

**RESOLUTION NUMBER 23-64**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE VAR20230060 TO MAKE THE HIBISCUS DRIVE FRONTAGE THE FRONT STREET SETBACK AND ESTERO BOULEVARD THE SIDE STREET SETBACK; TO SWITCH SIDE AND REAR SETBACKS; TO REDUCE HIBISCUS DR SETBACK FROM 25 FEET TO 15 FEET 10 INCHES; AND TO REDUCE THE SIDE SETBACK FROM 7.5 FEET TO 5.5 FEET.**

**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 from Homebound Technologies Inc, on behalf of owner Jackquelyn Lizak- Trustee for Lizak-May Trust, is requesting a variance from Table 34-3 Dimensional Regulations in Conventional Zoning Districts; and

**WHEREAS**, the STRAP number for the subject property is 29-46-24-W2-01441.0000; and

**WHEREAS**, the Property is located in the “Low Density” category of the Future Land Use Map of the Comprehensive Plan and the “Residential Single-Family” 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 13, 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 variance; and

**WHEREAS**, on June 20, 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.

**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 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 the variance from LDC Section 34-638(a)(4) Minimum Setbacks, Corner Lot Setbacks and from LDC Table 34-3.

Section 3. 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 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.

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

ADOPTED this 20th day of June, 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

  
Dan Allers (Nov 30, 2023 12:49 EST)  
\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

  
AMY BAKER (Nov 30, 2023 14:34 EST)  
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 Herin (Nov 29, 2023 14:41 EST)  
John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this \_\_\_\_ day of July 2023.