

LPA RESOLUTION 2024-01

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING WITH CONDITIONS VARIANCE 20240111, REQUESTING A VARIANCE FROM LDC 34-1174(B) TO ALLOW AN ACCESSORY APARTMENT CLOSER TO THE STREET THAN THE PRINCIPAL BUILDING IN THE RM ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 5662 AND 5664 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Scott Saveraid, as the trustee of the Scott A. Saveraid Revocable Trust, UTD 6 6-1-10, applied for a variance from LDC 34-1174(B) of the Town of Fort Myers Beach Land Development Code regarding real property assigned STRAP number 33-46-24-W2-00205.0010; and (“the Property”); and

WHEREAS, the Property has a street address of 5662 and 5664 Estero Boulevard, Fort Myers Beach and is located in the RM zoning district of the Official Zoning Map and the Low Density/Recreation category of the Future Land Use Map of the Comprehensive Plan 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 May 14, 2024; and

WHEREAS, at the hearing the LPA gave full and complete consideration to the request of the Applicant, the recommendations of staff, the documents in the agenda materials, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-87; and

WHEREAS, in accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the LPA makes the following findings and conclusions:

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 the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

C. The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

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 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.

WHEREAS, eligible members of the LPA voted unanimously by roll call vote to approve the requested variance with the following conditions:

1) 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.

2) The property owner adheres to section 34-1178 that discusses accessory apartments for owner-occupied homes.

3) The property owner(s) must provide a signed and recorded covenant in a form acceptable to the town to ensure that the accessory apartment is not sold separately from the principal building or subdivided or condominiumized, and that its use, and the use of the principal structure remain fully in compliance with Sec. 34-1178, Fort Myers Beach Town Code which provides:

Sec. 34-1178. - Accessory apartments in owner-occupied homes.

(a) Purpose. The purpose of this section is to recognize and legalize certain existing accessory apartments where the immediate presence of a property owner is presumed to mitigate any negative effects that might result from the use or rental of such apartments.

(b) Applicability. This section sets forth special requirements for a single accessory apartment in an owner-occupied home. Nothing in this section authorizes or legalizes Page 20 of 507 Page 5 of 5 any construction that is not allowed by the flood-hazard regulations found in §§ 6- 401 through 6-475 of this code.

(c) Definition. For purposes of this section, the term "accessory apartment" means a single living unit no larger than 850 square feet, with or without cooking facilities, that was in existence as of December 15, 1997. For such an accessory apartment to remain lawful under this section, the property owner or an immediate family member must be in residence on the premises, or on an immediately adjoining lot, during any period when the apartment is not vacant.

(d) Density. An accessory apartment that meets the requirements of this section is a living unit but not a dwelling unit as defined by the Fort Myers Beach Comprehensive Plan and is not counted in residential density computations (see § 34-632(5)b. of this chapter); and

WHEREAS, Ordinance 24-06 amended Section 34-232(d) of the LDC to provide that:

(d) Owner-initiated requests for variances, or required reviews to extend or to provide evidence of satisfaction of conditions contained in prior land use approvals, that are:

- 1) approved by a unanimous vote of the local planning agency members who are eligible to vote, and
- 2) not subject to a request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 business days after the date of the local planning agency decision, excluding holidays,

only require one public hearing before the local planning agency, and the local planning agency decision is final agency action.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

1. The foregoing “WHEREAS” clauses are adopted herein by reference and constitute the findings and conclusions of the LPA.

2. VAR20240111, with the conditions contained herein, received unanimous approval from eligible voting members of the LPA on May 14, 2024.

3. This Resolution shall constitute the equivalent of a development order and final agency action, subject to any request for an additional review by the Town Council filed with the Town Clerk within 10 business days of the LPA decision as authorized in Section 34-232(d) of the LDC.

The foregoing Resolution was adopted upon a motion by LPA Member Don Sudduth and seconded by LPA Member James Boan and upon being put to a vote, the result was as follows:

Chair Anita Cereceda	Aye
Vice-Chair Jane Plummer	Aye
Member James Boan	Aye
Member Douglas Eckmann	Aye
Member Don Sudduth	Aye
Member John McLean	Aye
Vacant	N/A

DULY PASSED AND ADOPTED THIS 14th day of May 2024.

Local Planning Agency of the Town of
Fort Myers Beach

By: 
Anita Cereceda (Jul 11, 2024 22:11 GMT+2)
Anita Cereceda, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: 
Nancy Stuparich (Jul 11, 2024 16:25 EDT)
Vose Law Firm, Town Attorney

By: 
Amy Baker, Town Clerk

EXHIBIT A: Site Plan

EXHIBIT A



CONCEPTUAL SITE PLAN
SCALE 1" = 20'

**** VARIANCE REQUEST - VARIANCE FROM LDC TABLE 34-3 AND LDC SEC. 34-638(3)b. - MINIMUM SETBACKS TO DECREASE THE ACCESSORY STRUCTURE SETBACKS TO CONSTRUCT AN AT GRADE POOL CLOSER THAN 25 FEET FROM A NATURAL WATER BODY MEAN HIGH WATER LINE.**

C1
 $\Delta = 09^{\circ}35'38''$
 $R = 360.00'(P)$
 $A = 60.28'(P)$
 $CH.BR. = N26^{\circ}55'13''E(M)$
 $CH. = 60.21'(M)$

C2
 $\Delta = 09^{\circ}36'24''$
 $R = 180.00'(P)$
 $A = 30.18'(P)$
 $CH.BR. = N26^{\circ}55'13''E(M)$
 $CH. = 30.14'(M)$

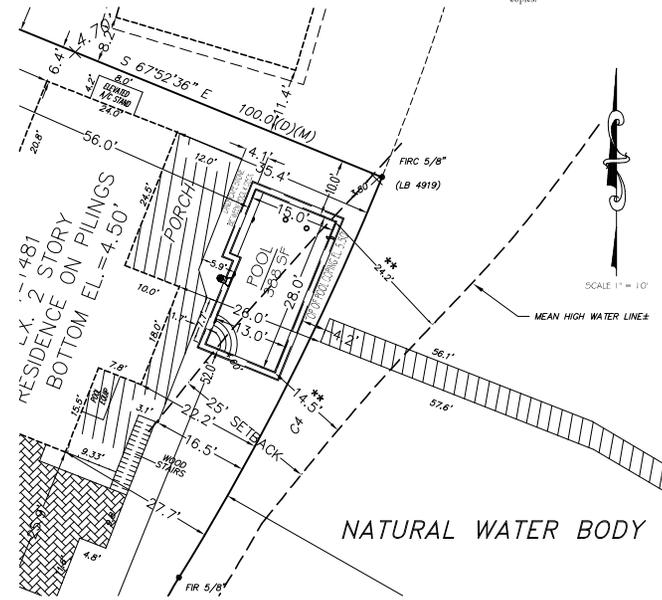
C3
 $\Delta = 02^{\circ}07'58''$
 $R = 360.00'(P)$
 $A = 13.40'(P)$
 $CH.BR. = N26^{\circ}55'13''E(M)$
 $CH. = 13.38'(M)$

C4
 $\Delta = 09^{\circ}35'38''$
 $R = 460.00'(P)$
 $A = 77.02'(P)$
 $CH.BR. = N26^{\circ}55'13''E(M)$
 $CH. = 76.93'(M)$



Digitally signed by
Gina R Green
 Date:
2024.03.26
16:38:54
-04'00'

This item has been digitally signed and sealed by Gina R. Green, P.E. on the date adjacent to the seal. Printed copies of this document are not considered signed and sealed and the signature must be verified on any electronic copies.



VARIANCE AREA
SCALE 1" = 10'

SETBACK CHART (LDC TABLE 34-3)		
DESCRIPTION	REQUIRED	PROVIDED
FRONT	25'	56.0'
SIDE	10'	10'
REAR **	25'	14.5'

REVISIONS	
NO.	DESCRIPTION



GINA R. GREEN, P.A.
 CIVIL ENGINEERING
 3310 1ST AVE. N.W.
 NAPLES, FLORIDA 34120
 (239) 348-0500 FAX (888) 720-4823

PREPARED FOR:	JANET SHOBE
PROJECT:	SHORE POOL VARIANCE
ADDRESS:	2143 WIDGEON TERRACE, FORT MYERS BEACH, FL 33951
DESCRIPTION:	VARIANCE CONCEPTUAL SITE PLAN
EXPIRES:	EXPIRES BY DATE: 06/30/2025, ALL RIGHTS RESERVED

EXHIBIT A

LPA2024-01, VAR20240111 5562 5564 Estero Final for signatures

Final Audit Report

2024-07-12

Created:	2024-07-11
By:	Amy Baker (AMY@FMBGOV.COM)
Status:	Signed
Transaction ID:	CBJCHBCAABAA-cWbD72vvKarOCyiGalftvmDhmHUu5CH

"LPA2024-01, VAR20240111 5562 5564 Estero Final for signatures" History

-  Document created by Amy Baker (AMY@FMBGOV.COM)
2024-07-11 - 7:45:15 PM GMT
-  Document emailed to Anita Cereceda (localcolorfmb@aol.com) for signature
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-  Document emailed to Nancy Stuparich (nstuparich@voselaw.com) for signature
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2024-07-11 - 7:45:21 PM GMT
-  Email viewed by Anita Cereceda (localcolorfmb@aol.com)
2024-07-11 - 8:11:07 PM GMT
-  Document e-signed by Anita Cereceda (localcolorfmb@aol.com)
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2024-07-11 - 8:12:32 PM GMT
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Signature Date: 2024-07-11 - 8:25:21 PM GMT - Time Source: server
-  Document e-signed by Amy Baker (AMY@FMBGOV.COM)
E-signature obtained using URL retrieved through the Adobe Acrobat Sign API
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✔ Agreement completed.

2024-07-12 - 1:58:00 PM GMT