

RESOLUTION NUMBER 22-22

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING A VARIANCE VAR-20220021 TO REDUCE SIDE-YARD SETBACKS FOR A SWIMMING POOL FIVE- FEET (5) ON THE PROPERTY LOCATED AT 292 OHIO AVENUE; 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 Jesse B. Hallman and Kenia A. Maltz are requesting a Variance of five-feet (5) to the eleven-foot (11) side-yard setback; and

WHEREAS, the STRAP number for the subject property is 19-46-24-W4-0090E.015A (“Property”); and

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 April 14, 2022 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 Town Land Development Code (“LDC”). The LPA voted unanimously to recommend approval.

WHEREAS, on May 2, 2022 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 does 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 of five-feet (5) to the eleven-foot (11) side-yard setback.

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

- A. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not essential to protect public policy;
- B. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question;
- C. That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;
- D. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
- E. That the conditions or circumstances on the specific piece of property for which the variance is sought are not 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:

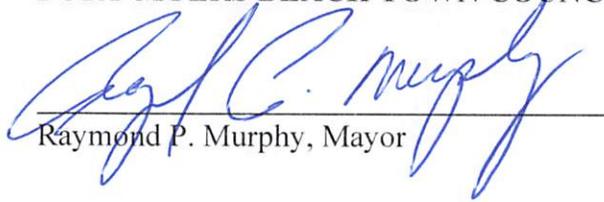
- A. N/A

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Atterholt and seconded by Mayor Murphy, 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 2nd day of May 2022 by the Town Council of the Town of Fort Myers Beach, Florida.

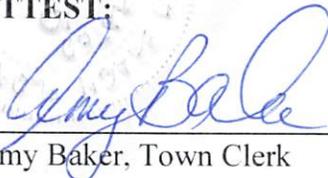
FORT MYERS BEACH TOWN COUNCIL



Raymond P. Murphy, Mayor

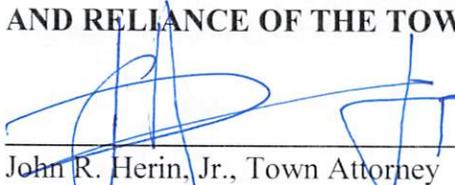


ATTEST:



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 6 day of June 2022.