

RESOLUTION NUMBER 21-45

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE 20210058 TO ALLOW THE CONSTRUCTION OF AN ACCESSORY STRUCTURES - A POOL - IN FRONT OF THE PRINCIPAL STRUCTURE WITHIN STREET SETBACKS AT 506/508 CARLOS CIRCLE; 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, applicant Jack Holsem, is 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

WHEREAS, the STRAP number for the subject property is 24-46-23-W1-0070E.0070

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 October 4, 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. 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, and from Table 34-3 to allow the pool within the street setbacks.

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 10 feet Type B Buffer, except the 5 feet buffer around the corner of the pool that encroaches the buffer, shall be constructed along Carlos Circle right-of-way between the driveway and the adjacent property, 518 Carlos Circle.

C. 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.

D. The final pool and deck/paver design are subject to the Town's maximum impervious surface requirement of 67%.

E. The pool shall be no farther than 10 feet from the existing single-family home with an allowance for up to three feet of pavers around the pool corner to encroach into the 10 feet buffer area. If the pool is greater than 10 feet from the home, then the paver encroachment allowance shall not be permitted.

F. Allow a 6 feet high enclosed fence (solid plastic) along the eastern property line buffer.

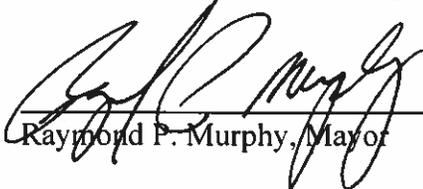
G. The variances shall only apply to the pool and fence as shown on the provided site plan. Alterations or substantial damage to either structure shall render their respective variance to be null and void.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member 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, Council Member	Aye
Jim Atterholt, Council Member	Aye
Bill Veach, Council Member	Aye

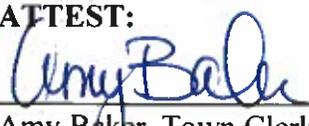
ADOPTED this 4th day of October 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL



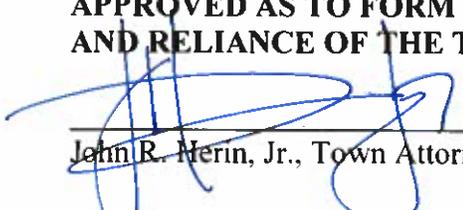
Raymond P. Murphy, Mayor

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. Merin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 27 day of January, 2022.