

RESOLUTION NUMBER 21-16

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE 20200091 TO ALLOW THE CONSTRUCTION OF TWO (2) ACCESSORY STRUCTURES - A GARAGE AND POOL - IN FRONT OF THE PRINCIPAL STRUCTURE FOR THE PROPERTY LOCATED AT 5730 ESTERO BOULEVARD; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, Joe McHarris, architect and agent for the owner (“Applicant”) of the property located at 5730 Estero Blvd (“Property”), is requesting a variance from Sec. 34-1174(b) of the Town of Fort Myers Beach Land Development Code (“LDC”), which does not allow accessory structures to be located closer to the street right-of-way than the principal building; and

WHEREAS, the Applicant has indicated that the STRAP number for the subject property is 33-46-24-W2-0030B.0030.

WHEREAS, the Property is located in the “Mixed Residential” category of the Future Land Use Map of the Comprehensive Plan and the “Residential Single-Family” zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on February 9, 2021, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC. The LPA voted 7-0 to recommend approval with conditions.

WHEREAS, on March 1, 2021 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-87 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve the request.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. The Town Council determines the Applicant did meet its burden of proof that the requested Variance do meet the requirements of the Town Comprehensive Plan and LDC, and approving the Variance is in the best interest of the Town to approve. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES the Variance from Section 34-1174(b) of the LDC to allow the construction of a detached garage and pool in front of the principal structure.

Section 3. In approving the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Sections 34-84 and 34-87 of the LDC:

- A. There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying approval of the variance are the result of actions of the Applicant taken after the adoption of the regulation in question.
- C. The variance is the minimum variance that will relieve the Applicant of an unreasonable burden caused by the application of the regulation to the Property.
- D. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. If the Town Council approves the requested variance, the following conditions of approval are imposed on the Applicant and the Property:

- A. Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- B. The variance shall only apply to the garage and pool as shown on the provided site plan. Alterations or substantial damage to either structure shall render the variance null and void.
- C. A restrictive covenant prohibiting conversion of the garage and storage area or any space above it to any unlawful uses, shall be recorded in the public records of Lee County.
- D. Any violation of the conditions of approval shall be subject to a penalty of \$500 per day, per incident and the possible revocation of the approved variance.

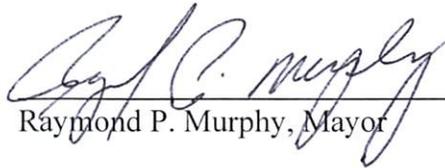
The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Allers and seconded by Council Member Atterholt, and upon being put to a vote, the result was as follows:

Raymond P. Murphy, Mayor	Aye
Rexann Hosafros, Vice Mayor	Aye
Dan Allers	Aye
Bill Veach	Aye
Jim Atterholt	Aye

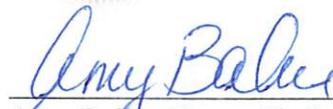
ADOPTED this 1st day of March, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

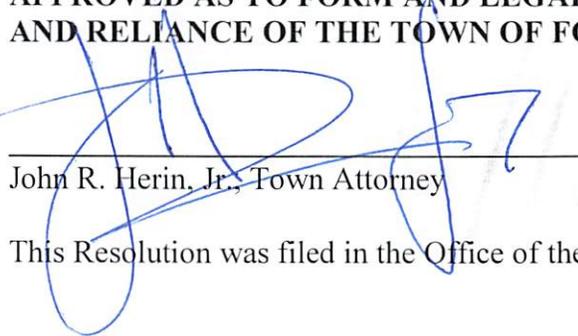



Raymond P. Murphy, Mayor

ATTEST:


Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**


John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 18 day of March 2021.