

**RESOLUTION NUMBER 23-17**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING SPECIAL EXCEPTION SEZ20220095 AND VARIANCE VAR20220094 TO ALLOW THE USE OF PERMANENT SHARE PARKING WITH DIMENSIONAL AND DESIGN VARIANCES FOR THE PROPERTY LOCATED AT 237 OLD SAN CARLOS BOULEVARD; 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 John Richard is requesting a special exception for the use of permanent shared parking in the Downtown zoning district and a variance from: Sec. 10-416(c)(2), Internal parking lot landscaping, Sec. 10-416(d), Table 10-8 and Sec. 34-677(b)(3) perimeter buffer, Sec. 34-676(b) Parking lot location, Sec. 34-676(c) Parking lot interconnections, Sec. 34-2016(1) & (2) Aisle and parking space sizes, Sec. 34-3131 Visibility Triangle; and

**WHEREAS**, the STRAP number for the subject property is 24-46-23-W3-0050A.0080

**WHEREAS**, the Property is located in the “Pedestrian Commercial” category of the Future Land Use Map of the Comprehensive Plan and the “Downtown” 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 December 18, 2023, 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 of the special exception and the six requested variances; and

**WHEREAS**, on February 21, 2023 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 and 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 do meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception and Variances 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 the special exception for the use of permanent shared parking in the Downtown zoning district and a variance from: Sec. 10-416(c)(2), Internal parking lot landscaping, Sec. 10-416(d), Table 10-8 and Sec. 34-677(b)(3) perimeter buffer, Sec. 34-676(b) Parking lot location, Sec. 34-676(c) Parking lot interconnections, Sec. 34-2016(1) & (2) Aisle and parking space sizes, Sec. 34-3131 Visibility Triangle.

Section 3. In approving the Special Exception, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

- A. Changed or changing conditions which make approval of the request appropriate.
- B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- C. The request meets or exceeds all performance and locational standards for the proposed use.
- D. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
- E. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- F. The requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.

In approving the Variance, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-87 of the LDC:

- 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 approval of the variance are not the result of actions of the Applicant taken after the adoption of the regulation in question.

C. The variance is 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 be injurious to the neighborhood or otherwise detrimental to the public welfare.

E. The conditions or circumstances on the Property 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 special exception and approves the 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. The applicant shall ensure that landscaping and hardscaping within the visibility triangle is less than 3.5 feet tall.

C. The applicant shall provide signage to make pedestrians aware of vehicles entering and exiting the site and signage for automobiles to be aware of pedestrians.

D. All ADA requirements shall be met in the final design.

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

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King	Aye
Bill Veach	Aye
Karen Woodson	Aye

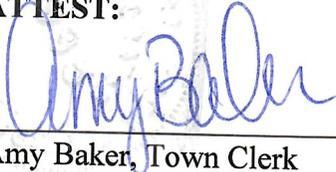
ADOPTED this 21<sup>st</sup> day of February 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**



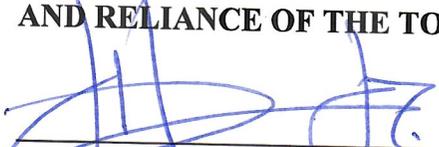
\_\_\_\_\_  
Dan Allers, Mayor

**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 4 day of April 2023.