

RESOLUTION NUMBER 24-57

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS VARIANCE VAR20240046, REQUESTING TWO VARIANCES FROM LDC TABLE 34-3 A VARIANCE OF 15 FEET FROM THE REQUIRED 25-FOOT STREET SETBACK, AND A VARIANCE OF 2.5 FEET FROM THE REQUIRED 7.5 FOOT SIDE SETBACK FOR THE EAST SIDE, FOR THE PROPERTY LOCATED AT 718 ESTERO BOULEVARD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY 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, 718 Estero LLC, owner of the property at 718 Estero Boulevard, is requesting a variance from LDC Table 34-3. which requires a single-family home in RM zoning district to provide a minimum 25-foot street setback and a 7.5-foot side yard setback; and

WHEREAS, the STRAP number for the subject property is 24-46-23-W3-00400.008A; and

WHEREAS, the Property is located in the "Mixed Residential" and "Recreational" category of the Future Land Use Map of the Comprehensive Plan and the "Residential, Multi 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 March 12, 2024, 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 found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted to recommend approval of the variance; and

WHEREAS, on April 1, 2024, 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 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 does meet the requirements of the Town Comprehensive Plan and LDC and approving the Variance is in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, interested parties and public, the Town Council APPROVES a request for variance from LDC Table 34-3 which requires a single-family home in RM zoning district to provide a minimum 25-foot street setback. Resolution 23-65 granted a variance of 2.5 feet for a 5' side setback.

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.

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.

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Jim Atterholt and seconded by Council Member Karen Woodson, 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
Karen Woodson, Council Member	Aye
Scott Safford, Council Member	Aye

The applicant also requested a waiver from the Town Council of the \$1800 fee for the variance request. The Town Council upon a motion by Vice Mayor Jim Atterholt and seconded by Council Member Karen Woodson, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Karen Woodson, Council Member	Aye
Scott Safford, Council Member	Aye

ADOPTED this 1st day of April 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL


Dan Allers (May 1, 2024 21:22 EDT)

Dan Allers, Mayor

ATTEST:


Amy Baker (May 2, 2024 13:09 EDT)

Amy Baker, Town Clerk

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


Nancy Stuparich (May 1, 2024 17:39 EDT)

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 1st day of May 2024.

PART OF LOT 8, UNIT 1, ISLAND SHORES

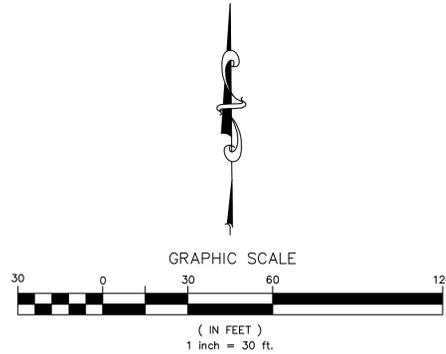
PLAT BOOK 9, PAGE 24
SECTION 24, TOWNSHIP 46 SOUTH, RANGE 23 EAST
TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

NOTES:

- 1. THIS SKETCH DOES NOT REFLECT OR DETERMINE OWNERSHIP.
2. DESCRIPTION AS FURNISHED BY CLIENT. NO SEARCH OF THE PUBLIC RECORDS WAS CONDUCTED BY THIS FIRM.
3. BEARINGS ARE BASED ON PLAT OR DEED.
4. ELEVATIONS AS SHOWN ARE BASED ON N.A.V.D. 1988 DATUM UNLESS OTHERWISE STATED.
5. THERE ARE NO VISIBLE ENCROACHMENTS THAN AS SHOWN.
6. THERE MAY BE OTHER EASEMENTS NOT SHOWN HEREON RECORDED IN THE PUBLIC RECORDS OF THE GOVERNING COUNTY.
7. NO DETERMINATION OF HAZARDOUS WASTE MATERIALS HAVE BEEN MADE BY THIS FIRM.
8. LOCATION OF UNDERGROUND UTILITIES OR STRUCTURES NOT SHOWN UNLESS OTHERWISE NOTED.
9. SIGNOR LIMITS LIABILITY ONLY UP TO THE COST OF SURVEY.
10. THIS SURVEY IS PROTECTED BY COPYRIGHT AND ALL RIGHTS ARE RESERVED.
11. SURVEY WAS BASED ON INFORMATION PROVIDED BY CLIENT AND EXISTING MONUMENTATION.
12. ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.
13. THE FEMA FLOOD ZONE INFORMATION INDICATED HEREON IS BASED ON MAPS SUPPLIED BY THE FEDERAL GOVERNMENT. THIS FLOOD INFORMATION MUST BE VERIFIED BY ANOTHER SOURCE.
14. PARCEL CONTAINS 9,629 SQUARE FEET, PLUS OR MINUS.
15. THIS TIDAL WATER SURVEY COMPLIES WITH CHAPTER 177, PART II, FLORIDA STATUTES.
16. MEAN HIGH WATER LINE WAS ESTABLISHED BY THIS FIRM BY FIELD CREW USING GPS.
17. CONVERSION FOR PROJECT ARE: NAVD88 + 1.181' = NGVD29

LEGEND:

- (A) — ARC LENGTH
A.C. — AIR CONDITIONER
C — CABLE TV
(C) — CALCULATED
C.B. — CATCH BASIN
CB — CHORD BEARING
CH — CHORD DISTANCE
F.C.M. — FOUND CONC. MONUMENT
(D) — DEED
D.O.B. — BASIS OF BEARINGS
D.E. — DRAINAGE EASEMENT
EL — ELEVATION
E.O.P. — EDGE OF PAVEMENT
F.H. — FIRE HYDRANT
FND. — FOUND
GV — GATE VALVE
I.R. — IRON ROD
G.W. — GUY WIRE
(M) — MEASURED
M&T — NAIL & TAB
N.A.V.D. — NORTH AMERICAN VERTICAL DATUM (1988)
N.T.S. — NOT TO SCALE
(NR) — NOT RADIAL
O.R. — OFFICIAL RECORD
(P) — PLAT
P.O.C. — POINT OF COMMENCEMENT
P.C. — POINT OF CURVATURE
P.C.C. — POINT OF COMPOUND CURVATURE
P.C.P. — PERMANENT CONTROL POINT
P.I. — POINT OF INTERSECT
PG. — PAGE
P.O.B. — POINT OF BEGINNING
P.O.C. — POINT OF COMMENCEMENT
P.P. — POWER POLE
P.R.C. — POINT OF REVERSE CURVATURE
P.R.M. — PERMANENT REFERENCE MONUMENT
P.T. — POINT OF TANGENCY
P.U.E. — PUBLIC UTILITY EASEMENT
R — RADIUS
(R) — RADIAL
RNG. — RANGE
R/W — RIGHT OF WAY
SEC. — SECTION
SET I.R. — SET 1/2" IRON ROD LBB427
S — SET PK NAIL AND DISC LBB427
S.W. — SIDEWALK
T — TELEPHONE BOX
TWP. — TOWNSHIP
U.P. — UTILITY PEDESTAL
W.M. — WATER METER
W.A. — WOOD ANGLE
W.H. — FIRE HYDRANT
T.B. — TEMPORARY BENCHMARK
C.L. — CENTERLINE
W.F. — WIRE FENCE
W.F. — WOOD FENCE
O.W. — OVERHEAD WIRES
C.P. — CONCRETE PAD
E. — EXISTING ELEVATION
X — LOT NUMBER
MHW — MEAN HIGH WATER
MLW — MEAN LOW WATER



CERTIFIED TO:
Jim Zeller

LEGAL DESCRIPTION:

718 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931
Part of Lot 8, Unit 1, Island Shores, a Subdivision, according to the plat thereof recorded in the public records of Lee County, in Plat Book 9, at Page 24, to wit:

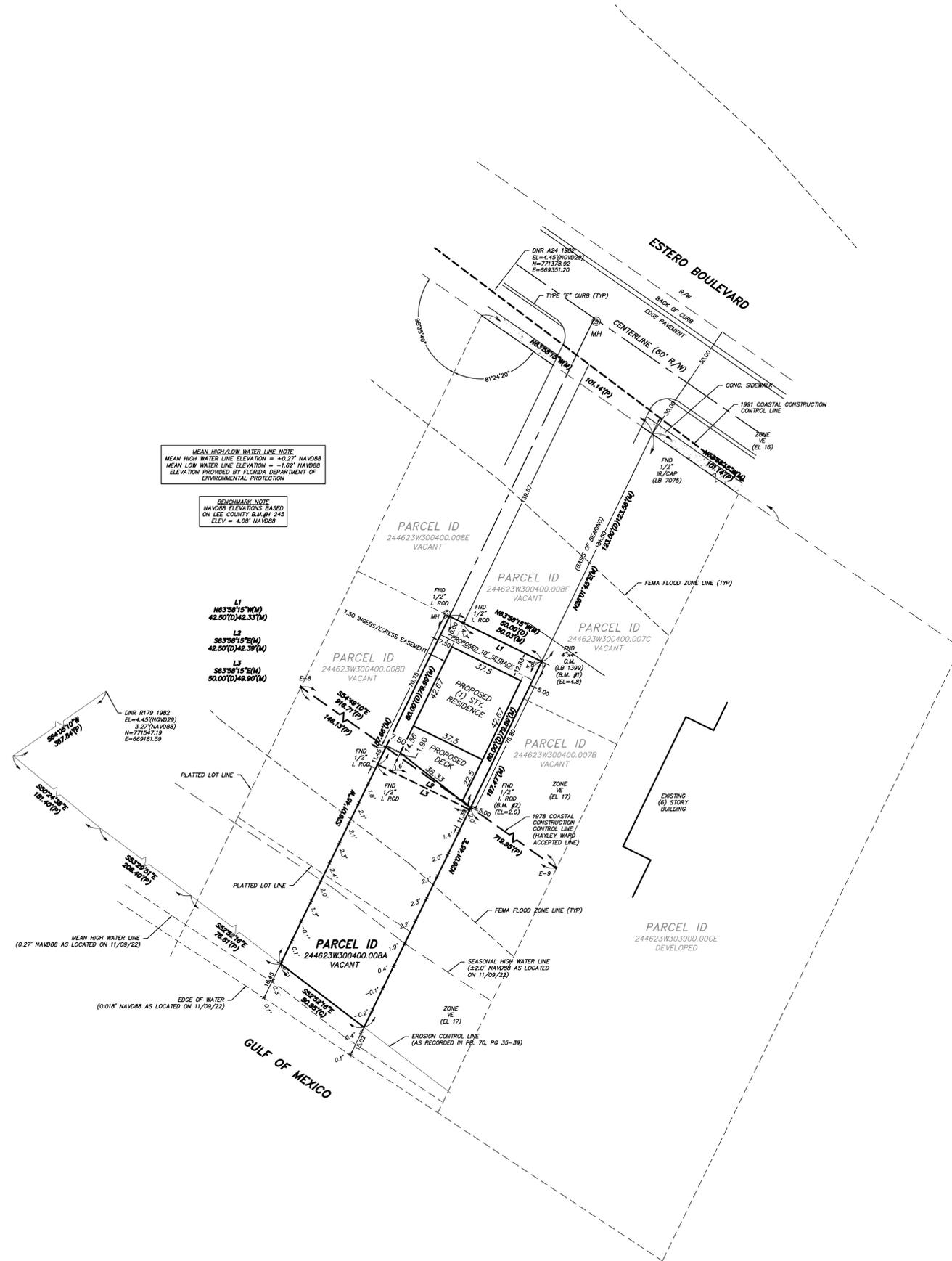
Beginning at a point in the common line of Lots 7 and 8, 123.00 feet Southwesterly of the Southwesterly line of Estero Boulevard which point is at the Southeastly corner of property conveyed by Howard A. Zeller to Robert H. and Edna Smith by deed dated December 24, 1969, and which point is marked by a concrete monument set in the ground, thence running at a right angle to the common line of Lots 7 and 8 in the Northwesterly direction a distance of 42 1/2' to a concrete monument set in the ground and thence continue in the same direction an additional 7 1/2' to an iron pipe set in the ground abutting the concrete collar manhole of a sanitary sewer manhole for a total of 50', thence running in a Southwesterly direction parallel to the common line of Lots 7 and 8 a distance of 80' to an iron rod set in the ground and thence continue in the same direction to the waters of the Gulf of Mexico, thence running Southeastly along said waters a distance of 50±' to the common line of Lots 7 and 8, thence running Northeastly along the common line of Lots 7 and 8 to the place of beginning. Together with any riparian rights thereto pertaining.

Subject to an easement for Ingress and Egress over and across a strip of land 7 1/2' wide on each side of the center line of Lot 8 for the common use of the owners of each side of Lot 8, and subject to restrictions of record and also subject to public easements.

The property hereby conveyed being part of the land conveyed by June Leonard, a widow, to Howard A. Zeller by deed dated January 16, 1967, and recorded in Book 392 at Page 268.



VICINITY MAP
N.T.S.



MEAN HIGH/LOW WATER LINE NOTE
MEAN HIGH WATER LINE ELEVATION = +3.27' NAVD88
MEAN LOW WATER LINE ELEVATION = -1.62' NAVD88
ELEVATION PROVIDED BY FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

BENCHMARK NOTE
NAVD88 ELEVATIONS BASED ON LEE COUNTY S.M.# 245
ELEV = 4.08' NAVD88

I HEREBY CERTIFY THAT THIS SKETCH OF SURVEY WAS MADE UNDER MY DIRECTION AND TO THE BEST OF MY KNOWLEDGE AND BELIEF SAID SURVEY MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 5J-17 FLORIDA ADMINISTRATIVE CODE FURTHER, THIS DOCUMENT IS ELECTRONICALLY SIGNED AND SEALED PURSUANT TO SECTION 472.027, OF THE FLORIDA STATUTES AND CHAPTER 5J-17 OF THE FLORIDA ADMINISTRATION CODE. NO OTHER PERSON OR ENTITY MAY RELY ON THIS SURVEY. NO ABSTRACT WAS REVIEWED. NO TITLE OPINION EXPRESSED.

Reviewed and Approved By:

(SIGNED) John Robert Avery III, P.S.M.
Professional Surveyor & Mapper
State of Florida License No. 5298

ELITE SURVEYING
4371 NOCATIE LANE,
FORT MYERS, FL 33905
239-362-3928(OFFICE) INFO@ELITESURVEYING.NET
LBB427



Table with 2 columns: FIELD SURVEY, CREW CHIEF, DRAWN BY, SCALE, ELITE JOB NO, SHEET: 1 OF 1, DATE: 01/03/2023