

**RESOLUTION NUMBER 23-184**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS VARIANCE VAR20230212 TO ALLOW AN ELEVATED EMERGENCY GENERATOR CLOSER TO THE ESTERO BOULEVARD STREET RIGHT-OF-WAY LINE THAN THE PRINCIPAL BUILDING FOR THE PROPERTY LOCATED AT 6642 ESTERO BLVD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY 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**, Curt Brenner, Applicant for owner Pointe Estero Condominium Association, Inc., is requesting a variance from LDC 3434-1174(b) which prohibits location of accessory structures, including emergency generators, closer to the street right-of-way line than the principal building; and

**WHEREAS**, the STRAP number for the subject property is 34-46-24-W4-02500.00CE; and

**WHEREAS**, the Property is located in the "Mixed Residential" category of the Future Land Use Map of the Comprehensive Plan and the "Residential Multi-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 December 19, 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 34-87 of the LDC. The LPA voted to recommend approval with conditions of the variance; and

**WHEREAS**, on January 8, 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 34-87 of the LDC; and

**WHEREAS**, the Town Council determined it is in the best interest of the Town to approve with conditions 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/ did not meet its burden of proof that the requested Variance does/ does not meet the requirements of the Town Comprehensive Plan and LDC and approving/ approving with conditions/ denying the Variance is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, interested parties and public, the Town Council APPROVES WITH CONDITIONS the variance from LDC 34-1174(b) which prohibits location of accessory structures, including emergency generators, closer to the street right-of-way line than the principal building in RM zoning district.

Section 3. In approving with conditions 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 not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is/ is not 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 variance, the following conditions of approval are imposed on the Applicant and the Property:

- A. The applicant shall provide screening or decorative features, of some kind, to limit the visual impact of the structure from Estero Blvd and from the neighboring property.
- B. 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.

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Atterholt 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	Aye
John R. King, Council Member	Aye
Vacant, Council Member	N/A
Karen Woodson, Council Member	Aye

ADOPTED this 8<sup>th</sup> day of January 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

  
Dan Allers (Feb 22, 2024 20:48 EST)  
\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

  
Amy Baker (Feb 29, 2024 11:05 EST)  
\_\_\_\_\_  
Amy Baker, Town Clerk

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

  
BeckyVose (Feb 22, 2024 10:31 EST)  
\_\_\_\_\_  
Gretchen R. H. Vose., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 22<sup>nd</sup> day of February 2024.