

RESOLUTION NUMBER 23-22

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING SPECIAL EXCEPTION SEZ20220103 TO ALLOW THE USE OF A SHARED DUNE WALKOVER AND BOARDWALK AT 8150 AND 8170 ESTERO BOULEVARD; AND APPROVING VARIANCE VAR20220104 TO ALLOW A ONE FOOT VARIANCE FROM THE MAXIMUM WIDTH OF THE STRUCTURE; 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 Texas Hold'em LLC and Squeeze Me Inn LLC is requesting a special exception for the use of a dune walkover and boardwalk in the EC zoning district; and a variance from: Sec. 34-652 f.2.c, to allow for a maximum width of five feet. and

WHEREAS, the STRAP number for the subject property is 03-47-24-W3-00300.0190 & 03-47-24-W3-00300.0200

WHEREAS, the Property is in the "Recreation" category of the Future Land Use Map of the Comprehensive Plan and the "Environmentally Critical" 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 14, 2023, 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 34-88 (Special Exception) and Section 34-87 (Variance) of the LDC. The LPA voted 6-1 to recommend approval with conditions of the special exception; and 6-1 to recommend approval of the variance; and

WHEREAS, on March 6, 2023, 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 34-88 and 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 Special Exception and Variance do meet the requirements of the Town Comprehensive Plan and LDC and approving the Special Exception and 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 Special Exception for the use of a shared dune walkover and boardwalk in the Environmentally Critical zoning district and a 1 foot Variance from Sec. 34-652 f.2.c to LDC to allow a maximum width of five feet of the shared dune walkover and boardwalk.

Section 3. In approving the Special Exception, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

- A. Changed or changing conditions which make approval of the request appropriate.
- B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- C. The request meets or exceeds all performance and locational standards for the proposed use.
- D. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
- E. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- F. The requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

In approving the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 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 not 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 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 Special Exception, the following conditions of approval are imposed on the Applicant and the Property:

A. Approval of this Special Exception 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 applicant will engage the neighbors for cross access easement(s) to provide access to the structure.

C. The Applicant shall report to Town Council what the legal documentation of the access agreement or easement will be.

D. Supplement documentation that was discussed with the LPA, including all environmental permits and leases with the State; plans for the boardwalk; items presented for criteria compliance that were addressed verbally to be submitted in writing to supplement the record.

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

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Nay
John R. King	Aye
Bill Veach	Nay
Karen Woodson	Aye

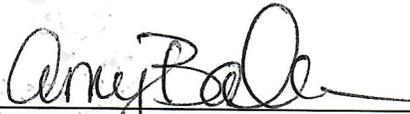
ADOPTED this 6th day of March 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL



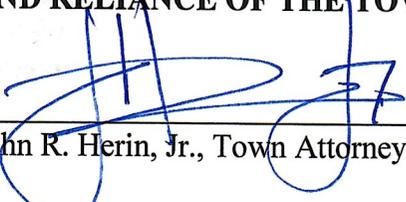
Dan Allers, Mayor

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 8 day of March 2023.