

## RESOLUTION 24-131

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS VAR20240071, FIVE (5) VARIANCES FROM LDC SECTIONS 34-674(a)(1)(b), 34-675(b)(3), 34-676(a)(4), 34-676(b) AND 34-676(d) REQUESTING RELIEF FROM BUILT-TO LINE MAXIMUM SETBACKS, INCREASED BUILDING HEIGHT, PARKING REDUCTIONS, RELIEF FROM PARKING LOCATION AND LOCATION OF SITE ACCESS IN THE DOWNTOWN ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 1250 ESTERO BLVD. (LESS ANY AREA WITHIN THE EC ZONING DISTRICT), GENERALLY KNOWN AS STRAP # 19-46-24-W4-0070F.0010 TO REDEVELOP A RESTAURANT/ BAR; 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 Right Choice Investments, LLC is requesting a variance from LDC 34-674(a)(1)(b) which requires all structures on First, Second, Third and Fifth streets, and the south side of Estero Boulevard from the Sky Bridge to Miramar Street to be between 0-5-feet setback from the street property line and;

**WHEREAS**, a variance from LDC 34-675(b)(3) limiting all structures on the south side of Estero Boulevard east of the main pedestrian crossing to a maximum of 40-feet above Base Flood Elevation and no taller than three stories, allowing for an additional 2-feet 3-inches of building height and;

**WHEREAS**, a variance from LDC 34-676(a)(4) which allows for all other areas not mentioned in this code section to reduce their parking requirements by 67-percent, the applicant has request additional parking count reductions of 18-percent, for a total parking reduction of 85-percent, or 97-spaces and;

**WHEREAS**, a variance from LDC 34-676(b) which requires all development to place parking areas in the rear, or to the side of buildings, to allow for the existing parking area forward of the proposed building to remain and;

**WHEREAS**, a variance from LDC 34-676(d) which requires all lots fronting along Estero Blvd to be relocated secondary streets, and all driveways connected to secondary streets, to allow

for the continued use of the existing parking and driveway areas which take access directly from Estero Blvd.

**WHEREAS**, the STRAP number for the subject property is 19-46-24-W4-0070F.0010 and is known as CRESCENT PARK LTS 1 + 2 + ESTRY 2.5 FT LT 3 + CRESCENT BEACH LTS 1-5 BLK F LESS ESTRLY 45FT OF NRTHLY 2.7 LT 3; and

**WHEREAS**, the Property is located in the “Pedestrian Commercial” and “Recreation” categories of the Future Land Use Map of the Comprehensive Plan and the “Downtown” and Environmentally Critical” (EC) zoning districts 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 June 11, 2024, 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 7-0 to recommend **APPROVAL WITH CONDITIONS** of the variances; and

**WHEREAS**, on July 17, 2024 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 by a 5-0 vote 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** meet its burden of proof that the requested Variance does meet the requirements of the Town Comprehensive Plan and LDC and approving with conditions 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 WITH CONDITIONS** the variances from sec. 34-674(a)(1)(b), 34-675(b)(3), 34-676(a)(4), 34-676(b) and 34-676(d)

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 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 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:

1. The applicant shall provide enclosures on the 3<sup>rd</sup> floor to mitigate sound from the restaurant/ bar through the use of a physical barrier.
2. The development shall be substantially in compliance with the site plan attached to the ordinance.
3. 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 Council Member Woodson and seconded by Vice Mayor Atterholt, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	aye
Jim Atterholt, Vice Mayor	aye
John R. King	aye
Scott Safford	aye
Karen Woodson	aye

ADOPTED this 17<sup>th</sup> day of June 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

*Dan Allers*  
Dan Allers (Jul 11, 2024 15:37 EDT)  
\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

*Amy Baker*  
\_\_\_\_\_  
Amy Baker, Town Clerk

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

*Nancy Stuparich*  
Nancy Stuparich (Jul 11, 2024 15:40 EDT)  
\_\_\_\_\_  
Vose Law Firm, Town Attorney

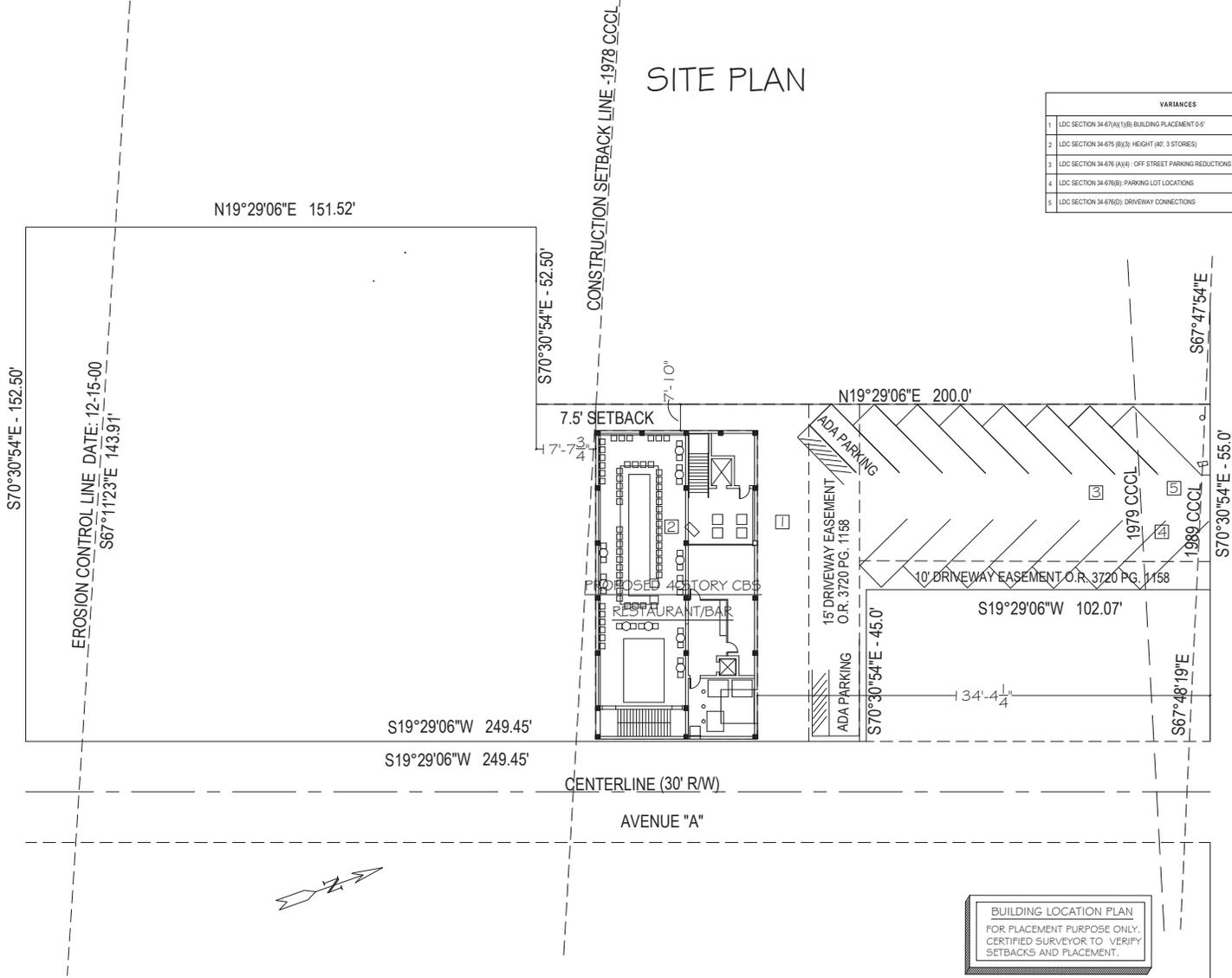
This Resolution was filed in the Office of the Town Clerk on this 11<sup>th</sup> day of July 2024.

Exhibit A: Site Plan  
Exhibit B: List of Approved Variances

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# Exhibit A: Site Plan

## SITE PLAN



VARIANCES	
1	LDC SECTION 34-67(A)(1)(B) BUILDING PLACEMENT 0'0"
2	LDC SECTION 34-67(B)(3) HEIGHT (40', 3 STORIES)
3	LDC SECTION 34-67(A)(4) - OFF STREET PARKING REDUCTIONS
4	LDC SECTION 34-67(B)(B) PARKING LOT LOCATIONS
5	LDC SECTION 34-67(D) DRIVEWAY CONNECTIONS

**BUILDING LOCATION PLAN**  
 FOR PLACEMENT PURPOSE ONLY.  
 CERTIFIED SURVEYOR TO VERIFY  
 SETBACKS AND PLACEMENT.

LOCATION PLAN  
 Scale: 1" = 10'

CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND LOCATIONS OF ALL UTILITIES AND STRUCTURES PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL MAINTAIN ALL EXISTING UTILITIES AND STRUCTURES UNLESS OTHERWISE SPECIFIED. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL MAINTAIN ALL EXISTING UTILITIES AND STRUCTURES UNLESS OTHERWISE SPECIFIED.

THE COTTAGE  
 1250 ESTERO BLVD  
 FORT MYERS BEACH, FL 33931

REVISIONS		
NO.	DATE	DESCRIPTION

JOB NO.: A23-5501  
 DATE: 04/05/2024  
 DRAWN BY:  
 CHK'D BY:

BUILDING  
 LOCATION PLAN

SHEET NUMBER

L-P

## **Exhibit B: List of Approved Variances**

**Variance #1:** Request for variance from LDC Section 34-674(a)(1)b which establishes a build-to line for the Downtown zoning districts and requires buildings to be placed 0-5' from the right of way

**Variance #2:** Request for variance from LDC Section 34-675(b)(3), which limits height to 40 feet above base flood elevation plus freeboard and 3 stories, to allow a building height of 42'- 3" feet above design flood elevation.

**Variance #3:** Request for variance from LDC Section 34-676(a)(4), which allows off-street parking reductions of up to 33% for the subject property located within the Downtown district. The variance requested would reduce parking counts from 114 spaces to 17 spaces, a total reduction of 85%.

**Variance #4:** Request for variance from LDC Section 34-676(b), which requires off-street parking to be placed in rear yards or side yards for properties that front the beach side of Estero Boulevard, to allow parking in the front yard. The applicant will retain the existing parking area and provide the 17 parking spaces approved in Variance #3.

**Variance #5:** Request for variance form LDC Section 34-676(d), which requires that new driveways shall connect only to secondary streets, except where these requirements would prohibit all reasonable access to a property. The applicant will retain the existing entrance/ exit on Estero Blvd.