

RESOLUTION NUMBER 24-134

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING WITH CONDITIONS SPECIAL EXCEPTION SEZ20240126 TO ALLOW RECONSTRUCTION OF STORM DAMAGED INFRASTRUCTURE IN THE EC ZONING DISTRICT, INCLUDING: A PARTIAL PARKING LOT, A NEW ALUMINUM RAIL FENCE ALONG THE SEAWALL, AND NEW FENCE WITH GATE AROUND THE SOUTH GARDEN, FOR THE PROPERTY LOCATED AT 7400 ESTERO BOULEVARD AND 7404 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND 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, Leonardo Arms Beach Club is requesting a special exception for the reconstruction of a partial parking lot that was damaged during Hurricane Ian, construction of a new aluminum rail fence along the seawall, and a new fence with gate around the south garden, which is located in the Environmentally Critical zoning district; and

WHEREAS, the STRAP number for the subject property is 03-47-24-W4-0200.000CE, 03-47-24-W4-02100.00CE; and

WHEREAS, the property is located in the “Mixed Residential” and “Recreation” category of the Future Land Use Map of the Comprehensive Plan and in the “Residential Multi-family” and “Environmentally Critical” 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 11, 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 34-88 of the LDC. The LPA found that the request is consistent with the comprehensive plan and the requirements of the LDC and voted unanimously to recommend approval of the special exception for reconstruction of a partial parking lot and an aluminum rail fence along the seawall and voted 6 to 1 to recommend approval of the south garden fence/gate; and

WHEREAS, on June 17, 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 Section 34-88 of the LDC; and

WHEREAS, the Town Council determined it is in the best interest of the Town to approve the request and voted 5 to 0 in favor of approval.

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 Special Exception does meet the requirements of the Town Comprehensive Plan and LDC, and approving the Special Exception is in the best interest of the Town to approve. 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 Special Exception for the reconstruction of a partial parking lot, construction of a new aluminum fence along the seawall, and a new fence with gate around the south garden partially in Environmentally Critical zoning district.

Section 3. In approving the Special Exception, the Town Council makes the following findings and conclusions in accordance with the requirements of Section 34-88 of the LDC:

- A. Changed or changing conditions which make approval of the request appropriate.
- B. The request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.
- C. The request meets all performance and locational standards for the proposed use.
- D. The request will protect, conserve, or preserve environmentally critical areas and natural resources.
- E. The request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- F. The requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code; and

In accordance with the additional regulations and considerations found in Section 6-366 of the LDC:

- A. Any repairs must comply with all relevant local and state floodplain regulations.
- B. Repairs may not damage existing dunes or dune vegetation.
- C. Repairs, other than those limited to emergency repairs to enclose a damaged structure, may not be completed during sea turtle nesting season.
- D. A new special exception must be applied for each time the structure is repaired.

Section 4. If the Town Council approves the requested Special Exception and the following conditions of approval are imposed on the Applicant and the Property:

- A. A new special exception must be applied each time the structures are reconstructed.
- B. Approval of this Special Exception 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.
- C. The applicant must apply for and receive all state and local permits required for the reconstruction of all proposed structures.
- D. Any violation of the conditions of approval shall render the special exception null and void.
- E. The applicant must obtain an approved lighting plan as outlined in LDC Sec. 34-1834. The applicant must also obtain an approved landscaping plan as outlined in LDC Sec. 10-413.
- F. The applicant must ensure that the proposed seawall fence/rail and south garden gate/fence adhere to LDC Sec. 34-1744.
- G. The additional fencing on the seawall shall be removed if there are no longer safety concerns after beach renourishment, as determined by the Director of Community Development.

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

ADOPTED this 17th day of June 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers
Dan Allers (Jun 25, 2024 11:33 EDT)

Dan Allers, Mayor

ATTEST:

Amy Baker

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
Nancy Stuparich (Jun 25, 2024 13:25 EDT)

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on the 25th day of June 2024.