

RESOLUTION NUMBER 23-123

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS VARIANCE VAR20230071 AN INCREASE OF 2 FEET TO ALLOWABLE FENCE HEIGHT WITHIN THE FRONT SETBACK; TO ALLOW CHAIN LINK FENCE TO EXTEND 19 FEET INTO THE FRONT SETBACK; TO ALLOW A FENCE WITHIN THE VISIBILITY TRIANGLE BETWEEN 2 AND 6 FEET ABOVE GRADE; 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 Anita Cereceda is requesting a variance from section 34-1744(b)(1) limiting fences in the front yard setback; and

WHEREAS, the applicant is requesting a variance from section 34-1742(c) limiting the use of chain link within the front yard setback; and

WHEREAS, the applicant is requesting a variance from section 34-3131(b) limiting the height of landscaping and structures between 2 and 6-feet within the designated visibility triangle; and

WHEREAS, the STRAP number for the subject property is 29-46-24-W1-0030C.003B; and

WHEREAS, the Property is located in the “Mixed Residential with Platted Overlay” 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 September 12, 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 6-0 to recommend approval of the variance with conditions; and

WHEREAS, on October 02, 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.

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 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 variances from sections 34-1744(b)(1), 34-1742(c), and 34-3131(b).

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 variances, 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 homeowner shall plant a buffer to obscure at least the 19 linear feet of the chain-link fence on the east side, within the front 25-foot front-yard setback area.

C. If the current principle structure is demolished and a new principle structure built on the property, the variances for this fence become null.

D. All other LDC requirements shall be met.

The foregoing Resolution was adopted by the Town Council upon a motion by vice Mayor Atterholt and seconded by Council Member Veach, and upon being put to a roll call 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 2nd day of October 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers

Dan Allers (Dec 13, 2023 08:08 EST)

Dan Allers, Mayor

ATTEST:

Amy Baker

AMY BAKER (Dec 13, 2023 10:33 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:

Becky Vose
[Becky Vose \(Dec 13, 2023 10:32 EST\)](#)

Gretchen R. H. "Becky" Vose, Esq., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 3rd day of October 2023.