



## 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

### MEMORANDUM

To: Planning & Zoning Board

Thru: Bud Bentley, Assistant Town Manager *TBB*

From: Jeff Bowman, Zoning/Code Supervisor *JB*

Date: 7/11/2011

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

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The purpose of this memorandum is to provide Staff's comments on the Conditional Use Application received on June 28, 2011. 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**

This office has reviewed the following documents submitted (**Exhibit 1**) pursuant to the requirements of the Town's Land Development Code:

1. Application.
2. Survey of property.

Fisherman's Pier proposes to provide outside eating for the existing restaurant on an existing wooden deck and a future expansion (126 sq. ft.) of that deck area.

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.

2. Sufficient Site Size, Site Specifications and Infrastructure

The use proposed will increase the customer service area by 266 sq. ft. as an expansion to the existing restaurant and the site is sufficient in size to accommodate the proposed use.

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 five (5) additional parking spaces for the expanded customer service area. The Town Commission recently passed ordinance 2011-01, which provides for a parking exemption for new restaurants and the expansion of an existing restaurant. The applicant has made application for the waiver of the five (spaces), but will not be approved until the use is approved.

Staff recommends approval of the proposed conditional use with the following conditions:

1. The use will be maintained and operated as provided in the applicant's letter of request submitted with the application received by the Development Services Department on June 28, 2011, attached as part of **Exhibit 1**.
2. An active Business Tax Receipt for the restaurant shall be maintained at all times.
3. All applicable state and county licenses are required to be maintained at all times.
4. The Conditional Use Permit is specific to the applicant and is not transferable.
5. The outside seating area shall be cleaned daily of any food or trash.

# Conditional Use Permit Application

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

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

Application # 2011-CU-06

06-28-11 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 # 904 465-7934  
Owners Name if not the same as the Applicant Louis Marchelo  
Owners Address 4400 Ocean Dr LBTS, FL 33308 Phone # 904 465-7934  
Property address where use will be conducted 2 Commercial Blvd LBTS, FL 33308

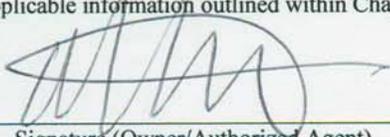
### Current Property Information

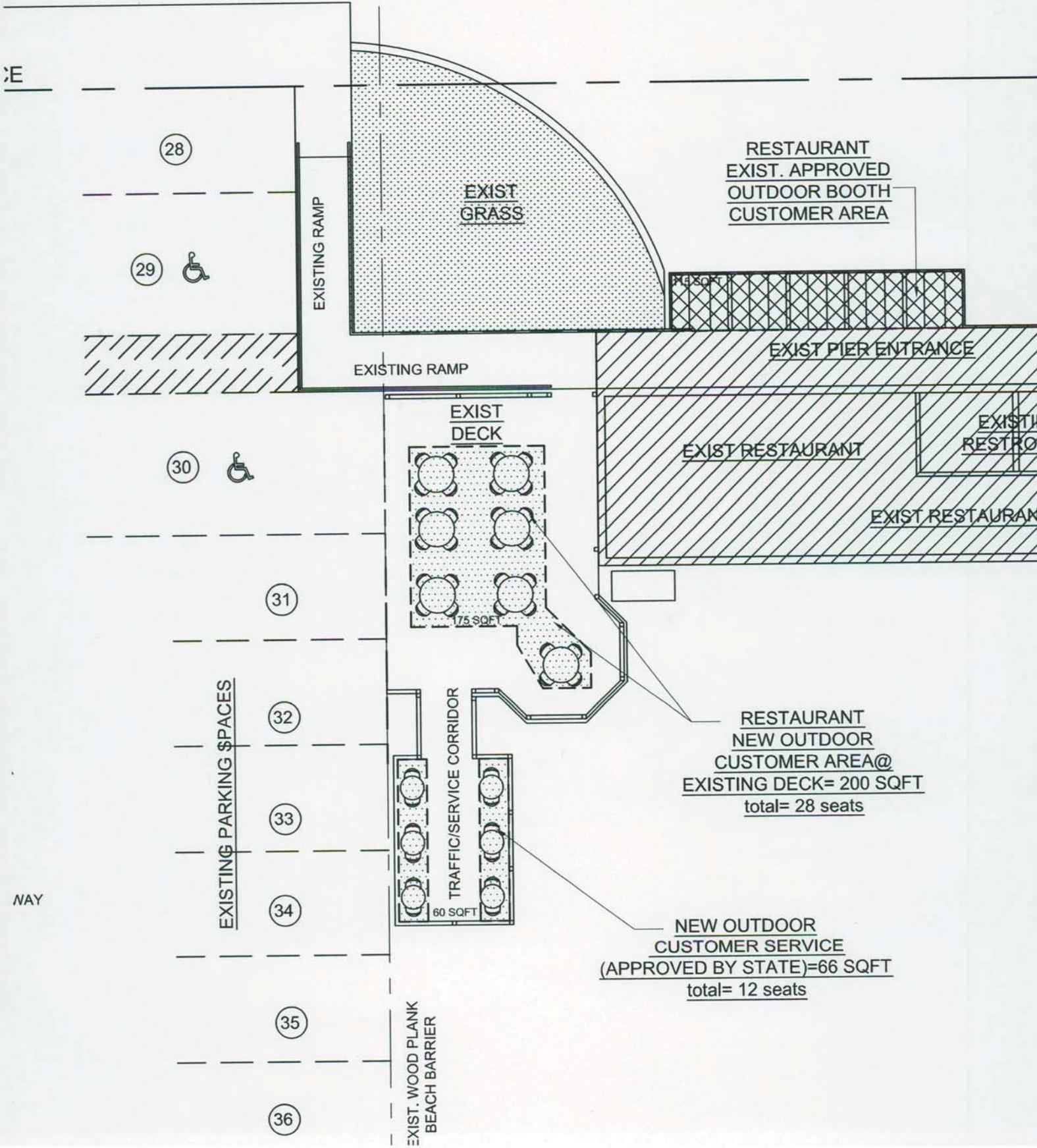
Folio # \_\_\_\_\_ Zoning District \_\_\_\_\_ Lot \_\_\_\_\_ Block \_\_\_\_\_ Subdivision \_\_\_\_\_  
Present Use Parking, lot / Restaurant (26)  
Hours of operation for each use 8am - 10pm  
Existing total floor area per use (sq. ft.) 266  
Required number of parking spaces for current use 5  
Existing 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 Marchelo  
Printed Name



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EXISTING RAMP

EXISTING RAMP

EXIST GRASS

EXIST DECK

75 SQFT

TRAFFIC/SERVICE CORRIDOR

60 SQFT

EXIST. WOOD PLANK BEACH BARRIER

RESTAURANT  
EXIST. APPROVED  
OUTDOOR BOOTH  
CUSTOMER AREA

14 SQFT

EXIST PIER ENTRANCE

EXIST RESTAURANT

EXIST RESTROOM

EXIST RESTAURANT

RESTAURANT  
NEW OUTDOOR  
CUSTOMER AREA@  
EXISTING DECK= 200 SQFT  
total= 28 seats

NEW OUTDOOR  
CUSTOMER SERVICE  
(APPROVED BY STATE)=66 SQFT  
total= 12 seats

NE

NAY



<b>Site Address</b>	2 E COMMERCIAL BOULEVARD , LAUDERDALE BY THE SEA	<b>ID #</b>	4943 18 01 0270
<b>Property Owner</b>	ANGLIN FAM TR DEMKO,M H TRSTEE	<b>Millage</b>	0211
<b>Mailing Address</b>	4334 E TRADEWINDS AVE LAUD BY THE SEA FL 33308	<b>Use</b>	35

<b>Legal Description</b>	LAUDERDALE BY THE SEA 6-2 B LOT 6,7 BLK 5
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The just values displayed below were set in compliance with [Sec. 193.011, Fla. Stat.](#), and include a reduction for costs of sale and other adjustments required by [Sec. 193.011\(8\)](#).

Property Assessment Values					
Click here to see 2010 Exemptions and Taxable Values reflected on Nov. 1, 2010 tax bill.					
Year	Land	Building	Just / Market Value	Assessed / SOH Value	Tax
2011	\$1,238,190	\$56,510	\$1,294,700	\$897,850	
2010	\$1,238,190	\$56,510	\$1,294,700	\$816,230	\$20,447.41
2009	\$534,600	\$265,990	\$800,590	\$742,030	\$15,297.91

2011 Exemptions and Taxable Values by Taxing Authority				
	County	School Board	Municipal	Independent
<b>Just Value</b>	\$1,294,700	\$1,294,700	\$1,294,700	\$1,294,700
<b>Portability</b>	0	0	0	0
<b>Assessed/SOH</b>	\$897,850	\$1,294,700	\$897,850	\$897,850
<b>Homestead</b>	0	0	0	0
<b>Add. Homestead</b>	0	0	0	0
<b>Wid/Vet/Dis</b>	0	0	0	0
<b>Senior</b>	0	0	0	0
<b>Exempt Type</b>	0	0	0	0
<b>Taxable</b>	\$897,850	\$1,294,700	\$897,850	\$897,850

Sales History				
Date	Type	Price	Book	Page
5/4/1998	QC*	\$100	28288	429

Land Calculations		
Price	Factor	Type
\$125.07	9,900	SF
<b>Adj. Bldg. S.F. (See Sketch)</b>		1109

\* Denotes Multi-Parcel Sale (See Deed)

Special Assessments					
Fire	Garbage	Light	Drainage	Improvement	Safe
02			LB		
C			LB		
1109			1.76		

AGENDA ITEM #2.

CONDITIONAL USE APPLICATION  
FOR  
OUTSIDE SEATING IN THE  
B-1 AND B-1-A ZONING DISTRICT

EXHIBIT #2

CODE SECTION 30-56

465 (d) Height.

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(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~~ 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~~ administratively reviewed by Town staff annually. The transient use shall ~~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 ~~determines~~ that (a) the conditional use does not adversely impact neighboring properties and (b) ~~it~~ complies with the conditions of site plan approval. ~~The conditional use permit is revocable, following notice to the~~ permit holder and opportunity to be heard by three members of the Town Administration, ~~designated by the Town Manager, when the use adversely~~ impacts adjacent property or the permit terms and conditions are violated. An administrative decision not to renew a rooftop use may be appealed 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 neighboring property owner. The Town Commission's decision on appeal shall constitute a final development order.

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

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

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

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the Code of Ordinances is hereby created to read as follows<sup>4</sup>:

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

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

<sup>4</sup> 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.

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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.

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(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.

(12) ~~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.~~

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- (f) **Continuing Jurisdiction.** The Town Commission hereby reserves to itself the jurisdiction and authority to review and revoke conditional use permits where the use or the continuation of the use:
- (1) Violates the conditions set forth by the Town Commission as a requirement for the granting of the use;
  - (2) Is injurious to the health, safety or welfare of the community or of the public;
  - (3) Tends to attract vagrants, loiterers or habitually intoxicated persons; or
  - (4) Has a history of repeated Code violations.
- (g) **Application Fees.** Fees for conditional use permits, and for Level 1 and Level 2 Amendments shall be established by the Town Commission by resolution.
- (h) **Flexibility rules.** Flexibility rules allow the Town to revise and rearrange land uses within a flexibility zone and allow the development of residential dwelling units on properties designated for commercial land use in the Broward County Land Use Plan, without requiring an amendment to that designation.
- (1) Definitions.
- i. Flexibility zones: Flexibility zones are fixed geographic areas within the Town, designated on the Broward County Land Use Plan, which provide limits on the number of additional dwelling units and additional commercial acreage which may be permitted by the Town's comprehensive plan.
  - ii. Flexibility units: Flexibility units are the total number of additional residential dwelling units permitted by the Broward County Land Use Plan above the total number of dwelling units allowed within the same flexibility zone by the Town's comprehensive plan.
- (2) Determination of available flexibility units. The Town Manager or designee shall maintain a log of the number of available flexibility units in each flexibility zone, the number of flexibility units assigned to parcels within each zone and within the Town, and the reason for assigning flexibility units to a parcel.
- (3) Assignment of flexibility units. If a sufficient number of flexibility units are available, the Town may allocate flexibility units for mixed use development in the B-1 zoning district, as provided in Section 30-271(e) Mixed Use Development, provided that the County's flexibility rules and regulations are met and all other applicable requirements of Chapter 30 of the Code are met.

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.

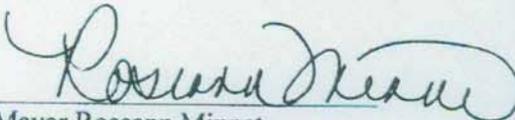
707           **SECTION 8. Codification.** This Ordinance shall be codified.

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

710           **SECTION 10. Adoption.** Passed on the first reading, this 22 day of March, 2011.

711           Passed and adopted on the second reading, this 27 day of April, 2011.

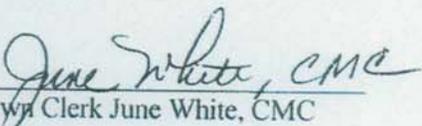
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Mayor Roseann Minnet

Mayor Minnet  
Vice-Mayor Dodd  
Commissioner Clotey  
Commissioner Sasser  
Commissioner Vincent

	First Reading	Second Reading
	<u>Yay</u>	<u>Yay</u>

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Attest:  
  
Town Clerk June White, CMC

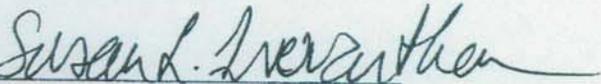
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(CORPORATE SEAL)

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Approved as to form:

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Susan L. Trevarthen, Town Attorney