



# AGENDA ITEM REQUEST FORM

Item No. 14a

## Development Services

Department Submitting Request

## Jeff Bowman

Zoning/Code Supervisor

*TJB*

\*Subject to Change

**REGULAR**  
**COMMISSION MTG**  
**Meeting Dates - 7:00 PM**

**DEADLINE TO**  
**Town Clerk**

- |   |  |                                       |
|---|--|---------------------------------------|
| <input type="checkbox"/> Sept 13, 2011            | <input type="checkbox"/> Sept 02 (5:00 pm)         | <input type="checkbox"/>              |
| <input checked="" type="checkbox"/> Sept 27, 2011 | <input type="checkbox"/> Sept 15 (5:00 pm)         | <input type="checkbox"/>              |
| <input type="checkbox"/> Resolution               | <input checked="" type="checkbox"/> Quasi Judicial | <input type="checkbox"/> Old Business |
|   |  | <input type="checkbox"/> New Business |

**SUBJECT TITLE: Fisherman's Pier Inc. Conditional Use Application for Outside Seating**

**EXPLANATION:** This item was tabled from the September 13, 2011 Commission meeting because notification was not provided to every property owner within 300 ft., which is now completed. The applicant is seeking approval to provide outside seating on an existing deck and to a proposed deck. Outdoor dining requires conditional use approval.

### **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 Application (**Exhibit 1**), which includes a revised site plan showing the proposed outdoor café.

Fisherman's Pier proposes to provide outside seating on an existing wooden deck (546 Sq. Ft.) (approved by the State on 8-19-11, permit #8024756 BO) and a future deck (130 Sq. Ft.) expansion (approved by the State on 2-16-11, permit # 3026041 BO).

Notification was published in the Sun-Sentinel and mailed to affected parties within 300 feet as required by the Town's Code of Ordinances 30-13 (d) (2).

### **Criteria and Analysis (Ordinance 30-56)**

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.



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- 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.

We find the proposed use, which is the same as the current use, including its scale, intensity, traffic generating characteristics, and off-site impacts are compatible and harmonious with adjacent land uses. There are business uses on the north and west sides of the property. The Oriana Condominiums are to the south of the Pier property and is 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.** 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.

We find that 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 shall comply with environmental, zoning, concurrency and other applicable regulations of this Code of Ordinances and shall be consistent with the Comprehensive Plan.

We find that 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.** 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.



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

**NOTE:** The applicant would be required to provide fourteen (14) additional parking spaces (1 space per 50 sq. ft.) for the expanded customer service area (676 Sq. Ft.). 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 conditions. The applicant has made application for an exemption of the parking spaces, which is on hold pending approval of the Conditional Use.

We worked with the Town Attorney's Office to calculate the total number of required parking spaces for the pier and its existing uses (pier, tackle shop, and restaurant). As the Commission is aware, we are working on a code revision to specifically provide in the code the required parking for a pier as opposed to this use falling within "Uses not specifically mentioned" (30-318 (o) which, requires 1 space per 200 sq. ft., which was used for the calculations for this application. The pier itself is 15,540 sq. ft. and the 1 space per 200 sq. ft. equals approximately 78 parking spaces. Staff believes it would be unrealistic to require such a high number of parking spaces due to its observed occupancy. Required parking for the pier was also discussed by the Planning and Zoning Board when we completed the second revision of the required parking code. It was agreed that this issue would be addressed during the third revision.

## PLANNING AND ZONING BOARD RECOMMENDATION:

Planning and Zoning Board reviewed this item on July 20, 2011 and August 17, 2011. Their recommendation was to approve with staff conditions. Minutes of both meetings are attached as **Exhibit 2**.

## STAFF RECOMMENDATIONS:

Staff recommends approval of the Conditional Use Development Order (**Exhibit 3**), which includes 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 revised and received on August 9, 2011, 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 rather by Section 12-10 of the Town Code as may be amended.
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.
6. The Development Order shall be recorded in the Public Records of Broward County by the applicant, at his/her sole cost and expense, and a certified copy of the recorded document provided to the Town within 30 days of approval.

**EXHIBITS:**     **Exhibit 1: Application**  
                  **Exhibit 2: Minutes of P&Z – July 20, 2011 & August 17, 2011**  
                  **Exhibit 3: Development Order**

Reviewed by Town Attorney

Town Manager Initials   CB



# AGENDA ITEM REQUEST FORM

Item No. \_\_\_\_\_

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Zoning/Code Supervisor

Yes     No

File: 9-13 AM Fisherman's Pier Conditional Use

# Conditional Use Permit

Development Services  
Town of Lauderdale-by-the-Sea  
4501 Ocean Drive  
Lauderdale-by-the-Sea, FL 33308  
www.lauderdale-by-the-sea.com

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

Application # 2011-CU-06

06-23-11 P01:53 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 9/13/11  
Application fee paid 7/13/11

## Exhibit 1

### General Information

Applicants Name: Angela Beach Cafe Address 2 Commercial Blvd Phone # 904 465-7934  
Owners Name if not the same as the Applicant Louis Michele  
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

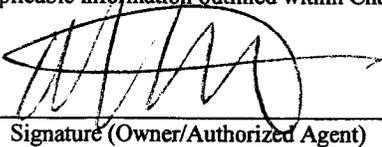
### Current Property Information

Folio # \_\_\_\_\_ Zoning District \_\_\_\_\_ Lot \_\_\_\_\_ Block \_\_\_\_\_ Subdivision \_\_\_\_\_  
Present Use Parking lot / Restaurant  
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

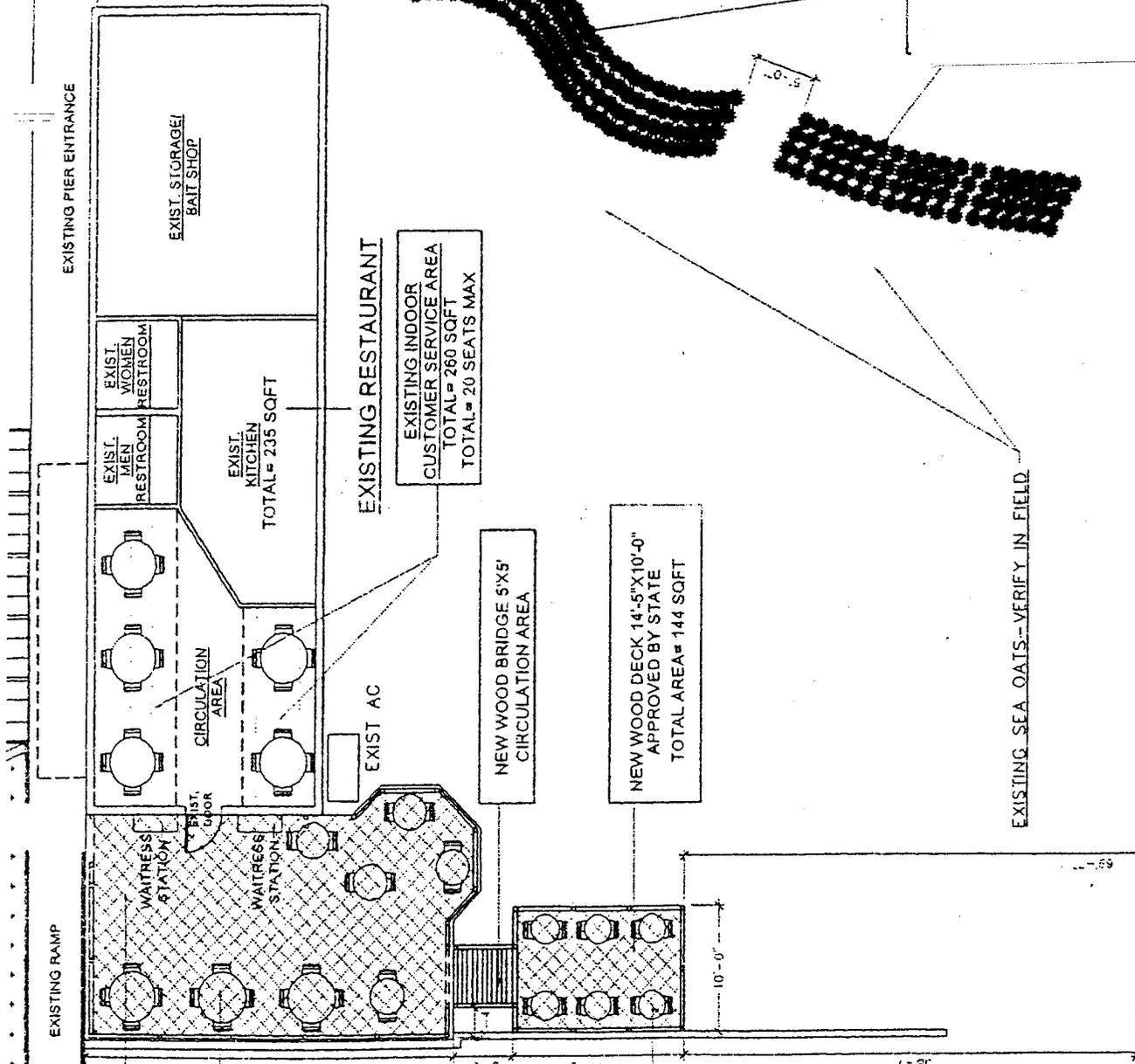
### Proposed Use Information

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 Michele  
Printed Name

# Exhibit 1



EXISTING WOOD DECK

NEW OUTDOOR CUSTOMER SERVICE AREA  
 TOTAL = 546 SQFT  
 TOTAL = 22 SEATS

NEW OUTDOOR CUSTOMER SERVICE AREA  
 TOTAL = 130 SQFT  
 TOTAL = 12 SEATS

NI  
SC

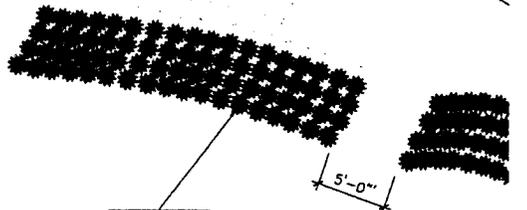
**OCCUPANCY CALCULATIONS**  
 (RESTROOM REQUIREMENT: 1 FOR EACH 75 MEN AND 1 FOR EACH 75 WOMEN AS PER FLORIDA PLUMBING CODE 2007-SECTION 403.1 (403.1 Minimum number of fixtures. Plumbing fixtures shall be provided for the type of occupancy and in the minimum number shown in Table 403.1. Types of occupancies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

Revised 8/1/11

# Exhibit 1

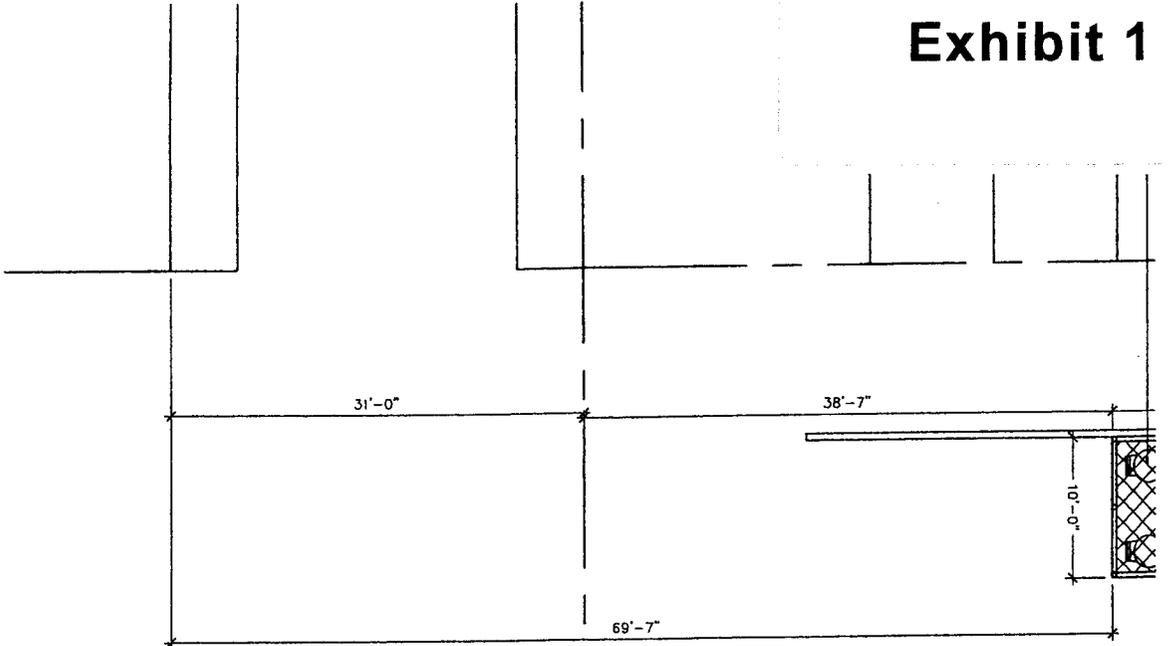
APPROVED BY STATE  
TOTAL AREA= 144 SQFT

EXISTING SEA OATS-VERIFY IN FIELD



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

NB4°55'35"W 128.70'



## OCCUPANCY CALCULATIONS

(RESTROOM REQUIREMENT: 1 FOR EACH 75 MEN

AND 1 FOR EACH 75 WOMEN AS PER FLORIDA PLUMBING CODE 2007.

**SECTION 403.1 (C) 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

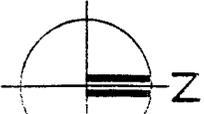
TOTAL OCCUPANCY= 76 SEATS (50% MEN/50% WOMEN)

RESTROOM REQUIREMENT= 1 MEN/1 WOMEN

RESTROOM PROVIDED= 1 MEN/ 1 WOMEN

## NEW SITE PLAN

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



### CUSTOMER SERVICE AREA CALCULATION

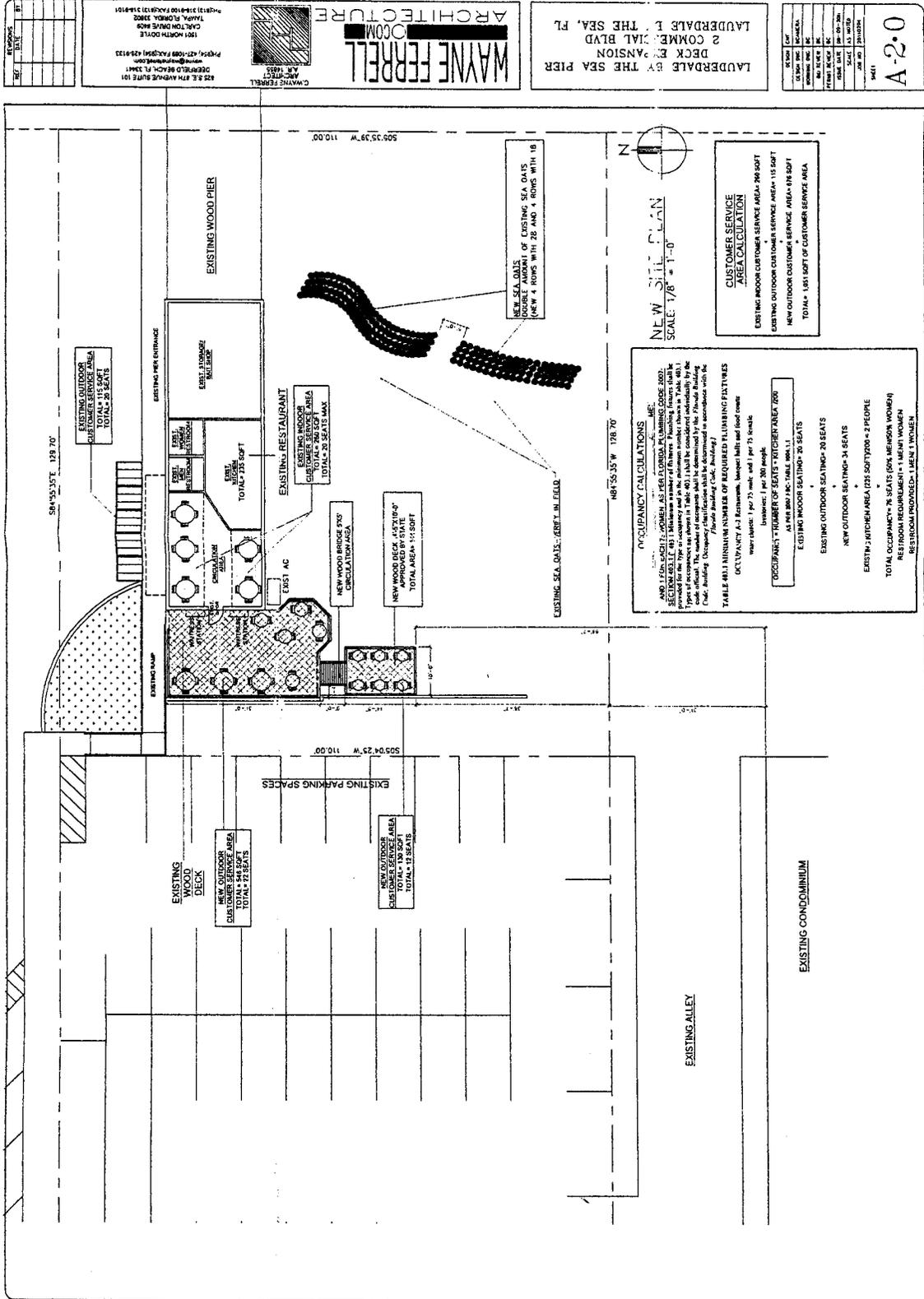
EXISTING INDOOR CUSTOMER SERVICE AREA= 260 SQ.F.T

EXISTING OUTDOOR CUSTOMER SERVICE AREA= 115 SQ.F.T

NEW OUTDOOR CUSTOMER SERVICE AREA= 676 SQ.F.T

TOTAL= 1,051 SQFT OF CUSTOMER SERVICE AREA

Revised 8/9/11



REV	DATE	BY

**WAYNE FERRELL ARCHITECTURE**  
 101 N. W. 10TH AVENUE SUITE 101  
 MIAMI, FLORIDA 33136  
 P: (305) 471-1000 F: (305) 429-8133  
 wferrell@wayneferrell.com  
 www.wayneferrell.com

LAUDRDAL BE THE SEA PIER  
 DECK EXPANSION  
 2 COMMERCIAL BLDG  
 LAUDRDAL BE THE SEA, FL

NO.	DATE	BY	REVISION

SHEET  
 A-20

**OCCUPANCY CALCULATIONS**  
 AND SEATING REQUIREMENTS AS PER FLORIDA PLANNING CODE 2007, SECTION 610.1 (4) Minimum number of tables/Plumbing fixtures shall be provided for the type of occupancy and in the calculation number shown in Table 601.1 shall be used. The number of occupants shall be determined by the "Florida Building Code - Building Occupancy Classification" table shown in accordance with the Florida Building Code. Occupancy classification shall be determined in accordance with the Florida Building Code.

**TABLE 601.1 MINIMUM NUMBER OF REQUIRED PLUMBING FIXTURES**  
 Occupancy: 1 per 75 seats and 1 per 75 people  
 Occupancy: 1 per 200 people  
 Occupancy: 1 per 200 people  
 Occupancy: 1 per 200 people

**CUSTOMER SERVICE AREA CALCULATION**  
 EXISTING INDOOR CUSTOMER SERVICE AREA= 115 SQFT  
 EXISTING OUTDOOR CUSTOMER SERVICE AREA= 416 SQFT  
 NEW OUTDOOR CUSTOMER SERVICE AREA= 416 SQFT  
 TOTAL= 947 SQFT OF CUSTOMER SERVICE AREA

**RESTROOM REQUIREMENTS**  
 RESTROOM PROVIDED= 1 MEN, 1 WOMEN

Revised  
 8/19/11





**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 they 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

### 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.

Chairman Oldaker asked Jeff Bowman to address the Conditional Use Application.

Mr. Bowman said that this item was presented at the last Planning and Zoning meeting and the board deferred it to this meeting and requested that Staff provide the board with additional information. Mr. Bowman referred to page 3 of his Staff report and at the bottom listed the board's questions and Staff's responses.

Chairman Oldaker requested that Mr. Bowman go through the questions and answers for the board.

Mr. Bowman stated each question –

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 area. The original application was for 266 sq. ft. and that has been revised to 676 sq. ft. as shown on Exhibit #1.

Mr. Bowman said that the applicant decided to make the entire area customer service area to make it easier for staff to not have to guess how much customer service area would actually be occupied on the deck at any given time.

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 classified 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.

Mr. Bowman said that the applicant has the two bathrooms that he needs for the occupancy load that the application is proposing.

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 was 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.

Mr. Bowman gave the board members a copy of the State approval document for the decking.

Mr. Brandt said that at the last meeting Staff noted that the application for the Conditional Use mentioned the hours between 8 AM and 10 PM and that would be the rule imposed once it was approved and he wanted to make sure Mr. Bowman was aware of that.

Mr. Bowman remarked that in Staff's recommendations, a condition was added that was approved by the board. Mr. Bowman referred to page 3 Condition #3 that states that the hours of operation are not limited to the hours specified in the application but by Section 12-10 of the Town Code which is 6 AM to 2 AM.

Mr. Brandt made a motion to approve the Conditional Use application as presented by Staff.

There was further discussion.

Mr. Freeny asked how many additional parking spots are required for the addition that will come out of the allotment for the exempt parking program.

Mr. Bowman said if it is based on the 676 sq. ft., the applicant would need about 13 parking spaces. Mr. Bowman said that the applicant has applied for parking exemption and if approved would not require him to provide parking.

Mr. Freeny asked if Mr. Bowman was just talking about the additional decking that is to be constructed and said that the prior decking was constructed before the parking exemption program.

Mr. Bowman said that the application for the parking exemption program was just for the increased customer service area which is the decking.

Mr. Freeny said that he was talking about the new decking not the old decking.

Mr. Bentley asked Mr. Freeny to restate his question so that Staff would answer the correct question.

Mr. Freeny said that his question is applicable to the new deck as to how many parking spaces would be added and applied to the limit of the parking exempt program.

Mr. Bowman explained that there is a proposed smaller deck that will be constructed next to the existing deck. The existing deck was approved as waiting area not customer area. So the applicant's application is including the existing decking on the west side of the property and a future adjacent decking that is indicated on the site plan.

Mr. Freeny said that basically what the exempt parking application does is apply for exempt parking for the deck that was built prior to the exempt parking regulations passed by the Commission.

Mr. Bowman said that Mr. Freeny was correct.

Mr. Freeny said that with the 6 new tables on the new deck he would still like to know what the number would be.

Mr. Bowman said that he would need 3 parking spaces.

Attorney Mehaffey said for clarification the purpose of the parking exemption is to use that for the parking for customer service with tables and it is the addition of those tables through this application which triggers a new parking requirement that will be part of the parking exemption application.

Mr. Bowman said that Attorney Mehaffey was correct because it is an expansion of the restaurant for customer service area.

Attorney Mehaffey said that for both of those areas, the applicant would need approximately 13 spaces.

Mr. Bowman responded yes. Mr. Bowman said that the two decks added together comes out to the 676 sq. ft. which calculates to approximately 13 spaces.

Mr. Brandt asked if this could be considered a sidewalk café?

Mr. Bowman responded no.

Mr. Brandt commented that we are going to be using a bunch of the parking allotment out of the parking exemption program that would be more than the 5 spaces that was indicated in the application.

Mr. Bowman said that the 5 parking spaces indicated on the application were based on the original square footage before it was revised to include all of the decking.

Chairman Oldaker said that there was a motion on the floor by Mr. Brandt and asked for a second.

Mr. Yankwitt seconded Mr. Brandt's motion to approve the Conditional Use Application for outside seating in the B-1 and B-1-A Zoning District with Staff's Conditions:

1. The outdoor café use will be maintained and operated as provided in the applicant's application 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 service 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.

In a roll call vote, all voted in favor of the motion. The motion passes 5 – 0.

**VII. UPDATES/BOARD MEMBER COMMENTS**

There were no updates or board member comments.

**VIII. ADJOURNMENT**

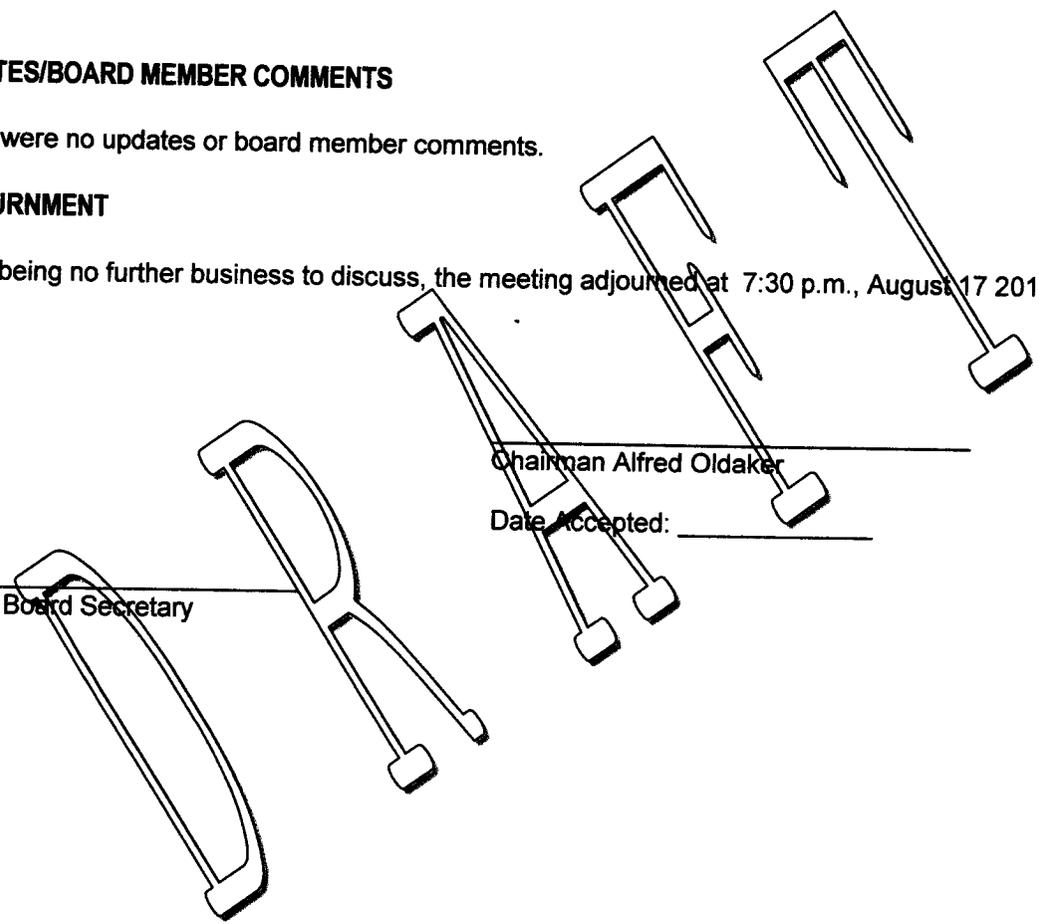
There being no further business to discuss, the meeting adjourned at 7:30 p.m., August 17 2011.

ATTEST:

\_\_\_\_\_  
Colleen Tyrrell, Board Secretary

\_\_\_\_\_  
Chairman Alfred Oldaker

Date Accepted: \_\_\_\_\_





**CONDITIONAL USE DEVELOPMENT ORDER  
TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA**

PROJECT NAME: ANGLIN BEACH CAFE  
ADDRESS OF PROPERTY: 2 COMMERCIAL BOULEVARD  
FOLIO #: N/A  
PROPERTY OWNER: STATE OF FLORIDA /FISHERMANS PIER INC  
APPLICANT: LOUIS MARCHELOS  
APPLICANT ADDRESS: 2 COMMERCIAL BOULEVARD

REQUEST: To provide outside seating for the existing restaurant as a conditional use, pursuant to Sections 30-56, Conditional Uses Review, and Section 30-13, Quasi-Judicial Procedures, and Section 30-371(b) of the Lauderdale-By-The-Sea Code of Ordinances.

SECTION 1. FINDINGS. THIS MATTER came before the TOWN Commission of the TOWN of LAUDERDALE-BY-THE-SEA, Florida, on September 13, 2011, following due public notice. The TOWN Commission having considered the public testimony, evidence in the record, the testimony of the applicant, and the recommendation of the TOWN Planning and Zoning Board and administrative staff, finds that the application, as conditioned herein, will promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity of the neighborhood and further, that the application does meet all of the criteria in Section 30-56(d), which are as follows:

1. Land Use Compatibility; and
2. Sufficient Site Size, Site Specifications, and Infrastructure; and
3. Compliance with the Comprehensive Plan and Code of Ordinances; and
4. Proper Use of Mitigative Techniques.

SECTION 2. APPROVAL. The request to provide outside seating for the Anglin's Beach Cafe is hereby approved.

SECTION 3. CONDITIONS. The APPROVAL granted herein is subject to 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 revised and received on August 9, 2011, 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.

## Exhibit 3

### ANGLIN BEACH CAFÉ DEVELOPMENT ORDER

3. The hours of operation are not limited to the hours specified in the application, but rather by Section 12-10 of the Town Code as may be amended.
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.
6. The Development Order shall be recorded in the Public Records of Broward County by the applicant, at his/her sole cost and expense, and a certified copy of the recorded document provided to the Town within 30 days of approval.

SECTION 4. VIOLATION OF CONDITIONS. Failure to adhere to the terms and conditions of this Development Order shall be considered a violation of the Town Code and persons found violating the conditions shall be subject to the penalties prescribed by the Town Code, including but not limited to, the revocation of any of the approval(s) granted in this Development Order. The Applicant understands and acknowledges that it must comply with all other applicable requirements of the Town Code before it may commence construction or operation, and that the foregoing approval in this Development Order may be revoked by the Town at any time upon a determination that the Applicant is in non-compliance with the Town Code or the conditions of this Approval.

SECTION 5. APPEAL. In accordance with Section 30-13(d) (12) of the Town Code, the Applicant, or any aggrieved property owner in the area, may appeal the decision of the Town Commission in the Circuit Court of Broward County, Florida, in accordance with the Florida Rules of Appellate Procedure.

SECTION 6. EFFECTIVE DATE. This Development Order shall become effective upon Approval by the Commission.

**APPROVED** this 13<sup>th</sup> day of September, 2011.

**ATTEST:**

\_\_\_\_\_  
**MAYOR ROSEANN MINNET**

\_\_\_\_\_  
June White, Town Clerk, CMC

**Approved as to form:**

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Susan L. Trevarthen, Town Attorney