

**FORT MYERS BEACH  
TOWN COUNCIL MEETING  
OCTOBER 9, 2000  
NationsBank, Council Chambers  
2523 Estero Boulevard  
FORT MYERS BEACH, FLORIDA**

**I. CALL TO ORDER**

The meeting of October 9, 2000, was opened by Mayor Daniel Hughes at 6:30 p.m.

**Council members present at the meeting:** Terry Cain, Anita Cereceda, Daniel Hughes, Ray Murphy and Garr Reynolds.

Members absent from meeting: None.

**Town Staff present:**

**II. PLEDGE OF ALLEGIANCE**

All assembled recited the Pledge of Allegiance.

**III. PUBLIC COMMENT ON AGENDA ITEMS**

None.

**IV. PUBLIC HEARING: SIMMONS RESIDENTIAL POOL ADDITION. CASE**

**NO. VAR2000-00047.** A variance in the Residential Single Family RS-1 district from Land Development Code Section 34-2192 which requires a 25 foot setback from the edge of right-of-way of a local roadway, to permit a setback of 7.5 feet for the construction of a swimming pool. This property is located at 315 Bayland Road.

There were no ex parte communications regarding this case.

**Applicant's Representative:**

Rob Fowler, representing the applicant on this request, asked that staff present their findings first.

**County Representative:**

Dan Faulk, a planner with the Lee County Department of Community Development, reviewed the request before us and prepared the staff report and staff's recommendations. He advised that staff is recommending approval of the 10-foot variance but not the 7.5 ft. variance with two conditions: A 25-ft. setback is required for a swimming pool that will not have a cage around it nor be attached to the original structure as originally planned. The Land Development Code does allow accessory structures closer to the street right-of-way than the principal structure on through lots which are adjacent to a secondary street, but they must meet the required street setback or there must be a dedicated 10-ft. buffer easement. This lot is surrounded by right-of-ways on three sides so they would be subject to street setbacks, but there is some relief for corner lots. But because this is an accessory structure, they're not allowed to be closer

than the principal structure except as he has described. This subject property is a through lot, which means that it has two opposite lot lines abutting the street right-of-way. The second question would be do they have a secondary street that would allow an accessory structure. They do not. Their principal access is on Bayland Road and opposite that is not a secondary street but in fact an abutting lot. So in order to build this accessory structure, they do need a variance. Staff has used this as the basis for the extraordinary condition, which is that they are a through lot, some of their neighbors on this block are also through lots and they would have the right to build an accessory structure closer than the principal to the right-of-way under this part of the Land Development Code.

The pool would be put alongside Coquina Road. The abutting property to the northwest has their access on Dolphin Lane and the pool would be considered to be in the backyard of the abutting property.

At the LPA hearing there was quite a bit of discussion regarding Condition 2. The conditions Dan Faulk presented us with have the same effect as what was approved by the LPA and he has just rewritten Condition 2 to try and clarify it. Condition 1 is exactly the same as what was approved by the LPA. It essentially ties the variance to the site plan which the applicant has submitted with the difference that it would not be a 7.5 ft. setback but a 10-ft. setback from Coquina. The second condition reads that the 10-ft. setback will also be maintained as a vegetative buffer along Coquina. It will comply with the Type D buffer which requires 5 trees per 100 linear feet and a double staggered row hatch. In addition, landscaping will be installed along the abutting property line to the northwest. The landscaping will be located on the subject property between the swimming pool and fence, which is required by the Land Development Code, and the right-of-way/abutting property line.

Rob Fowler said applicants were in total agreement with the 10-ft. setback. He advised that it was just the waterfall feature attached to the pool that needed a variance of 7.5 ft.

**MOTION:** Moved by Ray Murphy to approve the requested setback of 10 feet incorporating the conditions as given to us today and also incorporating the additional 7.5-ft. setback required to build the waterfall, hearing that there were no objections from the neighborhoods or adjoining property owners.

**Discussion:**

Mayor Hughes recognized that Vice Mayor Murphy was moving for adoption of the resolution with the adjustments to it and with the two conditions as submitted by the staff with Condition 1 being modified. Dan Faulk said what he was going to recommend was that if we changed the last sentence of Condition 1 to read "no closer than 7.5 feet" that would take care of what he would call the half-circle. And then he could also tie it to the site plan as it was submitted.

Mayor Hughes felt that we should also put in that the encroachment beyond the 10-ft envelope has a maximum area of 25 sq. ft. It's a variation on a variation.

The motion was seconded by Anita Cereceda.

**Discussion:**

Councilman Reynolds said he had driven by the property on two separate days and hadn't liked the idea that the LPA had approved a 15-ft. reduction in a setback. He was prepared to go along with 10 ft. but he's not prepared to go against what the LPA recommended because they've done a lot of study too. He believes it would work the way they suggested.

Mayor Hughes said he wasn't convinced from the record that we really are going against the LPA. He thinks they needed some more clarification and expressed limitation on that.

Councilwoman Cain feels that the property is an exceptional situation -- a house with a road on three sides of it and each one of the setbacks is different.

Motion passes 4-1 with Councilman Reynolds dissenting.

**V. PUBLIC HEARING: SCHMIDT VARIANCE. CASE NO. VAR2000-00029.**

A variance in the C-1 Commercial District from Land Development Code 34-844 which requires a side setback of 15 feet to permit a side setback of 7.5 feet for a single family residence. This property is located at 2870 & 2872 Seaview.

**Applicant's Representative**

Kate Gooderham of Gooderham & Associates was here on behalf of the owner of the property. She advised that the overall request is to make a significant improvement in the property. They want to remove the existing duplex and cottage and replace them with one unit. The 7.5 ft. setback is appropriate for a single-family district. There are no new structures in the Recreation Land Use Category. This is an established residential neighborhood and the present structures were built in 1961. There is residential use with commercial zoning.

Applicants are removing two nonconforming structures and replacing them not only with a conforming structure in terms of compliance with the codes of the Town of Fort Myers Beach, but also seaward of the state's coastal construction control line so the new structure must be built in compliance with those standards. It would be a benefit to the community as a whole to get substandard structures replaced with something that will hold up well under storm conditions. Applicants have no setbacks in certain portions of their property and by adhering to a 7.5 ft. setback they are increasing their setbacks substantially from what they have now, which is 0. The proposed single family will comply with permitted density and meet required street and water body setbacks, so the only thing they're asking for is the side setbacks.

**County Representative:**

Dan Faulk, a planner with the Lee County Department of Community Development, stated that staff has recommended approval of the request with one condition: that the variance is limited to one single-family residence as shown on the proposed site plan, Attachment B to the staff report.

Subject property is a lot of record that was platted in 1935. It is 51 ft. wide by 139 ft. deep. Surrounding properties are all zoned C-1 and used as residential properties.

Staff believes that seeking the variance on the side setbacks is appropriate in this situation.

Approval of the request will remove two nonconforming structures and replace them with one single-family home. There is a sketch of the property that shows where the existing structures sit. One structure is right on the property line with an 8.5-ft. street setback. Another structure actually encroaches onto the neighboring property.

Councilman Reynolds was told that there was a 25-ft. setback from Seaview, which is the required street setback.

**MOTION:** Moved by Ray Murphy and seconded by Anita Cereceda to approve the variance request with the one condition that it be limited to one single-family dwelling.

**Discussion:**

Asked if the resolution would include the attached site plan, Mayor Hughes responded yes.

Councilman Reynolds said he believed this was a pretty standard type of request throughout the island and very much in line with the ordinance.

Vice Mayor Murphy said he thinks that future councils are going to be seeing a lot of these kinds of cases.

Motion passes unanimously.

**VI. PUBLIC COMMENT**

None.

**VII. ADJOURNMENT**

The meeting was adjourned at    p.m.

Respectfully submitted,

Lorraine Calhoun  
Transcribing Secretary