

RESOLUTION NUMBER 23-74

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS VARIANCE VAR20230061 TO REDUCE THIRD STREET SETBACK BY 2.5 FEET, FROM THE REQUIRED 25 FEET; TO REDUCE THE SIDE SETBACK BY 2.5 FEET, FROM THE REQUIRED 7.5 FEET; AND TO REDUCE REAR WATERBODY SETBACK BY 7.5 FEET, FROM THE REQUIRED 25 FEET FOR THE PROPERTY LOCATED AT 800 THIRD 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 Samir Malviya, on behalf of owners Schmeling Robert W and Jollie Cheri, is requesting a variance from Table 34-3 Dimensional Regulations in Conventional Zoning Districts for the street, side and rear setback; and

WHEREAS, the STRAP number for the subject property is 24-46-23-W3-0030B.0130; and

WHEREAS, the Property is located in the “Mixed Residential” 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 June 27, 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 4-3 to recommend approval of the variance; and

WHEREAS, on August 07, 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 34-87 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve with conditions the request by a 3-2 vote.

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 from Table 34-3 Dimensional Regulations in Conventional Zoning Districts.

Section 3. In approving with conditions 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 not 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 variance, the following conditions of approval are imposed on the Applicant and the Property:

- A. The first floor shall not be enclosed. It should be made available as a private car park for the residents and their guests. All vehicles must be placed on the site and not on the Town's Right of Way (ROW).
- B. Any relocation of the driveway will require a separate review and may require a shared driveway with the property to the east or west. The driveway(s) must also adhere to The Town of Fort Myers Beach Residential Swale Driveway specifications.
- C. Any additional encroachment of the street setback is limited to the front staircase as approved in the site plan and no further encroachment of the street setbacks shall be permitted at any time.
- D. Roof overhang is limited, to be no closer than 40 inches to the side property line.

E. 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.

F. The variance shall only apply to the single-family home as shown on the provided site plan. Alterations or substantial damage to the 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 Atterholt and seconded by Council Member King, and upon being put to a vote, the result was as follows:

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

ADOPTED this 7th day of August 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers

Dan Allers, Mayor

ATTEST:

AMY BAKER

Amy Baker, Town Clerk

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

Becky Vose

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 26th day of September 2023.

Signature: Dan Allers
Dan Allers (Sep 26, 2023 16:21 EDT)
Email: allersd@fmbgov.com

Signature: Becky Vose
Becky Vose (Nov 15, 2023 11:31 EST)
Email: bvose@voselaw.com

Signature: Amy Baker
AMY BAKER (Nov 15, 2023 11:43 EST)
Email: AMY@FMBGOV.COM