

LPA RESOLUTION 2024-04

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING WITH CONDITIONS VARIANCE 20240142, REQUESTING 1) A VARIANCE FROM LDC TABLE 34-3 OF 3 FEET FROM THE WEST SIDE SETBACK FOR A SIDE SETBACK OF 4 FEET 6 INCHES FOR AIR CONDITIONING EQUIPMENT; AND 2) A VARIANCE FROM SEC.34-638(D)(2)(B) OF 3 FEET FROM THE STREET SETBACK FOR A STREET SETBACK OF 22 FEET FOR THE SECOND FLOOR BALCONY OF A NEW SINGLE FAMILY STRUCTURE IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 319 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA; 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, render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Jack Holsem ("Owner") is the owner of the property located at 319 Estero Boulevard ("Property"), and is requesting 1) a variance from LDC Table 34-3 of 3 feet from the west side setback for a side setback of 4 feet 6 inches for the mechanical equipment; and 2) a variance from Sec.34-638(d)(2)(b) of 3 feet from the street setback for a street setback of 22 feet for the second-floor balcony of a new single-family structure in the RC zoning district; and

WHEREAS, the STRAP number for the subject property is 24-46-23-W1-0070.D027A; and

WHEREAS, the Property is located in the "Mixed Residential" Future Land Use of the Comprehensive Plan and the "Residential" and "Conservation" 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 September 3, 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; 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 variances with the following conditions:

- 1) Approval of these variances does not give the Applicant an undeniable right to permit approval. Development 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 variance shall only apply to the single-family home as shown on the provided site plan. Demolition or substantial damage to the residential structure shall render the variances to be null and void.
- 3) Property owners must have complete visual screening that enclose all mechanical equipment to obscure from the public right-of-way and from the immediate neighbor's property to help mitigate noise.
- 4) A revision of the existing permit (Permit Number 240817) will be necessary if the variances are granted; 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. VAR20240142, with the conditions contained herein, received unanimous approval from eligible voting members of the LPA on September 3, 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 Dunlap and seconded by LPA Member Eckman 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
Member James Dunlap	Aye

DULY PASSED AND ADOPTED THIS 3rd day of September 2024.

Local Planning Agency of the Town of
Fort Myers Beach

By: 
Anita Cereceda (Sep 23, 2024 10:56 EDT)
Anita Cereceda, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: 
Nancy Stuparich (Sep 25, 2024 11:19 EDT)
Vose Law Firm, Town Attorney

By: 
Amy Baker, Town Clerk

This Resolution was filed in the Office of the Town Clerk on this 23rd day of September 2024.

