

LPA RESOLUTION 2025-16

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING WITH CONDITIONS VARIANCE 20240302, REQUESTING 1)A VARIANCE FROM LDC SECTION 34 TABLE 34-3 TO ALLOW A 19.5 FOOT SETBACK WHERE A 25 FOOT SETBACK IS REQUIRED; AND 2) A VARIANCE FROM LDC SECTION 34-1174(D)(1)A TO ALLOW AN ACCESSORY STRUCTURE SETBACK OF 3.2-FEET WHERE A 5 FOOT SETBACK IS REQUIRED FOR THE PROPERTY LOCATED AT 435 MADISON COURT GENERALLY REFERED TO AS STRAP NUMBER 24-46-23-W1-0060D.025F IN FORT MYERS BEACH; 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, Joseph L. and Bobbi J. Intile (“Owner”) of the property located at 435 Madison Court (Property), are requesting a variance from LDC Section 34 Table 34-3 for setback requirements in the RS zoning district resulting in a 19.5-foot setback from the rear property line where a 25-foot setback is required and a 3.2-foot setback to the rear property line for a swimming pool accessory structure where a 5-foot setback is required.

WHEREAS, the STRAP number for the subject property is 29-46-24-W1-0110D.0150; and

WHEREAS, the Property is located in the “Low Density” Future Land Use Map of the Comprehensive Plan and the “Residential Single-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 September 9th, 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 to approve the variances as shown on the site plan attached as Exhibit B and based on the findings in Exhibit A, 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 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. Property owner must ensure that they adhere to the neighborhood flooding ordinance (LDC Sec. 6-14) for drainage and 67% maximum impervious requirements.
3. The variance shall only apply to the structure as shown on the provided site plan. Demolition or substantial damage to the structure shall render the variance 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. VAR20240302, with the conditions contained herein, received did receive unanimous approval from eligible voting members of the LPA on September 9, 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 Boan and seconded by LPA Member Dunlap and upon being put to a vote, the result was as follows:

LPA Chair Cereceda	Aye
LPA Vice-Chair Plummer	Absent
LPA Member Boan	Aye
LPA Member Eckmann	Aye
LPA Member Sudduth	Aye
LPA Member McLean	Aye
LPA Member Dunlap	Aye

DULY PASSED AND ADOPTED THIS 9th day of September 2025.

Local Planning Agency of the Town of Fort Myers Beach

By: 
Anita Cereceda (Nov 5, 2025 13:30:18 EST)
Anita Cereceda, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: 
Nathan Vose (Nov 5, 2025 22:18:39 EST)
Vose Law Firm, Town Attorney

By: 
Amy Baker (Nov 6, 2025 16:14:42 EST)
Amy Baker, Town Clerk

This Resolution was filed in the Office of the Town Clerk on Nov 6, 2025.

EXHIBITS

- A. Findings Review for each variance
- B. Site Plan

Findings Review

Variance 1) LDC Section 34 Table 34-3 to allow a 19.5-foot rear setback where a 25-foot setback is required

- 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.
 - a. Exceptional conditions are present at the site due to the location of the rear lot line and location of the seawall. It is typical for the lot line and the seawall to be at the same point on a property. The variance is the de minimus to correct the noncompliance. Rigid compliance in this case 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.
 - a. The error made by the contractor were not the result of actions taken by the applicant/homeowners.
- 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.
 - a. The requested variance is the minimum variance necessary to allow the existing home to remain.
- D. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 - a. The granting of this variance is unlikely to be injurious to the neighborhood as the property will appear in reality to comply with the required setbacks.
- 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.
 - a. The conditions or circumstances on this specific property for which a variance is sought are not general in nature and do not warrant a code change.

Variance 2) LDC section 34-1174(d)(1)a to allow an accessory structure setback of 3.2-feet where 5-foot is required

- 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.
 - a. Exceptional conditions are present at the site due to the location of the rear lot line and location of the seawall. It is typical for the lot line and the seawall to be at the same point on a property. The variance is the de minimus to correct the noncompliance. Rigid compliance in this case 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.
 - a. The error made by the contractor were not the result of actions taken by the applicant/homeowners.
- 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.
 - a. The requested variance is the minimum variance necessary to allow the existing pool to remain.
- D. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 - a. The granting of this variance is unlikely to be injurious to the neighborhood as the property will appear in reality to comply with the required setbacks.
- 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.
 - a. The conditions or circumstances on this specific property for which a variance is sought are not general in nature and do not warrant a code change.