

LPA RESOLUTION 2025-13

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING WITH CONDITIONS VARIANCE 20250089, REQUESTING A VARIANCE FROM LDC SECTION 34-638(3)d FOR THE PROPERTY LOCATED AT 21541 WIDGEON TERRACE GENERALLY REFERED TO AS STRAP NUMBER 34-46-24-W1-00001.0010 IN FORT MYERS BEACH, TO VARY UP TO 11.87 FEET FROM REQUIRED 25 FOOT WATER BODY SETBACK TO BUILD A NEW POOL AND SPA STRUCTURE IN THE RC ZONING DISTRICT; AND PROVIDING FOR OTHER 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, 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, Harden Custom Homes (“Applicant”) on behalf of property owners Chad and Emily Rubner TR for the Emily Rubner Trust (“Owners”), of the property located at 21541 Widgeon Terrace (Property), are requesting a variance from LDC Sec. 34-638(3)d to reduce the required setback of 25 feet to 11.87 feet to accommodate a proposed pool and spa in the RC zoning district; and

WHEREAS, the STRAP number for the subject property is 34-46-24-W1-00001.0010; and

WHEREAS, the Property is located in the “Mixed Residential” Future Land Use Map of the Comprehensive Plan and the “Residential Conservation” zoning districts 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 August 12th, 2025, 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; and

WHEREAS, in accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the LPA makes the following findings and conclusions:

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 the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

C. The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.

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 specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

WHEREAS, eligible members of the LPA voted 6 to 0 by roll call vote to approve with conditions the requested variances with the following conditions:

1. 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.
2. The variance shall only apply to the single-family home as shown on the provided site plan. Demolition or substantial damage to the residential structure shall render the variances to be null and void.

WHEREAS, Ordinance 24-06 amended Section 34-232(d) of the LDC to provide that:

(d) Owner-initiated requests for variances, or required reviews to extend or to provide evidence of satisfaction of conditions contained in prior land use approvals, that are:

- 1) approved by a unanimous vote of the local planning agency members who are eligible to vote, and
- 2) not subject to a request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 business days after the date of the local planning agency decision, excluding holidays, only require one public hearing before the local planning agency, and the local planning agency decision is final agency action.

IT IS HEREBY RESOLVED BY THE LPA OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

1. The foregoing “WHEREAS” clauses are adopted herein by reference and constitute the findings and conclusions of the LPA.

2. VAR20250089, with the conditions contained herein, received unanimous approval from eligible voting members of the LPA on August 12th, 2025.

3. This Resolution shall constitute the equivalent of a development order and final agency action, subject to any request for an additional review by the Town Council filed with the Town Clerk within 10 business days of the LPA decision as authorized in Section 34-232(d) of the LDC.

The foregoing Resolution was adopted upon a motion by LPA member James Dunlap and seconded by LPA member Don Sudduth and upon being put to a vote, the result was as follows:

LPA Chair Cereceda	<u>Aye</u>
LPA Vice-Chair Plummer	<u>Absent</u>
LPA Member Boan	<u>Aye</u>
LPA Member Dunlap	<u>Aye</u>
LPA Member Eckmann	<u>Aye</u>
LPA Member McLean	<u>Aye</u>
LPA Member Sudduth	<u>Aye</u>

DULY PASSED AND ADOPTED THIS 12th day of August 2025.

Local Planning Agency of the Town of Fort Myers Beach

By: 
Anita Cereceda (Aug 26, 2025 10:50:16 EDT)
Anita Cereceda, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: Nancy Stuparich
Nancy Stuparich (Aug 28, 2025 11:43:10 EDT)
Vose Law Firm, Town Attorney

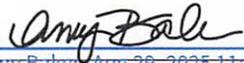
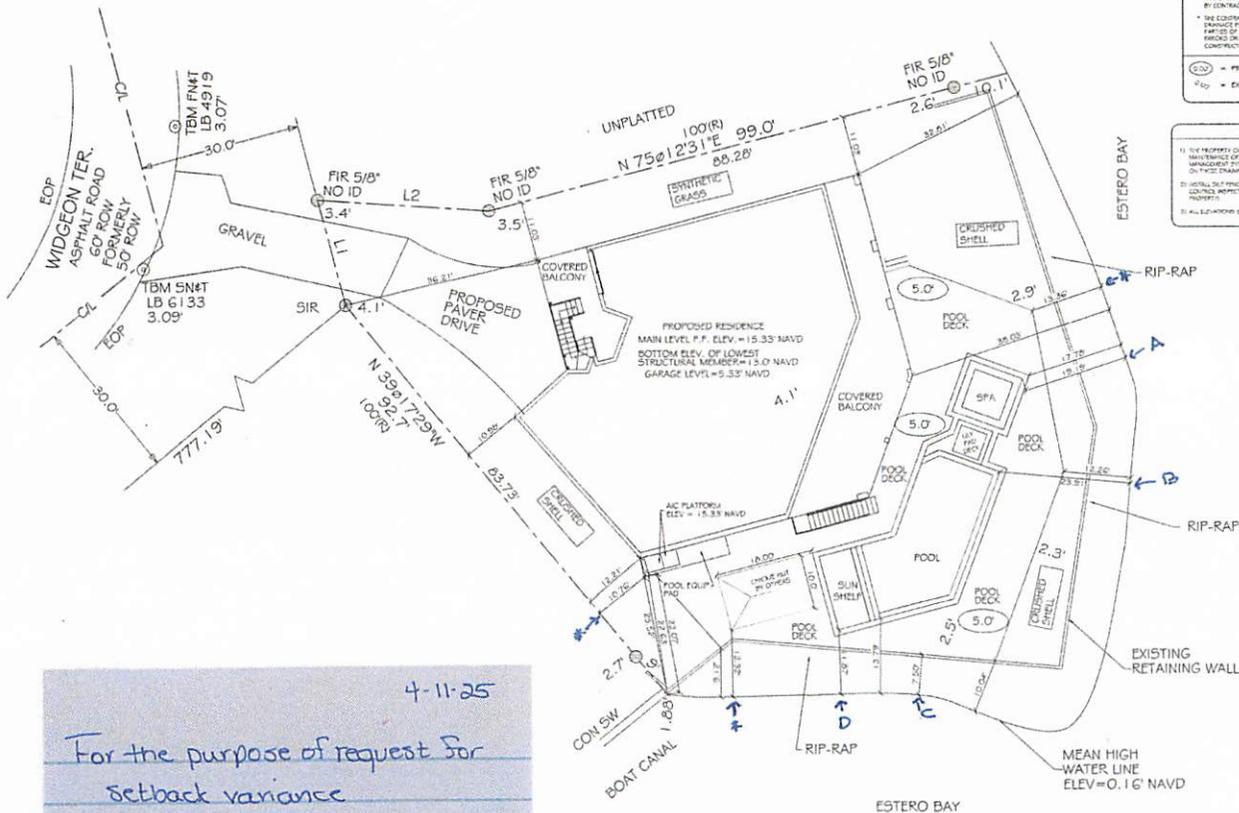
By: 
Amy Baker (Aug 29, 2025 11:11:36 EDT)
Amy Baker, Town Clerk

EXHIBIT A: Site Plan

This Resolution was filed in the Office of the Town Clerk on: Aug 29, 2025.



NOTES & LEGEND

- * CONTRACTOR TO VERIFY PROPOSED ELEVATION AND DRIVE GRADE.
- * THE SURVEYOR/ENGINEER SHALL VERIFY SETBACK DISTANCES AND PROPERTY LINES AS SHOWN BEFORE PERMITTING AND CONSTRUCTION.
- * INFORMATION USED IN THE PREPARATION OF THIS SITE PLAN OBTAINED FROM PLANS PROVIDED BY CONTRACTOR.
- * THE CONTRACTOR SHALL VERIFY THE FINISH GRADE PLAN AND SHALL NOTIFY ALL AGENCIES OF ANY DISCREPANCIES BEFORE COMMENCING CONSTRUCTION.

(---) = PROPOSED ELEV. (NAVD)
 (---) = EXISTING ELEV. (NAVD)

GENERAL NOTES

- THE PROPERTY OWNER IS RESPONSIBLE FOR PERMITTING, MAINTENANCE OF ALL FEATURES OF THE SURFACE WATER MANAGEMENT SYSTEM AS OBTAINED BY THE DESIGN ENGINEER ON THESE DRAWINGS.
- INSTALL SET POINTS FOR FLOODING, BACKFLOW PREVENTION, LOW-LEVEL WARNING, MANUAL STOP, @ PROPERTY'S PROPERTY.
- ALL ELEVATIONS SHOWN ON THIS PLAN ARE IN NAVD 1988.

21541/21543 WIDGEON TERRACE
FT. MYERS BEACH, FL

STRAP # 34-46-24-W1-00001.0010

SCALE: 1" = 10'

SITE PLAN

F.I.R.M. ZONE DATA

F.I.R.M. ZONE	BASE FLOOD ELEV. (FEET)	FIRM MAP
VE	1.0	FIRM 12017 Z ONASIS SHEET 14-11002E

SITE AREA SUMMARY

DESCRIPTION	AREA (SQ. FEET)	PERCENTAGE
TOTAL PROPOSED IMPERVIOUS AREA	3,200	21.0%
POOL DECK	3,400	21.1%
TOTAL IMPERVIOUS AREA	6,600	43.1%
GRAVEYARD AND/OR OTHER	0	0.0%
TOTAL IMPERVIOUS AREA	6,600	43.1%
TOTAL SITE AREA	15,300	100%

LOT COVERAGE CALCULATION

DESCRIPTION	AREA (SQ. FEET)	PERCENTAGE
PLANNED FOOTPRINT LATER FOOTPRINT	3,375	22.0% WITH ELEV.
TOTAL SITE AREA	15,300	100%

4-11-25

For the purpose of request for
setback variance

Proposed	Asking for
A = 19.9'	5.1'
B = 23.91'	1.09'
C = 13.79'	11.21'
D = 11.87'	13.13'

NOTE:
If approved, we will immediately submit a revised drainage and stormwater plan with the corresponding impervious area worksheet.
Thank you in advance for your consideration.
Harden Custom Homes Inc.

REVISION	DATE
21541/21543	REV

"RUBNER RESIDENCE"
21541 WIDGEON TERRACE
FT. MYERS BEACH, FL

NCW Engineering, LLC
C.A. No. 31855
Cape Coral, FL 33915
(239) 209-1920
nathan@ncwengineering.com

NATHAN C. WUNDER
No. 77759
STATE OF FLORIDA
PROFESSIONAL ENGINEER

I hereby certify that the above-named engineer is duly licensed and qualified to perform the duties of a professional engineer in the State of Florida. This certificate is valid only if the engineer is in good standing with the State Board of Professional Engineers and the State Board of Professional Engineering Examiners.

NATHAN WUNDER, Digitally signed by NATHAN WUNDER P.E.
P.E. REG. No. 77759 Date: 2024.04.19 No. 77759 165151-0607

DATE	BY
4-11-25	
SCALE	
NOTED	
SHEET NO.	
31122	
SHEET	