

RESOLUTION NUMBER 21-63

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/DENYING VARIANCE 20210039 TO ALLOW A 10 FEET REDUCTION OF THE 25 FEET STREET SETBACK TO ALLOW A SETBACK OF 15 FEET AT 71 CHAPEL STREET; 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, and 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, applicant Ronald Yanke, is requesting a variance from Table 34-3 of the Town of Fort Myers Beach Land Development Code, which establishes street right-of-way setbacks for the principal structure; and

WHEREAS, the STRAP number for the subject property is 19-46-24-W3-0120A.0090 (“Property”)

WHEREAS, the Property is located in the “Boulevard” category of the Future Land Use Map of the Comprehensive Plan and the “Residential Multi-Family” 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 October 20, 2021, 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 5-0 to recommend approval with conditions.

WHEREAS, on November 15, 2021 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 34-87 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve/deny 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/did not meet its burden of proof that the requested Variance meets the requirements of the Town Comprehensive Plan and LDC, and approving the Variance is in the best interest of the Town to approve. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties and public, the Town Council APPROVES/DENIES the Variance to allow the construction of a single-family dwelling to encroach 10 feet within the street setback, for a setback of 15 feet.

Section 3. In approving/denying the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Sections 34-84 and 34-87 of the LDC:

- A. There are/are not 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 approval/denial of the variance are/are not the result of actions of the Applicant taken after the adoption of the regulation in question.
- C. The variance is/is not the minimum variance that will relieve the Applicant of an unreasonable burden caused by the application of the regulation to the Property.
- D. The granting of the variance will/will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property are/are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. If the Town Council approves the requested variance, the following conditions of approval are imposed on the Applicant and the Property:

- A. 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.
- B. No portion of the home may encroach further than 10 feet into the Cottage Ave. setback, this includes awnings and overhangs.
- C. The driveway entrance onto Cottage Ave will be removed and the right-of-way and drainage restored to meet all Town standards and existing conditions along Cottage Avenue.

D. A 10-foot wide, Type B buffer will be provided along the Cottage Ave property line, extending the length of the house.

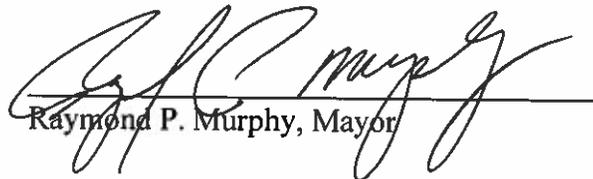
F. The variances shall only apply to the proposed principal structure as shown on the provided site plan. Alterations or substantial damage to either structure shall render their respective variance to be null and void.

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Hosafros and seconded by Council Member Veach, and upon being put to a vote, the result was as follows:

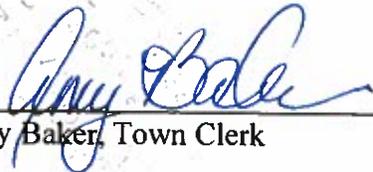
Raymond P. Murphy, Mayor	Aye
Rexann Hosafros, Vice Mayor	Aye
Dan Allers	Aye
Bill Veach	Aye
Jim Atterholt	Aye

ADOPTED this 15th day of November 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

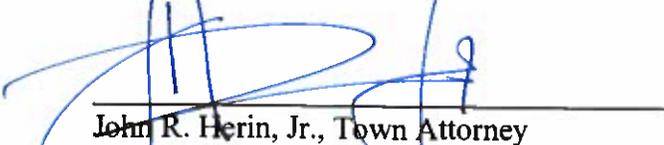
FORT MYERS BEACH TOWN COUNCIL


Raymond P. Murphy, Mayor

ATTEST:


Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**


John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 15 day of November 2021.