

RESOLUTION NUMBER 21-65

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE 20210066 TO ALLOW AN ACCESSORY STRUCTURE – POOL – IN FRONT OF THE PRINCIPAL STRUCTURE AND WITHIN THE STREET SETBACK FOR THE PROPERTY LOCATED AT 6036/38 ESTERO BLVD; 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 Eran Epstein is requesting a variance from Sec. 34-1174(b) of the Town of Fort Myers Beach Land Development Code (“LDC”), to allow a pool forward of the principal structure, and Table 34-3 of the LDC to allow the pool to encroach into the required 25 feet setback by 15 feet, resulting in approximately a 10 feet setback; and

WHEREAS, the STRAP number for the subject property is 33-46-24-W3-00600.0060 (“Property”); and

WHEREAS, the Property is in the “Boulevard” category of the Future Land Use Map of the Comprehensive Plan and the “Residential Conservation” 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 November 17, 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 January 10, 2022 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 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 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 the Variances from Sec. 34-1174(b) of the LDC, to allow a pool forward of the principal structure, and from Table 34-3 of the LDC, to allow the pool to encroach into the street setback by 15 feet.

Section 3. In approving 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/is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- B. The conditions justifying approval 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 the minimum variance that will relieve the Applicant of an unreasonable burden caused by the application of the regulation(s) to the Property.
- 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 Property ~~are not~~ are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Section 4. 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. A 10' Type B Buffer shall be installed along Shelby Lane. All buffers shall also be consistent with the site visibility triangle requirements of the LDC.

C. The pool shall be constructed as an in-ground pool at existing grades. The approved location and variance to setbacks does not apply to any elevated pool or structures.

D. The site improvements are subject to the Town’s maximum impervious surface requirement of 67% and no net increase greater than 500 square feet unless an Approved on-site stormwater management system is provided. The property owner is responsible for demonstrating that the site complies with this requirement, along with removing existing compacted soils that qualify as impervious surfaces in the rear yard if additional impervious surfaces are added to complete the Estero Boulevard driveway requirements and conditions of approval required by Lee County. The Shelby Lane ROW shall be restored.

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

F. Property must obtain Lee County approval for driveway ingress/egress before applying for permits through the Town of Fort Myers Beach.

G. New drainage must address the proposed alterations to the site by providing stormwater as found in Sec. 6-14 of the LDC, if applicable. The proposed drainage plan and support documents shall provide evidence that post-development conditions are the same or improved from the pre-development (existing) conditions.

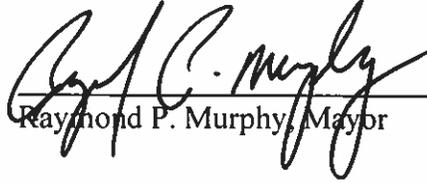
The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Allers and seconded by Mayor Murphy, and upon being put to a vote, the result was as follows:

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|-----------------------------|-----|
| Raymond P. Murphy, Mayor | aye |
| Rexann Hosafros, Vice Mayor | nay |
| Dan Allers | aye |
| Bill Veach | nay |
| Jim Atterholt | aye |

[SIGNATURES ON FOLLOWING PAGE]

ADOPTED this 10th day of January 2022 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:



VICTOR SANABRIA ON BEHALF
OF JOHN HERIN
John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 24 day of January 2022.