

**RESOLUTION NUMBER 21-39**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE 20210033 TO ALLOW THE CONSTRUCTION OF AN ACCESSORY STRUCTURES - A POOL - IN FRONT OF THE PRINCIPAL STRUCTURE AND ALLOW A 5 FEET HIGH FENCE IN FRONT YARD FOR THE PROPERTY LOCATED AT 101 GULF DRIVE; 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**, applicants Richard & Rebecca Dobbs, are requesting a variance from Sec. 34-1174(b) of the Town of Fort Myers Beach Land Development Code which does not allow accessory structures to be located closer to the street right-of-way than the principal building; Table 34-3 which does not allow any structures within the street setbacks, and 34-1744(b)(1) to allow a 5 feet high fence in the front yard of the corner lot; and

**WHEREAS**, the STRAP number for the subject property is 33-46-24-W3-004G.008A

**WHEREAS**, the Property is located in the “Mixed Residential” category of the Future Land Use Map of the Comprehensive Plan and the “Residential Conservation” 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 August 10, 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 5-0 to recommend approval with conditions.

**WHEREAS**, on August 16, 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/deny 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 pool in front of the principal structure; from Table 34-3 to allow the pool within the street setbacks, and 34-1744(b)(1) to allow a 5 feet high fence in the front yard of the corner lot.

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. A minimum three feet wide and four feet tall hedge shall be maintained between Estero Boulevard and any constructed pool.
- C. A fence with a maximum height of five feet from existing grade shall be permitted along the frontage of Estero Boulevard and Gulf Drive. The fence location shall be consistent with visibility triangle requirements regardless of the approved variance measurements. The fence shall be maintained throughout the life of the pool.

D. The pool shall be constructed as an in-ground pool at existing grades. The approved location and variance to setbacks does not apply to any elevated pool or structures.

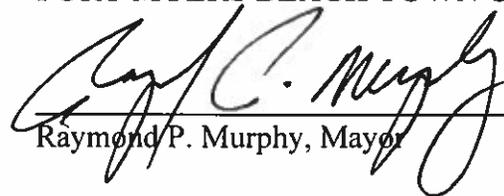
C. The variances shall only apply to the pool and fence as shown on the provided site plan. Alterations or substantial damage to either structure shall render their respective variance to be null and void.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Veach and seconded by Vice Mayor Hosafros, 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 16<sup>th</sup> day of August, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

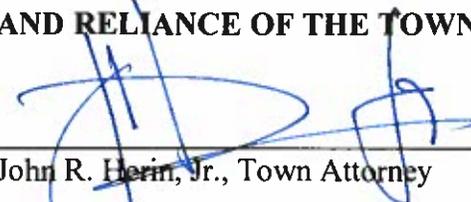
**FORT MYERS BEACH TOWN COUNCIL**

  
\_\_\_\_\_  
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 14 day of August 2021.