

RESOLUTION 23-155

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS VAR20230198, TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE REQUIRED STREET SETBACK BY 17-FEET 6-INCHES AND REAR SETBACK BY 15-FEET, IN THE RM ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 49/51 POMPANO 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 Carmela Kennelly is requesting two variances from LDC Table 34-3 which requires all lots in the RM zoning district to provide street setbacks of 25-feet, the applicant will be providing 7.5-foot setbacks, a difference of 17.5-feet.

WHEREAS, applicant Carmela Kennelly is requesting a variance from LDC Table 34-3 which requires all lots in the RM zoning district to provide rear setbacks of 20-feet, the applicant will be providing 5-foot setbacks, a difference of 15-feet.

WHEREAS, the STRAP number for the subject property is 30-46-24-W2-0020B.0230 and is known as Lot 23 Block B, Planning Book 8 Page 45 in the Winklers Subdivision; and

WHEREAS, the Property is located in the "Boulevard" category of the Future Land Use Map of the Comprehensive Plan and the "Residential Multi-Family" (RM) 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 14, 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 6-0-1 to recommend approval of the variance; and

WHEREAS, on December 04, 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/ approve with conditions/ deny 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/ did not meet its burden of proof that the requested Variance does/ does not meet the requirements of the Town Comprehensive Plan and LDC and approving/ approving with conditions/ denying 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/ APPROVES WITH CONDITIONS/ DENIES the variance from LDC 34-3 which requires all lots in the RM district to provide street setbacks of 25-feet and rear setbacks of 20-feet.

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/ 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 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. 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 work with staff to ensure that any enclosed areas below Base Flood Elevation (BFE) are compliant with the Town's flood code. All vehicles must be placed on the site and not on the Town's Right of Way (ROW).

- C. Any design/redesign of the driveway will require a separate review and must also adhere to The Town of Fort Myers Beach Residential Swale Driveway specifications.
- D. The eaves may extend no closer than 40 inches to the property line.
- E. The proposed structure must adhere to FDEP and local flood requirements.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Veach and seconded by Council Member King, 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, Council Member	Aye
Bill Veach, council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 4th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL


Dan Allers (Jan 30, 2024 11:47 EST)

Dan Allers, Mayor

ATTEST:


AMY BAKER (Jan 30, 2024 12:28 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:**


Gretchen R.H. Vose (Jan 30, 2024 11:29 EST)

Gretchen R. H. Vose., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 30th day of January 2024.