading.

SECTION 10. Adoption. Passed on the first reading, this 22 day of March, 2011.
Passed and adopted on the second reading, this 27 day of April, 2011.

Roseann Minnet
Mayor Roseann Minnet

719 Mayor Minnet
720 Vice-Mayor Dodd
721 Commissioner Clottey
722 Commissioner Sasser
723 Commissioner Vincent

725 Attest:

727 June White, CMC
728 Town Clerk June White, CMC
729
730

731 (CORPORATE SEAL)
732

733 Approved as to form:
734

735 Susan L. Trevarthen
736 Susan L. Trevarthen, Town Attorney
737
738

First Reading

Yay Yay Yay Yay Yay

Second Reading

Yay Yay Yay Yay Yay