

**RESOLUTION NUMBER 23-154**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING VARIANCE VAR20230205 TO DECREASE THE NUMBER OF REQUIRED PARKING SPACES BY 37 SPACES, AND TO ALLOW FOR A THREE-STORY BUILDING WITH ENCLOSED SPACE ON THE GROUND FLOOR, AND TO ALLOW FOR A BUILDING HEIGHT OF 36 FEET ABOVE FLOOD ELEVATION, FOR THE PROPERTY AT 1249 ESTERO BLVD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, 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 Fowler Construction & Development, on behalf of owner 1249 Estero Adventures LLC, is requesting a variance from LDC Section 34-2020(d)(2)h.2. to decrease the number of parking spaces by 37 for a restaurant with cocktail bar area from 54 spaces to 17 spaces, a variance per 34-675(b)(2) to allow a three-story building with enclosed space on the ground level and to allow a 36 foot tall building where 30 feet is the maximum allowed height; and

**WHEREAS**, the STRAP number for the subject property is 19-46-24-W4-0060H.0300; and

**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 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, with one member abstaining, to recommend approval of the variance; and

**WHEREAS**, on December 4, 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 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 WITH CONDITIONS the variance from LDC Section 34-2020(d)(2)h.2, and a variance from Section 34-675(b)(2).

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 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 amendment, 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.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member King and seconded by Vice Mayor Atterholt, 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 4<sup>th</sup> 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 11:46 EST)

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Dan Allers, Mayor

**ATTEST:**

  
AMY BAKER (Jan 30, 2024 12:28 EST)

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Amy Baker, Town Clerk

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

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

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Gretchen R. H. Vose, Town Attorney

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