

## **LPA RESOLUTION 2025-10**

**A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING WITH CONDITIONS VARIANCE 20250056, REQUESTING FOUR VARIANCES FOR THE PROPERTY LOCATED AT 2900/2902 ESTERO BLVD., IN THE RM ZONING DISTRICT, AND GENERALLY REFERED TO AS STRAP NUMBER 30-46-24-W2-003M0.0140 IN FORT MYERS BEACH, 1) A VARIANCE OF 5 FEET FROM REQUIRED 25-FOOT STREET SETBACK, IN DIVISION 4. TABLE 34-3, FROM ESTERO BLVD., TO ALLOW A PRIMARY STRUCTURE 20 FEET FROM ESTERO BLVD., 2) A VARIANCE OF 10 FEET FROM THE REQUIRED 25-FOOT STREET SETBACK, IN DIVISION 4. TABLE 34-3, FROM SEAVIEW ST., TO ALLOW A PRIMARY STRUCTURE 15 FEET FROM SEAVIEW ST. 3) A VARIANCE OF 15 FEET FROM THE REQUIRED ACCESSORY STRUCTURE STREET SETBACK, IN DIVISION 4. TABLE 34-3, TO ALLOW AN AT-GRADE POOL WITHOUT SCREEN ENCLOSURE 10 FEET FROM SEAVIEW ST., 4) A VARIANCE FROM SEC. 34-1174(b) TO ALLOW A POOL CLOSER TO THE STREET THAN THE PRIMARY STRUCTURE; AND PROVIDING FOR OTHER 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, 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**, Tamara Diepholz ("Applicant"), on behalf of the Tamara Diepholz Trust, ("Owner") of the property located at 2900/2902 Estero Blvd. (Property), and is proposing the construction of a new single-family residence in the RM zoning district and is requesting four variances from LDC Table 34-3, **1)** a variance from the primary structure street setback of 5 feet from Estero Blvd, to allow a setback of 20 feet from Estero Blvd., and **2)** a variance of 10 feet from Seaview St., to allow a setback of 15 feet from Seaview St., and **3)** a variance for the accessory structure (an at-grade pool) of 15 feet from the required street setback, to allow an at-grade pool 10 feet from Seaview St., and **4)** a variance from Sec. 34-1174(b) to allow the pool to be closer to Seaview St. than the primary structure; and

**WHEREAS**, the STRAP number for the subject property is 30-46-24-W2-003M0.0140; and

**WHEREAS**, the Property is located in the "Boulevard" Future Land Use Map of the Comprehensive Plan and the "Residential Multifamily" 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 April 8, 2025, 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 7 to 0 by roll call vote to approve with conditions the requested variances 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 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.

**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. VAR20250056, with the conditions contained herein, received unanimous approval from eligible voting members of the LPA on April 8, 2025.
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 Boan and seconded by LPA Vice Chair Plummer and upon being put to a roll call vote, the result was as follows:

LPA Chair Cereceda	Aye
LPA Vice-Chair Plummer	Aye
LPA Member Boan	Aye
LPA Member Eckmann	Aye
LPA Member Sudduth	Aye
LPA Member McLean	Aye
LPA Member Dunlap	Aye

DULY PASSED AND ADOPTED THIS 8<sup>th</sup> day of April 2025.

Local Planning Agency of the Town of  
Fort Myers Beach

By:   
Anita Cereceda (Apr 24, 2025 17:28 EDT)  
Anita Cereceda, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: Nancy Stuparich  
Nancy Stuparich (Apr 21, 2025 21:49 EDT)  
Vose Law Firm, Town Attorney

By:   
Amy Baker (Apr 29, 2025 13:52 EDT)  
Amy Baker, Town Clerk

This Resolution was filed in the Office of the Town Clerk on this 24<sup>th</sup> day of April 2025.

EXHIBIT A: Criteria for Variances  
EXHIBIT B: Site Plan

**Evaluation of each variance request per LDC criteria.**

**1) A VARIANCE OF 5 FEET FROM REQUIRED 25-FOOT STREET SETBACK FROM ESTERO BLVD. IN DIVISION 4. TABLE 34-3, TO ALLOW A PRIMARY STRUCTURE 20 FEET FROM ESTERO BLVD.**

- 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.

*There are exceptional conditions inherent to the property. The lot is an irregularly shaped, and irregularly configured, nonconforming RM zoned parcel. The request may be considered de minimis under these circumstances because rigid compliance is not essential.*

- B. The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

*The property has a street setback on two sides and is small and irregularly shaped. These are not the result of the actions of the applicant.*

- 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.

*The variance will provide adequate setback from Estero Blvd and is similar to a rear setback on a non-waterfront lot.*

- D. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

*The requested 5-foot variance will not be injurious to the neighborhood. The proposed home appears to have a greater setback than the previous existing home on this property.*

- D. 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.

*This is not a request that should be applied to all properties and therefore would not be appropriate for a code amendment.*

**2) A VARIANCE OF 10 FEET FROM THE REQUIRED 25-FOOT STREET SETBACK FROM SEAVIEW ST., IN DIVISION 4. TABLE 34-3, TO ALLOW A PRIMARY STRUCTURE 15 FEET FROM SEAVIEW ST.**

- 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.

*There are exceptional conditions inherent to the property. The lot is an irregularly shaped, and irregularly configured, nonconforming RM zoned parcel. The request may be considered de minimis under these circumstances because rigid compliance is not essential.*

- B. The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

*The requested variance will allow for two vehicles to be parked under the structure on an oddly shaped, nonconforming parcel. These conditions are not the result of actions of the applicant.*

- 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.

*The requested variance is the minimum amount to allow for two cars to be parked under the structure and to maintain a 20 foot setback from Estero Blvd.*

- D. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

*It does not appear that the variance will be injurious to neighbors. This street has many oddly shaped and small parcels which will be difficult to develop without requesting variances.*

- 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.

*This is not a request that should be applied to all properties and therefore would not be appropriate for a code amendment.*

**3) A VARIANCE OF 15 FEET FOR FROM THE REQUIRED ACCESSORY STRUCTURE STREET SETBACK, IN DIVISION 4. TABLE 34-3, TO ALLOW AN AT-GRADE POOL WITHOUT SCREEN ENCLOSURE 10 FEET FROM SEAVIEW ST.**

- 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.

*There are exceptional conditions inherent to the property. The lot is an irregularly shaped, and irregularly configured, nonconforming RM zoned parcel. The request may be considered de minimis under these circumstances because rigid compliance is not essential.*

- B. The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

*This parcel has street frontage on the front and the rear. In order to allow the development of a pool, in a yard, this property requires a variance. Most properties on the island allow a setback of 5 feet from the rear property line, the applicant is requesting a 10-foot setback from the street property line.*

- 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.

*The requested variance is minimal and the proposed pool is small. Additionally, the pool will be at-grade and the applicant is not proposing a screen enclosure.*

- D. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

*It does not appear that the variance will be injurious to neighbors. This street has many oddly shaped and small parcels which will be difficult to develop without requesting variances.*

- 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.

*This is not a request that should be applied to all properties and therefore would not be appropriate for a code amendment.*

#### **4) A VARIANCE FROM SEC. 34-1174(b) TO ALLOW A POOL CLOSER TO THE STREET THAN THE PRIMARY STRUCTURE.**

- 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.

*There are exceptional conditions inherent to the property. The lot is an irregularly shaped, and irregularly configured, nonconforming RM zoned parcel. The request may be considered de minimis under these circumstances because rigid compliance is not essential.*

- B. The conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

*The conditions justifying the variance are inherent in the lot. Because there is a street at the front and at the rear of the property, this variance request would be necessary to put a pool in almost any location on this parcel.*

- 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.

*The variance request is the minimum variance to allow a pool on the Seaview side of the parcel or the Estero side of the parcel.*

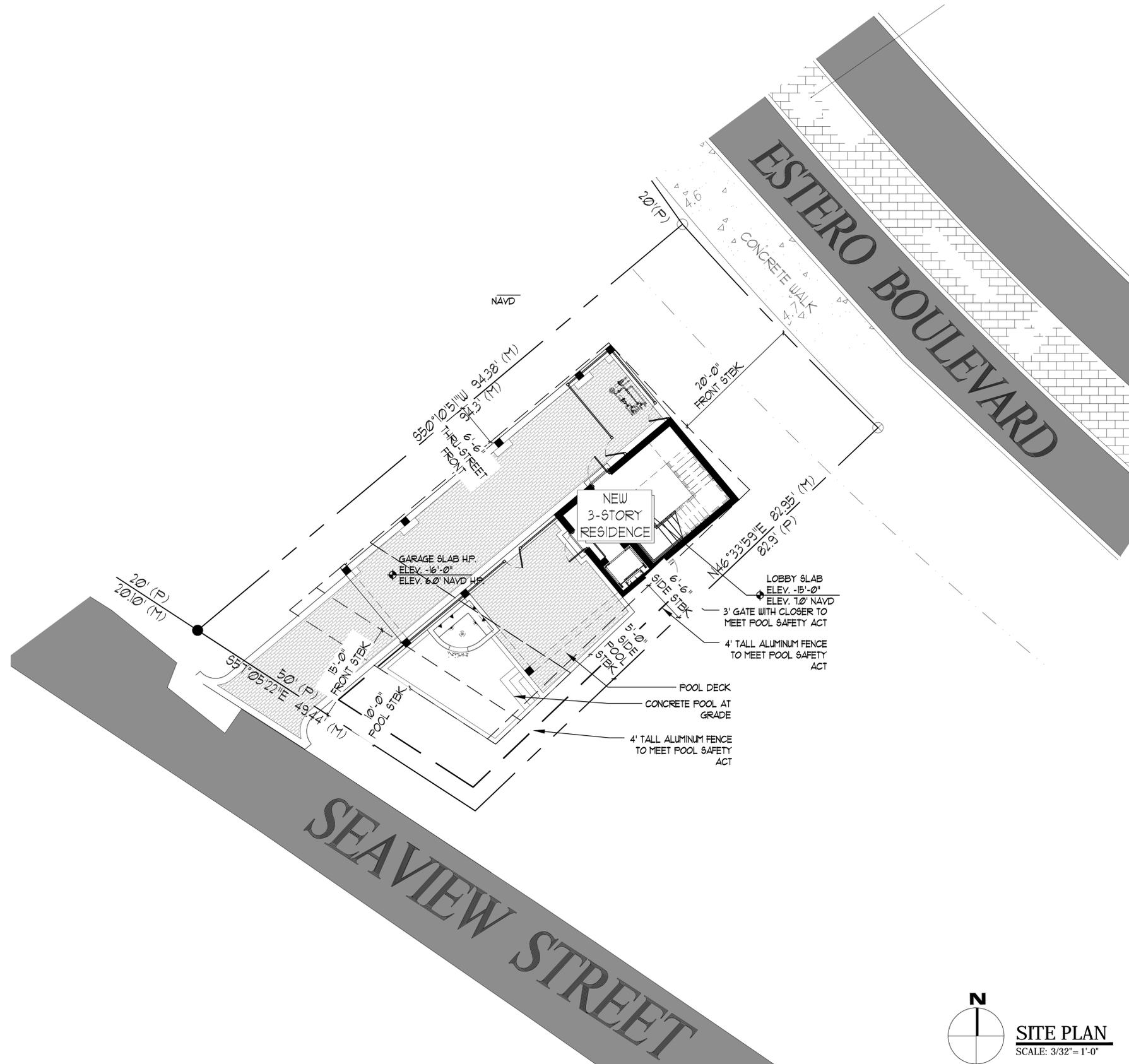
- D. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

*It does not appear that the variance will be injurious to neighbors. This lot is bounded on the front and rear by streets and any pool in a yard would require this variance unless the proposed pool was in a courtyard.*

- 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.

*This is not a request that should be applied to all properties and therefore would not be appropriate for a code amendment.*

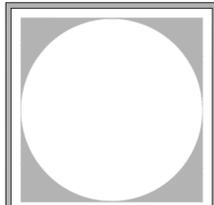
# EXHIBIT "A" PROPOSED SETBACKS



**SITE PLAN**  
SCALE: 3/32" = 1'-0"

ZONING DATA
<b>ZONE:</b>
VILLAGE OF FORT MYERS BEACH ZONING:
<b>FLOOD ZONE (2019):</b>
X
BFE: 10.00' NAVD.
DFE: 4.00' + 1" NAVD.
<b>MAX BUILDING HEIGHT:</b>
35'-0"
FROM MORE RESTRICTIVE OF: FEMA HABITABLE FLOOR 18' ABOVE GROUND OF ROAD

GENERAL NOTES
1. G.C. TO COORDINATE REMOVAL OF EXISTING VEGETATION.
2. ALL DOORS & WINDOWS PROVIDING DIRECT ACCESS FROM THE HOME SHALL MEET THE RESIDENTIAL POOL SAFETY ACT.
3. ALL SCREEN DOORS (IF APPLICABLE) ARE TO BE SELF LATCHING AND SELF CLOSING. LATCH MECHANISM SHALL BE MOUNTED # 94".
4. ALARMS SHALL ALSO BE INSTALLED ON SCREEN DOORS (IF APPLICABLE) G.C. TO VERIFY THAT ALL EXITS TO THE BACKYARD MEET SWIMMING POOL SAFETY ACT.
5. TO VERIFY ALL EXISTING CONDITIONS ON SITE PRIOR TO COMMENCEMENT OF CONSTRUCTION. NOT ALL EXISTING CONDITIONS ARE NECESSARILY SHOWN ON THIS PLAN.
6. REFER TO SURVEY FOR EXISTING CONDITIONS.
7. REFER TO LANDSCAPE ARCHITECTS DRAWINGS FOR INFORMATION ON THE POOL, LANDSCAPING AND OTHER SITE FEATURES.
8. REFER TO SITE DRAINAGE PLANS BY CIVIL ENGINEER FOR PROPOSED SITE ELEVATIONS, GRADING, ETC.
9. ALL INFORMATION SHOWN HEREON IS TAKEN FROM A SURVEY BY: ***** INC. DATED 11/23. PROJECT FILE: ***** IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO FAMILIARIZE HIMSELF WITH ALL EXISTING CONDITIONS. ALL EXISTING CONDITIONS ARE NOT NECESSARILY SHOWN HEREON.



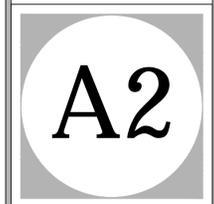
Date	Revisions

**PRIVATE RESIDENCE**  
----- ESTERO BLVD  
FORT MYERS BEACH, FLORIDA 33931



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PROJ. #: 2402-01  
DRAWN BY: K.A.V.  
DATE: 11.11.24



DESIGN DEVELOPMENT