

RESOLUTION NUMBER 25-240

A RESOLUTION OF THE FORT MYERS BEACH TOWN COUNCIL APPROVING WITH CONDITIONS VARIANCE APPLICATION VAR20250047 FOR THE PROPERTY AT 6425 ESTERO BLVD, GENERALLY IDENTIFIED AS STRAP NUMBER 34-46-24-W4-00046.0000 IN FORT MYERS BEACH FOR A VARIANCE TO DECREASE THE NUMBER OF REQUIRED PARKING SPACES FROM 115 TO 33 PARKING SPACES AND A BICYCLE RACK FOR A RESTAURANT, COCKTAIL BAR AND ENTERTAINMENT AREA; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, 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, Applicant, The Neighborhood Company, on behalf of the property owner, 6425 Estero, 4148 LLC, is requesting a variance from Section 34-2020 of the Land Development Code to allow a decrease in the number of parking spaces from 115 to 33 parking spaces plus one bike rack for a restaurant with cocktail bar and entertainment area; and

WHEREAS, the STRAP number for the subject property is 34-46-24-W4-00046.0000; and

WHEREAS, the Property is located in the "Mixed Residential" category of the Future Land Use Map of the Comprehensive Plan and the "Commercial Boulevard" 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 June 10, 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. The LPA voted 6-0, to recommend approval with conditions of the variance; and

WHEREAS, on August 4, 2025 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 Section 34-88 of the Land Development Code ("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 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 variance as described herein.

Section 3. In approving with conditions the Variance, the Town Council has considered the following criteria set forth in Section 34-84 and 34-87 of the LDC for each of the requested approvals as stated in more detail in Exhibit A:

- 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.

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	<u>Nay</u>
Jim Atterholt, Vice Mayor	<u>Aye</u>
John R. King	<u>Aye</u>
Scott Safford	<u>Aye</u>
Karen Woodson	<u>Aye</u>

ADOPTED this 4th day of August 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers
Dan Allers (Sep 29, 2025 14:31:44 EDT)
Dan Allers, Mayor

ATTEST:

Amy Baker
Amy Baker (Oct 8, 2025 14:08:33 EDT)
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 (Oct 2, 2025 8:35:35 EDT)
Nancy Stuparich, Town Attorney

This Resolution was filed in the Office of the Town Clerk on: Oct 8, 2025.

ATTACHMENTS

- Exhibit A – Findings for Variance Criteria
- Exhibit B – Site Plan
- Exhibit C– Conditions of Approval

Exhibit A Code Required Findings

Variations for Parking: Section 34-2020(b)(2) requires that new uses in a building must provide code required parking, Section 34-2020(d)(2)(h) requires restaurants to provide eight spaces per 1,000 square feet of total floor area plus outdoor seating area, Section 34-2020(d)(2)(h) 2. Requires bars to provide eight spaces per 1,000 square feet of total floor area plus five additional spaces per 1,000 square feet of floor area used for the bar, plus outdoor seating area. Staff proposes a single variance from Section 34-2020 to provide 33 automobile parking spaces, 2 bicycle racks, and 4 golf cart parking spaces where the code would require 115 parking spaces.

Section 34-87 required variance findings:

*(1) That there are/**are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is/**is not** for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy;*

The parking lot adjacent to the building is existing and it would not be possible to add parking spaces to that parking lot without a substantial cost. However, parking places existed under the building previously and that area will be utilized for a bar, seating and entertainment.

*(2) That the conditions justifying the variance **are/** are not the result of actions of the applicant taken after the adoption of the regulation in question;*

The building previously had parking spaces on the ground floor. The proposed new use of outdoor entertainment and bar will utilize a portion of the previous parking area.

*(3) That the variance granted **is/is** not the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;*

The request is the minimum variance necessary to allow the proposed layout of the property.

*(4) That the granting of the variance **will (may)** /will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The lack of parking on site may result in people parking where they are not allowed. They may park along Curlew St or Egret St or in the condominium parking lots across Estero Blvd from the proposed use.

*(5) That the conditions or circumstances on the specific piece of property for which the variance is sought **are/** are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

Staff recognizes that the parking code is in need of updating. However, the reduction being

Exhibit A Code Required Findings

requested may be more than is appropriate without some mitigation such as valet parking.

The Variance from Section 34-2020 for a reduction in the number of required parking spaces **does not meet** the criteria found in Section 34-87.

CONDITIONS OF APPROVAL – SEZ20250046 & VAR20250047

1. All music and entertainment on the property will be in compliance with the Town's noise regulations.
2. General hours of operation will be from 7 AM to Midnight. No food and beverage service prior to 10 AM at the ground-level restaurant.
3. Hours of amplified music will be limited from 11 AM to 9 PM on weekdays and from 11 AM to 10 PM on weekends. All amplified music will be distributed through a unified speaker system controlled by Management. A centralized sound system with distributed speakers, not individual speakers/amps for performers; live entertainment limited to single or duo acts; no cornhole. No bands (3 or more performers) or drums/percussion unless approved through the Town's special event permitting process.
4. Sound mitigation will be provided by concrete block walls and bi-fold glass doors (or other retractable door) as depicted on the attached Schematic Plan sheet D1.
5. No consumption of alcohol shall be permitted outside the restaurant, bar, and accessory game area delineated by the 36' Railing and depicted on the attached Schematic Plan sheet D1.
6. Games in the accessory game area cannot include loud electronic beeping, ringing, or buzzing.
7. The development must comply with the LDC's sea turtle conservation requirements.
- ~~8. Redevelopment of the dock must receive an approved LDO or DO as determined by the Community Development Department. (LDO and construction of dock already occurred)~~
9. At time of site development, signage will be installed on the dock stating that the dock is not open to the public and that it is for private use only.
10. The dumpster enclosure shall be refurbished, in coordination with the solid waste carrier, to allow closure of the doors. Solid waste pickup shall be provided at a minimum twice per week excluding Sundays.
11. The property owner will submit a shared parking agreement with the Dolphin Inn or other nearby properties per LDC 34-2183C prior to DO approval. Should the Dolphin Inn property be sold or redeveloped into any use other than parking, a shared parking agreement with another nearby property will be needed prior to the Dolphin Inn parking operations ceasing
12. All employees are required to park off-site. Off-site employee parking; must have valet parking available for opening; no parking signage on ROW; and shared parking agreement with Dolphin Inn per sec. 34-2018(c)3.
13. Valet parking service will be established when restaurant operations begin and will be

available as needed to meet peak parking needs.

14. The property owner will coordinate with Town staff to install “No Parking” signs along the right-of-way where the subject property abuts Egret and Curlew Streets.
15. At time of site development, the property must provide perimeter buffers as depicted on the approved site plan.
16. Any unremedied violation of the conditions of approval shall render the special exception null and void.