



Fort Myers Beach Town Council

**Town Hall
2731 Oak Street
Fort Myers Beach, FL 33931**

Agenda

Monday, March 4, 2024

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF FINAL AGENDA**
- V. PUBLIC COMMENT**
- VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**
 - A. Proclamation: Flood Awareness Week
- VII. ADVISORY COMMITTEES ITEMS / REPORTS / APPOINTMENTS**
 - A. Public Safety Committee (PSC) - Chair Dawn Thomas
 - B. Local Planning Agency (LPA) - Chair Cereceda
 - C. Local Planning Agency Appointment
 - D. Advisory Boards
Designation of a Council representative to the six Town advisory boards/committees.
 - E. Outside Committees
Designation of a Council representative and alternate to the seven outside committees on which Council members have previously served.
- VIII. APPROVAL OF MINUTES**
 - A. Management & Planning Session - February 15, 2024
 - B. Town Council Special Meeting - February 15, 2024
- IX. CONSENT AGENDA**
 - A. Resolutions 24-43 through 24-46; Extending State of Local Emergency Hurricane Ian
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE

PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

- B. Resolutions 24-47 through 24-50; Extending State of Local Emergency Hurricane Idalia

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE.

- C. Vetor Settlement Agreement

Motion to approve a settlement agreement with Vetor Contracting Services LLC in the amount of \$225,000 related to disputed billing and work performed following Hurricane Ian.

- D. Resolution 24-54; Vetor Budget Amendment

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING A BUDGET AMENDMENT IN THE AMOUNT OF \$225,000 FOR PAYMENT OF A SETTLEMENT OF A BILLING DISPUTE UNDER THE PROMPT PAYMENT ACT FOR HURRICANE RELIEF WORK PERFORMED BY VETOR CONTRACTING SERVICES, LLC; AND PROVIDING FOR AN EFFECTIVE DATE.

- E. 24-51, Authorizing \$1,000,000 ARPA Funds to Match FDEP Grant For Bay Oaks Recreational Campus

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE USE OF \$1,000,000 OF AMERICAN RESCUE PLAN ACT (ARPA) FUNDS TO MATCH A \$1,000,000 GRANT FROM FDEP FOR THE BAY OAKS CAMPUS REDEVELOPMENT PROJECT, AND RELATED BUDGET ADJUSTMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

- F. Resolution 24-52; Town Hall Internet Ratification

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION BY THE TOWN MANAGER ON FEBRUARY 27, 2024, TO WAIVE THE TOWN'S COMPETITIVE PROCUREMENT POLICY AND TO APPROVE A PURCHASE ORDER FROM SOFTRIM LLC FOR EQUIPMENT AND INSTALLATION OF INTERNET SERVICE FOR THE TOWN HALL MODULAR UNITS AT THE BAY OAKS RECREATION CAMPUS IN AN AMOUNT NOT TO EXCEED \$36,036.66 AS AN EMERGENCY PURCHASE; AND PROVIDING AN EFFECTIVE DATE.

- G. Resolution 24-55; Professional Services for Marina Booster Pump Station
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SUPPLEMENTAL TASK AUTHORIZATION TETRA TECH, INC. NOT TO EXCEED \$68,830 FOR WATER UTILITIES FOR MARINA BOOSTER PUMP STATION REHABILITATION.

X. PUBLIC HEARINGS

- A. VAR20230162, 21391 Widgeon Terrace
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230162, TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE REQUIRED SIDE YARD SETBACK BY 2.18 FEET FROM THE REQUIRED 10 FEET AND TO DECREASE REQUIRED WATERBODY SETBACK BY 14.39 FEET FROM THE REQUIRED 25 FEET, IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 21391 WIDGEON TERRACE; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE
- B. Resolution 24-53; VAR20230288, 8069 Estero Boulevard
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230288, REQUESTING A VARIANCE FROM LDC 34-638(D)(1)G. WHICH REQUIRES NEW AT-GRADE MECHANICAL EQUIPMENT TO NOT ENCROACH INTO A SIDE YARD SETBACK AND TO BE LOCATED ON THE SIDE OF THE PROPERTY WITH THE LARGER SETBACK, WHERE THERE ARE DIFFERING SIDE SETBACK WIDTHS, FOR THE PROPERTY LOCATED AT 8069 ESTERO BOULEVARD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.
- C. Resolution 24-20; VAR20230284, 65 Flamingo Street
A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230284, REQUESTING A VARIANCE FROM TABLE 34-3 PRINCIPAL STRUCTURE SETBACKS, TO DECREASE THE FRONT STREET SETBACK BY 10 FEET AND DECREASE THE REAR SETBACK BY 15 FEET AND DECREASE THE REAR STREET SETBACK BY 15 FEET, TO ALLOW A NEW SINGLE FAMILY HOME FOR THE PROPERTY AT 65 FLAMINGO STREET; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

XI. ADMINISTRATIVE AGENDA

A. Resolution 24-09; Extra-Duty Marine Patrols

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO RATIFY AND APPROVE A CONTRACT AGREEMENT WITH LEE COUNTY SHERIFF'S OFFICE FOR EXTRA-DUTY WATERWAY DETAIL SERVICES AT THE RATES SPECIFIED IN EXHIBIT A TO THE AGREEMENT AND ADDENDUM; AND PROVIDING FOR AN EFFECTIVE DATE.

XII. FINAL PUBLIC COMMENT**XIII. TOWN MANAGER'S ITEMS****XIV. TOWN ATTORNEY'S ITEMS**

A. TDC Times Square Funding

XV. COUNCILMEMBERS ITEMS AND REPORTS

A. Resilient Lee Update

XVI. ADJOURNMENT

NOTE: THIS MEETING IS STREAMED LIVE ON FACEBOOK AND YOUTUBE.

IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSONS MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.



For special accommodation, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202

In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.

1. **Request:**

Flood Awareness Week March 3 - 9, 2024

Meeting Date: March 4, 2024

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

LOCAL ACHIEVEMENTS AND
RECOGNITIONS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. Flood Awareness Week Proclamation 2024

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/22/2024
Approved - 2/27/2024
Approved - 2/28/2024
Final Approval - 2/28/2024

Proclamation

WHEREAS, the Town of Fort Myers Beach has experienced severe weather in the past in the form of extreme rainfall or tropical system events resulting in flooding in the town, and this flooding has caused damage and flood losses to homes and buildings in all areas whether they are high-risk special flood hazard areas or low to moderate risk flood zones; and

WHEREAS, the Town of Fort Myers Beach is a voluntary participant in the National Flood Insurance Program that provides residents with the opportunity to protect themselves against flood loss through the purchase of flood insurance at reduced insurance premium rates as well as setting higher regulatory standards to reduce the flood risk and potential flood damage to their property; and

WHEREAS, the reduction of loss of life and property damage can be achieved when appropriate flood preparedness, control, and mitigation measures are taken before a flood; and

WHEREAS, public education and awareness of potential weather hazards and methods of protection are critical to the health, safety and welfare of residents, the Florida Floodplain Managers Association (FFMA), have declared the week of March 3-9, 2024, as Flood Awareness Week to promote awareness and increase knowledge of flood risk, the availability of flood insurance, flood protection methods, and how to prepare for emergencies.

NOW, THEREFORE, be it proclaimed that the Town Council of the Town of Fort Myers Beach does hereby proclaim March 3 -9, 2024 as

FLOOD AWARENESS WEEK

and further encourage the citizens of the Town of Fort Myers Beach to increase their knowledge of how to protect themselves and their property from flooding.

Given under my hand and the seal of the office of the Mayor this 4th day of March 2024.

Dan Allers, Mayor

1. **Request:**

Meeting Date: March 4, 2024

Appoint a member to the FY2023-2024 Local Planning Agency (LPA) to fill a vacancy on the board.

Why the action is necessary:

Fills a vacancy on the Local Planning Agency

What the action accomplishes:

Fills a vacancy on the board

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Amy Baker, Town Clerk

5. **Background:**

The resignation of Scott Safford from the LPA on February 15, 2024 has created a vacancy on the board. Staff advertised the open position and received four applications from island residents John McLean, Sal Pedone, Edward Schoonover and Debra Szekely.

Per Sec. 34-113. - Composition, appointment and compensation of members of the Code of Ordinances:

(a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall not affect a person's eligibility for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of town council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be residents of, or owners of real property located within, the territorial limits of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before October 1 of the appointment year. Each application must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.

(b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.

(c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).

Attachments:

1. McLean, John

2. Pedone, Sal
3. Schoonover, Edward
4. Szekely, Debra

Financial Impact:

6. Alternative Action

Do not appoint the vacancy and re-advertise.

7. Management Recommendations:

8. Recommended Approval:

Jason Freeman, Legislative Liaison / Deputy Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/22/2024
Approved - 2/27/2024
Approved - 2/28/2024
Final Approval - 2/28/2024



Town of Fort Myers Beach **Advisory Boards and Committees Application**

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☒ Local Planning Agency
- ☐ Marine and Environmental Resources Task Force Nuisance
- ☐ Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

As a FMB homeowner since 2014 and full-time resident since 2019, I am deeply committed to ensuring that as we rebuild from Ian, our community emerges stronger and more resilient, while maintaining the unique culture and vibe. The LPA is a critical voice in achieving the balance between sustainable growth and the preservation of our unique coastal environment. I represent a residents' perspective and have no commercial interest except owning and running a single vacation rental home.

Community Involvement:

I have personally attended almost every Town Council and most LPA meetings since Ian and have become very knowledgeable regarding the issues facing the town. I have also come to understand and appreciate the Comprehensive Plan and the Land Development Code. I was an early volunteer for Let's Go FMB and for a time led the Residential Committee representing the residents' voices as we began rebuilding our cherished beach community.

Interests / Activities:

I retired in 2022 after 20+ years with AT&T where I lead the team that supported F500 firms for Disaster Recovery/Business Continuity and Cyber Security solutions. Throughout my career, I have demonstrated pragmatic, collaborative, and measured decision making. I now enjoy our wonderful beach, boating, bike riding, dolphin and bird spotting as well as pickleball. I also love to cook and read fiction and history.

You may attach a resume in addition to the above information.

<https://www.linkedin.com/in/john-mclean-2ab6b05/details/experience/>

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



John McLean

Date

2/19/2024

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date: FEB 22, 2024

Name: PEDONE SAL C.
Last First Middle initial

Telephone Number: 239-699-0258

Email Address: SALPEDONE15@GMAIL.COM

Home Address: 190 JEFFERSON ST. FMB, FL 33931

Mailing Address SAME AS ABOVE

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
☐ Audit Committee
☐ Bay Oaks Recreational Campus Advisory Board
☐ Cultural and Environmental Learning Center Advisory
☐ Board Historic Preservation Advisory Committee
☒ Local Planning Agency
☐ Marine and Environmental Resources Task Force Nuisance
☐ Abatement Board
☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office?

Yes ☐ No ☒

Do you have unpaid fines or liens due the Town?

Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction?

Yes ☒ No ☐

Town of Fort Myers Beach

FEB 22 2024

Received by: _____

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

TO BECOME MORE INVOLVED IN AND
CONTRIBUTE MY SKILLS FOR
THE BETTERMENT OF THE COMMUNITY

Community Involvement:

SVRS ON LITTLE LEAGUE BOARD
UMPIRE AND PLAYER REP

Interests / Activities:

BOATING, SPORTS
ARTS, MUSIC
AND MANY MANY MORE.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out Public Records Exemption Request form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

FEB. 22, 2024

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard,
Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____



Town of Fort Myers Beach
Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☒ No ☐

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☒ Local Planning Agency
- ☐ Marine and Environmental Resources Task Force Nuisance
- ☐ Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

I would like to assist the town in the process of changing and easing codes and regulations in order to assist residents and commercial business in their efforts to get shovels in the ground and rebuild.

Community Involvement:

Laguna Shores HOA (former), Anchorage Committee (current)

Interests / Activities:

Outreach Africa advisor (non profit)

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3., F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed



Date

02/16/2024

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

ED SCHOONOVER

LPA CANDIDATE

CONTACT

218.820.3389
ed.schoonover@jandjholmes.com
8180 Lagoon Rd
Fort Myers Beach, FL 33931

PROFILE

I have nearly 25 years of experience working in a municipal government. I spent most of my time working in the Parks and Recreation Department but have spent time in various other departments including: Planning, Engineering, Surveying and Public Works. I then spent time managing and assisting operations for a large family YMCA. My latest chapter has been in property management as our companies own and operate 29 properties in both the residential and commercial realms. We are proud of our laundromat and services chain of stores that covers the North Central Minnesota Area. We have been full time residents of Fort Myers Beach since 2018.

EXPERIENCE

Owner/Property Manager and Development Coordinator

2013 – Present JMKS, J2, Chip, JMK and Sons Properties

Our companies own and operate a variety of properties. We have had HUD/HAP properties that required us to have extensive knowledge in Section 8 and affordable housing plans. Also included in our property profile are several group homes serving developmentally disabled adults and children. Our commercial side includes office buildings and a chain of service-related storage units and wash facilities.

Maintenance and Operations Director

2010 – 2013 Brainerd (MN) Family YMCA

I managed and oversaw all aspects of building operations. Some aspects of management included: Manage staff, coordinate barrier removal for ADA compliance, seek and award bids for projects with various contractors, I participated in the complete remodel of a Gymnasium floor and the reconstruction and remodeling of two pools.

Operations Specialist

1982 – 2008 Brainerd Area Civic Center

Assisted in management and operations under the auspices of both nonprofit and municipal management. Major focuses were: superior customer service, maintaining playing surfaces and facilities to an NHL type standard, implementing utility saving projects reducing water and electricity expenses.

Ed Schoonover

LPA Candidate

8180 Lagoon Rd
Fort Myers Beach, FL 33931
218.820.3389
ed.schoonover@jandjholmes.com

REFERENCES

Chuck "Gringo" Grillo

Retired NHL teams front office

218.821.8400

Mr. Grillo is the former vice president and director of player personnel for the San Jose Sharks (NHL). Mr. Grillo was the Head Scout for the Pittsburgh Penguins (NHL) and has won a Stanley Cup in that role. Mr. Grillo was one of our major tenants at Brainerd Area Civic Center and can testify to my work ethic and attention to detail

Bob Motzko

Head Coach Minnesota Golden Gophers Men's Hockey (NCAA)

320.291.6431

Mr. Motzko serves as head coach of the perennial top ten in the nation Gopher men's hockey teams. Mr. Motzko has won an International Gold Medal leading the men's junior hockey team. Mr. Motzko served on the LSVB board with me and can testify to my leadership and ability to get things done.

Randy Klinger

Special Education Teacher, Sarasota, FL

218.839.0990

Mr. Klinger was the Executive Director of the Brainerd Family YMCA and worked closely with me on various major projects. Mr. Klinger is currently a special ed teacher with life experience of helping others succeed. Mr. Klinger can testify to my management abilities and experience securing quality contractors to complete major projects under cost and on time.



Town of Fort Myers Beach

Advisory Boards and Committees Application

Complete one form for each application/committee appointment. Your application will be a public record subject to disclosure on request.

Please type or print clearly. Do not leave blanks.

Today's Date:

Name:
Last First Middle initial

Telephone Number:

Email Address:

Home Address:

Mailing Address

(if different from home address):

Are you currently serving on any of the Town's committees? Yes ☐ No ☒

If yes, which committee(s)?

If yes, when is your term expiration?

I am applying for appointment to: (Check one)

- ☐ Anchorage Advisory Committee
- ☐ Audit Committee
- ☐ Bay Oaks Recreational Campus Advisory Board
- ☐ Cultural and Environmental Learning Center Advisory
- ☐ Board Historic Preservation Advisory Committee
- ☒ Local Planning Agency
- ☐ Marine and Environmental Resources Task Force Nuisance
- ☐ Abatement Board
- ☐ Public Safety Committee

Have you been convicted of a felony, an offense involving moral turpitude while in office? Yes ☐ No ☒

Do you have unpaid fines or liens due the Town? Yes ☐ No ☒

Are you a registered voter within the Town's jurisdiction? Yes ☒ No ☐

Are you a resident within the Town's jurisdiction?

Yes ☒ No ☐

Are you an owner of real property within the Town's jurisdiction?

Yes ☒ No ☐

Are you currently serving on a board, authority, committee or commission for another governmental agency?

Yes ☐ No ☒

If yes, what board, etc., and since when?

Why are you seeking appointment to this board or committee?

Now as a full time resident, I feel the need to give back to the community that has given me so much. Even with the destructive storm, losing my home, and the daily struggles living in an RV, I'm inspired by the people, the resilience, the spirit. I truly believe this town will overcome and soar. I would like to contribute to the fight. I follow as much as I can, am willing to learn, and can/will be, a conscientious servant to the community.

Community Involvement:

Right now I'm deep into remodel + rebuild but I also served on our neighborhood Civic Association for Hibiscus. Also some volunteer time with Save the Arches.

Interests / Activities:

Family First. 6 children - 6 grands. Ski, hike Camp. Anything as long as it involves friends and family.

You may attach a resume in addition to the above information.

Do you qualify for Special Exemptions per § 119.071(4)(d)3, F.S.

Yes ☐ No ☒

If yes, fill out [Public Records Exemption Request](#) form and submit with the application.

I swear or affirm that all information on this form is true and accurate.

Signed

Debra A. Sykes

Date

2-21-24

Please return this form to the Town Clerk's Office, Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931 Amy@fmbgov.com

Office Use Only:

Appointed: Yes _____ No _____

DATE: _____

To the council for The Town of FMB
Extending information for consideration
LPA

Recently I became a full time resident of FMB, due to the need to be here on a full time basis, with a rebuild (my home on Hibiscus) and a remodel of buildings (rentals) on Fairweather. As you are aware, the rebirth of the houses, the neighborhoods, and the town, has been unprecedented. That said, it has also been a time like no other. I think we are all witnessing history here. Historical fortitude, resilience, strength, hope... all coming together to build the island back from the brink. I humbly offer my time and servitude towards saving what we have, building back responsibly new... while maintaining the quality and beauty of island life, people have come accustomed to.

I have spent many LPA sessions watching from iPad at home, have learned some of the the towns development codes, ordinances and understand what the committee tries to maintain and accomplish, for the welfare of its citizens and community. It would be my honor to help in the preservation of what is still here and decipher what is to come.

I appreciate your time and attention and express good wishes for the accepted applicant that is finally chosen. Thank you

Debra Szekely
122 Hibiscus Dr
FMB

1. **Request:**

Meeting Date: March 4, 2024

Designation of a Council representative to the six Town advisory boards/committees.

Why the action is necessary:

It is the policy of the Town Council to reorganize annually and designate a liaison to each of the Town's advisory boards or committees.

What the action accomplishes:

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

In accordance with Town Council Policies and Procedures, Council reorganization takes place at the first meeting after the second Tuesday in November. The reorganization may include designating a liaison to the Town's advisory committees. Whenever Town Council is called upon to make committee determinations, the Council should confirm its desire to continue its current committee structure.

The scope of each committee is listed as follows:

Anchorage Advisory Committee. Current liaison: Vice Mayor Atterholt
Advises Town Council and staff on all issues pertaining to the Town's public mooring field.

Audit Committee. Current liaison: Council Member King
To serve in an advisory capacity to the Town Council in the election of an auditor to conduct the Town's annual financial audit and for other purposes as directed by Town Council.

Bay Oaks Recreational Campus Advisory Board. Current liaison: Council Member Woodson
To serve the Town as a community center and recreational facility, providing individuals with social and community activities and events for both residents and visitors.

Cultural and Environmental Learning Center Advisory Board. Current liaison: Council Member Atterholt
Oversees the Mound House and Newton Park; the goals are to manage and promote the cultural, historical and environmental resources of Fort Myers Beach.

Marine & Environmental Resources Task Force. Current liaison: **Vacant**
To promote stewardship of our marine resources, to stop further damage and to rehabilitate Estero Bay and its surrounding waters, wildlife, plant life and air/water quality.

Public Safety Committee. Current liaison: Mayor Allers
To address any safety and transportation issues specifically assigned to the committee by the Town Council for the purpose of the health, safety and welfare of the citizens and visitors to the Town.

Attachments:

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/23/2024
Approved - 2/27/2024
Approved - 2/28/2024
Final Approval - 2/28/2024

1. **Request:**

Meeting Date: March 4, 2024

Designation of a Council representative and alternate to the seven outside committees on which Council members have previously served.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADVISORY COMMITTEES ITEMS
/ REPORTS / APPOINTMENTS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Reorganization of the Council includes selecting regular and alternate committee representatives for committees that are influential in decision making that affects the interests of the Town. The committees include:

Coastal and Heartland National Estuary Partnership - Policy Committee:

<https://www.chnep.org>

A partnership of citizens and elected officials, and resource managers working together to protect and restore water and wildlife habitat in Central and Southwest Florida. The Policy Committee establishes the general policy for the CHNEP, has authority over program administration, appoints members to other committees and approves the CHNEP's budget.

Meets January 26, 2023, May 25, 2023 and September 21, 2023. Current representation : Town Environmental Projects Manager Chadd Chustz, alternate **TBD**.

Coastal Advisory Committee:

<http://www.leegov.com/naturalresources/marine/beachmgmnt/CAC>

A Lee County government committee that advises the BoCC, staff and various related advisory boards when proceeding with a project affecting beach and shoreline preservation regarding the proper methods of helping to conserve the beaches of Lee County. Meets periodically throughout the year, usually on the 4th Monday; current representation: Town Environmental Projects Manager Chadd Chustz, alternate **TBD**.

Fort Myers Beach Elementary School Youth Council:

Current representation: Mayor Allers

Horizon Council: <http://www.leecountybusiness.com/horizon-council>

A Lee County Economic Development Office committee that advises the BoCC on economic development issues; current representation: Council Member Woodson

Metropolitan Planning Organization: <http://leempo.com>

A Lee County BoCC committee that provides regional leadership addressing long term challenges and opportunities facing Southwest Florida. Meets monthly, 3rd Friday of the month; current representation: Council Member King, alternate Council Member **TBD**

Southwest Florida Regional Planning Council: <http://www.swfrpc.org>

A self-governed committee that provides regional leadership addressing long term challenges

and opportunities facing Southwest Florida. Meets 3rd Thursday of the month; current representation: staff. The Town receives reports upon request.

Southwest Florida Resiliency Coalition: <https://www.fgcu.edu/swflresiliencycoalition/>

The Coalition unites county and municipal governments (within the counties of Charlotte, Lee, and Collier) with natural and cultural resource managers to analyze the region's vulnerability to the effects of climate change (e.g., sea-level rise, storminess, warming, extremes in precipitation), and to adaptively plan for or mitigate its consequences through the identification and implementation of best practices. The Coalition is further committed to engaging the public through education and participation in the decision-making process.

Tourist Development Council: <https://www.leevcb.com/tourist-development-council>

Membership on the Tourist Development Council includes one seat which rotates every two years between the City of Sanibel and the Town of Fort Myers Beach. Currently, the Town holds that seat, which will expire June 30, 2024. The TDC typically meets on the second Tuesday of each month. The Town Council shall appoint one elected official to serve as the Town's representative: Current representation: Mayor Allers, alternate **TBD**.

Attachments:

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/23/2024
Approved - 2/27/2024
Approved - 2/28/2024
Final Approval - 2/28/2024

1. **Request:**

Meeting Date: March 4, 2024

Management & Planning Session - February 15, 2024

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

APPROVAL OF MINUTES

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. Draft MandP minutes 2.15.24

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk

Created/Initiated - 2/23/2024



Fort Myers Beach Management & Planning Session

Bay Oaks Recreation Center
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes

Thursday, February 15, 2024

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King and Council Member Woodson.

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Presentation: LeeCARES

Lee Cares Hurricane Ian Housing Recovery Program Overview

Lee County Assistant County Manager Glen Salyer addressed the CDBG-DR (Community Development Block Grant Disaster Recovery) program and stated they were in the process of launching all the programs put forward. He noted that since they were the first jurisdiction to launch any program, they had a huge slate of general contractors to choose from. He described how to apply for funding for shared assets and noted the asset owner would apply. He explained opportunities for the beach to receive assistance, such as matching funds for a hazard mitigation program and prioritizing low and moderate-income benefit projects to demonstrate to HUD that they prioritized those needs.

Jeannie Sutton, Deputy Director, utilized PowerPoint for her presentation. The presentation started with Lee Cares Overview, Eligibility, Duplication of Benefits, Documents Needed, 3 Ways to Apply and Intake Centers.

B. Presentation: ResilientLee

Lee County Recovery Task Force Overview

Lee County Manager Dave Harner described the plan, where the county was and the next steps.

Assistant County Manager Christine Brady indicated that they were working on all the properties at the beach. Design companies were being selected

and the community engagement communication team would prepare updates on their website with timelines for each project. She stated that Lee County Parks & Recreation suffered \$28 million worth of damage and their goal was to open Crescent Beach shortly for temporary use.

Mr. Harner noted they were working with the state regarding the Seafarer's property, the Carlos Pass bridge was on target and the fishing pier was not included at this point. The DOT (Department of Transportation) was working on a plan for Estero Blvd. regarding the damage from trucks.

Public Safety Director Ben Abes utilized PowerPoint to discuss the recovery task force work. Slides included Lee County Long-term Recovery and Resilience Plan Purpose, Task Force Efforts to Engage Community and Municipalities Plan Development, Timeline, Plan Highlights, Branch Descriptions and Plan Adoption.

C. Presentation: Mooring Field

An update on the Town mooring field

Environmental Projects Manager Chadd Chustz noted deadlines to apply for grant opportunities. He utilized PowerPoint for his presentation. Slides included Matanzas Pass Mooring Field, Expanded Mooring Field, Matanzas Pass Mooring Field Recovery Update, Dockside Sanitary Connection, Mooring Facilities, Grant Opportunities, Dockside Sanitary Connection & Town Vessel Mooring Location Feasibility Analysis, Pros and Cons, Harbormaster Austin Gilchrist described the need for a self-contained pump-out facility, Location Needs, Staff Only Facility, No Dinghy Dock or Public Facility, Eliminated Locations, Virginia Ave. Pros & Cons, Chapel St. Pros & Cons and Bay Oaks Pros and Cons. Discussion was held regarding obtaining feedback from property owners at each location. The presentation continued with Grant Opportunities, FWC FBIP Grant, FWC BIGP Grant, WCIND WDP, and Clean Vessel Act Grant.

D. Presentation: Sea Turtle Conservation

An overview from Environmental staff

Projects Manager Chustz utilized PowerPoint for his presentation. Slides included Town Codes Lighting Standards, Sea Turtle Conservation Purpose, When is a Lighting Review Required?, What is a Lighting Review Reviewing?, Sea Turtle Conservation Code, Why Do We Need Lighting Reviews?, What Happens When We Do Not Review Lighting?, Existing Lights Reviewed?, What is TFMB Policy?

Mayor Allers discussed lighting and public safety issues outside of turtle season and allowing flexibility. He did not think requiring amber lights year-round for houses on the back bay made sense. Projects Manager Chustz noted that he did not review single-family residences landward of the CCCL (Coastal Construction Control Line). He requested flexibility to do white lighting or dark sky lighting on commercial in the gray area and not require long-wavelength lighting on the bay side. Mayor Allers commented that there was technology to allow both long and short wavelengths with adjustments.

Council Member Woodson thought they needed to research new technology before they put restrictions on people. Council Member King brought up educating new people coming in. Mayor Allers noted people were taking the path of least resistance and installing amber lights year-round in parking lots, which put people at risk. He stated that the public safety standard was a one-foot candle, regardless of color.

The recording skipped to Vice Mayor Atterholt speaking about flexibility with technology and being sensitive to the turtles and public safety. He felt it reasonable for Projects Manager Chutz to follow the gray area on the map for multi-family and commercial entities.

IV. AGENDA MANAGEMENT

A. February 2024

Council Member Woodson questioned when strategic planning would be scheduled. Town Manager Hyatt noted it was on the list for February or March. The recording skipped to Mayor Allers stating that FEMA hired a firm.

V. ADJOURNMENT

Council Member King moved to adjourn; seconded by Mayor Allers. The motion carried unanimously.

The meeting was adjourned at 11:36 a.m.



Fort Myers Beach Town Council

Bay Oaks Recreation Center
2731 Oak Street
Fort Myers Beach, FL 33931

Minutes

Thursday, February 15,
2024

11:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

Members present: Mayor Allers, Vice Mayor Atterholt, Council Member King and Council Member Woodson.

II. PLEDGE OF ALLEGIANCE

III. PUBLIC COMMENT

Jim Boan, resident, withdrew his name from consideration.

IV. ADMINISTRATIVE AGENDA

A. Town Council Vacancy

Town Attorney Stuparich stated that there would be an impact on the town's budgetary process regarding the rollback rate without a full council installed. She noted there was also pending litigation in the Florida legislature concerning increasing the millage rate, requiring a vote of at least 2/3 of the membership. Director of Finance Joe Onzick distributed and explained forms that dictated calculations for the rollback rate.

Vice Mayor Atterholt noted that all candidates were qualified for the position. Scott Safford received four votes to fill the seat.

Council Member King moved to accept the results of the vote; seconded by Council Member Woodson.

Council members explained the reasons behind their votes.

The motion carried unanimously.

Scott Safford thanked council members and relayed a story about a conversation with Dan Hughes.

I. ADJOURNMENT

Council Member King moved to adjourn; seconded by Council Member Woodson.
The motion carried unanimously.
The meeting was adjourned at 12:09 p.m.

DRAFT

DRAFT

1. **Request:**

Meeting Date: March 4, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Extending the local state of emergency provides the Town with the needed flexibility to respond to the catastrophic disaster caused by Hurricane Ian and maintains the Town's eligibility for federal and state reimbursement funding for the costs of recovery.

What the action accomplishes:

Extends the Town's Declaration of state of local emergency.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

Hurricane Ian has caused a catastrophic disaster in the Town, causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas. Approving and ratifying these Resolutions will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 22-34.

Attachments:

1. 24-43, Extending Declaration of Local Emergency Ian 3.5.24 - 3.11.24
2. 24-44, Extending Declaration of Local Emergency Ian 3.12.24 - 3.18.24
3. 24-45, Extending Declaration of Local Emergency Ian 3.19.24 - 3.25.24
4. 24-46, Extending Declaration of Local Emergency Ian 3.26.24 - 4.1.24

Financial Impact:

6. **Alternative Action**

Not adopt resolutions and the end the Local State of Emergency for Fort Myers Beach

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/22/2024
Approved - 2/27/2024
Approved - 2/28/2024
Final Approval - 2/28/2024

RESOLUTION 24-43

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 4th day of March 2024.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 4th day of March 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of March 2024.

RESOLUTION 24-44

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 12th day of March 2024.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 4th day of March 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of March 2024.

RESOLUTION 24-45

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 19th day of March 2024.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 4th day of March 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of March 2024.

RESOLUTION 24-46

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING AND EXTENDING THE PROCLAMATION THAT A STATE OF LOCAL EMERGENCY EXISTS BECAUSE OF THE CATASTROPHIC IMPACTS CAUSED BY HURRICANE IAN; PROVIDING FOR CONFLICTS; PROVIDING FOR SCRIVENER ERRORS, PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 252, *Florida Statutes*, authorizes the waiver of procedures and formalities, otherwise required of municipalities, and to take whatever prudent action is necessary to ensure the health, safety, and welfare of the community in the event of a state of emergency; and

WHEREAS, Section 252.38 *Florida Statutes*, specifically authorizes municipalities to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions required by law pertaining to performance of public work and taking whatever action is necessary to ensure the health, safety, and welfare of the community such as but not limited to entering into contracts; incurring obligations; employing permanent and temporary workers; utilizing volunteer workers; renting of equipment; acquiring and distributing supplies, materials and facilities with or without compensation, and appropriating and expending public funds; and

WHEREAS, the Town of Fort Myers Beach, Florida (Town), pursuant to its inherent home rule powers under Florida Constitution and otherwise has adopted certain emergency procedures set forth in Chapter 12, Article II – “Emergency and Disaster Planning” of the Code of Ordinances, Town of Fort Myers Beach, Florida (“Code”), and is otherwise authorized to activate the Town’s emergency plan; and

WHEREAS, the State of Florida and Lee County have declared a state of local emergency due to the catastrophic impacts of Hurricane Ian to Lee County; and

WHEREAS, as defined in the Code, Hurricane Ian has caused a catastrophic disaster in the Town causing extensive damage to public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas; and

WHEREAS, Section 12-21 of the Code provides that where it is not possible to obtain a quorum to convene an emergency meeting to proclaim a state of local emergency, or extend or rescind such a proclamation, the Mayor, Vice-Mayor, or Town Manager are authorized to proclaim, extend, or rescind a local state of emergency.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. The foregoing whereas clauses are true and correct and hereby adopted as the legislative and administrative findings of the Town Council and made a specific part of this Resolution; all exhibits attached hereto are incorporated herein and made a specific part of this Resolution.

Section 2. Hurricane Ian has caused a catastrophic disaster in the Town, damaging, or destroying over ninety percent (90%) of the Town's public utilities, public buildings, public communication systems, public streets and roads, public drainage systems, commercial and residential buildings, and areas and continues to pose a serious threat to the health, lives, property, and safety of the business owners and residents of the Town. Accordingly, the state of local emergency is hereby extended for seven (7) additional days *nun pro tunc* from 9:00 AM on the 26th day of March 2024.

Section 3. The amendment and extension of the proclamation of a state of local emergency set forth in Resolution 22-35 is an emergency measure necessary for the protection of the public safety, due to the catastrophic disaster caused by Hurricane Ian.

Section 4. As provided in Section 252.38(3)(a), *Florida Statutes* and Chapter 12, Article II of the Code, the Town hereby waives the procedures and formalities otherwise required by law of a municipality as set forth in said State law and the Code.

Section 5. The Town Manager or designee is hereby designated as the declaring official for purposes of implementing the emergency and disaster regulations of the Town. The Town Manager or designee will exercise all powers necessary to protect the health and safety of the public set forth in any Executive Order that may be issued by the Governor, Chapter 252, Fla. Stat., and Chapter 12, Article II of the Code. This proclamation also authorizes the Town Manager or designee to utilize government employees and volunteers to assist in securing private property to minimize the overall damage to the Town.

Section 6. The state of local emergency shall remain in effect until terminated as provided in Section 12-21 of the Code. However, the mandatory curfew and prohibition regarding the use of fresh water supplied by the County or local water company for any purpose other than cooking, drinking, or bathing set forth in Section 12-24 of the Code are hereby waived at this time.

Section 7. As provided in Section 12-21(a) of the Code, the Mayor, Vice-Mayor, or Town Manager may extend the proclamation of a state of local emergency as the "responsible official" of the Town.

Section 8. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 9. Any scrivener or typographical errors that do not affect intent of this Resolution may be corrected with notice to and authorization of the Town Attorney and Town Manager without further process.

Section 10. If any clause, section, other part, or application of this Resolution is held by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall not affect the validity of the remaining portions or applications of this Resolution.

Section 11. This Resolution shall become effective upon the signature of the Mayor.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 4th day of March 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of March 2024.

1. **Request:**

Meeting Date: March 4, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE.

Why the action is necessary:

Keeps the Local State of Emergency in effect for Hurricane Idalia

What the action accomplishes:

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

Approving and ratifying this Resolution will maintain in place the Town Declaration of State of Local Emergency originally adopted via Resolution 23-99.

Attachments:

1. 24-47, Extention of Local Emergency - Idalia 3.5.24 - 3.11.24
2. 24-48, Extention of Local Emergency - Idalia 3.12.24 - 3.18.24
3. 24-49, Extention of Local Emergency - Idalia 3.19.24 - 3.25.24
4. 24-50, Extention of Local Emergency - Idalia 3.26.24 - 4.1.24

Financial Impact:

6. **Alternative Action**

Do not approve and end the Local State of Emergency for Hurricane Idalia

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/22/2024
Approved - 2/27/2024
Approved - 2/28/2024
Final Approval - 2/28/2024

RESOLUTION NUMBER 24-47

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 4th day of March 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of March 2024.

RESOLUTION NUMBER 24-48

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 4th day of March 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of March 2024.

RESOLUTION NUMBER 24-49

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 4th day of March 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of March 2024.

RESOLUTION NUMBER 24-50

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, EXTENDING THE DECLARATION OF STATE OF LOCAL EMERGENCY DUE TO HURRICANE IDALIA; PROVIDING THE TOWN WITH POWERS, INCLUDING, BUT NOT LIMITED TO THOSE PURSUANT TO FLORIDA STATUTES, CHAPTER 252, AND TOWN CODE CHAPTER 2, ARTICLE VI; PROVIDING FOR PENALTIES FOR VIOLATIONS; PROVIDING FOR CONFLICTS, SEVERABILITY, AND FOR AN EFFECTIVE DATE AND A TERMINATION DATE

WHEREAS, Section 252.38(3), Florida Statutes, authorizes the Town of Fort Myers Beach to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

WHEREAS, Chapter 12 of the Town Code of the Town of Fort Myers Beach authorizes certain powers in the event of a local state of emergency; and

WHEREAS, a state of local emergency proclamation is allowed for seven (7) days with appropriate extensions pursuant to law; and

WHEREAS, the effects of Hurricane Idalia impacted Fort Myers Beach and the current declaration of emergency that was adopted relating to that storm on August 29, 2023, must be extended.

THEREFORE, under the powers vested in it pursuant to Chapter 252, Florida Statutes, and under Chapter 12 of the Town Code of the Town of Fort Myers Beach, the **Town Council does hereby extend the proclamation of a state of local emergency in the Town of Fort Myers Beach, Florida, as identified above beginning at the end of the previously adopted state of local emergency to 7 days thereafter.**

SECTION 1. State of Local Emergency. The following emergency powers and other provisions shall be in force during this state of local emergency:

1. The Town Manager, or designee, is authorized to take all actions necessary and appropriate to protect human life and property, including the promulgation of rules and orders as may be necessary subject to the limitations of Section 252.33, Florida Statutes. This resolution further authorizes the Town Manager, or designee, to utilize all lawful authority granted to the Town of Fort Myers Beach by Federal, State, County, or Town Emergency Management Laws, Rules, Regulations, Orders and, including, but not limited to, Section 252.46 and Section 252.38(3)(a)(1) through Section 252.38(3)(a)(5), Florida Statutes, inclusive.
2. All existing laws, ordinances, and rules inconsistent with the provisions of Sections 252.31 to Section 252.905, Florida Statutes, inclusive, or inconsistent with any rule or order

specifically promulgated under this resolution shall be suspended during this period of time and to the extent that such conflict exists.

3. The Town Manager may suspend, toll or extend the time requirements, notice requirements and deadlines for final action on applications for permits, licenses, rates and other approvals under the Town of Fort Myers Beach Code of Ordinances, to the extent necessary to accommodate the emergency.
4. Pursuant to Section 252.38(3)(a)(5), Florida Statutes, the Town hereby exercises its authority and waives the procedures and formalities otherwise required of a political subdivision by law, pertaining to:
 - Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
 - Entering into contracts;
 - Incurring obligations;
 - Employment of permanent and temporary workers;
 - Utilization of volunteer workers;
 - Rental of equipment;
 - Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and
 - Appropriation and expenditure of public funds
5. The Town Manager shall follow FEMA guidelines in procuring services, materials, labor and equipment necessary to respond to the emergency, including recovery efforts. The Town Manager shall abide by the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements” for federal awards, codified at 2 C.F.R. §§200.317 through 200.326.
6. Pursuant to Section 12-23, of the Code of the Town of Fort Myers Beach, in addition to any other powers conferred by law, the town manager or designees shall have the power and authority to order and promulgate all or any of the following emergency measures to be effective during the period of such emergency in whole or in part, with such limitation and conditions as the town manager or designees may deem appropriate to protect the town's health, safety and welfare, and/or waive the procedures and formalities otherwise required of the town by law pertaining to these measures:
 - (a) To appropriate and expend funds; make contracts; incur obligations; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to victims of any emergency; and direct and coordinate the implementation of emergency management plans and programs in accordance with the requirements of state and federal law.
 - (b) To appoint, employ, remove, or provide (with or without compensation) rescue teams, coordinators, other emergency management workers and other permanent or temporary workers.

- (c) To establish, as necessary, primary and secondary emergency operating centers to provide continuity of government and direction and control of emergency operations.
 - (d) To assign and make available for duty the offices and agencies of the town, including the employees, property, or equipment thereof relating to health, medical and related services, transportation, construction, and similar items or services for emergency operation purposes, for deployment within or outside the limits of the town.
 - (e) To request state assistance or invoke emergency-related mutual-aid assistance pursuant to existing contracts and/or state or local law.
 - (f) To waive any procedures and formalities otherwise required of the town by law pertaining to performance of public work and/or the taking of whatever prudent action is necessary to ensure the health, safety, and welfare of the people of the town.
 - (g) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives and/or combustibles.
 - (h) To utilize all available resources of the town government as reasonably necessary to cope with the emergency occasioned by the disaster.
 - (i) To make provisions for availability and use of temporary emergency housing and emergency warehousing of materials.
 - (j) Preceding or during the emergency, to call on the National Guard or the Army, Coast Guard or other law enforcement division or other agency as necessary to assist in the mitigation of the emergency or to help maintain law and order, rescue and traffic control.
7. Pursuant to Sec. 12-24, "Prohibitions during state of emergency", of the Code of the Town of Fort Myers Beach, whenever a state of local emergency has been declared, and until such state of local emergency is terminated, the following prohibitions shall apply throughout the town, unless and until the same shall be waived or modified by a quorum of the town council at a general, special or emergency meeting:
- (a) It shall be unlawful and an offense against the town for any person to use the fresh water supplied by the county or local water company for any purpose other than cooking, drinking or bathing.
 - (b) It shall be unlawful for any person to be out and about on the public rights-of-way or other public areas of the town between the dusk and dawn, except for law enforcement officers, members of the town fire control district, emergency medical personnel, town councilmembers, other persons authorized by the town manager, and regular employees of local businesses while traveling to and from their jobs for their regular hours, providing such employees have in their possession personal identification and identification of the business by which they are employed.
8. Any person who refuses to comply with or violates any provision of this declaration of local emergency shall be guilty of a municipal violation. Each day of such violation shall constitute a separate offense. Nothing herein contained shall prevent the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any refusal to comply with, or violation of, this article or the emergency measures which may be made effective pursuant to this article. Such other lawful action shall include but shall not be limited to,

an equitable action for injunctive relief or an action at law for damages. In addition, any person violating any rule or order issued pursuant to this Resolution or any person who willfully fails or refuses to comply with the order or orders of any duly authorized law enforcement officer or personnel charged with the responsibility for the enforcement of such orders shall, upon conviction therefor, be punished as provided by Section 252.50, Florida Statutes, and by such other laws as may be applicable to the offense.

SECTION 2. Conflicts. Any and all Resolutions or parts of Resolutions in conflict herewith are hereby repealed.

SECTION 3. Severability. If any provision or portion of this Resolution or the application is held invalid, the invalidity shall not affect other provisions, portions or applications of the Resolution, which can be given effect without the invalid provision, portion or application, and to this end the provisions, portions, or applications of this Resolution are declared severable.

SECTION 4. Effective Date and Termination Date. This Resolution shall take effect immediately upon the termination of the previously adopted state of local emergency and shall terminate automatically seven (7) days from that date unless terminated earlier or extended by a document of equal dignity herewith.

SECTION 5. Direction to Implement. The Town Manager is directed to implement this Resolution.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 4th day of March 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of March 2024.

1. **Request:**

Meeting Date: March 4, 2024

Motion to approve a settlement agreement with Vetor Contracting Services LLC in the amount of \$225,000 related to disputed billing and work performed following Hurricane Ian.

Why the action is necessary:

The action would allow the Town Council to avoid the risk of an adverse decision in protracted litigation and the payment of the opposing party's litigation costs.

What the action accomplishes:

Resolves a pending billing and contractual dispute.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Settlement Agreement

4. **Submitter of Information:**

Becky Vose, Town Attorney

5. **Background:**

Vetor Contracting Services LLC ("Vetor") had a contract with the Town of FMB to do repairs on the south water tower in March of 2022. Immediately following Hurricane Ian, the former Utilities Director, Christy Cory, contacted Vetor and several other contractors and requested assistance with hurricane recovery efforts. About a week after Hurricane Ian made landfall, the former Town attorney asked that all vendor contracts be in writing and FEMA compliant. A contract was signed by the Town Manager and Vetor on October 28, 2022. The contract contained a clause which under Florida law would authorize the prevailing party to recover attorney fees in the event of litigation due to a dispute. Thereafter, the Town's Finance staff and the Town's Public Assistance team began reviewing Vetor's invoices for payment and possible reimbursement from FEMA or the Town's property insurance company. As the invoices were reviewed, questions arose resulting in a complex billing dispute, which lasted several months. In addition to hurricane recovery services, the billing dispute also included claims by Vetor for payment for renovations to space in the North Tower. Vetor claims the Utility Director verbally told them to proceed with the work, which was not part of their emergency services contract. Staff has verified that some work was performed by Vetor in the North Tower, but the renovations remain incomplete.

The Town received a demand from Vetor for mediation under the Florida Local Government Prompt Payment Act in November 2023. Derek Rooney, an attorney and mediator with the firm of Gray Robinson was hired and two mediation sessions were held. The result of the two mediations, while not resulting in what either party thought they were entitled to, appears to be a reasonable compromise under the facts and would protect the Town from the risk of protracted litigation and an adverse judgment, inclusive of payment of Vetor's attorney fees and costs. The attorneys' fee provision was particularly concerning because even if Vetor were to win even a small judgment against the Town in the litigation, (and it appears that even under the Town's calculations, the Town did owe some money to Vetor), such win would entitle Vetor to its attorneys' fees which could easily far exceed the amounts claimed by Vetor.

There is no guarantee of recovery by the Town for the settlement amount from other sources; however, staff will continue to pursue reimbursement from FEMA and/or the Town's insurance carrier of the disputed invoices, as adjusted by the terms of the settlement agreement with Vetor. Approval of the settlement agreement will also require a budget amendment, which will be presented as a separate agenda item.

Attachments:

1. Vetor Settlement Agreement
2. Letter to FMB re Demand for Mediation dated 11-3-23

Financial Impact:

Payment of settlement in the amount of \$225,000. Funding will need an appropriation and budget amendment.

6. Alternative Action

Do not approve the settlement agreement.

7. Management Recommendations:

Approve.

8. Recommended Approval:

Jason Freeman, Legislative Liaison / Deputy Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/21/2024
Approved - 2/28/2024
Approved - 2/28/2024
Final Approval - 2/28/2024

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** (hereinafter referred to as "Agreement") is made and entered into by and between Vetor Contracting Services, LLC ("Vetor"), on the one hand, and the Town of Fort Myers Beach ("FMB"), on the other hand. Vetor and FMB shall hereinafter be collectively referred to as the "Parties".

WHEREAS, a dispute arose between the Parties, relative to labor, services, and materials supplied by Vetor for FMB in the aftermath of Hurricane Ian ("Dispute");

WHEREAS, the Parties have resolved their differences and desire to reduce their settlement understanding to a writing so that it shall be binding upon Vetor, as well as its owners, principals, officers, employees, ex-employees, agents, representatives, insurers, successors, assigns, grantees and affiliates, and upon FMB, as well as its board members, council, principals, officers, employees, ex-employees, agents, representatives, insurers, successors, assigns, grantees and affiliates.

NOW THEREFORE, in consideration of the foregoing premises and the following mutual promises (the receipt and sufficiency of such consideration being acknowledged by all Parties), the Parties hereby agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are incorporated by reference.

2. **Effective Date**. The "Effective Date" of this Agreement is the date the last of the Parties has executed the Agreement.

3. **Denial of Liability**. No Party is admitting wrongdoing, fault, or liability of any nature by entering into this Agreement.

4. **Contingent Upon FMB Approval**. This Settlement Agreement shall be contingent upon majority approval by the Town Council for FMB, at a meeting to be held on March 4, 2024. Vetor shall supply FMB with an invoice reflecting the Payment set forth in Paragraph 5, below, as the final amount owed prior to the meeting date set forth above. Should FMB fail to approve the terms set forth herein, this Agreement shall be rendered null and void, and each party shall reserve their respective legal positions, claims, causes of action, defenses, and remedies available to them under Florida law.

5. **Payment**. FMB shall pay to Vetor the total sum of Two Hundred Twenty-Five Thousand and 00/100 (\$225,000.00) within seven (7) business days of approval at the March 4, 2024 meeting. Payment may be made by check or wire, with wire instructions to be provided by Counsel for Vetor upon request. Each party shall bear their own attorneys' fees and costs.

6. **Release and Discharge**.

- a. **Release by Vetor**: Except for the obligations set forth herein, Vetor hereby releases, acquits, satisfies, and forever discharges FMB (including any and all board members, council, employees, officers, directors, successors, assigns, legal representatives, insurers, attorneys and agents of FMB) of and from any and all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties,

covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, and demands whatsoever, in law or in equity, which Vetor had, now has, or which any employees, officers, directors, successors, assigns, insurers, or agents of Vetor hereinafter can, shall or may have arising out of, or relating to the Dispute from the beginning of the world to the day of this Agreement.

- b. **Release by FMB:** Except for the obligations set forth herein, FMB hereby releases, acquits, satisfies, and forever discharges Vetor (including employees, officers, directors, successors, assigns, insurers, and agents of Vetor) of and from any and all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, and demands whatsoever, in law or in equity, which FMB ever had, now has, or which any board members, council, employees, officers, directors, successors, assigns, insurers, agents, heirs or assigns of FMB hereinafter can, shall or may have arising out of, or relating to the Dispute from the beginning of the world to the day of this Agreement. Vetor shall not be disbarred nor otherwise prohibited from bidding on any future work with FMB.

7. **Indemnification.** Vetor expressly represents and warrants that the only unpaid subcontractor and/or materialmen as of the Effective Date of this Agreement is Signal Restoration; and, Vetor agrees to make final payment to Signal Restoration following receipt of the Payment set forth in Paragraph 5, above, from FMB. Vetor agrees to defend, indemnify and hold harmless FMB from and against any and all claims or suits for payment that arise out of, or are otherwise connected with, any of Vetor's subcontractors' work performed for the benefit of FMB.

8. **Authority to Enter into Agreement.** The individuals signing below on behalf of the respective Parties each represent that he/she has been delegated any necessary authority to enter into this Agreement on behalf of their respective party and that his/her signature is binding upon same.

9. **Enforcement of the Settlement Agreement.** The Agreement is the joint product of the Parties and shall not be construed against any Party as the drafter.

10. **Governing Law and Venue.** This Agreement and all other documents executed in connection with this Agreement are governed by and shall be interpreted under Florida law. The sole and exclusive venue for any litigation among the Parties that may arise out of, or is related to this Agreement, or any documents executed in connection with this Agreement shall be a court of competent jurisdiction in and for Lee County, Florida.

11. **Enforceability.** In the event that any provision of this Agreement is found to be void or unenforceable by a court of competent jurisdiction, the remaining provisions, in whole or in part, shall continue to be enforceable to the greatest extent allowed by law and to the same extent as if the void or unenforceable provision were omitted from the Agreement.

12. **Cooperation.** The Parties hereby agree to cooperate and work in good faith to carry out the terms of this Agreement and to execute or prepare any other documentation necessary to effectuate the terms of this Agreement.

13. Acknowledgement of Independent Counsel/Tax/Mediator Advice. The Parties hereto acknowledge and affirm that they:

- a. Have each been represented by separate legal counsel, or they have had the opportunity to consult with legal counsel and their separate tax advisors as to their respective rights and responsibilities hereunder;
- b. Have entered into this Agreement intentionally and voluntarily, and in doing so are not acting under any duress or coercion; and
- c. Have read or have had read to them, and understand all terms and provisions of this Agreement, and have not relied upon explanations from the Mediator, other parties to this Agreement, or counsel to the other parties to this Agreement.

14. Entire Settlement Agreement. This Agreement contains the entire agreement between the Parties, and all prior or contemporaneous negotiations or representations are merged into this Agreement.

15. Paragraph Headings. Captions and paragraph headings in this Agreement are for convenience and reference only and do not define, describe, extend or limit the scope or intent of this Agreement or any provision herein.

16. Attorney's Fees for Breach of Agreement. In the event any Party breaches this Agreement, the party having to enforce this Agreement shall be entitled to recover its attorney's fees and costs, through litigation and any and all appeals.

17. Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts with each copy being deemed an original. A facsimile signature on this Agreement will be deemed to be equivalent to an original signature.

IN WITNESS WHEREOF, the parties hereto have set their hands on the date indicated herein. Signed, sealed and delivered in the presence of:

VETOR CONTRACTING SERVICES, LLC

Date

By: _____

Print Name: _____

Its: _____

TOWN OF FORT MYERS BEACH

By: _____

Print Name: _____

Date

Its: _____

Michael D. Moore
mmoore@lawfirmnaples.com

November 2, 2023

VIA EMAIL (bvose@voselaw.com, nstuparich@voselaw.com)

Becky Vose, Esq.
Nancy Stuparich, Esq.¶
VOSE LAW FIRM LLP
324 W Morse Blvd
Winter Park, FL 32789

**Re: DEMAND FOR MEDIATION - Vetor Contracting Services
Unpaid Invoices**

Dear Ms. Vose,

We represent Vetor Contracting Services, LLC ("VCS") in connection with certain unpaid invoices for Hurricane Ian related repair and construction work that VCS has performed for the Town of Fort Myers Beach ("FMB"). I have been informed by Victor Sanabria of Fox Rothschild that you are now representing FMB in connection with this matter. If I am incorrect, please let me know immediately.

VCS performed critical work for FMB after Hurricane Ian and FMB has failed to pay VCS monies due for that work. VCS has attempted to communicate with FMB on multiple occasions about this project and the outstanding invoices and FMB has rebuffed the efforts of VCS to have a dialogue about the project and the amounts owed to VCS. Most recently VCS responded to the FMB's objections to some of VCS's bills and re-asserted its entitlement to be paid.

FMB's contract with VCS requires that the FMB pay VCS within thirty (30) days after receipt of VCS' invoices. FMB has failed to remit payment on multiple invoices within the time period required by the contract and has not been acting in good faith to resolve any questions or disputes relating to any invoices submitted. Accordingly, because FMB is no longer communicating with VCS about the invoices, pursuant to section 14.4 of VCS' contract with FMB, and pursuant to the Florida Local Government Prompt Payment Act, Fla. Stat. §218.76, VCS hereby demands that the parties submit any dispute over the unpaid invoices, and any other related disputes, to mediation as soon as possible.

VCS values its relationship with FMB and would like to resolve the matter of the unpaid invoices without resorting to litigation. However, it cannot continue to wait in a vacuum for FMB to respond when it has subcontractors and other vendors demanding payment for work performed on these projects. FMB faces significant exposure under the Florida Local Government Prompt Payment Act for its failure to make timely payment to VCS. If FMB fails to respond promptly to this request for mediation, VCS will take appropriate legal action and will seek to recover its legal fees and interest if it is forced to proceed in that manner.

Thank you in advance for your prompt consideration of this matter.

Sincerely,

**WOODS, WEIDENMILLER, MICHETTI &
RUDNICK, LLP**

/s/ Michael D. Moore

Michael D. Moore

1. **Request:**

Meeting Date: March 4, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING A BUDGET AMENDMENT IN THE AMOUNT OF \$225,000 FOR PAYMENT OF A SETTLEMENT OF A BILLING DISPUTE UNDER THE PROMPT PAYMENT ACT FOR HURRICANE RELIEF WORK PERFORMED BY VETOR CONTRACTING SERVICES, LLC; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The budget adjustment authorizes the expenditure of Town funds for this settlement.

What the action accomplishes:

The budget adjustment authorizes the expenditure of Town funds for this settlement.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

This resolution will provide funding for the settlement of the Vetor Contracting Services, LLC billing dispute that was recently mediated.

Attachments:

1. 24-54 Vetor Budget Appropriation Amended

Financial Impact:

The funding of \$225,000 will come from the General Fund from funds that were not otherwise budgeted.

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/28/2024
Approved - 2/28/2024
Approved - 2/28/2024
Approved - 2/28/2024
Final Approval - 2/28/2024

RESOLUTION NUMBER 24-54

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING A BUDGET AMENDMENT IN THE AMOUNT OF \$225,000 FOR PAYMENT OF A SETTLEMENT OF A BILLING DISPUTE UNDER THE PROMPT PAYMENT ACT FOR HURRICANE RELIEF WORK PERFORMED BY VETOR CONTRACTING SERVICES, LLC; 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 (“Town”) empowers the Town to adopt, amend, or appeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, on March 4, 2024, the Town Council approved a settlement agreement with Vetor Contracting Services, LLC related to a billing dispute for work performed following Hurricane Ian; and

WHEREAS, in order to fund the settlement agreement, it is necessary to appropriate the needed funds to pay the \$225,000 settlement in the Fiscal Year 2024 budget; and

WHEREAS, approval of this budget amendment is in the best interest of the residents of the Town of Fort Myers Beach.

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

Section 1. That the above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. That the Town Council authorizes an appropriation of \$225,000 and the following adjustment to Fiscal Year 2024 budget is hereby authorized:

10.21.524.35410	General Fund-Code Enforcement: Code Enforcement Fees	\$225,000
10.21.524.59106	General Fund-Code Enforcement: Transfer out to Emergency Fund	\$225,000
13.40.533.38110	Emergency Fund-Water: Transfer in from General Fund	\$225,000
13.40.533.53401	Emergency Fund-Water: Contracted Services	\$225,000

Section 3. That this resolution is effective immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 4th day of March 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this _____ day of March 2024.

1. **Request:**

Meeting Date: March 4, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE USE OF \$1,000,000 OF AMERICAN RESCUE PLAN ACT (ARPA) FUNDS TO MATCH A \$1,000,000 GRANT FROM FDEP FOR THE BAY OAKS CAMPUS REDEVELOPMENT PROJECT, AND RELATED BUDGET ADJUSTMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The action is necessary to provide a source of funding to meet the \$1,000,000 matching requirement of the \$1,000,000 grant from the Federal Department of Environmental Protection (FDEP) for the Bay Oaks Recreational Campus Redevelopment project. The grant cannot be used without meeting the matching requirement, and there are no other sources of funding available at this time.

What the action accomplishes:

Provides a source of funding to meet the \$1,000,000 matching requirement of the \$1,000,000 grant from Federal Department of Environmental Protection (FDEP) for the Bay Oaks Recreational Campus Redevelopment project. This enables the project to be completed this calendar year.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Jeff Hauge, Culture, Parks &
Recreation Director

5. **Background:**

The Town received a \$1,000,000 matching grant from the Florida Department of Environmental Protection for the Bay Oaks Recreational Campus Redevelopment project that expires December 31, 2024. The project includes outdoor recreational facilities such as a multi-sport field, basketball court, tennis courts, pickleball courts, loop trail, picnic areas, playground, batting cages, parking lot, sidewalks, utilities and site work. Since it is a matching grant, the Town must contribute \$1,000,000 towards the project.

Since an eligible use of ARPA Funds is Government Services, which includes investments in parks and recreation to promote improved health outcomes; and since ARPA Funds used for Government Services are allowed to be used to match other federal grants, and since \$2,229,019 of unallocated ARPA funds are still remaining and must be obligated by December 31, 2024, it would be appropriate to authorize \$1,000,000 of the ARPA funds to be used to match the \$1,000,000 FDEP grant for the Bay Oaks Recreational Campus Redevelopment project.

Attachments:

1. 24-51, Authorizing ARPA Funds to Match FDEP Grant for Bay Oaks ns

Financial Impact:

The \$1,000,000 expenditure of ARPA funds allows us to receive and an additional \$1,000,000 to be used towards the Bay Oaks Recreational Campus Redevelopment Project.

6. **Alternative Action**

Do not approve use of ARPA funds to match FDEP Grant.

7. **Management Recommendations:**

Staff recommends approval of the use of ARPA Funds to meet the \$1,000,000 matching requirement of the Federal Department of Environmental Protection grant for the Bay Oaks Recreational Campus Redevelopment Project.

8. **Recommended Approval:**

Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/26/2024
Approved - 2/27/2024
Approved - 2/28/2024
Final Approval - 2/28/2024

RESOLUTION NUMBER 24-51

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AUTHORIZING THE USE OF \$1,000,000 OF AMERICAN RESCUE PLAN ACT (ARPA) FUNDS TO MATCH A \$1,000,000 GRANT FROM FDEP FOR THE BAY OAKS CAMPUS REDEVELOPMENT PROJECT, AND RELATED BUDGET ADJUSTMENT; 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 (“Town”) empowers the Town to adopt, amend, or appeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, Congress adopted the American Rescue Plan Act in March of 2021 (“ARPA”) which included \$65 billion in recovery funds for cities across the country; and

WHEREAS, the Town received a total of \$3,553,056 in ARPA funding in two disbursements; and

WHEREAS, the Final Rule adopted by the Secretary of the Treasury allows ARPA Funds to be obligated to fund government services and infrastructure expenses; and

WHEREAS, the Town approved Resolution 23-83 on August 7, 2023, authorizing the American Rescue Plan Act (ARPA) Funds to be considered as a source of funding for any allowable government services and/or infrastructure expense, subject to final approval by Town Council; and

WHEREAS, the Town subsequently included \$1,324,537 of the ARPA Funds for General Government Services in the Fiscal Year 2023-2024 budget approved by Resolution 23-117 on September 25, 2023; and

WHEREAS, \$2,229,019 of ARPA Funds remains to be obligated; and

WHEREAS, according to the Final Rule all eligible costs to be funded by ARPA Funds must be incurred (i.e., all ARPA funds must be obligated) by December 31, 2024, and all obligated funds must be fully expended by December 31, 2026; and

WHEREAS, according to the Final Rule, Government Services includes Health Services, including investments in parks and recreation to promote improved health outcomes;

and

WHEREAS, the Town has received a \$1,000,000 matching grant from the Florida Department of Environmental Protection for the Bay Oaks Recreational Campus Redevelopment project that expires December 31, 2024, and that includes outdoor recreational facilities such as a multi-sport field, basketball court, tennis courts, pickleball courts, loop trail, picnic areas, playground, batting cages, parking lot, sidewalks, utilities and site work; and

WHEREAS, according to the Final Rule the funds available for the provision of government services generally may be used to meet the non-federal cost-share or matching requirements of other federal programs; and

WHEREAS, adoption of this Resolution is in the best interest of the residents of the Town of Fort Myers Beach, Florida.

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

Section 1. That the above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein as the legislative and administrative findings of the Town Council.

Section 2. That the Town Council authorizes that \$1,000,000 of the American Rescue Plan Act (ARPA) Funds may be used to match the \$1,000,000 grant from the Florida Department of Environmental Protection for the Bay Oaks Campus Redevelopment project.

Section 3. That the following adjustment to the Fiscal Year 2024 budget is hereby authorized:

40.50.572.33436	Capital Fund-Bay Oaks: FDEP Grant	\$1,000,000
40.50.572.38123	Capital Fund-Bay Oaks: Transfer in from ARPA	\$1,000,000
40.50.572.63720	Capital Fund-Bay Oaks: Athletic Fields	\$2,000,000
60.19.519.38191	ARPA: Prior Year Carryover	\$1,000,000
60.19.519.59112	ARPA: Transfer out to Capital Fund	\$1,000,000

Section 4. That this resolution is effective immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Scott Safford, Council Member	_____

Karen Woodson, Council Member _____

ADOPTED this 4th day of March 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this _____ day of March 2024.

1. **Request:**

Meeting Date: March 4, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION BY THE TOWN MANAGER ON FEBRUARY 27, 2024, TO WAIVE THE TOWN'S COMPETITIVE PROCUREMENT POLICY AND TO APPROVE A PURCHASE ORDER FROM SOFTRIM LLC FOR EQUIPMENT AND INSTALLATION OF INTERNET SERVICE FOR THE TOWN HALL MODULAR UNITS AT THE BAY OAKS RECREATION CAMPUS IN AN AMOUNT NOT TO EXCEED \$36,036.66 AS AN EMERGENCY PURCHASE; AND PROVIDING AN EFFECTIVE DATE.

Why the action is necessary:

Purchases over \$25,000 must be approved by Town Council unless the competitive procurement process is waived.

What the action accomplishes:

Retroactively waives the Town's procurement policy and signing of the proposal to meet the opening deadline.

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

5. **Background:**

The Town has been working on continuing with Hurricane Ian repairs as quickly and safely as possible. The Town Hall trailers on the Bay Oaks property are now ready for use, and internet and service work was needed to ensure operations at the new trailer locations were able to run.

Softrim agreed to install new wiring and connections needed to help with Town operations at the new trailers within the opening time frame of March 4th, 2024.

In order to permit improvements as quickly and safely as possible, Town staff believed it was in the best interest to proceed with this work and are seeking the retroactive approval from Town Council.

Attachments:

1. 24-52, Softrim Internet Ratification ns 2-28-2024 am
2. Softrim Proposal

Financial Impact:

Not To Exceed \$36,036.66 for time and materials.

6. **Alternative Action**

7. **Management Recommendations:**

Retroactively ratify the waiving of the Town's procurement policy and signing of the proposal.

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk
Frankie Kropacek, Operations & Compliance Director

Created/Initiated - 2/27/2024
Approved - 2/27/2024

nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Approved - 2/28/2024
Approved - 2/28/2024
Final Approval - 2/28/2024

RESOLUTION NUMBER 24-52

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING ACTION BY THE TOWN MANAGER ON FEBRUARY 27, 2024, TO WAIVE THE TOWN'S COMPETITIVE PROCUREMENT POLICY AND TO APPROVE A PURCHASE ORDER FROM SOFTRIM LLC FOR EQUIPMENT AND INSTALLATION OF INTERNET SERVICE FOR THE TOWN HALL MODULAR UNITS AT THE BAY OAKS RECREATION CAMPUS IN AN AMOUNT NOT TO EXCEED \$36,036.66 AS AN EMERGENCY PURCHASE; AND PROVIDING 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 ("Town") empowers the Town to adopt resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town of Fort Myers Beach has been renting land from the Lee County Fire District as a temporary location for its Town Hall; and

WHEREAS, because the lease for the land will soon expire, Town staff has been working diligently to secure modular units for use as a Town Hall at the Bay Oaks Recreation Campus; and

WHEREAS, the modular units were recently delivered and quickly set up in anticipation of a new location to conduct the March 4, 2024 Town Council Meeting; and

WHEREAS, an emergency purchase of equipment and installation of Internet service was needed to allow the immediate use of the modular units in preparation for the March 4, 2024 Town Council Meeting, and thereafter by Town staff and the public; and

WHEREAS, without the emergency purchase there was a threat to the public welfare and safety due to a possible delay of the delivery of governmental services; and

WHEREAS, the purchase order with Softrim LLC for Internet service was made with as much competition as was practicable under the circumstances; and

WHEREAS, adoption of this Resolution is in the best interest of the health, safety and welfare of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF FORT MYERS BEACH, AS FOLLOWS:

Section 1. That the above recitals are true and correct and are hereby incorporated by reference as though fully set forth herein and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. That the Town Manager is submitting the purchase order with Softrim LLC executed on the 27th day of February, 2024 to the Town Council for ratification and approval of the emergency purchase.

Section 3. That the resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 4th day of March 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day March, 2024.



We have prepared a quote for you

Temp Trailers LV Quote

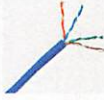
Quote # 021031
Version 1

Prepared for:

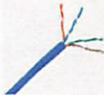
Town of Fort Myers Beach

Frankie Kropacek
fkropacek@fmbgov.com

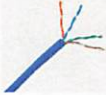
Hardware

Description		Price	Qty	Ext. Price
TRAILER 1 LV INSTALL PRICE		\$8,046.07	1	\$8,046.07
TRAILER ONE				
STRUCTURED CABLE				
CAT6 CABLE NON PLENUM (BLUE)(DATA/PHONE)			1024	
CAT6 JACK BLUE (DATA/VOICE)			11	
SINGLE GANG JACK PLATE 1-PORT - ID WINDOW - WHT			11	
CAT6 DIRECT BURIAL CABLE PER FOOT			220	
CAT6 RJ45 MOD CLIP (EACH)			2	
INFRASTRUCTURE				
FIRE STOP SLEEVE 2" FIRE TUBE			1	
24 PORT CAT6 DATA PATCH PANEL LOADED			1	
STARTECH 4U 19" STEEL VERTICAL WALL MOUNT			2	
1U HORIZONTAL WIRE MANAGEMENT			1	
CAT6 PATCH CABLE 3FT (BLUE)(VOICE/DATA)			12	
WIFI				
ACCESS POINT WIFI 6 PRO			2	
DATASWITCH / BATTERY BACK UP				

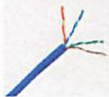
Hardware

Description		Price	Qty	Ext. Price
PRO SWITCH 24-PORT POE GEN2			1	
APC SMART-UPS RM 1500VA USB			1	
LABOR				
LABOR TO WIRE DATA DROPS FOR TRAILER AS PER THE PROVIDED BLUEPRINTS	LABOR		1	
LABOR TO PROGRAM SWITCH AND WIFI ACCESS POINTS	LABOR		1	
TRAILER 2 LV INSTALL PRICE		\$11,700.84	1	\$11,700.84
TRAILER TWO				
STRUCTURED CABLE				
CAT6 CABLE NON PLENUM (BLUE)(DATA/PHONE)			1125	
CAT6 JACK BLUE (DATA/VOICE)			12	
SINGLE GANG JACK PLATE 1-PORT - ID WINDOW - WHT			12	
CAT6 RJ45 MOD CLIP (EACH)			2	
INFRASTRUCTURE				
FIRE STOP SLEEVE 2" FIRE TUBE			1	
24 PORT CAT6 DATA PATCH PANEL LOADED			1	
STARTECH 4U 19" STEEL VERTICAL WALL MOUNT			2	
1U HORIZONTAL WIRE MANAGEMENT			1	
CAT6 PATCH CABLE 3FT (BLUE)(VOICE/DATA)			15	
WIFI				

Hardware

Description		Price	Qty	Ext. Price
ACCESS POINT WIFI 6 PRO			2	
DATASWITCH / BATTERY BACK UP / FIREWALL				
PRO SWITCH 24-PORT POE GEN2			1	
APC SMART-UPS RM 1500VA USB			1	
SONICWALL TZ570 TOTAL SECURE - ADVANCED EDITION FIREWALL 1YR			1	
SONICWALL TZ570 HIGH AVAILABILITY FIREWALL			1	
LABOR				
LABOR TO WIRE DATA DROPS FOR TRAILER AS PER THE PROVIDED BLUEPRINTS	LABOR		1	
LABOR TO PROGRAM SWITCH AND WIFI ACCESS POINTS	LABOR		1	
TRAILER 3 LV INSTALL PRICE		\$8,097.64	1	\$8,097.64
TRAILER THREE				
STRUCTURED CABLE				
CAT6 CABLE NON PLENUM (BLUE)(DATA/PHONE)			1175	
CAT6 JACK BLUE (DATA/VOICE)			12	
SINGLE GANG JACK PLATE 1-PORT - ID WINDOW - WHT			12	
CAT6 DIRECT BURIAL CABLE PER FOOT			220	
CAT6 RJ45 MOD CLIP (EACH)			2	
INFRASTRUCTURE				
FIRE STOP SLEEVE 2" FIRE TUBE			1	

Hardware

Description		Price	Qty	Ext. Price
24 PORT CAT6 DATA PATCH PANEL LOADED			1	
STARTECH 4U 19" STEEL VERTICAL WALL MOUNT			2	
1U HORIZONTAL WIRE MANAGEMENT			1	
CAT6 PATCH CABLE 3FT (BLUE)(VOICE/DATA)			13	
WIFI				
ACCESS POINT WIFI 6 PRO			2	
DATASWITCH / BATTERY BACK UP				
PRO SWITCH 24-PORT POE GEN2			1	
APC SMART-UPS RM 1500VA USB			1	
LABOR				
LABOR TO WIRE DATA DROPS FOR TRAILER AS PER THE PROVIDED BLUEPRINTS	LABOR		1	
LABOR TO PROGRAM SWITCH AND WIFI ACCESS POINTS	LABOR		1	
TRAILER 4 LV INSTALL PRICE				
		\$8,192.11	1	\$8,192.11
TRAILER FOUR				
STRUCTURED CABLE				
CAT6 CABLE NON PLENUM (BLUE)(DATA/PHONE)			1435	
CAT6 JACK BLUE (DATA/VOICE)			14	
SINGLE GANG JACK PLATE 1-PORT - ID WINDOW - WHT			13	

Hardware

Description		Price	Qty	Ext. Price
SINGLE GANG JACK PLATE 3 - PORT - WHITE			1	
CAT6 DIRECT BURIAL CABLE PER FOOT			220	
CAT6 RJ45 MOD CLIP (EACH)			2	
INFRASTRUCTURE				
FIRE STOP SLEEVE 2" FIRE TUBE			1	
24 PORT CAT6 DATA PATCH PANEL LOADED			1	
STARTECH 4U 19" STEEL VERTICAL WALL MOUNT			2	
1U HORIZONTAL WIRE MANAGEMENT			1	
CAT6 PATCH CABLE 3FT (BLUE)(VOICE/DATA)			15	
WIFI				
ACCESS POINT WIFI 6 PRO			2	
DATASWITCH / BATTERY BACK UP				
PRO SWITCH 24-PORT POE GEN2			1	
APC SMART-UPS RM 1500VA USB			1	
LABOR				
LABOR TO WIRE DATA DROPS FOR TRAILER AS PER THE PROVIDED BLUEPRINTS	LABOR		1	
LABOR TO PROGRAM SWITCH AND WIFI ACCESS POINTS	LABOR		1	

Subtotal: \$36,036.66



Temp Trailers LV Quote



Prepared by:

HQ - Estero, FL

Frank Parsons

(239) 449-2902

FParsons@softrim.com

Prepared for:

Town of Fort Myers Beach

2523 Estero Blvd

Fort Myers Beach, FL 33931

Andy Hyatt

(239) 313-0895

andyhyatt@fmbgov.com

Quote Information:

Quote #: 021031

Version: 1

Delivery Date: 02/27/2024

Expiration Date: 03/18/2024

Quote Summary

Description	Amount
Hardware	\$36,036.66
Total: \$36,036.66	

Please click on the following link to view the Softrim, LLC Statement of Terms, Conditions, and Limited Warranty that govern all work performed by Softrim, LLC. <http://www.softrim.com/warranty>

If this link is not accessible please contact Softrim, LLC to request a copy prior to signing. By signing below, you certify that you agree to all the terms, conditions and statement of limited warranty.

Sales Tax listed is an estimate and the final amount will be calculated at time of invoice.

Due to availability and other market conditions at the time of procurement, Softrim may replace the equipment/materials listed above with functionally comparable equivalents.

Town of Fort Myers Beach

Signature:

A handwritten signature in blue ink, appearing to read 'Andy Hyatt', written over a horizontal line.

Name:

Andy Hyatt

Date:

2/27/24

1. **Request:**

Meeting Date: March 4, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SUPPLEMENTAL TASK AUTHORIZATION TETRA TECH, INC. NOT TO EXCEED \$68,830 FOR WATER UTILITIES FOR MARINA BOOSTER PUMP STATION REHABILITATION.

Why the action is necessary:

The action is necessary to utilize Tetra Tech's Marina Booster Pump Station Rehabilitation.

What the action accomplishes:

Authorizes Town Manager to sign and approve STA between Tetra Tech and the Town for this emergency rehabilitation at the Marina Booster Pump Station

2. **Agenda:**

CONSENT AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Mark Ashton, Public
Works/Utilities Director

5. **Background:**

The Town is requesting Tetra Tech's assistance with professional services required to implement the proposed emergency. The Town's existing pumps and electrical components were submerged in salt water during Hurricane Ian. The Town of Fort Myers Beach accepts potable water from Lee County on the west side of San Carlos Blvd Bridge over Matanzas Pass near Moss Marine. Once on island, potable water enters the Town's transmission network where the pressure is boosted by the Marina Booster Pump Station. Without this pump station, the Town can not fill our two (2) storage tanks, or provide adequate pressure, in accordance with Florida Department of Environmental Protection (FDEP) 62-555.320(15)(a)2, which is a minimum of 20 pounds per square inch (psi) (pressure) throughout the island. the Town Council has determined it is in the best interest of the Town to approve the requested supplemental task order.

Attachments:

1. Final 24-55 Marina Booster Pump STA
2. STA 32_Marina PS Rehab_through Const (004)

Financial Impact:

6. **Alternative Action**

Do not approve STA

7. **Management Recommendations:**

Staff recommends approval of the STA not to exceed \$68,830.

8. **Recommended Approval:**

Deborah Hite,
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/21/2024
Approved - 2/23/2024
Approved - 2/28/2024
Approved - 2/28/2024
Final Approval - 2/28/2024

RESOLUTION NUMBER 24-55

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A SUPPLEMENTAL TASK AUTHORIZATION TETRA TECH, INC. NOT TO EXCEED \$68,830.00 FOR WATER UTILITIES FOR MARINA BOOSTER PUMP STATION REHABILITATION; AUTHORIZING THE TOWN MANAGER TO SIGN THE SUPPLEMENTAL TASK ORDER; AND PROVIDING 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, the Town is requesting Tetra Tech, Inc.'s assistance with professional services required to implement the proposed emergency; and

WHEREAS, the Town's existing pumps and electrical components were submerged in salt water during Hurricane Ian; and

WHEREAS, the Town of Fort Myers Beach accepts potable water from Lee County on the west side of San Carlos Blvd Bridge over Matanzas Pass near Moss Marine. Once on island, potable water enters the Town's transmission network where the pressure is boosted by the Marina Booster Pump Station; and

WHEREAS, without this pump station, the Town cannot fill our two (2) storage tanks, or provide adequate pressure, in accordance with Florida Department of Environmental Protection (FDEP) 62-555.320(15)(a)2, which is a minimum of 20 pounds per square inch (psi) (pressure) throughout the island; and

WHEREAS, the Town Council has determined it is in the best interest of the Town to approve the requested Supplemental Task Order.

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 hereby approves the Supplemental Task Authorization between the Town and Tetra Tech, Inc. not to exceed \$68,830.00. A copy of the amended Supplemental Task Agreement is attached hereto as Attachment "A".

Section 3. That the Town Manager is authorized to sign the Supplemental Task Authorization between the Town and Tetra Tech, Inc.

Section 4. That this Resolution shall be effective upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Karen Woodson, Council Member	_____
Vacant, Council Member	_____

ADOPTED this 4th day of March 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this _____ day of March 2024

X Supplemental Task Authorization NO.: 32

CONTRACT/PROJECT NAME: Marina Booster Pump Station Rehabilitation

CONSULTANT: Tetra Tech, Inc. PROJECT NO.: _____

SOLICIT NO.: RFQ-20-22-AD CONTRACT NO.: 20-22-AD

REQUESTED BY: Mark Ashton DATE OF REQUEST: 01/25/24

PURCHASE ORDER NUMBER: _____

EXHIBIT "A"	SCOPE OF PROFESSIONAL SERVICE:	DATED: <u>03/04/24</u>
EXHIBIT "B"	COMPENSATION & METHOD OF PAYMENT:	DATED: <u>03/04/24</u>
EXHIBIT "C"	TIME AND SCHEDULE OF PERFORMANCE:	DATED: <u>03/04/24</u>
EXHIBIT "D"	CONSULTANT'S/PROVIDER'S ASSOCIATED SUB-CONSULTANT(S)/SUB-CONTRACTORS:	DATED: <u>03/04/24</u>

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EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES

MARINA BOOSTER PUMP STATION REHABILITATION**Background:**

The Town of Fort Myers Beach (TOWN) accepts potable water from Lee County on the west side of San Carlos Boulevard Bridge over Matanzas Pass near Moss Marine. Once on island, potable water enters the Town's transmission network where the pressure is boosted by the Marina Booster Pump Station which consists of two (2) vertical turbine pump in cans. The Booster Station was initially constructed in 1980 and has been owned and maintained by the TOWN since they took possession of the system.

Due to its age and condition, it is recommended that the station be completely rebuilt in the near future. This will require the station to be brought into compliance with existing codes, including elevating the station approximately 10 +/- feet to above the 100-year flood elevation; replacing the piping, valves and cans; and due plans by the landowner to develop the property where the current station sits within an easement, potentially relocating station.

As there are several factors to consider for the long-term improvements and as development of Moss Marine is in its infancy stage, the TOWN desires to proceed now with replacement of the existing pumps and updating of the existing electrical components on an emergency basis, now. This emergency upgrade will also include the addition of variable frequency drives (VFDs) to assist with varying conditions. The existing pumps and electrical components were submerged in saltwater during Hurricane Ian. Although both pumps were removed and the motors were rebuilt, there is great concern as to their longevity. It is intended that these improvements be made as a temporary repair, with long term improvements following up in the near future, no more than 2-3 years. This will give the TOWN time to develop a plan and to work with the developer that owns the land where the current station is located for negotiating a new easement, performing the design, permitting and implementation.

The TOWN has requested Tetra Tech's assistance with the professional services required to implement the proposed emergency improvements. This will include assistance with research to determine the existing pump size in order to match the pump as close as possible to the existing size, and the design for the electrical improvements. It is understood that the electrical improvements will be minimized to utilizing the existing cabinets to the extent possible, although new cabinets may be required for the VFDs.

In order to fast-track the improvements, this scope of services is based on the TOWN direct purchasing the pumps and retaining a vendor directly to perform the installation. This will leave electrical and minor valve/fitting improvements to be performed through the public bidding process. More specifically, the following improvements will be designed under this STA:

- Assisting the TOWN with pump selection (TOWN to work with Pump Vendor for purchase/installation). Pumps to include inverter duty rated motors for use with VFDs.
- Assisting the TOWN (if needed) for specifying replacement valves.
- Design and drawing/technical specification development for the replacement of the existing electrical breakers, controls, transfer switch within the existing cabinetry (to remain).
- Design and drawing/technical specification development for the addition of VFDs for the new pumps in a new standalone cabinet.

This scope of services includes Final Design. Post-Design (bidding and construction management) will be provided under separate authorization.

Scope of Services:

Task 1: Final Design

1. Perform a site visit in order to collect data and to take measurements to be used in preparation of design drawings.
2. Coordinate with the TOWN in order to try to determine the size of the existing pumps. This will include physical review of the existing pumps for nameplate information; discussions with the pump manufacturer (if known); discussions with Mader Electric who is familiar with the pumps and who recently rewound the motors; and coordination with Lee County regarding any data they may have. (Flow testing is not anticipated to be performed.)
3. Upon completion of the site visit and estimate of pump sizing, the CONSULTANT will proceed with the final design, which will result in preparation of engineering drawings and technical specifications for use in construction by the TOWN's selected Contractor(s). Deliverables will be submitted to the TOWN for review at 75-, and 100-percent completion levels. A review meeting will be held with the TOWN following each submission. The drawings shall generally include, but not be limited to the following:

General – 2 sheets

Cover Sheet (1 sheet)

General Notes/Sheet Index (1 sheet)

Process/Civil – 2 sheets

Pump Replacement Plan/Section (1 sheet)

Details (1 sheet)

Electrical – 4 sheets

Electrical General Notes (1 sheet)

Site Plan (1 sheet)

Control Panel and VFD Plan & Sections (2 sheets)

4. Perform quality assurance/control reviews at the 75- and 100-percent completion stages.
5. Furnish a PDF set of drawings and technical specifications at the 75- and 100-percent completion stages. Comments received from the TOWN following the 75-percent submittal will be incorporated into the 100-percent drawings (ready for bid), as applicable.

Notes:

1. The proposed design is based on our understanding that as the pumps will be replaced as "like for like", the improvements are considered maintenance and do not require a permit. If it is determined that a permit is required, then our further understanding is that the pump motors, shafts and electrical panels will be required to be raised such that the bottoms of the components are higher than the flood elevation, which for this area is 13.0, approximately 9 feet higher than existing grade. Performing design to elevate these components is not included within this scope of services.
2. No surveying is proposed to be performed. The original 1980 site plan prepared by Johnson Engineering, Inc. and site visit measurements will be used to perform the

design efforts. It is noted that the design drawings from Johnson Engineering do not appear to match the existing field conditions.

3. It is anticipated that the only drawings to be prepared are associated with new panels for the electrical components and new VFDs as well as for the site improvements associated with the pump removal and replacement and associated piping and appurtenances. Where practical, technical requirements will be placed on the drawings in lieu of providing technical specifications.
4. This scope of services does not include preparation of an opinion of costs.
5. It is assumed that the existing electrical service and wire size is adequate to serve the new pumps.
6. This scope of services assumes that the TOWN has legal access to the Booster Station through an existing easement. As such, no efforts related to the easement (modifications or title work) are proposed to be performed.
7. It is anticipated that no permits are required to complete the work in the scope. Any permitting requirements (including Town permits) will require additional scope and fee.

Task 2: Bidding & Construction Administration

- A. Bidding Assistance - Tetra Tech will assist the TOWN with bidding services associated with the electrical improvement portion of the project. It is understood that the TOWN will procure the services associated with the pump and valve replacement. Our proposed services during bidding include the following:
 1. Attend a pre-bid meeting at the TOWN's office.
 2. Assist the TOWN with addressing bidders' questions during the bidding phase through the preparation of answers for the TOWN's inclusion into addenda.
 3. Upon receipt of bids (to be provided by the TOWN), a review will be performed of each bid along with references and a recommendation of award will be made for the lowest responsive, responsible bidder that is determined to be in the best interest of the TOWN.
- B. Construction Administration - During the Construction Phase, Tetra Tech will provide the following limited services:
 1. Prepare conformed documents incorporating any changes made during the addenda process.
 2. Schedule, prepare for and attend a Virtual Pre-Construction meeting via Microsoft Teams with the awarded Electrical Contractor.
 3. Serve as an extension of staff providing project management oversight and coordination activities.
 4. Review shop drawing submittals to determine acceptable of proposed products. It is anticipated that up to 15 shop drawings will be submitted.
 5. Make visits at intervals appropriate to the various stages of construction in order to

observe as an experienced and qualified design professional the progress and quality of the various aspects of contractor's work. It is anticipated 8 visits will be performed. Based on information obtained during such visits and on such observations, Tetra Tech will determine if such work is proceeding in accordance with the Contract Documents. The purpose of the site visits will be to enable Tetra Tech to observe construction to the extent necessary to certify the project's completion.

6. At the request of the Contractor, attend startup testing (to be performed by the pump manufacturer). Following successful completion of testing, review operation & maintenance manuals associated with the pumps and electrical components.
7. Conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that Tetra Tech may recommend, in writing, final payment to Contractor and give written notice to the Town and the Contractor that the work is acceptable.
8. Prepare a set of reproducible Record Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by the TOWN to Tetra Tech and which Tetra Tech and the TOWN consider significant.

Notes:

1. Inspection services are not proposed to be included. If additional field observation beyond the 8 site visits is desired, then a modification to this scope of services would be required.

EXHIBIT BDate: 03/04/24COMPENSATION AND METHOD OF PAYMENT FOR
MARINA BOOSTER PUMP STATION EMERGENCY REHABILITATIONSection 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
1	Final Design	\$33,650	NTE	WIPP
2	Bidding & Construction Administration	\$35,180	NTE	WIPP
TOTAL (Unless list is continued on next page)		\$68,830	NTE	

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated 03/04/24, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto 03/04/24 entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: 03/04/24

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE FOR MARINA BOOSTER PUMP STATION EMERGENCY REHABILITATION

Consultant or Sub-consultant Name: Tetra Tech, Inc.
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Standard Rate Schedule As Included with Proposal			

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

****NOTE:** Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: 03/04/24

**NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR
MARINA BOOSTER PUMP STATION EMERGENCY REHABILITATION**

CONSULTANT OR SUB-CONSULTANT NAME: Tetra Tech
(A separate Attachment No. 2 should be included for each Sub-Consultant)

[illegible]

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: 03/04/24

TIME AND SCHEDULE OF PERFORMANCE FOR MARINA BOOSTER PUMP STATION EMERGENCY REHABILITATION

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
1	Final Design	60 days	60 days
2	Bidding & Construction Administration	240 days	300 days

EXHIBIT D

Date: 03/04/24

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S) FOR
MARINA BOOSTER PUMP STATION EMERGENCY REHABILITATION

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
N/A						

1. **Request:**

Meeting Date: March 4, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230162, TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE REQUIRED SIDE YARD SETBACK BY 2.18 FEET FROM THE REQUIRED 10 FEET AND TO DECREASE REQUIRED WATERBODY SETBACK BY 14.39 FEET FROM THE REQUIRED 25 FEET, IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 21391 WIDGEON TERRACE; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE

Why the action is necessary:

The applicant wishes to construct an elevated pool closer to the side and rear property lines than allowed by the code.

What the action accomplishes:

Approval of the variance will allow a pool and screen enclosure to be constructed closer to the side and rear water body than the code allows.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Sarah Propst, Planning &
Zoning

5. **Background:**

The applicant and owner for the property located at 21391 Widgeon Terrace, is requesting two variances from the Town's Land Development Code (LDC) Table 34-3. The code requires that structures elevated greater than 4 feet above grade and accessory structures on natural waterbodies meet the principal structure setback found in table 34-3. In the RC zoning district, lots 100 feet wide or greater must provide a minimum 10-foot side setback and a 25-foot setback from an unseawalled waterbody. The variance will allow the applicant to construct an elevated pool and screen enclosure in the side yard 7.8 feet from the side property line and 14.3 feet from the mean high water line.

Attachments:

1. 23-190, VAR20230162 21391 Widgeon Terrace
2. Staff report
3. Exhibit A - Landscape-Planting
4. Exhibit B - Application package
5. Exhibit C - TC Postcard

Financial Impact:

Unknown

6. **Alternative Action**

RECOMMEND DENIAL

7. **Management Recommendations:**

Recommend Approval

8. **Recommended Approval:**

Kendra Rosa, Zoning Coordinator/Planner 1
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/21/2024
Approved - 2/21/2024
Approved - 2/27/2024
Approved - 2/28/2024
Final Approval - 2/28/2024

RESOLUTION NUMBER 23-190

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230162, TWO VARIANCES FROM LDC TABLE 34-3 TO DECREASE THE REQUIRED SIDE YARD SETBACK BY 2.18 FEET FROM THE REQUIRED 10 FEET AND TO DECREASE THE REQUIRED WATERBODY SETBACK BY 14.39 FEET FROM THE REQUIRED 25 FEET, IN THE RC ZONING DISTRICT, FOR THE PROPERTY LOCATED AT 21391 WIDGEON TERRACE; 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, Todd Plaisted, owner of the property situated at 21391 Widgeon Terrace, is requesting two variances from LDC Table 34-3 which requires accessory structures including swimming pools associated with a single-family home waterfront lot in the RC zoning district to provide a minimum 10-foot side setback for lots 100 feet wide or greater and a 25-foot setback from a the mean high water; and

WHEREAS, the STRAP number for the subject property is 34-46-24-W1-022M0.0010; and

WHEREAS, the Property is located in the "Mixed Residential" category of the Future Land Use Map of the Comprehensive Plan and the "Residential Conservation" 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 February 13, 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 voted to recommend approval with conditions of the variance; and

WHEREAS, on March 4, 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/ 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/ did not meet its burden of proof that the requested Variance does/ does not meet the requirements of the Town Comprehensive Plan and LDC and approving/ approving with conditions/ denying 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/ APPROVES WITH CONDITIONS/ DENIES these two variances from LDC Table 34-3 requires accessory structures including swimming pools associated with a single-family home waterfront lot in the RC zoning district to provide a minimum 10-foot side setback for lots 100 feet wide or greater and 25 foot setback from a waterbody.

Section 3. In approving/ approving with conditions/ denying 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/ are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is/ is not 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/ are not the result of actions of the Applicant taken after the adoption of the regulation in question.
- C. The variance is/ is not 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/ will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property are/ 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.

- B. The landscaping plan attached as Exhibit A shall be installed prior to final inspection is approved.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

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

ADOPTED this 4th day of March 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of March 2023.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20230162

CASE NAME: 21391 Widgeon Terrace; requesting a variance from LDC Table 34-3 to decrease the principal structure setbacks to construct an elevated pool..

TOWN COUNCIL HEARING DATE: March 4, 2024

LPA HEARING DATE: February 13, 2024

STAFF RECOMMENDATION: APPROVAL

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: Todd Plaisted

Request: Variance from LDC Table 34-3 3 to decrease the principal structure setbacks to construct an elevated pool closer than 25 feet from a natural waterbody and closer to the side property line than 10 feet.

The property is 108 feet wide by 58 feet deep lot along Widgeon terrace. The Applicant is requesting a variance of 2.18 feet for a side yard setback of 7.82 feet and a variance of 10.61 feet from the waterbody for a setback of 14.39 feet, to build an elevated swimming pool and screen enclosure in the west side yard of an existing single-family home.

Subject property: See attached site plan

Physical Address: 21391 Widgeon Terrace

STRAP #: 34-46-24-W1-022M0.0010

FLU: Mixed Residential

Zoning: Residential Conservation (RC)

Adjacent zoning and land uses:

North: MIXED RESIDENTIAL
RC, Residential conservation

South: MIXED RESIDENTIAL
RC, Residential conservation

East: WETLANDS
RC, Residential conservation

West: WETLANDS
EC, Environmental Conservation

II. BACKGROUND AND ANALYSIS

Background:

Todd Plaisted, the applicant and owner for the property located at 21391 Widgeon Terrace, is requesting two variances from the Town's Land Development Code (LDC) Table 34-3, which requires accessory structures including swimming pools associated with a single-family home in RC zoning district to provide a minimum 10-foot side setback for lots 100 feet wide or greater and 25-foot setback from a waterbody. The applicant is requesting a variance of 2.18 feet for a side yard setback of 7.82 feet and a variance of 10.61 feet from the waterbody for a setback of 14.39 feet, to build an elevated, attached swimming pool and screen enclosure in the west side yard of an existing single-family home.

Analysis:

The property is 108 feet wide by 58 feet deep lot, zoned Residential Conservation (RC). The purpose of the RC zoning district is to provide stable neighborhoods where single-family/two-family homes are the predominant land use.

The subject property currently supports a single-family residence and is a waterbody lot situated along Widgeon Terrace. The proposed use, requiring a variance, is an elevated pool. According to Section 34-1176(b)(1)d. of the LDC, pools with more than four feet of stem wall visible above grade must meet the primary structure setbacks. Code Section 34-1174(d)(1)d. requires that accessory structures on natural

waterbodies meets the primary structure setback also. Therefore, the request is for a variance from Table 34-3 which provides the required setbacks for primary structures.

As per LDC table 34-3, a minimum 10 foot side setback is required for lots 100 feet wide or greater and a 25 foot setback is required from the waterbody. The existing single-family home does not meet the waterbody setback requirement of the Town's LDC. The Applicant is requesting two variances for the construction of a pool in the west side yard. The requests include 2.18 feet for a side yard setback of 7.82 feet and a variance of 10.61 feet from the waterbody for a setback of 14.39 feet.

Neighborhood Compatibility:

The subject property is part of the Widgeon Terrace residential neighborhood. The existing house is similar in style and nature to the neighboring residences. Most of the properties in this neighborhood include a pool in the rear yard with waterbody setbacks less than required by the Town's LDC. The existing residence also does not comply with the LDC's required waterbody setback of 25 feet from the mean high-water line. Due to the closeness of the house to the mean high water, the proposed pool will only fit in the west side yard, the size of the pool proposed, will only fit in this location with approval of these variances.

The property owner to the north has voiced concerns regarding the closeness of the elevated structure to the existing home. The applicant has provided an additional landscaping plan to assist in screening the proposed elevated pool and screen enclosure. The addition of proposed landscaping is included in the required conditions of approval.

Findings and Conclusions:

LDC Sec. 34-87 sets forth the required findings and conclusions for the approval of a variance:

- a. That there **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request **is**/is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.

There are exceptional conditions inherent to the property. The subject property is a 108 feet wide and 58 feet deep lot. The Widgeon Terrace neighborhood also includes a portion of the right of way within the property lines making the depth of the lot fairly restrictive. The applicant originally began the design of the pool when the side yard setback was 7.5 feet, however this setback requirement changed prior to the applicant submitting their application.

- b. That the conditions justifying the variance are/**are not** the result of actions of the applicant taken after the adoption of the regulation in question.

The lots in this neighborhood are particularly narrow and because they back up to a natural waterbody, the rear setback for any structure is 25 feet. The setback requirements have changed.

- c. *That the variance granted **is**/is not the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

The narrow lot, backing on to a natural waterbody requires a variance to construct a reasonable size pool. The variance request is minimal.

- d. *That the granting of the variance will/**will not** be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

- e. *That the conditions or circumstances on the specific piece of property for which the variance is sought are/**are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

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.

III. RECOMMENDATION

Staff has reviewed the request for a variance from LDC Table 34-3 which requires an accessory structure like a swimming pool attached to a single-family home in RC zoning district to provide a minimum 10 feet side setback for lots 100 feet wide or greater and 25 feet setback from a waterbody and found that the variance request meets the requirements set-forth in sec. 34-87.

At the February 13th LPA hearing the LPA recommended approval with conditions of the request with a 5-2 vote.

IV. CONDITIONS FOR APPROVAL

If the variance is approved, the condition below is recommended by staff.

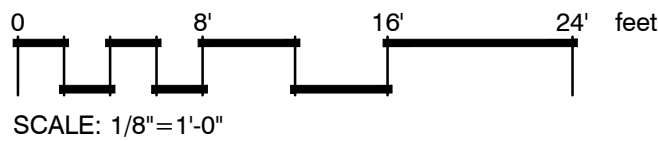
- 1) Approval of this variance does not give the Applicant an undeniable right to permit approval. Development or redevelopment of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- 2) The landscaping plan attached as Exhibit A shall be installed prior to final inspection is approved.

V. EXHIBITS

Exhibit A: Landscape Plan

Exhibit B: Complete Application Packet

Exhibit C: Postcards to Adjacent Property Owners

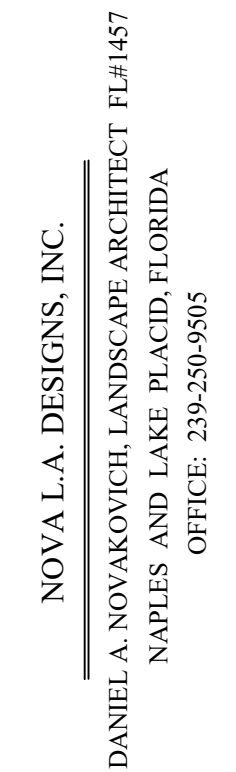


<u>SYMBOL</u>	<u>QTY</u>	<u>BOTANICAL NAME</u>	<u>COMMON NAME</u>	<u>SIZE</u>	<u>CONTAINER</u>	<u>REMARKS</u>
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<u>SYMBOL</u>	<u>QTY</u>	<u>BOTANICAL NAME</u>	<u>COMMON NAME</u>	<u>SIZE</u>	<u>CONTAINER</u>	<u>SPACING</u>	<u>REMARKS</u>
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MULCH - SHREDDED	HARDWOOD, DK. BROWN MULCH	QTY. BY CONTRACTOR
------------------	---------------------------	--------------------

IRRIGATION	SALVAGE EXISTING SYSTEM, REPAIR OR REPLACE BROKEN
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TODD PLAISTED
21391 WIDGEON TERRACE
Fort Myers Beach, FLORIDA

Project No. _____

[illegible]

Date	Issue
------	-------

1/10/24

Drawn By Checked By
DAN

Sheet Title

Landscape Planting

Sheet No. _____

L-1



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 21391 Widgeon Terrace, Fort Myers Beach, FL 33931

STRAP Number: 34-46-24-W1-022MO.0010

Applicant: Todd Plaisted

Phone: N/A

Contact Name: Attorney Robert Burandt

Phone: (239) 542-4733

Email: Robert@capecoralattorney.com

Fax: (239) 542-9203

Current Zoning District: RC

Future Land Use Map (FLUM) Category: Mixed Residential

FLUM Density Range: 6-Units

Platted Overlay:

☐ YES

☐ NO

ACTION REQUESTED

☐ Special Exception

☐ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Todd Plaisted

Phone: _____

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: c/o Robert Burandt, Esquire, 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904

Email: Robert@capecoralattorney.com

Fax: (239) 542-9203

Contact Name: Robert Burandt

Phone: (239) 542-4733



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☒ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☐ Other* (please indicate) _____ | |

*Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Steeven Knight Phone: (239) 641-2628
Address: 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904
Email: islandspsfl@gmail.com Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Attorney Robert Burandt Phone: (239) 542-4733
Address: 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904
Email: robert@capecoralattorney.com Fax: (239) 542-9203

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☒ Variance from LDC Section 34-1174 - Side setback, etc.
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☒ Other. Please Explain: Variance

PART III - Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: N/A Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV - Property Ownership (Single Owner)

☒ Single Owner (individual or husband and wife)

Name: Todd Plaisted Phone: _____

Mailing Address: 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904

Email: Robert@capecoralattorney.com Fax: (239) 542-9203

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Todd Plaisted swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Todd Plaisted
Signature

Todd Plaisted

Printed Name

STATE OF FL COUNTY OF LEE

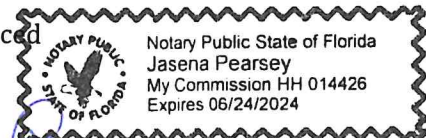
The foregoing instrument was certified and subscribed before me by means of ☒ physical

presence OR ☐ online notarization, this 15th day of May, 2022, by

Todd Plaisted ☒ who is personally known to me OR ☐ who has produced

MN D/L as identification.

(SEAL)



Jasena Pearsey
Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☐ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☐ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address
Todd Plaisted

Percentage Ownership
100%



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____	_____
Signature	Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, _____ (name), as _____ (title) of _____ (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

N/A

Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Title

Typed or Printed Name

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 34-46-24-W1-022MO.0010

Property Address: 21391 Widgeon Ter., Ft. Myers Beach, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee

County? ☐ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: 1357 Page: 1089 Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Page 7 of 11



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 102.12 ft +/- feet
Depth (please provide an average width if irregular in shape) 99.81 ft +/- feet
Frontage on street: 102.12 ft +/- feet. Frontage on waterbody: 100.76 ft +/- feet
Total land area: 9570.55 sq ft (0.22 acres) ☒ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Big Carlos Pass Bridge

County Rd 865, Fort Myers Beach, FL 33931 Head west on Estero Blvd 2. Turn right onto Mound Rd 3. Turn left onto Noddy Tern Dr

4. Continue onto Widgeon Terrace Partial restricted usage road Destination will be on the right 2.4 mi

Head west on Estero Blvd 2. Turn right onto Mound Rd 3. Turn left onto Noddy Tern Dr 4. Continue onto Widgeon Terrace

Partial restricted usage road Destination will be on the right 2.4 mi

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☐ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|--|--|
| ☐ Low Density | ☐ Marina |
| ☐ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



Case # _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

Case Number:
Project Name: Plaisted Pool
Authorized Applicant: Todd Plaisted
LeePA STRAP Number: 34-46-24-W1-022MO.0010

Current Property Status: Single Family Residence	
Current Zoning: Residential (RC)	
Future Land Use Map (FLUM) Category: Mixed Residential	
Comp Plan Density:	Platted Overlay? ☐ Yes ☐ No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

34-1174 34-638	Rear and side setbacks

Complete the narrative statements below for EACH variance requested.



Case # _____

Date Received: _____

PART I
Narrative Statements

Request for variance from 34-1174 **(LDC Section number)**

Explain the specific regulation contained in this section from which relief is sought:

The applicant requests a variance to construct his pool within 16 1/2 feet from the rear property line. The current code is 34-638 which is 25 feet. The neighbor residing at 21401 Widgeon Terrace, Fort Myers Beach, FL pool is constructed within 25 feet. See the picture marked as Exhibit "1" (Neighbor's Pool)

The applicant also requests a variance from the current 25 foot setback pursuant to Table 34-3 to be within 7 1/2 feet of the side property line. Please note that this setback was modified from 7 1/2 feet to 25 feet in February of 2022.

Attached is the Lee County Property Appraiser's Print Out for the applicant's house marked as Exhibit "2". Exhibit "3" is a survey showing where the pool is to be located .

A photograph of the residence and property line is marked as Exhibit "4". Photographs of the planned area for the pool is marked as Exhibit "5" and "6". A picture of the applicants house from the back bay is Exhibit "7", and a survey of the applicant's property is Exhibit "8".

Reasons for request

Explain why the variance is needed:

The property has only one possible location for a pool as demonstrated on the survey is marked as Exhibit "3".

Explain the possible effect the variance, if granted, would have on surrounding properties:

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The adjacent property on the pool side will be 7 1/2, the former setback amount. The nearest structure pool side is the elevated house with a substantial hedge on the property line, with the garbage being next to the purported pool. See Exhibit "5", Picture 1 and 2. Picture #5 shows the applicant's house and the potentially affected neighbor.

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

Without these two (2) variances, the applicant will not be able to fully enjoy his home. There is just not any place else for their pool.



Case # _____

Date Received: _____

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

The applicant's request is de minimis in nature and will only allow for the development of a private pool that will be accessory to the single-family dwelling unit, or the principal structure.

The variance request is not the result of action taken by the current property owner, who acquired the property in 2021.

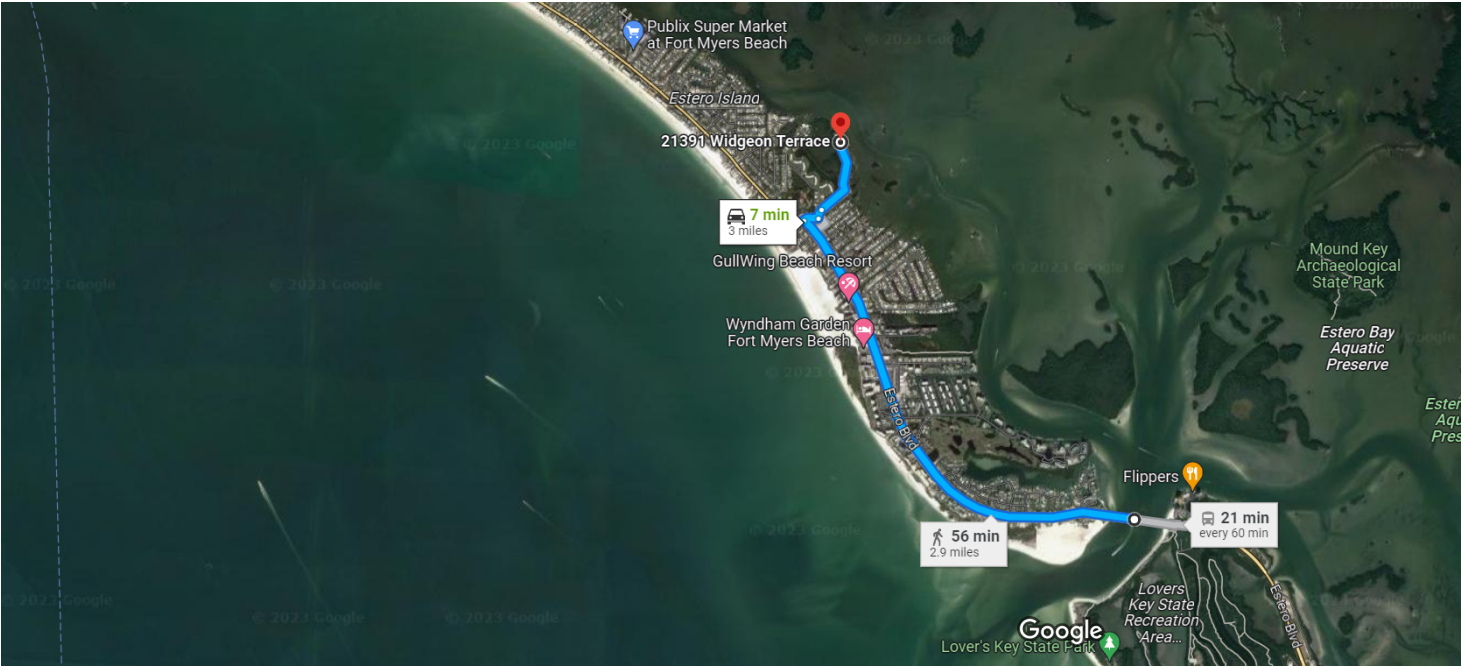
The requested variance is the minimum to relieve the applicant of the code requirement. The variance is from the requirement that restricts accessory uses such as a pool from being located closer to Estero Bay and his daughter to the south.

The space between the principal structure and the bay is the only available location for the construction of a pool on this Property.

Exhibit 6-3 Pg 8 - D

Big Carlos Pass Bridge to 21391 Widgeon Terrace, Fort Myers Beach, FL 33931

Drive 3.0 miles, 7 min

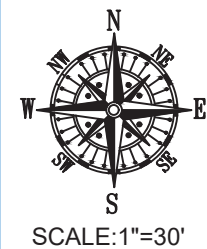


Imagery ©2023 Airbus, Landsat / Copernicus, Maxar Technologies, U.S. Geological Survey, Map data ©2023 Google 2000 ft

	via Estero Blvd	7 min
	Fastest route now due to traffic conditions	3.0 miles
	This route has restricted usage or private roads.	
	via Estero Blvd	56 min
		2.9 miles
	11:57 AM—12:18 PM	21 min
	410	

Explore nearby 21391 Widgeon Terrace

Restaurants Hotels Gas stations Parking Lots More



TYPE OF SURVEY:

- ☐ BOUNDARY
☐ ALTA/NSPS
☒ CONSTRUCTION
☒ TOPOGRAPHIC
☐ CONDOMINIUM
☐ SPECIAL PURPOSE

PRINTING INSTRUCTIONS

WHEN PRINTING THIS PDF IN ADOBE, SELECT "ACTUAL SIZE" TO ENSURE CORRECT SCALING. **DO NOT USE "FIT".**

ABBREVIATION LEGEND

(SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING):

- A OR AL = ARC LENGTH
C/O = CLEANOUT
CA = CENTRAL ANGLE
CATV = CABLE TV RISER
CF = CALCULATED FROM FIELD
CH = CHORD DISTANCE
CONC. = CONCRETE
CR = CALCULATED FROM RECORD
DE = DRAINAGE EASEMENT
EL OR ELEV = ELEVATION
EM = ELECTRIC METER
F.F.E. = FINISHED FLOOR ELEV.
FIR = FOUND IRON ROD
FN = FOUND NAIL
FND = FOUND
G.F.F. = GARAGE FINISHED FLOOR
L = LEGAL DESCRIPTION
M = MEASURED
OHC = OVERHEAD CABLE
- P = PLAT
PC = POINT OF CURVE
PCC = POINT OF COMPOUND CURVE
PH = POOL HEATER
PI = POINT OF INTERSECTION
POB = POINT OF BEGINNING
POC = POINT OF COMMENCEMENT
PP = POOL PUMP
PRC = POINT OF REVERSE CURVE
PT = POINT OF TANGENCY
QTR = QUARTER
R = RADIUS
RNG = RANGE
SEC = SECTION
TR = TELEPHONE RISER
TWP = TOWNSHIP
UE = UTILITY EASEMENT
UP = UTILITY POLE
WM = WATER METER
WV = WATER VALVE

SYMBOLS - NOT-TO-SCALE

(SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING):

- = UTILITY POLE
 = LIGHT POLE
 = CATCH BASIN
 = FIRE HYDRANT
 = MANHOLE
 = WATER VALVE
 = WATER METER
 = HANDICAP PARKING SPACE
 = SEC. QTR. CORNER
 = SECTION CORNER
- = WELL
 = CENTER LINE
 = PARTY WALL
 = AIR CONDITIONER
 = SEPTIC LID
 = ELEV. SHOT

CERTIFICATION

I HEREBY CERTIFY THAT THIS SURVEY MEETS THE STANDARDS OF PRACTICE AS OUTLINED IN CHAPTER 5J-17.051 & 5J-17.052 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, AND THAT THE ELECTRONIC SIGNATURE AND SEAL HEREON MEETS PROCEDURES AS SET FORTH IN CHAPTER 5J-17.062. PURSUANT TO SECTION 472.025, FLORIDA STATUTES.

SIGNATURE _____ DATE: 8-24-2023

PABLO ALVAREZ - PROFESSIONAL SURVEYOR AND MAPPER FLORIDA REGISTRATION NO. 7274 (NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OR THE ELECTRONIC SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER SHOWN ABOVE)

BEARING REFERENCE:
CENTER LINE OF 93rd AVENUE AS N 88°46'09" W
AS REFERENCED IN SUBJECT PROPERTY LEGAL DESCRIPTION.
ALL BEARINGS SHOWN HEREON REFERENCED THERETO.

Job Number : 179798-SW Field: K.A.
Drawn By : E.I. Date of Field Work : 07/28/2023

PURPOSE OF SURVEY: PROPERTY IMPROVEMENTS-OTHER

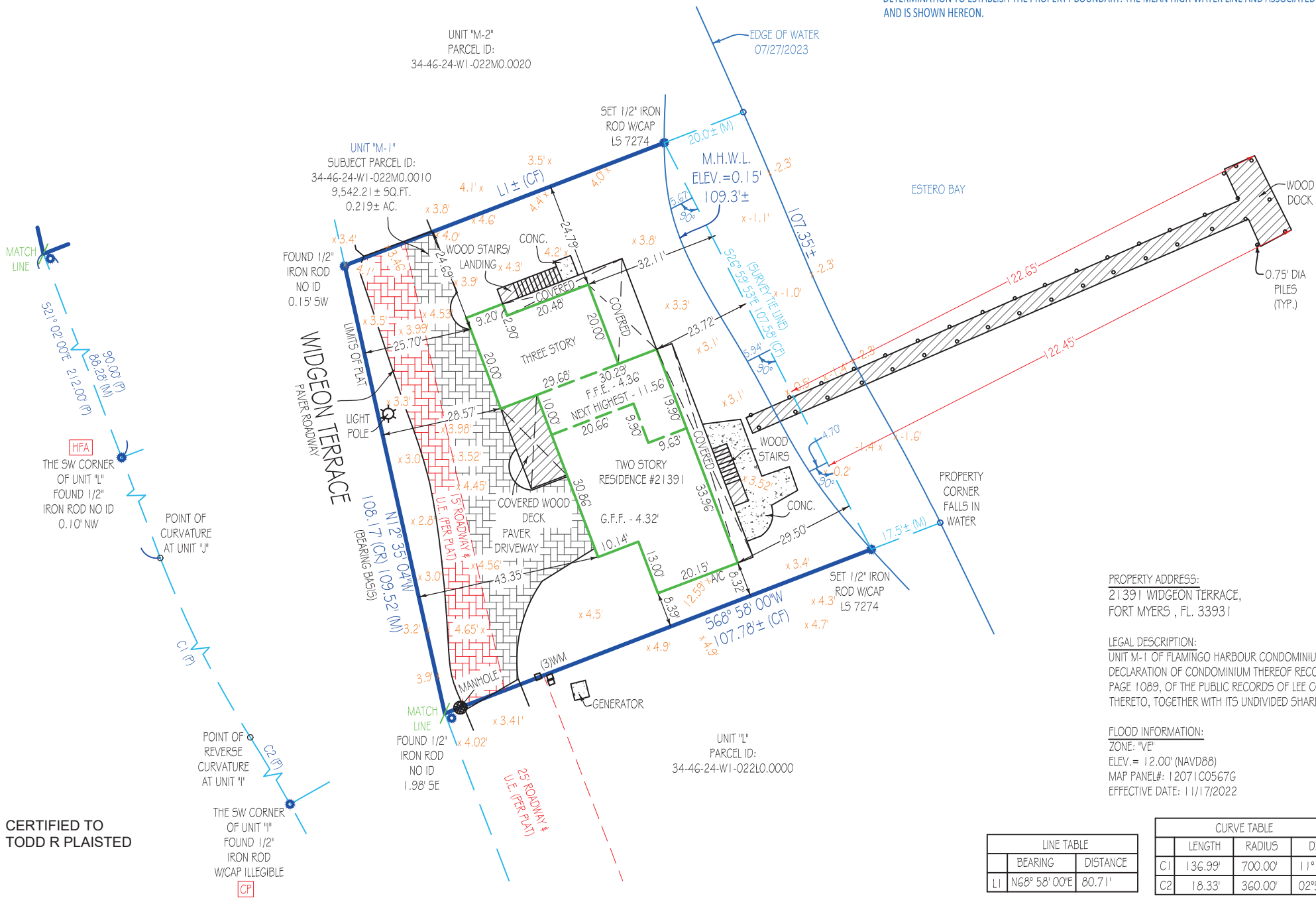
REVISIONS

UPDATE - E.I. - 08/23/2023

Platted Easements & Notable Conditions (unplatted easements also listed if provided): IF APPLICABLE, RECIPIENTS OF THIS SURVEY SHOULD REVIEW THE POSITION OF ANY FENCE LINES SHOWN AND THEIR RELATIONSHIP TO THE BOUNDARY LINE.

- 15' ROADWAY AND UTILITY EASEMENT ALONG WESTERLY BOUNDARY LINE OF SUBJECT LOT.
- PAVER DRIVEWAY EXTENDS THROUGH THE WESTERLY EASEMENT.
- PAVER DRIVEWAY CROSSES THE BOUNDARY LINE ON NORTHERLY AND SOUTHERLY SIDES OF LOT AS SHOWN.
- WOOD DOCK CROSSES THE BOUNDARY LINE ON EASTERLY SIDE OF LOT AS SHOWN.

4. RECORD DATA INDICATES OWNERSHIP TO THE EDGE OF WATER. ESTERO BAY IS TIDALLY INFLUENCED AND REQUIRES A MEAN HIGH WATER DETERMINATION TO ESTABLISH THE PROPERTY BOUNDARY. THE MEAN HIGH WATER LINE AND ASSOCIATED MEANDER LINE HAS BEEN ESTABLISHED AND IS SHOWN HEREON.



PROPERTY ADDRESS:
21391 WIDGEON TERRACE,
FORT MYERS, FL. 33931

LEGAL DESCRIPTION:
UNIT M-1 OF FLAMINGO HARBOUR CONDOMINIUM, A CONDOMINIUM ACCORDING TO THE DECLARATION OF CONDOMINIUM THEREOF RECORDED IN OFFICIAL RECORDS BOOK 1357, PAGE 1089, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND ALL AMENDMENTS THERETO, TOGETHER WITH ITS UNDIVIDED SHARE IN THE COMMON ELEMENTS.

FLOOD INFORMATION:
ZONE: "VE"
ELEV. = 12.00' (NAVD88)
MAP PANEL#: 12071C0567G
EFFECTIVE DATE: 11/17/2022

LINE TABLE	
BEARING	DISTANCE
L1 N68°58'00"E	80.71'

CURVE TABLE			CHORD LENGTH	CHORD BEARING
	LENGTH	RADIUS		
C1	136.99'	700.00'	111°24'7"	136.77'
C2	18.33'	360.00'	02°55'03"	18.33'

LINETYPES:

- BOUNDARY ——— BUILDING ———
EASEMENT - - - - - CHAIN LINK FENCE - x - x -
WOOD FENCE — // — PLASTIC FENCE — o —
OVERHEAD CABLE — | — | —

Elevations, if shown:

Benchmark: DN3725
Benchmark Elev.: 3.27'
Benchmark Datum: NAVD 88
Elevations on Drawing are in:
N.G.V.D.29 ☒ N.A.V.D.88

"CP" = CONTROLLING POINT (POINT OF ROTATION) "HFA" = HELD FOR ALIGNMENT - ALL OTHER MONUMENTATION AND IMPROVEMENTS RELATIVE THERETO

This survey has been issued by the following Landtec Surveying office:

700 W. Hillsboro Blvd. Suite 4-100
Deerfield Beach, FL 33441
Office: (561) 367-3587 Fax: (561) 465-3145
www.LandtecSurvey.com



LICENSED BUSINESS No. 8507

Aerial Photograph

May not show latest improvements. Not-to-scale.



GENERAL NOTES:

1. THIS SURVEY IS BASED UPON RECORD INFORMATION PROVIDED BY CLIENT. NO SPECIFIC SEARCH OF THE PUBLIC RECORD HAS BEEN MADE BY THIS OFFICE UNLESS OTHERWISE NOTED.
2. AS INDICATED ABOVE, UNDER "PURPOSE OF SURVEY", IF THIS SURVEY HAS BEEN PREPARED FOR A PURCHASE OR REFINANCE, ITS SCOPE IS LIMITED TO THE DETERMINATION OF TITLE DEFICIENCIES, AND IS NOT INTENDED FOR USE IN DESIGN OR CONSTRUCTION PURPOSES. LANDTEC SURVEYING ASSUMES NO RESPONSIBILITIES FOR ERRORS RESULTING FROM FAILURE TO ADHERE TO THIS CLAUSE.
3. ANY FENCES SHOWN HEREON ARE ILLUSTRATIVE OF THEIR GENERAL POSITION ONLY. FENCE TIES SHOWN ARE TO GENERAL CENTERLINE OF FENCE. THIS OFFICE WILL NOT BE RESPONSIBLE FOR DAMAGES RESULTING FROM THE REMOVAL OF, OR CHANGES MADE TO, ANY FENCES UNLESS WE HAVE PROVIDED A SURVEY SPECIFICALLY LOCATING SAID FENCES FOR SUCH PURPOSES. DETERMINATION OF FENCE POSITIONS SHOULD BE BASED SOLELY ON THEIR PHYSICAL RELATIONSHIP TO THE MONUMENTED BOUNDARY LINES.
4. GRAPHIC REPRESENTATIONS MAY HAVE BEEN EXAGGERATED TO MORE CLEARLY ILLUSTRATE MEASURED RELATIONSHIPS - DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALED POSITIONS.
5. UNDERGROUND IMPROVEMENTS HAVE NOT BEEN LOCATED EXCEPT AS SPECIFICALLY SHOWN.
6. ELEVATIONS ARE BASED UPON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D. 1929) OR NORTH AMERICAN VERTICAL DATUM (N.A.V.D. 1988) AS SHOWN ABOVE.
7. ALL BOUNDARY AND CONTROL DIMENSIONS SHOWN ARE FIELD MEASURED AND CORRESPOND TO RECORD INFORMATION UNLESS SPECIFICALLY NOTED OTHERWISE.
8. ANY CORNERS SHOWN AS "SET" HAVE EITHER BEEN SET ON THE DATE OF FIELD WORK, OR WILL BE SET WITHIN 2 BUSINESS WEEKS OF SAID DATE AND ARE IDENTIFIED WITH A CAP MARKED LS (LICENSED SURVEYOR) #7274.

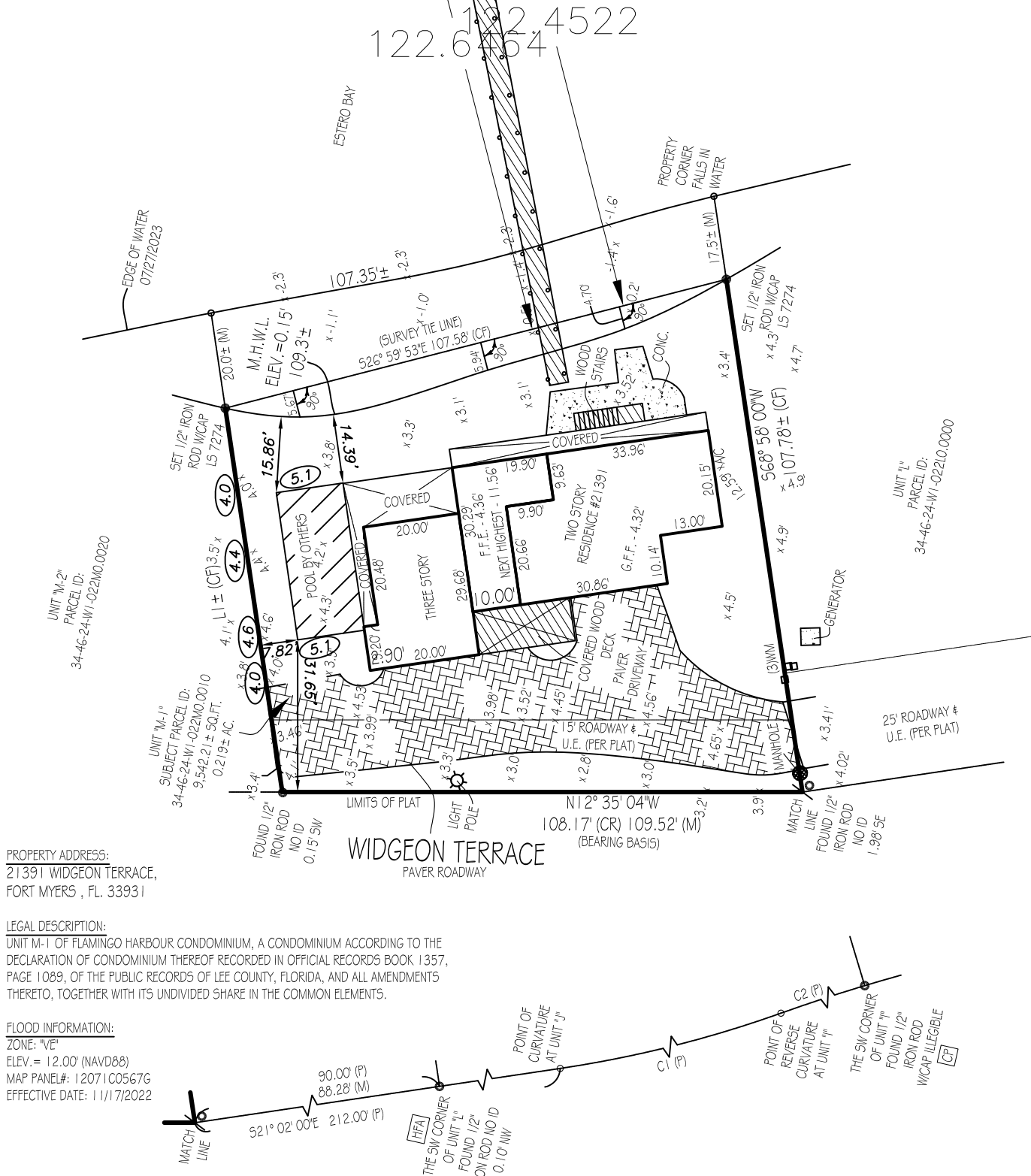
Nov 07, 2023 - 4:26pm E:\Wai Tech\WAL TECH\Jobs\2023\David Ward\21391 Widgeon ter - PLAISTED\21391 WIDGEON TER SITE.dwg



LINE TABLE		
	BEARING	DISTANCE
L1	N68°58'00"E	80.71'

CURVE TABLE				CHORD LENGTH	CHORD BEARING
	LENGTH	RADIUS	DELTA		
C1	136.99'	700.00'	11°12'47"	136.77'	S26°38'23"E
C2	18.33'	360.00'	02°55'03"	18.33'	S30°47'15"E

4. RECORD DATA INDICATES OWNERSHIP TO THE EDGE OF WATER. ESTERO BAY IS TIDALLY INFLUENCED AND REQUIRES A MEAN HIGH WATER DETERMINATION TO ESTABLISH THE PROPERTY BOUNDARY. THE MEAN HIGH WATER LINE AND ASSOCIATED MEANDER LINE HAS BEEN ESTABLISHED AND IS SHOWN HEREON.



PROPERTY ADDRESS:
21391 WIDGEON TERRACE,
FORT MYERS, FL. 33931

LEGAL DESCRIPTION:
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FLOOD INFORMATION:
ZONE: "VE"
ELEV. = 12.00' (NAVD88)
MAP PANEL#: 12071C0567G
EFFECTIVE DATE: 11/17/2022

THE SURVEY WAS PERFORMED BY: LANDTEC SURVEYING

50.2 DENOTES EXISTING ELEVATION
50.2 DENOTES PROPOSED ELEVATION

~ DENOTES DRAINAGE FLOW
— OHL — DENOTES OVERHEAD LINES
● PP DENOTES POWER POLE
- W - W - W - DENOTES WATER LINES

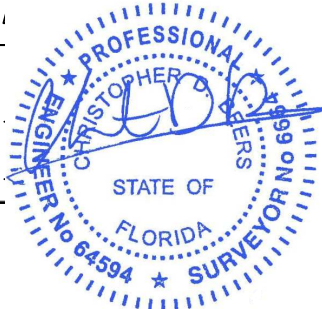
THIS SKETCH IS CERTIFIED ONLY AS TO FIELD CONDITIONS ON:

11/7/23

WTE JOB # _____
SCALE: 1"=30'

WAL TECH, LLC.
WATER, AIR, LAND
524 W Virginia Ave Punta Gorda FL 33950
PH:(941) 628-0635 EMAIL: bgaraimondo@comcast.net

CHRISTOPHER BEERS, PE
FLORIDA REG. NO. 64594
DATE _____



Big Gator Pools and Spas

1749 NE 10th Ter, Unit 6, Cape Coral, FL 33909

RE: Variance request for : 234477 / 21391 Widgeon ter. / New elevated pool

PERMIT # 234477

In response to the last Zoning review letter we received – I have attached a NEW Survey showing the mean high water line and a new Site plan showing the proposed pool location with setbacks for review.

Please see the attached Rejection Letter and the corrected Variance Request with New Survey and New Site Plan as requested.

The corrected pages are Pg 17 Survey and Pg 18 Site Plan

Thank you.

David A Ward

Priority Permitting Services

941-628-8850

dward@git-fl.com



Date: 08/31/2023

Contractor: Big Gator Pools and Spas

RE: 234477 / 21391 Widgeon ter. / New elevated pool

Cc: Property Owner

The drawings submitted for the referenced project have been reviewed following the 7th Edition (2020) Florida Building Codes, Florida Statutes (F.S), and the Town of Fort Myers Beach Land Development Code. For the reasons listed below, we cannot approve your application at this time.

Please provide the Rejection Letter and a Cover Letter showing where each corrected item can be found.

3rd Zoning Review Review

Kendra Rosa / Kendra@fmbgov.com

Once variance has been approved through Town Council, resubmit the resolution as a resubmittal. The zoning review for the pool cannot be completed at this time.

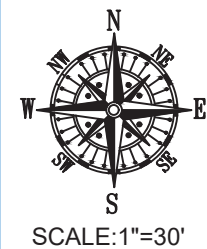
PLEASE NOTE:

- **Mailed in or paper plans will not be accepted.**
- Submit all corrections together at one time with an appropriate response/ cover letter showing where each corrected item can be found to resubmittal@fmbgov.com.
- Please note that no other reviews will be done until the **Zoning Review** is approved.
- Resubmittals will not be processed unless all review comments are addressed.

Please refer to the **Permit Portal** to access a copy of this rejection letter.

Sincerely,

Town of Fort Myers Beach Building Services and Community Development Departments.



TYPE OF SURVEY:

- ☐ BOUNDARY
☐ ALTA/NSPS
☒ CONSTRUCTION
☒ TOPOGRAPHIC
☐ CONDOMINIUM
☐ SPECIAL PURPOSE

PRINTING INSTRUCTIONS

WHEN PRINTING THIS PDF IN ADOBE, SELECT "ACTUAL SIZE" TO ENSURE CORRECT SCALING. DO NOT USE "FIT".

ABBREVIATION LEGEND

(SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING):

A OR AL = ARC LENGTH
C/O = CLEANOUT
CA = CENTRAL ANGLE
CATV = CABLE TV RISER
CF = CALCULATED FROM FIELD
CH = CHORD DISTANCE
CONC. = CONCRETE
CR = CALCULATED FROM RECORD
DE = DRAINAGE EASEMENT
EL OR ELEV = ELEVATION
EM = ELECTRIC METER
F.F.E. = FINISHED FLOOR ELEV.
FIR = FOUND IRON ROD
FN = FOUND NAIL
FND = FOUND
G.F.F. = GARAGE FINISHED FLOOR
L = LEGAL DESCRIPTION
M = MEASURED
OHC = OVERHEAD CABLE
P = PLAT
PC = POINT OF CURVE
PCC = POINT OF COMPOUND CURVE
PH = POOL HEATER
PI = POINT OF INTERSECTION
POB = POINT OF BEGINNING
POC = POINT OF COMMENCEMENT
PP = POOL PUMP
PRC = POINT OF REVERSE CURVE
PT = POINT OF TANGENCY
QTR = QUARTER
R = RADIUS
RNG = RANGE
SEC = SECTION
TR = TELEPHONE RISER
TWP = TOWNSHIP
UE = UTILITY EASEMENT
UP = UTILITY POLE
WM = WATER METER
WV = WATER VALVE

SYMBOLS - NOT-TO-SCALE

(SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING):

- = UTILITY POLE
 = LIGHT POLE
 = CATCH BASIN
 = FIRE HYDRANT
 = MANHOLE
 = WATER VALVE
 = WATER METER
 = HANDICAP PARKING SPACE
 = SEC. QTR. CORNER
 = SECTION CORNER
 = WELL
 = CENTER LINE
 = PARTY WALL
 = AIR CONDITIONER
 = SEPTIC LID
 = ELEV. SHOT

CERTIFIED TO
TODD R PLAISTED

CERTIFICATION

I HEREBY CERTIFY THAT THIS SURVEY MEETS THE STANDARDS OF PRACTICE AS OUTLINED IN CHAPTER 5J-17.051 & 5J-17.052 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, AND THAT THE ELECTRONIC SIGNATURE AND SEAL HEREON MEETS PROCEDURES AS SET FORTH IN CHAPTER 5J-17.062. PURSUANT TO SECTION 472.025, FLORIDA STATUTES.

SIGNATURE _____ DATE: 8-24-2023

PABLO ALVAREZ - PROFESSIONAL SURVEYOR AND MAPPER FLORIDA REGISTRATION NO. 7274 (NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OR THE ELECTRONIC SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER SHOWN ABOVE)

BEARING REFERENCE:
CENTER LINE OF 93rd AVENUE AS N 88°46'09" W
AS REFERENCED IN SUBJECT PROPERTY LEGAL DESCRIPTION.
ALL BEARINGS SHOWN HEREON REFERENCED THERETO.

Job Number : 179798-SW Field: K.A.
Drawn By : E.I. Date of Field Work : 07/28/2023

PURPOSE OF SURVEY: PROPERTY IMPROVEMENTS-OTHER

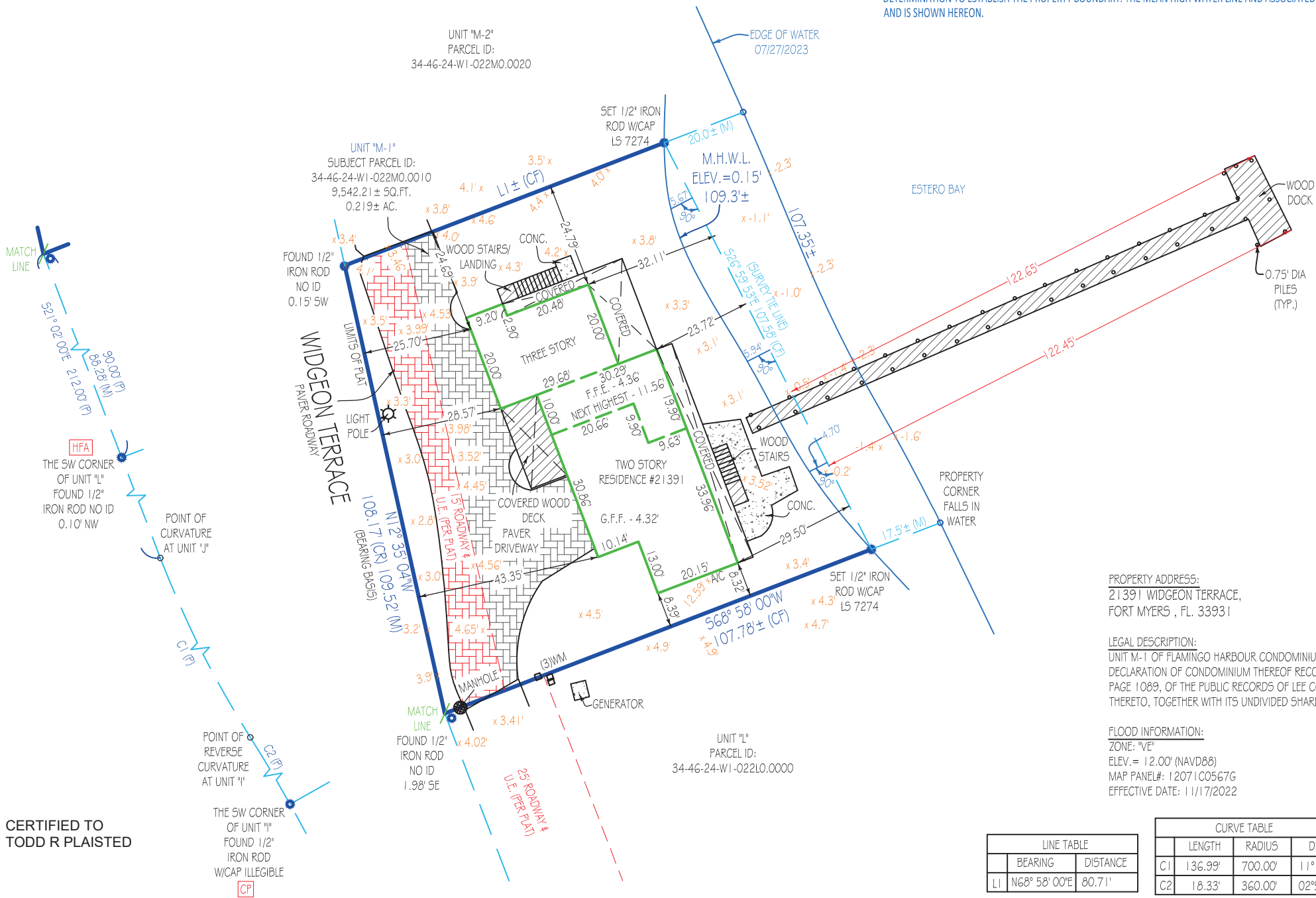
REVISIONS

UPDATE - E.I. - 08/23/2023

Platted Easements & Notable Conditions (unplatted easements also listed if provided): IF APPLICABLE, RECIPIENTS OF THIS SURVEY SHOULD REVIEW THE POSITION OF ANY FENCE LINES SHOWN AND THEIR RELATIONSHIP TO THE BOUNDARY LINE.

- 15' ROADWAY AND UTILITY EASEMENT ALONG WESTERLY BOUNDARY LINE OF SUBJECT LOT.
- PAVER DRIVEWAY EXTENDS THROUGH THE WESTERLY EASEMENT.
- PAVER DRIVEWAY CROSSES THE BOUNDARY LINE ON NORTHERLY AND SOUTHERLY SIDES OF LOT AS SHOWN.
- WOOD DOCK CROSSES THE BOUNDARY LINE ON EASTERLY SIDE OF LOT AS SHOWN.

4. RECORD DATA INDICATES OWNERSHIP TO THE EDGE OF WATER. ESTERO BAY IS TIDALLY INFLUENCED AND REQUIRES A MEAN HIGH WATER DETERMINATION TO ESTABLISH THE PROPERTY BOUNDARY. THE MEAN HIGH WATER LINE AND ASSOCIATED MEANDER LINE HAS BEEN ESTABLISHED AND IS SHOWN HEREON.



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L1 N68°58'00"E	80.71'

CURVE TABLE			CHORD LENGTH	CHORD BEARING
	LENGTH	RADIUS		
C1	136.99'	700.00'	111°24'7"	136.77'
C2	18.33'	360.00'	02°55'03"	18.33'

LINETYPES:

BOUNDARY ——— BUILDING ———
EASEMENT - - - - - CHAIN LINK FENCE - x - x -
WOOD FENCE — // — PLASTIC FENCE — o —
OVERHEAD CABLE — | — | —

Elevations, if shown:

Benchmark: DN3725
Benchmark Elev.: 3.27'
Benchmark Datum: NAVD 88
Elevations on Drawing are in:
N.G.V.D.29 ☒ N.A.V.D.88

"CP" = CONTROLLING POINT (POINT OF ROTATION) "HFA" = HELD FOR ALIGNMENT - ALL OTHER MONUMENTATION AND IMPROVEMENTS RELATIVE THERETO

This survey has been issued by the following Landtec Surveying office:

700 W. Hillsboro Blvd. Suite 4-100
Deerfield Beach, FL 33441
Office: (561) 367-3587 Fax: (561) 465-3145
www.LandtecSurvey.com



LICENSED BUSINESS No. 8507

Aerial Photograph

May not show latest improvements. Not-to-scale.



GENERAL NOTES:

1. THIS SURVEY IS BASED UPON RECORD INFORMATION PROVIDED BY CLIENT. NO SPECIFIC SEARCH OF THE PUBLIC RECORD HAS BEEN MADE BY THIS OFFICE UNLESS OTHERWISE NOTED.
2. AS INDICATED ABOVE, UNDER "PURPOSE OF SURVEY", IF THIS SURVEY HAS BEEN PREPARED FOR A PURCHASE OR REFINANCE, ITS SCOPE IS LIMITED TO THE DETERMINATION OF TITLE DEFICIENCIES, AND IS NOT INTENDED FOR USE IN DESIGN OR CONSTRUCTION PURPOSES. LANDTEC SURVEYING ASSUMES NO RESPONSIBILITIES FOR ERRORS RESULTING FROM FAILURE TO ADHERE TO THIS CLAUSE.
3. ANY FENCES SHOWN HEREON ARE ILLUSTRATIVE OF THEIR GENERAL POSITION ONLY. FENCE TIES SHOWN ARE TO GENERAL CENTERLINE OF FENCE. THIS OFFICE WILL NOT BE RESPONSIBLE FOR DAMAGES RESULTING FROM THE REMOVAL OF, OR CHANGES MADE TO, ANY FENCES UNLESS WE HAVE PROVIDED A SURVEY SPECIFICALLY LOCATING SAID FENCES FOR SUCH PURPOSES. DETERMINATION OF FENCE POSITIONS SHOULD BE BASED SOLELY ON THEIR PHYSICAL RELATIONSHIP TO THE MONUMENTED BOUNDARY LINES.
4. GRAPHIC REPRESENTATIONS MAY HAVE BEEN EXAGGERATED TO MORE CLEARLY ILLUSTRATE MEASURED RELATIONSHIPS - DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALED POSITIONS.
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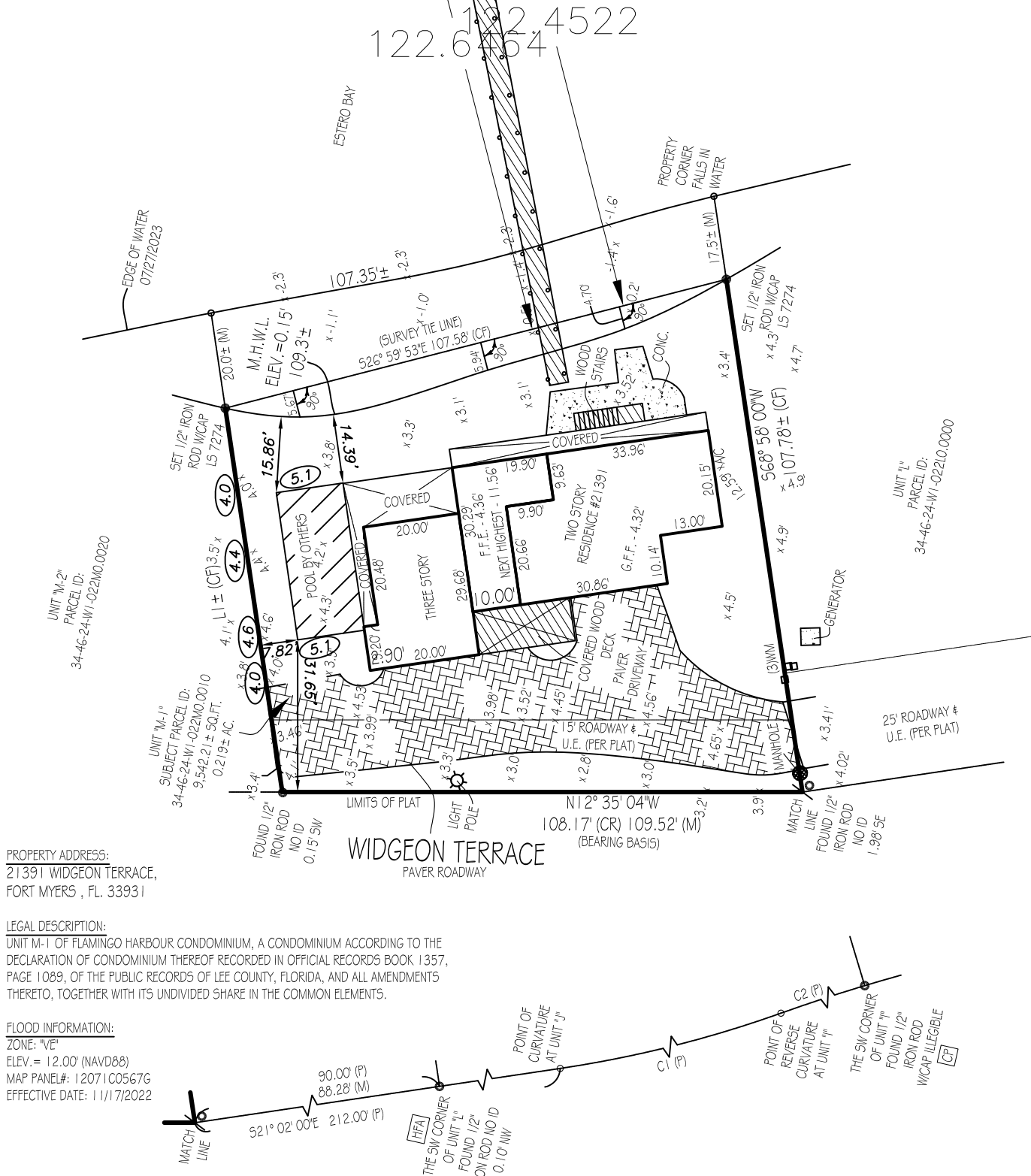
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50.2 DENOTES EXISTING ELEVATION
50.2 DENOTES PROPOSED ELEVATION

~ DENOTES DRAINAGE FLOW
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11/7/23

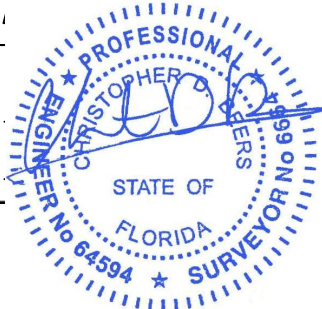
WTE JOB #

SCALE: 1"=30'

WAL TECH, LLC.
WATER, AIR, LAND

524 W Virginia Ave Punta Gorda FL 33950
PH:(941) 628-0635 EMAIL: bgaraimondo@comcast.net

CHRISTOPHER BEERS, PE
FLORIDA REG. NO. 64594
DATE





Attorney Robert Burandt
1714 Cape Coral Pkwy. E
Cape Coral, FL 33904

September 18, 2023

RE: 21391 Widgeon Terr, Fort Myers Beach
Strap # 34-46-24-W1022M.00010
VAR Application 20230162 – Variance request from 34-638 Rear and side

Dear Todd Plaisted,

The Community Development Department has reviewed the submission package for the above-referenced Variance application. At this time, the application is found insufficient and requires additional information.

1. Site plan.-

- a. Please include a site plan showing the proposed location of the pool.
- b. Include the rear setback from the pool shell to the mean high-water line.
- c. Include the side setback from the pool shell to side property line.

Per Sec. 34-638(d)(3)b.1. If the body of water is subject to tidal changes, the setback will be measured from the mean high-water line.

2. 67% Impervious Coverage concerns.

The site appears to be fairly built out and lot area for cover and impervious surface is generally considered the square footage of the property minus wetlands, canals and other waterbodies or lands designated recreation.



Please respond to each sufficiency review comment. If you do not provide the requested supplements or corrections within 60 calendar days of this letter, the Code requires that this application be considered withdrawn. If additional time is needed, the applicant may ask for additional time. Please feel free to contact me if you have any questions.

Sincerely,
Kendra Rosa
Zoning Coordinator
Town of Fort Myers Beach
Community Development Department



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 21391 Widgeon Terrace, Fort Myers Beach, FL 33931

STRAP Number: 34-46-24-W1-022MO.0010

Applicant: Todd Plaisted

Phone: N/A

Contact Name: Attorney Robert Burandt

Phone: (239) 542-4733

Email: Robert@capecoralattorney.com

Fax: (239) 542-9203

Current Zoning District: RC

Future Land Use Map (FLUM) Category: Mixed Residential

FLUM Density Range: 6-Units

Platted Overlay: ☐ YES ☐ NO

ACTION REQUESTED

☐ Special Exception

☐ Variance

☐ Conventional Rezoning

☐ Planned Development ☐ Commercial ☐ Residential

☐ Master Concept Plan Extension

☐ Appeal of Administrative Action

☐ Vacation of Platted Right-of-way and Easement

☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A

PH-B

PH-C

PH-D

PH-E

PH-F

PH-G

attach on separate sheet

PART I – General Information

A. Applicant*: Todd Plaisted

Phone: _____

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

Applicant Mailing Address: c/o Robert Burandt, Esquire, 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904

Email: Robert@capecoralattorney.com

Fax: (239) 542-9203

Contact Name: Robert Burandt

Phone: (239) 542-4733



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☒ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☐ Other* (please indicate) _____ | |

*Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Steeven Knight Phone: (239) 641-2628
Address: 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904
Email: islandspstfl@gmail.com Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Attorney Robert Burandt Phone: (239) 542-4733
Address: 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904
Email: robert@capecoralattorney.com Fax: (239) 542-9203

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☒ Variance from LDC Section 34-1174 - Side setback, etc.
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☒ Other. Please Explain: Variance

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: N/A Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☒ Single Owner (individual or husband and wife)

Name: Todd Plaisted Phone: _____

Mailing Address: 1714 Cape Coral Pkwy. E., Cape Coral, FL 33904

Email: Robert@capecoralattorney.com Fax: (239) 542-9203

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Todd Plaisted swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Todd Plaisted
Signature

Todd Plaisted

Printed Name

STATE OF FL COUNTY OF LEE

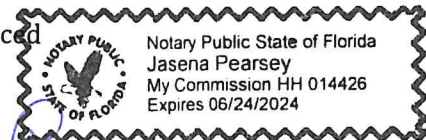
The foregoing instrument was certified and subscribed before me by means of ☒ physical

presence OR ☐ online notarization, this 15th day of MAY, 2022, by

Todd Plaisted ☒ who is personally known to me OR ☐ who has produced

MN D/L as identification.

(SEAL)



Jasena Pearsey
Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☐ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☐ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address
Todd Plaisted

Percentage Ownership
100%



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____	_____
Signature	Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, _____ (name), as _____ (title) of _____ (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

N/A

Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Title

Typed or Printed Name

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 34-46-24-W1-022MO.0010

Property Address: 21391 Widgeon Ter., Ft. Myers Beach, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee

County? ☐ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: 1357 Page: 1089 Unit: _____ Block: _____ Lot(s): _____

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Page 7 of 11



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 102.12 ft +/- feet
Depth (please provide an average width if irregular in shape) 99.81 ft +/- feet
Frontage on street: 102.12 ft +/- feet. Frontage on waterbody: 100.76 ft +/- feet
Total land area: 9570.55 sq ft (0.22 acres) ☒ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Big Carlos Pass Bridge
County Rd 865, Fort Myers Beach, FL 33931 Head west on Estero Blvd 2. Turn right onto Mound Rd 3. Turn left onto Noddy Tern Dr

4. Continue onto Widgeon Terrace Partial restricted usage road Destination will be on the right 2.4 mi

Head west on Estero Blvd 2. Turn right onto Mound Rd 3. Turn left onto Noddy Tern Dr 4. Continue onto Widgeon Terrace
Partial restricted usage road Destination will be on the right 2.4 mi

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☐ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|--|--|
| ☐ Low Density | ☐ Marina |
| ☐ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- ☐ C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

line. Exhibit 6-2

- ☐ C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
- D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
- E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
- F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
- G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
- H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
- I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



Case # _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

Case Number:
Project Name: Plaisted Pool
Authorized Applicant: Todd Plaisted
LeePA STRAP Number: 34-46-24-W1-022MO.0010

Current Property Status: Single Family Residence	
Current Zoning: Residential (RC)	
Future Land Use Map (FLUM) Category: Mixed Residential	
Comp Plan Density:	Platted Overlay? ☐ Yes ☐ No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

34-1174 34-638	Rear and side setbacks

Complete the narrative statements below for EACH variance requested.



Case # _____

Date Received: _____

Explain the possible effect the variance, if granted, would have on surrounding properties:

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The adjacent property on the pool side will be 7 1/2, the former setback amount. The nearest structure pool side is the elevated house with a substantial hedge on the property line, with the garbage being next to the purported pool. See Exhibit "5", Picture 1 and 2. Picture #5 shows the applicant's house and the potentially affected neighbor.

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

Without these two (2) variances, the applicant will not be able to fully enjoy his home. There is just not any place else for their pool.



Case # _____

Date Received: _____

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

The applicant's request is de minimis in nature and will only allow for the development of a private pool that will be accessory to the single-family dwelling unit, or the principal structure.

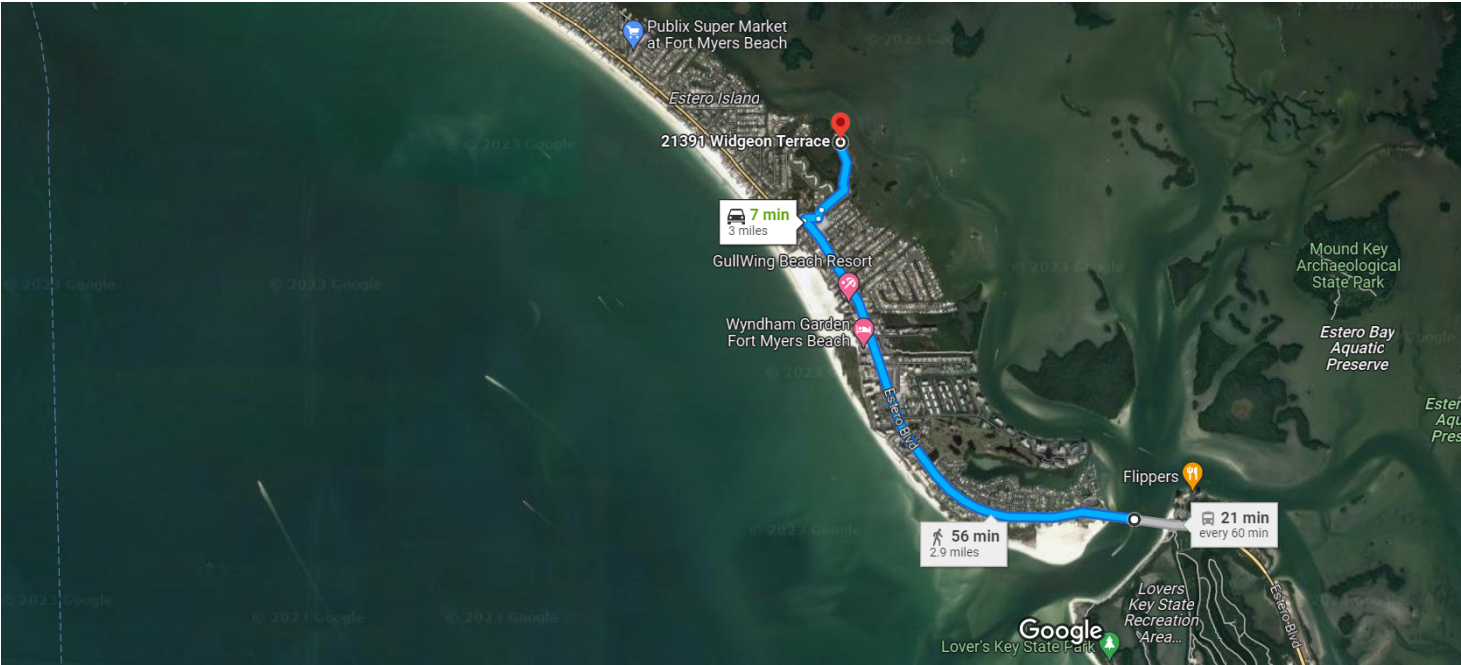
The variance request is not the result of action taken by the current property owner, who acquired the property in 2021.

The requested variance is the minimum to relieve the applicant of the code requirement. The variance is from the requirement that restricts accessory uses such as a pool from being located closer to Estero Bay and his daughter to the south.

The space between the principal structure and the bay is the only available location for the construction of a pool on this Property.

Big Carlos Pass Bridge to 21391 Widgeon Terrace, Fort Myers Beach, FL 33931

Drive 3.0 miles, 7 min



Imagery ©2023 Airbus, Landsat / Copernicus, Maxar Technologies, U.S. Geological Survey, Map data ©2023 Google 2000 ft

	via Estero Blvd	7 min
	Fastest route now due to traffic conditions	3.0 miles
	This route has restricted usage or private roads.	
	via Estero Blvd	56 min
		2.9 miles
	11:57 AM—12:18 PM	21 min
	410	

Explore nearby 21391 Widgeon Terrace

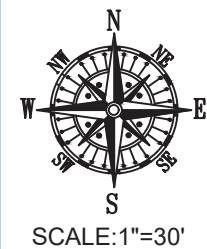
- Restaurants

Hotels

Gas stations

Parking Lots

More



TYPE OF SURVEY:

- ☐ BOUNDARY
☐ ALTA/NSPS
☒ CONSTRUCTION
☒ TOPOGRAPHIC
☐ CONDOMINIUM
☐ SPECIAL PURPOSE

PRINTING INSTRUCTIONS

WHEN PRINTING THIS PDF IN ADOBE, SELECT "ACTUAL SIZE" TO ENSURE CORRECT SCALING. **DO NOT USE "FIT".**

ABBREVIATION LEGEND

(SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING):

A OR AL = ARC LENGTH
C/O = CLEANOUT
CA = CENTRAL ANGLE
CATV = CABLE TV RISER
CF = CALCULATED FROM FIELD
CH = CHORD DISTANCE
CONC. = CONCRETE
CR = CALCULATED FROM RECORD
DE = DRAINAGE EASEMENT
EL OR ELEV = ELEVATION
EM = ELECTRIC METER
F.F.E. = FINISHED FLOOR ELEV.
FIR = FOUND IRON ROD
FN = FOUND NAIL
FND = FOUND
G.F.F. = GARAGE FINISHED FLOOR
L = LEGAL DESCRIPTION
M = MEASURED
OHC = OVERHEAD CABLE
P = PLAT
PC = POINT OF CURVE
PCC = POINT OF COMPOUND CURVE
PH = POOL HEATER
PI = POINT OF INTERSECTION
POB = POINT OF BEGINNING
POC = POINT OF COMMENCEMENT
PP = POOL PUMP
PRC = POINT OF REVERSE CURVE
PT = POINT OF TANGENCY
QTR = QUARTER
R = RADIUS
RNG = RANGE
SEC = SECTION
TR = TELEPHONE RISER
TWP = TOWNSHIP
UE = UTILITY EASEMENT
UP = UTILITY POLE
WM = WATER METER
WV = WATER VALVE

SYMBOLS - NOT-TO-SCALE

(SOME ITEMS IN LEGEND MAY NOT APPEAR ON DRAWING):

- = UTILITY POLE
 = LIGHT POLE
 = CATCH BASIN
 = FIRE HYDRANT
 = MANHOLE
 = WATER VALVE
 = WATER METER
 = HANDICAP PARKING SPACE
 = SEC. QTR. CORNER
 = SECTION CORNER
 = WELL
 = CENTER LINE
 = PARTY WALL
 = AIR CONDITIONER
 = SEPTIC LID
 = ELEV. SHOT

CERTIFIED TO
TODD R PLAISTED

CERTIFICATION

I HEREBY CERTIFY THAT THIS SURVEY MEETS THE STANDARDS OF PRACTICE AS OUTLINED IN CHAPTER 5J-17.051 & 5J-17.052 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES, AND THAT THE ELECTRONIC SIGNATURE AND SEAL HEREON MEETS PROCEDURES AS SET FORTH IN CHAPTER 5J-17.062. PURSUANT TO SECTION 472.025, FLORIDA STATUTES.

SIGNATURE _____ DATE: 8-24-2023

PABLO ALVAREZ - PROFESSIONAL SURVEYOR AND MAPPER FLORIDA REGISTRATION NO. 7274 (NOT VALID WITHOUT THE SIGNATURE AND ORIGINAL RAISED SEAL OR THE ELECTRONIC SEAL OF THE FLORIDA LICENSED SURVEYOR AND MAPPER SHOWN ABOVE)

BEARING REFERENCE:
CENTER LINE OF 93rd AVENUE AS N 88°46'09" W
AS REFERENCED IN SUBJECT PROPERTY LEGAL DESCRIPTION.
ALL BEARINGS SHOWN HEREON REFERENCED THERETO.

Job Number : 179798-SW Field: K.A.
Drawn By : E.I. Date of Field Work : 07/28/2023

PURPOSE OF SURVEY: PROPERTY IMPROVEMENTS-OTHER

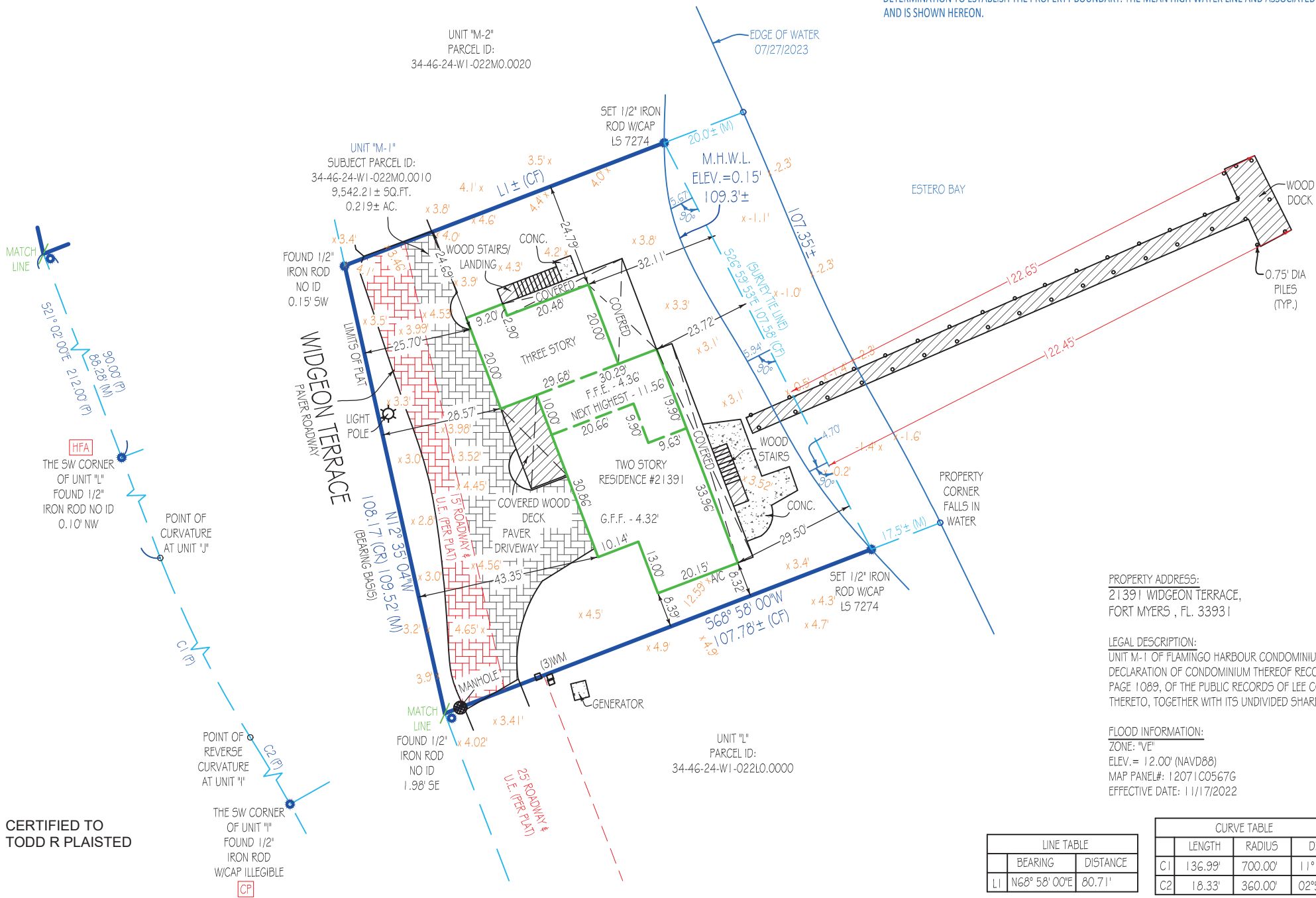
REVISIONS

UPDATE - E.I. - 08/23/2023

Platted Easements & Notable Conditions (unplatted easements also listed if provided): IF APPLICABLE, RECIPIENTS OF THIS SURVEY SHOULD REVIEW THE POSITION OF ANY FENCE LINES SHOWN AND THEIR RELATIONSHIP TO THE BOUNDARY LINE.

- 15' ROADWAY AND UTILITY EASEMENT ALONG WESTERLY BOUNDARY LINE OF SUBJECT LOT.
- PAVER DRIVEWAY EXTENDS THROUGH THE WESTERLY EASEMENT.
- PAVER DRIVEWAY CROSSES THE BOUNDARY LINE ON NORTHERLY AND SOUTHERLY SIDES OF LOT AS SHOWN.
- WOOD DOCK CROSSES THE BOUNDARY LINE ON EASTERLY SIDE OF LOT AS SHOWN.

4. RECORD DATA INDICATES OWNERSHIP TO THE EDGE OF WATER. ESTERO BAY IS TIDALLY INFLUENCED AND REQUIRES A MEAN HIGH WATER DETERMINATION TO ESTABLISH THE PROPERTY BOUNDARY. THE MEAN HIGH WATER LINE AND ASSOCIATED MEANDER LINE HAS BEEN ESTABLISHED AND IS SHOWN HEREON.



PROPERTY ADDRESS:
21391 WIDGEON TERRACE,
FORT MYERS, FL. 33931

LEGAL DESCRIPTION:
UNIT M-1 OF FLAMINGO HARBOUR CONDOMINIUM, A CONDOMINIUM ACCORDING TO THE DECLARATION OF CONDOMINIUM THEREOF RECORDED IN OFFICIAL RECORDS BOOK 1357, PAGE 1089, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA, AND ALL AMENDMENTS THERETO, TOGETHER WITH ITS UNDIVIDED SHARE IN THE COMMON ELEMENTS.

FLOOD INFORMATION:
ZONE: "VE"
ELEV. = 12.00' (NAVD88)
MAP PANEL#: 12071C0567G
EFFECTIVE DATE: 11/17/2022

LINE TABLE	
BEARING	DISTANCE
L1 N68°58'00"E	80.71'

CURVE TABLE			CHORD LENGTH	CHORD BEARING
	LENGTH	RADIUS		
C1	136.99'	700.00'	111°24'7"	136.77'
C2	18.33'	360.00'	02°55'03"	18.33'

LINETYPES:

BOUNDARY ——— BUILDING ———
EASEMENT - - - - - CHAIN LINK FENCE - x - x -
WOOD FENCE — // — PLASTIC FENCE — o —
OVERHEAD CABLE — | — | —

Elevations, if shown:

Benchmark: DN3725
Benchmark Elev.: 3.27'
Benchmark Datum: NAVD 88
Elevations on Drawing are in:
N.G.V.D.29 ☒ N.A.V.D.88

"CP" = CONTROLLING POINT (POINT OF ROTATION) "HFA" = HELD FOR ALIGNMENT - ALL OTHER MONUMENTATION AND IMPROVEMENTS RELATIVE THERETO

This survey has been issued by the following Landtec Surveying office:

700 W. Hillsboro Blvd. Suite 4-100
Deerfield Beach, FL 33441
Office: (561) 367-3587 Fax: (561) 465-3145
www.LandtecSurvey.com



LICENSED BUSINESS No. 8507

Aerial Photograph

May not show latest improvements. Not-to-scale.



GENERAL NOTES:

1. THIS SURVEY IS BASED UPON RECORD INFORMATION PROVIDED BY CLIENT. NO SPECIFIC SEARCH OF THE PUBLIC RECORD HAS BEEN MADE BY THIS OFFICE UNLESS OTHERWISE NOTED.
2. AS INDICATED ABOVE, UNDER "PURPOSE OF SURVEY", IF THIS SURVEY HAS BEEN PREPARED FOR A PURCHASE OR REFINANCE, ITS SCOPE IS LIMITED TO THE DETERMINATION OF TITLE DEFICIENCIES, AND IS NOT INTENDED FOR USE IN DESIGN OR CONSTRUCTION PURPOSES. LANDTEC SURVEYING ASSUMES NO RESPONSIBILITIES FOR ERRORS RESULTING FROM FAILURE TO ADHERE TO THIS CLAUSE.
3. ANY FENCES SHOWN HEREON ARE ILLUSTRATIVE OF THEIR GENERAL POSITION ONLY. FENCE TIES SHOWN ARE TO GENERAL CENTERLINE OF FENCE. THIS OFFICE WILL NOT BE RESPONSIBLE FOR DAMAGES RESULTING FROM THE REMOVAL OF, OR CHANGES MADE TO, ANY FENCES UNLESS WE HAVE PROVIDED A SURVEY SPECIFICALLY LOCATING SAID FENCES FOR SUCH PURPOSES. DETERMINATION OF FENCE POSITIONS SHOULD BE BASED SOLELY ON THEIR PHYSICAL RELATIONSHIP TO THE MONUMENTED BOUNDARY LINES.
4. GRAPHIC REPRESENTATIONS MAY HAVE BEEN EXAGGERATED TO MORE CLEARLY ILLUSTRATE MEASURED RELATIONSHIPS - DIMENSIONS SHALL HAVE PRECEDENCE OVER SCALED POSITIONS.
5. UNDERGROUND IMPROVEMENTS HAVE NOT BEEN LOCATED EXCEPT AS SPECIFICALLY SHOWN.
6. ELEVATIONS ARE BASED UPON NATIONAL GEODETIC VERTICAL DATUM (N.G.V.D. 1929) OR NORTH AMERICAN VERTICAL DATUM (N.A.V.D. 1988) AS SHOWN ABOVE.
7. ALL BOUNDARY AND CONTROL DIMENSIONS SHOWN ARE FIELD MEASURED AND CORRESPOND TO RECORD INFORMATION UNLESS SPECIFICALLY NOTED OTHERWISE.
8. ANY CORNERS SHOWN AS "SET" HAVE EITHER BEEN SET ON THE DATE OF FIELD WORK, OR WILL BE SET WITHIN 2 BUSINESS WEEKS OF SAID DATE AND ARE IDENTIFIED WITH A CAP MARKED LS (LICENSED SURVEYOR) #7274.



Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing which will take place at Bay Oaks, 2731 Oak St (tentative location), Fort Myers Beach, Florida, 33931. Please be sure to visit our website at WWW.FMBGOV.com to check for any updates or changes regarding the upcoming meeting.

TIME: 9 AM

DATE: March 4, 2024

CASE: VAR20230162

ADDRESS: 21391 Widgeon Ter

APPLICANT: Todd Plaisted

REQUEST: The applicant is requesting a variance from LDC Table 34-3 to decrease principal structure setbacks to construct an elevated pool closer than 25 feet from a natural waterbody and closer to the side property line than 10 feet.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Town Council** will review the application materials and hear testimony to make a **decision**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



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Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

1. **Request:**

Meeting Date: March 4, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230288, REQUESTING A VARIANCE FROM LDC 34-638(D)(1)G. WHICH REQUIRES NEW AT-GRADE MECHANICAL EQUIPMENT TO NOT ENCROACH INTO A SIDE YARD SETBACK AND TO BE LOCATED ON THE SIDE OF THE PROPERTY WITH THE LARGER SETBACK, WHERE THERE ARE DIFFERING SIDE SETBACK WIDTHS, FOR THE PROPERTY LOCATED AT 8069 ESTERO BOULEVARD; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Installation of new, at-grade mechanical equipment that encroaches into a side yard setback requires a variance approval to remain in the setback.

What the action accomplishes:

Approval of the variance will allow the equipment to encroach into the required side yard setback.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Sarah Propst, Planning &
Zoning

5. **Background:**

The applicant for 8069 Estero Blvd, is requesting a variance from the Town's Land Development Code 34-638(d)(1)(g). Mechanical equipment such as air conditioners, generators, service panels, meters, and pool equipment, associated with new homes, may encroach up to three feet into rear and waterbody primary structure setbacks but must meet the same street and side setbacks as the building it serves. 1. On lots where the side setbacks are not equal on both sides, mechanical equipment may not be placed on the side of the house with the smaller setback unless the smaller setback is 20 feet wide or more.

This new pool equipment was installed at-grade and encroaches 2.5 feet into the required setback. The property also has a larger side setback on the opposite side of the house, where the equipment was approved. The applicant is requesting a variance of 2.5 feet for a side yard setback of 5.05 feet where a 7.5 foot side yard is required, to allow pool equipment in the west side yard of an existing single-family home.

Attachments:

1. 24-53, VAR20230288, 8069 Estero
2. 8069EsteroBlvd_StaffReport
3. Exhibit B - As-Built Survey
4. Exhibit A - Application
5. Exhibit C - LPA & TC postcard

Financial Impact:

Unknown

6. **Alternative Action**

recommend approval

7. **Management Recommendations:**

Denial

8. **Recommended Approval:**

Kendra Rosa, Zoning Coordinator/Planner 1
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/21/2024
Approved - 2/21/2024
Approved - 2/27/2024
Approved - 2/28/2024
Final Approval - 2/28/2024

RESOLUTION NUMBER 24-53

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230288, REQUESTING A VARIANCE FROM LDC 34-638(D)(1)G. WHICH REQUIRES NEW AT-GRADE MECHANICAL EQUIPMENT TO NOT ENCROACH INTO A SIDE YARD SETBACK AND TO BE LOCATED ON THE SIDE OF THE PROPERTY WITH THE LARGER SETBACK, WHERE THERE ARE DIFFERING SIDE SETBACK WIDTHS, FOR THE PROPERTY LOCATED AT 8069 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, Harris Blair J & Valerie J, owners of the property situated at 8069 Estero Boulevard, is requesting a variance from LDC 34-638(d)(1)g. which requires new at-grade mechanical equipment to not encroach into a side yard setback and to be located on the side of the property with the larger setback, where there are differing side setback widths; and

WHEREAS, the STRAP number for the subject property is 03-47-24-W3-00103.0390; and

WHEREAS, the Property is located in the "Low Density Residential" category of the 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 February 13, 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 with conditions of the variance; and

WHEREAS, on March 4, 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/ 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/ did not meet its burden of proof that the requested Variance does/ does not meet the requirements of the Town Comprehensive Plan and LDC and approving/ approving with conditions/ denying 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/ APPROVES WITH CONDITIONS/ DENIES a request for variance from LDC 34-638(d)(1)g. which requires new at-grade mechanical equipment to not encroach into a side yard setback and to be located on the side of the property with the larger setback, where there are differing side setback widths.

Section 3. In approving/ approving with conditions/ denying 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/ are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is/ is not 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/ are not the result of actions of the Applicant taken after the adoption of the regulation in question.
- C. The variance is/ is not 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/ will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property are/ 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 Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King	_____
Karen Woodson	_____
Scott Safford	_____

ADOPTED this ____ day of March 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of March 2024.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20230288

CASE NAME: 8069 Estero Blvd; requesting a variance from LDC Section 34-638(d)(1)(g), which requires new at-grade mechanical equipment to meet the primary structure side yard setback and to be located on the side of the property with the larger setback, where there are differing side setback widths.

TOWN COUNCIL HEARING DATE: March 4, 2024

LPA HEARING DATE: February 13, 2024

STAFF RECOMMENDATION: Denial

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP/ Jason Green, AICP, CFM

I. APPLICATION SUMMARY

Applicant/Owner: Blair Harris

Request: The applicant is requesting variances from LDC Section 34-638(d)(1)(g), which requires new at-grade mechanical equipment to not encroach into a side yard setback and to be located on the side of the property with the larger setback, where there are differing side setback widths.

Subject property: See attached As-Built Survey

Physical Address: 8069 Estero Blvd

STRAP #: 03-47-24-W3-00103.0390

FLU: Low Density
Zoning: Residential Single-Family (RS)

Adjacent zoning and land uses:

North: RESIDENTIAL Single-Family (RS)
Single-Family Residence/Two-Family
South: RESIDENTIAL Single-Family (RS)
Single-Family Residence/Two-Family
East: RESIDENTIAL Single-Family (RS)
Single-Family Residence/Two-Family
West: RESIDENTIAL Single-Family (RS)
Single-Family Residence/Two-Family

II. BACKGROUND AND ANALYSIS

Background:

Blair Harris, the applicant for 8069 Estero Blvd, is requesting a variance from the Town's Land Development Code 34-638(d)(1)(g). Mechanical equipment such as air conditioners, generators, service panels, meters, and pool equipment, associated with new homes, may encroach up to three feet into rear and waterbody primary structure setbacks but must meet the same street and side setbacks as the building it serves. 1. On lots where the side setbacks are not equal on both sides, mechanical equipment may not be placed on the side of the house with the smaller setback unless the smaller setback is 20 feet wide or more.

This new pool equipment was constructed at grade and encroaches 2.5 feet into the required setback. The property also has a larger side setback on the opposite side of the house, where the equipment was approved. The applicant is requesting a variance of 2.5 feet for a side yard setback of 5.05 feet where a 7.5 foot side yard is required, to allow a pool equipment pad in the west side yard of an existing single-family home.

Analysis:

The purpose of the RS zoning district is to provide stable neighborhoods where single-family homes are the predominant land use. The lot varies in width from approximately 74 feet to 66 feet. The lot depth is approximately 125 feet. The property currently has a single-family home, which was not destroyed by Hurricane Ian. The code required setback for this lot is 7.5 feet and the house provides an 8.7-foot side yard setback on the west side and a 27-foot side yard setback on the east side.

In 2022, the Applicant built a pool with new equipment pad. The approved plans indicated the pool equipment on the east side of the house, under the access stairs. The equipment was installed on the west side of the house with a side setback of 5.05 feet from the west property line. The permit failed final inspection due to deviating from the originally approved location without submitting a permit revision. The applicant is requesting a variance of 2.5 feet for a side yard setback of 5.05 feet to allow the pool equipment pad in west side yard setback of an existing single-family home.

Neighborhood Compatibility:

All properties with 75 feet or lesser width along Estero Blvd are required to have a minimum of 7.5 feet wide side yard setbacks. Several single-family residences along this corridor have a pool in the rear yard and equipment on the side of the house. It is unknown whether the equipment was installed original to the home and met the Town's LDC requirements at the time of construction or if the equipment meets the current required side yard setback.

Findings and Conclusions:

LDC Sec. 34-87 sets forth the required findings and conclusions for the approval of a variance:

- a. *That there are/**are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is/**is not** for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

The applicant had the equipment installed professionally and the pool company placed the equipment on the wrong side of the house without amending the permit. While the applicant was unaware that the equipment was in the wrong location until the final inspection failed, the applicant has not requested that the pool company move the equipment to the correct location. The current location is in a side yard abutting another side yard. The side where the equipment was proposed is 27 feet from an adjacent property.

- b. *That the conditions justifying the variance are/**are not** the result of actions of the applicant taken after the adoption of the regulation in question.*

The homeowner hired a pool company to do this work and believed that it was completed properly. They were not aware of the issue until the final inspection revealed that the equipment was in the incorrect location.

- c. *That the variance granted **is/is not** the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to this property.*

This is the minimum variance that would resolve the setback encroachment.

- d. *That the granting of the variance will/**will not** be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The house currently has air condition equipment in the side yard setback.

- e. *That the conditions or circumstances on the specific piece of property for which the variance is sought are/**are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

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.

III. RECOMMENDATION

Staff has reviewed the request for a variance *from LDC 34-638(d)(1)(g), which requires new at-grade mechanical equipment to not encroach into a side yard setback and to be located on the side of the property with the larger setback, where there are differing side setback widths* and found that the pool equipment variance request does not meet the requirements set forth in sec. 34-87.

Therefore, staff recommends **DENIAL** of VAR20230288, a request for 2.5 feet for a side yard setback of 5.05 feet to allow the newly built pool equipment pad in west side yard of an existing single-family home.

At the February 13th LPA hearing the LPA unanimously recommended approval of the request with conditions.

IV. CONDITIONS FOR APPROVAL

If the Town's LPA recommends approval for the variances, town's staff recommends the following conditions of approval.

- 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.

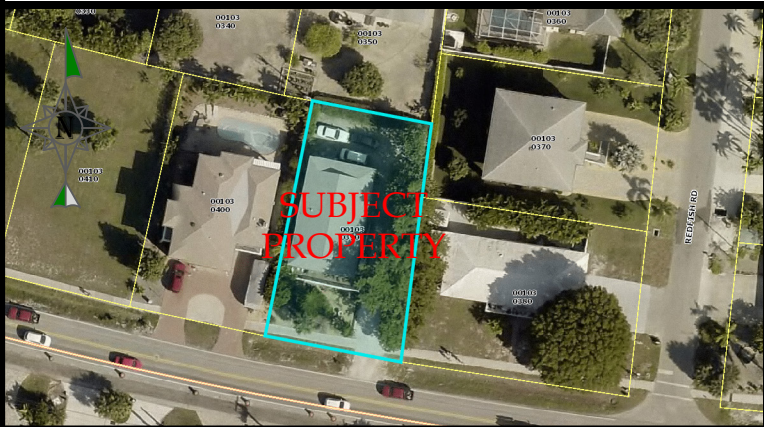
V. EXHIBITS

- A. Complete application
- B. Postcards



GEOMETRIC SURVEYING INC.

2804 DEL PRADO BLVD S, SUITE 205
CAPE CORAL, FL 33904
ASSISTANCE@GEOMETRICSURVEYING.COM
(239)-540-6257
(239)-471-2237



LOCATION SKETCH
SCALE = N.T.S.



VIEW OF SUBJECT PROPERTY

8069 ESTERO BLVD, FORT MYERS, FLORIDA 33931

ABBREVIATIONS

A	= ARC.	ELEV.	= ELEVATION	PVMT.	= PAVEMENT	T	= TANGENT
A/C	= AIR CONDITIONER PAD	ENCR.	= ENCROACHMENT	PL	= PLANTER	TB	= TELEPHONE BOOTH
A.E.	= ANCHOR EASEMENT	F.H.	= FIRE HYDRANT	P.B.	= PLAT BOOK	T.B.M.	= TEMPORARY BENCHMARK
A.R.	= ALUMINUM ROOF	F.I.P.	= FOUND IRON PIPE	P.G.	= PAGE	T.U.E.	= TECHNOLOGY UTILITY EASEMENT
A.S.	= ALUMINUM SHED	F.I.R.	= FOUND IRON ROD	P.L.	= PROPERTY LINE	TSB	= TRAFFIC SIGNAL BOX
ASPH.	= ASPHALT	F.F.E.	= FINISHED FLOOR ELEVATION	P.C.C.	= POINT OF COMPOUND CURVATURE	T.S.P.	= TRAFFIC SIGNAL POLE
B.C.	= BLOCK CORNER	F.N.D.	= FOUND NAIL & DISK	P.C.P.	= PERMANENT CONTROL POINT	TWP	= TOWNSHIP
BLDG.	= BUILDING	FT.	= FEET	P.C.	= POINT OF CURVATURE	UTIL.	= UTILITY
B.M.	= BENCH MARK	NFIP.	= NATIONAL FLOOD INSURANCE PROGRAM	P.O.T.	= POINT OF TANGENCY	U.E.	= UTILITY EASEMENT
B.O.B.	= BASIS OF BEARING	F.N.	= FOUND NAIL	P.O.C.	= POINT OF COMMENCEMENT	U.P.	= UTILITY POLE
B.S.L.	= BUILDING SETBACK LINE	H.	= HIGH OR (HEIGHT)	P.O.B.	= POINT OF BEGINNING	W.M.	= WATER METER
(C)	= CALCULATED	IN.&EG.	= INGRESS AND EGRESS EASEMENT	P.R.C.	= POINT OF REVERSE CURVATURE	W.F.	= WOOD FENCE
C.B.	= CATCH BASIN	I.C.V.	= IRRIGATION CONTROL VALVE	P.WY.	= PARKWAY	W.P.	= WOOD PORCH
C.B.S.	= CONCRETE BLOCK STUCCO	ID?	= IDENTIFICATION ILLEGIBLE	P.R.M.	= PERMANENT REFERENCE MONUMENT	W.R.	= WOOD ROOF
C.B.W.	= CONCRETE BLOCK WALL	I.F.	= IRON FENCE	P.S.M.	= PROFESSIONAL SURVEYOR & MAPPER	W.V.	= WATER VALVE
CH.	= CHORD	L.B.	= LICENSED BUSINESS	P.L.S.	= PROFESSIONAL LAND SURVEYOR	M/L	= MONUMENT LINE
CH.B.	= CHORD BEARING	L.P.	= LIGHT POLE	P.P.	= POWER POLE	C	= CENTER LINE
CL.	= CLEAR	L.F.E.	= LOWEST FLOOR ELEVATION	P.P.S.	= POOL PUMP SLAB	Δ	= DELTA
C.O.	= CLEAN OUT	L.M.E.	= LAKE MAINTENANCE EASEMENT	P.U.E.	= PUBLIC UTILITY EASEMENT		
C.L.F.	= CHAIN LINK FENCE	I	= MINUTES	(R)	= RECORD		
C.M.E.	= CANAL MAINTENANCE EASEMENT	(M)	= MEASURED	R.R.	= RAIL ROAD		
CONC.	= CONCRETE	M.B.	= MAIL BOX	RES.	= RESIDENCE		
C.U.P.	= CONCRETE UTILITY POLE	M.E.	= MAINTENANCE EASEMENT	R/W	= RIGHT-OF-WAY		
C.P.	= CONCRETE PORCH	M.H.	= MAINHOLE	RAD.	= RADIUS OR RADIAL		
C.S.	= CONCRETE SLAB	N.A.P.	= NOT A PART OF	RGE.	= RANGE		
C.W.	= CONCRETE WALK	NAVD	= NORTH AMERICAN VERTICAL DATUM 1988	R.O.E.	= ROOF OVERHANG EASEMENT		
D.E.	= DRAINAGE EASEMENT	NGVD	= NATIONAL GEODETIC VERTICAL DATUM 1929	SEC.	= SECTION		
D.H.	= DRILL HOLE	NO ID	= NO IDENTIFICATION	STY.	= STORY		
D.M.E.	= DRAINAGE MAINTENANCE EASEMENT	N.T.S.	= NOT TO SCALE	SWK.	= SIDEWALK		
DRIVE	= DRIVEWAY	# OR NO.	= NUMBER	S.I.R.	= SET IRON ROD		
o	= DEGREES	O/S	= OFFSET	S.I.P.	= SET IRON PIPE		
EB	= ELECTRIC BOX	O.H.	= OVERHEAD	S.N.D.	= SET NAIL & DISK		
E.T.P.	= ELECTRIC TRANSFORMER PAD	O.H.L.	= OVERHEAD UTILITY LINES	S	= SOUTH		
		O.R.B.	= OFFICIAL RECORDS BOOK	S.P.	= SCREENED PORCH		
		O.V.H.	= OVERHANG	S.V.	= SEWER VALVE		
				"	= SECONDS		

LEGEND

— = OVERHEAD UTILITY LINES

— = CENTERLINE

— = CONCRETE BLOCK STUCCO WALL

— = CHAIN LINK FENCE

— = IRON FENCE

— = WOOD FENCE

— = WIRE FENCE

— = BUILDING SETBACK LINE

— = UTILITY EASEMENT

— = LIMITED ACCESS R/W

— = RGE, TWP, SEC, 1/4 SEC LINE

— = NON-VEHICULAR ACCESS R/W

0.00' = EXISTING ELEVATIONS

SURVEYOR NOTES :

- THIS SURVEY IS TO BE USED EXCLUSIVELY AS AN AID TO OBTAIN TITLE INSURANCE, NO OTHER WARRANTIES ARE HEREBY EXTENDED.
- THERE MAY BE EASEMENTS RECORDED IN THE PUBLIC RECORDS NOT SHOWN ON THIS SURVEY.
- EXAMINATIONS OF THE ABSTRACT OF TITLE WILL HAVE TO BE MADE TO DETERMINE RECORDED INSTRUMENTS, IF ANY, AFFECTING THE PROPERTY.
- THIS SURVEY MAY BE SUBJECT TO DEDICATIONS, LIMITATIONS, RESTRICTIONS, RESERVATIONS, ENCUMBRANCES OR EASEMENTS OF RECORD THE SAME THAT MAY NOT BE NOTED OR DEPICTED HEREON.
- LEGAL DESCRIPTIONS PROVIDED BY CLIENT OR ATTESTING TITLE COMPANY.
- BOUNDARY SURVEY MEANS A DRAWING AND/ OR A GRAPHIC REPRESENTATION OF THE SURVEY WORK PERFORMED IN THE FIELD, COULD BE DRAWN AT A SHOWN SCALE AND/OR NOT TO SCALE; THE WALLS OR FENCES MAY BE EXAGGERATED FOR CLARITY PURPOSES.
- EASEMENTS AS SHOWN ARE PER PLAT, UNLESS NOTED OR DEPICTED OTHERWISE.
- THE TERM "ENCROACHMENT" REFERS TO ABOVE GROUND INTRUSIONS OF IMPROVEMENTS ONTO SUBJECT PROPERTY FROM ADJOINERS PROPERTY OR ONTO ADJOINERS PROPERTY FROM SUBJECT PROPERTY.
- ARCHITECTS AND ENGINEERS SHALL VERIFY ZONING REGULATIONS, RESTRICTIONS, SETBACKS AND WILL BE RESPONSIBLE FOR SUBMITTING PLANS WITH CORRECT INFORMATION TO BUILDING AND ZONING OFFICIALS OR ANY OTHER AUTHORITIES FOR APPROVAL OF PLANS FOR NEW CONSTRUCTION. THEY WILL ALSO BE RESPONSIBLE FOR SUBMITTING PLANS WITH CORRECTPROPOSED BUILDING HEIGHTS AND PROPOSED FINISHED FLOOR ELEVATION WITH DATUM FOR NEW BUILDINGS TO THE PROPER AUTHORITIES IN NEW CONSTRUCTION.
- UNLESS OTHERWISE SHOWN RECORD AND MEASURED CALLS ARE IN SUBSTANTIAL AGREEMENT.
- UNDERGROUND UTILITIES ARE NOT DEPICTED HEREON
- UNLESS OTHERWISE NOTED, THIS FIRM HAS NOT ATTEMPTED TO LOCATE UNDERGROUND FOOTINGS AND/OR FOUNDATIONS.
- FENCE OWNERSHIP NOT DETERMINED.
- THIS PLAN OF SURVEY, HAS BEEN PREPARED FOR THE EXCLUSIVE USE OF THE ENTITIES NAMED HEREON, THE CERTIFICATE DOES NOT EXTEND TO ANY UNNAMED PARTY.
- FENCE TIES ARE TO CENTERLINE OF THE SAME.
- WALL TIES ARE TO THE FACE OF THE SAME.

FLOOD ZONE INFORMATION:

THE NFIP FLOOD MAPS HAVE DESIGNATED THE HEREIN DESCRIBED LAND TO BE SITUATED IN:
FLOOD ZONE: "AE","VE"
BASE FLOOD ELEVATION: 12.00 FT,13.00 FT.
COMMUNITY: 120673
PANEL: 0569
SUFFIX: G
DATE OF FIRM: 11/17/2022
THE SUBJECT PROPERTY IS AFFECTED BY TWO FLOOD ZONE AREAS.

SURVEYOR'S CERTIFICATION:

THEREBY CERTIFY: THAT THE SKETCH OF THIS BOUNDARY SURVEY WAS PREPARED UNDER MY SUPERVISION AND THAT IT MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS & MAPPERS IN CHAPTER 5J-17.050.052 OF THE FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472 OF THE FLORIDA STATUTES AND THAT THE SKETCH HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

MIGUEL J. GARAY

09/12/2023

(DATE OF FIELDWORK)

PROFESSIONAL SURVEYOR AND MAPPER LS# 6594 STATE OF FLORIDA (NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER).

REVISED ON: _____

REVISED ON: _____

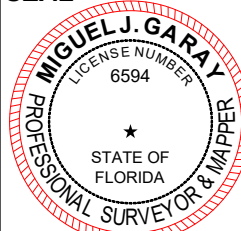
DRAWN BY:	SML
FIELD DATE:	09/12/2023
SURVEY NO:	21-01238
SHEET:	1 OF 2

Miguel
J. Garay

Digitally signed by Miguel J. Garay
DN: cn=Miguel J. Garay,
o=Geometric surveying, inc., ou,
email=assistance@geometricsurvey
ing.com, c=US
Date: 2023.09.18 15:40:39 -04'00'

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SEAL



L.S.#6594 L.B.#8203



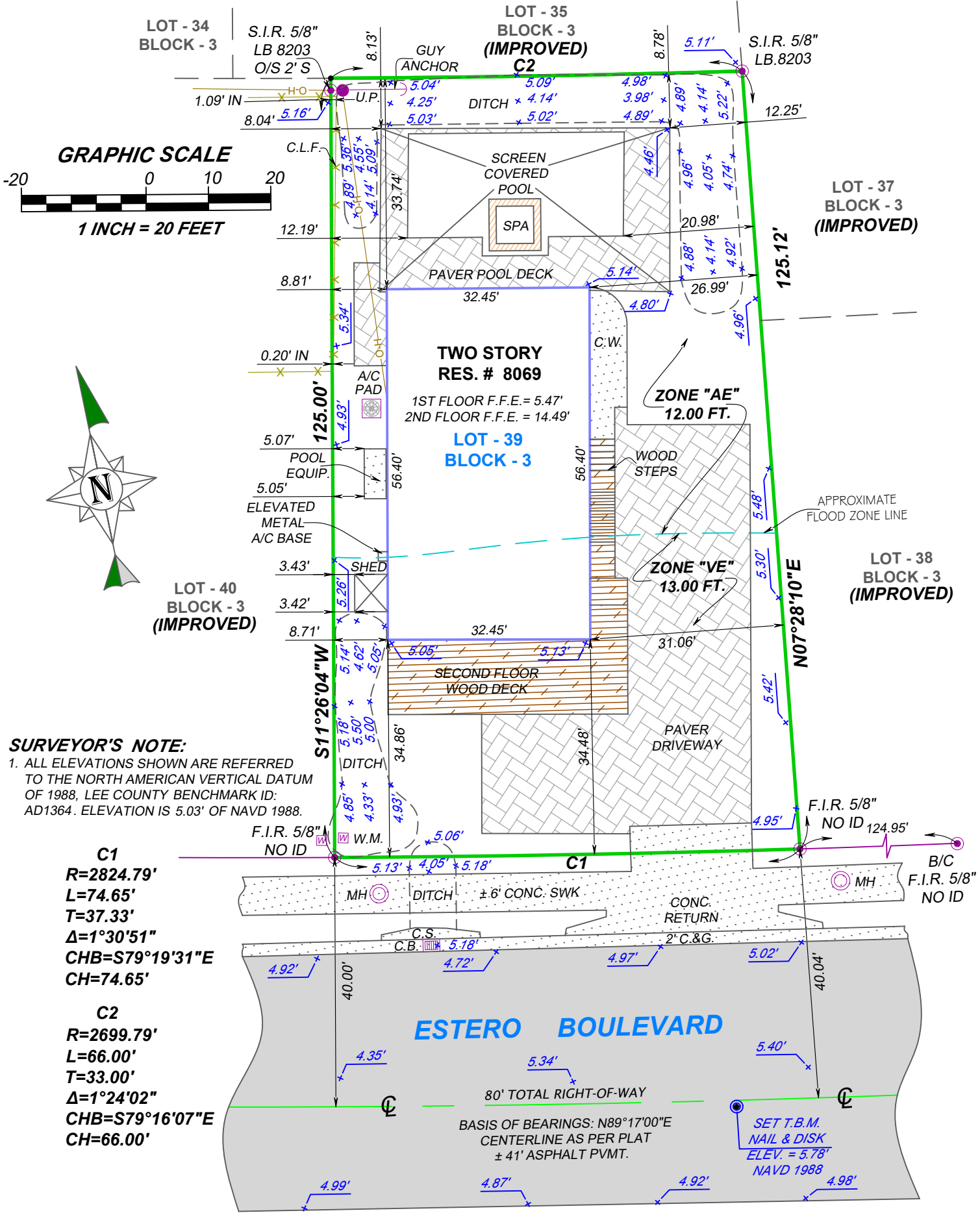
GEOMETRIC SURVEYING INC.

2804 DEL PRADO BLVD S, SUITE 205
CAPE CORAL, FL 33904
ASSISTANCE@GEOMETRICSURVEYING.COM
(239)-540-6257
(239)-471-2237

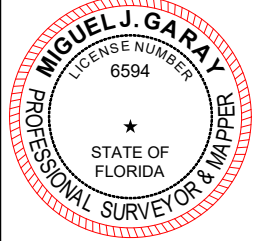


MAP OF BOUNDARY SURVEY

8069 ESTERO BLVD, FORT MYERS, FLORIDA 33931



SEAL



L.S.#6594 L.B.#8203

LEGAL DESCRIPTION:

LOT 39, BLOCK 3, UNIT 1, LAGUNA SHORES SUBDIVISION, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 9, PAGE(S) 29 AND 30, INCLUSIVE, LESS AND EXCEPT THAT PART AS DESCRIBED IN ORDER OF TAKING RECORDED IN CHANCERY ORDER BOOK 39, PAGE 453, FOR RIGHT OF WAY FOR STATE ROAD S-865, IN THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

CERTIFICATION:

BLAIR J. HARRIS AND VALERIE J. HARRIS

THIS PAGE IS NOT VALID WITHOUT ALL OTHERS

DRAWN BY:	SML
FIELD DATE:	09/12/2023
SURVEY NO:	21-01238
SHEET:	2 OF 2



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 8069 Estero Blvd
STRAP Number: 03-47-24-W3-00103.0390
Applicant: Blair Harris Phone: 5852022205
Contact Name: Valerie Harris Phone: 5853050042
Email: vharris0042@gmail.com Fax: _____
Current Zoning District: Laguna Shores
Future Land Use Map (FLUM) Category: _____
FLUM Density Range: _____ Platted Overlay: ☐ YES ☐ NO

ACTION REQUESTED

- ☐ Special Exception
☒ Variance
☐ Conventional Rezoning
☐ Planned Development ☐ Commercial ☐ Residential
☐ Master Concept Plan Extension
☐ Appeal of Administrative Action
☐ Vacation of Platted Right-of-way and Easement
☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A
PH-B
PH-C
PH-D
PH-E
PH-F
PH-G
attach on separate sheet

PART I – General Information

A. Applicant*: Blair Harris Phone: 5852022205
**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*
Applicant Mailing Address: 8069 Estero Blvd, Fort Myers Beach, FL, 33931
Email: vharris0042@gmail.com Fax: _____
Contact Name: Valerie Harris Phone: 5853050042



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☐ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☐ Other* (please indicate) _____ | |

*Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Blair Harris Phone: 5852022205
Address: 8069 Estero Blvd Fort Myers Beach Fl
Email: vharris0042@gmakil.com Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Valerie Harris Phone: 5853050042
Address: 8069 Estero Blvd Fort Myers Beach FL 33931
Email: vharris0042@gmail.com Fax: _____

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II - Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☐ Variance from LDC Section 34 - 638 (d)(1)(g)
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Page 2 of 11



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☐ Other. Please Explain: _____

PART III - Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV - Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: Blair and Valerie Harris Phone: 5852022205

Mailing Address: 8069 Estero Blvd Fort Myers Beach Fl

Email: vharris0042@gmail.com Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Blair Harris swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Page 3 of 11



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Blair Harris
Signature

Blair Harris
Printed Name

STATE OF Florida COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of ☒ physical

presence OR ☐ online notarization, this 13th day of December, 2023, by

Blair Harris, ☐ who is personally known to me OR ☒ who has produced

Florida Drivers License
as identification.



Jennifer S. Moreland
Notary Public
State of Florida
Comm# HH126973
Expires 5/5/2025

Jennifer S. Moreland
Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☐ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☐ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____	_____
Signature	Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, _____ (name), as _____ (title) of _____ (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Title

Typed or Printed Name

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____ ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 03-47-24-W3-00103.0390

Property Address: 8069 Estero Blvd Fort Myers Beach Fl 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☐ No. Attach a legible copy of the legal description as Exhibit 6-1.

☐ Yes. Property identified in subdivision: _____

Book: 9 Page: 29 Unit: _____ Block: 3 Lot(s): 3

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.

4/30/2021

Town of Fort Myers Beach 2525 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 zoningpermits@fmbgov.com Fax: 239-765-0909

Page 7 of 11



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 70.5 feet
Depth (please provide an average width if irregular in shape) 125 feet
Frontage on street: 75 feet. Frontage on waterbody: 0 feet
Total land area: 8813 ☐ acres ☐ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

1 mile North of Big Carlos Pass Bridge on Estero

☐ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☐ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☐ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☐ Attach a map showing the surrounding property owners as Exhibit 6-7.
☐ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|--|--|
| ☐ Low Density | ☐ Marina |
| ☐ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

2 Surged-

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

- line. Exhibit 6-2
- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
 - D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
 - E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
 - F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
 - G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
 - H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
 - I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



Case # _____ Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

Case Number:
Project Name: 8069 Estero Pool equipment
Authorized Applicant:
LeePA STRAP Number: 03-47-24-W3-00103.0390

Current Property Status:	
Current Zoning: RS	
Future Land Use Map (FLUM) Category:	
Comp Plan Density:	Platted Overlay? ☐ Yes ☐ No

Variance is requested from:

LDC Section Number **Title of Section or Subsection**

34-638 (d)(1)(g)	

Complete the narrative statements below for EACH variance requested.



Case # _____

Date Received: _____

PART I

Narrative Statements

Request for variance from 638 (d)(1)(g) (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:

638 (d)(1)(g) side setbacks non-waterfront lots requires

that the equipment be 7.5 feet setback

The lot width is 74.65' in the front and 66' in the rear

Reasons for request

Explain why the variance is needed:

The equipment was installed last year right before lan.

The installer placed the equipment in a location that was not on the initial permit



Case # _____

Date Received: _____

Explain the possible effect the variance, if granted, would have on surrounding properties:

The neighbors on the side of the house that the pool equipment is on do not mind the equipment placement approximately 2 feet past the requirement and entirely on our property

There is not an impact to any of the other surrounding neighbors

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

There is not another reasonable place to put this equipment.

The hardship is that the contractor installed in the wrong place. The contractor claims this is the best location to place the equipment.



Case # _____

Date Received: _____

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

C1. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or

conditions where rigid compliance is not essential to protect public policy;

C1 answer: Deminius and rigid compliance not essential to protect public policy

C2 That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question;

C2 Answer: The action was taken after adoption of the regulation

C3 That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;

C3 answer: The minimum variance will relieve the applicant of the burden

C4 That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and c5

c4 answer: Granting the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare

c5: That 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.

C5 Answer: This is not a common problem and not practical to amend the regulation in question.



Case # _____

Date Received: _____

PART 2 Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://iworq.talktomycity.com)

Required Items

- Public Hearing Request Form
- Supplemental form PH-B
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; and a clear illustration of the proposed variance
- Fee in the amount of \$1800.00 (residential)/Additional Variance \$500.00
- Variance (non-residential) \$2800.00/ Additional Variance \$700.00

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

"Variance is requested from..." Provide the section number and title of each section of the Fort Myers Beach Land Development Code from which a variance is being sought.

Narrative statements

If the application is for multiple variances, complete all of the narrative statements for each variance that is requested.

Site plan

The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

LDC Section 34-87

The guidelines for decision-making regarding a request for a variance are as follows:

1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;
3. Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;
5. Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.



Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency of the Town of Fort Myers Beach will hold a public hearing which will take place at Bay Oaks, 2731 Oak St (tentative location), Fort Myers Beach, Florida, 33931. Please be sure to visit our website at WWW.FMBGOV.com to check for any updates or changes regarding the upcoming meeting.

TIME: 9 AM

DATE: LPA February 13, 2024, and Town Council March 4, 2024

CASE: VAR20230288

ADDRESS: 8069 Estero Blvd

APPLICANT: Blair Harris

REQUEST: The applicant is requesting a variance from LDC Section 34-638(d)(1)(g), which requires new at-grade mechanical equipment to meet the primary structure side yard setback and to be located on the side of the property with the larger setback, where there are differing side setback widths

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency** will review the application materials and hear testimony to make a **recommendation**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



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TIME: 9 AM

DATE: LPA February 13, 2024, and Town Council March 4, 2024

CASE: VAR20230288

ADDRESS: 8069 Estero Blvd

APPLICANT: Blair Harris

REQUEST: The applicant is requesting a variance from LDC Section 34-638(d)(1)(g), which requires new at-grade mechanical equipment to meet the primary structure side yard setback and to be located on the side of the property with the larger setback, where there are differing side setback widths

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TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

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Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

1. **Request:**

Meeting Date: March 4, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230284, REQUESTING A VARIANCE FROM TABLE 34-3 PRINCIPAL STRUCTURE SETBACKS, TO DECREASE THE FRONT STREET SETBACK BY 10 FEET AND DECREASE THE REAR SETBACK BY 15 FEET AND DECREASE THE REAR STREET SETBACK BY 15 FEET, TO ALLOW A NEW SINGLE FAMILY HOME FOR THE PROPERTY AT 65 FLAMINGO STREET; PROVIDING FOR CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

The applicant is proposing a house that will encroach the required setbacks; this requires a variance.

What the action accomplishes:

Approval of this variance would allow construction of a new home with reduced front and rear setbacks.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Sarah Propst, Planning &
Zoning

5. **Background:**

The subject property is an irregularly shaped 72.5 feet wide and 50 feet deep non-conforming lot (3,538.9 sq ft in area) situated along Flamingo Street. The rear yard of the property abuts the Gulf Road cul-de-sac. The property supported a single-family residence, prior to Hurricane Ian. The Applicant is requesting a variance of 10 feet from the front street setback, 15 feet from the rear street setback and 15 feet from the rear setback to build a new single-family home with a front setback of 15 feet and rear setback of 5 feet.

Attachments:

1. 24-20, VAR202320284 65 Flamingo St
2. Staff report
3. Objection to Variance for 65 Flamingo St
4. Objection 2 to Variance at 65 Flamingo St.
5. Exhibit A - Application
6. Exhibit A Continued - Boundary Survey
7. Exhibit B - LPA AND TC postcard

Financial Impact:

Unknown

6. **Alternative Action**

Deny

7. **Management Recommendations:**

Recommend approval with conditions

8. **Recommended Approval:**

Kendra Rosa, Zoning Coordinator/Planner 1
Frankie Kropacek, Operations & Compliance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/22/2024
Approved - 2/23/2024
Approved - 2/27/2024
Approved - 2/28/2024
Final Approval - 2/28/2024

RESOLUTION NUMBER 24-20

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA APPROVING/ APPROVING WITH CONDITIONS/ DENYING VARIANCE VAR20230284, REQUESTING A VARIANCE FROM TABLE 34-3 PRINCIPAL STRUCTURE SETBACKS, TO DECREASE THE FRONT STREET SETBACK BY 5 FEET AND DECREASE THE REAR SETBACK BY 15 FEET AND DECREASE THE REAR/SECONDARY STREET SETBACK BY 15 FEET, TO ALLOW A NEW SINGLE FAMILY HOME FOR THE PROPERTY AT 65 FLAMINGO STREET; 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, Karl Pilat, owner of the property situated at 65 Flamingo Street, is requesting three variances from LDC Table 34-3 which requires a single-family home in the RC zoning district to provide a minimum 25-foot street setback, 20-foot rear setback and 20-foot rear/secondary street setback; and

WHEREAS, the owner of the property is proposing a front street setback variance of 5 feet for a 20-foot street setback, and a rear setback variance of 15 feet for a 5-foot rear and rear/secondary street setback; and

WHEREAS, the STRAP number for the subject property is 33-46-24-W3-00600.0180; and

WHEREAS, the Property is located in the "Mixed Residential" category of the Future Land Use Map of the Comprehensive Plan and the "Residential Conservation" 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 February 13, 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 voted to recommend approval with conditions of the variance; and

WHEREAS, on March 04, 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/ 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/ did not meet its burden of proof that the requested Variance does/ does not meet the requirements of the Town Comprehensive Plan and LDC and approving/ approving with conditions/ denying 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/ APPROVES WITH CONDITIONS/ DENIES these three variances from LDC Table 34-3 a single-family home in RC zoning district to allow construction of a home with a 15-foot street setback, 5-foot rear setback and 5-foot rear street setback.

Section 3. In approving/ approving with conditions/ denying 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/ are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request is/ is not 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/ are not the result of actions of the Applicant taken after the adoption of the regulation in question.
- C. The variance is/ is not 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/ will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. The conditions or circumstances on the Property are/ 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.
- B. No encroachment, including roof overhangs, may be closer than 40 inches to any property line.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

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

ADOPTED this ____ day of March 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day of March 2024.



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR20230284

CASE NAME: 65 Flamingo Street; requesting variance from LDC Table 34-3 which requires a single-family home in RC zoning district to provide a minimum 25-foot street setback, 20-foot rear setback and 20-foot rear/secondary street setback.

TOWN COUNCIL HEARING DATE: March 4, 2024

LPA HEARING DATE: February 13, 2024

STAFF RECOMMENDATION: APPROVAL with conditions

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP

I. APPLICATION SUMMARY

Applicant/Owner: Karl Pilat (Applicant/ Owner)

Request: Variance from LDC Table 34-3 which requires a single-family home in RC zoning to provide a minimum 25-foot street setback, 20-foot rear setback and 20-foot rear/secondary street setback. Applicant is requesting a variance of 5 feet from the front street setback, 15 feet from the rear/secondary street setback and 15 feet from the rear setback to build a new single-family home.

Subject property: See attached site plan

Physical Address: 65 Flamingo Street

STRAP #: 33-46-24-W3-00600.0180

FLU: Mixed Residential
Zoning: Residential Conservation (RC)

Adjacent zoning and land uses:

North: MIXED RESIDENTIAL
Residential Conservation (RC)

South: MIXED RESIDENTIAL
Residential Single-Family (RS)

East: MIXED RESIDENTIAL
Residential Conservation (RC)

West: MIXED RESIDENTIAL
Residential Conservation (RC)

II. BACKGROUND AND ANALYSIS

Background:

Karl Pilat, owner, and James Ink, applicant, for 65 Flamingo Street, is requesting a variance from the Town's Land Development Code (LDC) Table 34-3 which requires a single-family home in RC zoning district to provide a minimum 25-foot street setback, 20-foot rear setback and 20-foot rear/secondary street setback. Staff utilized the 20-foot setback rather than 25-foot because it seemed most appropriate to apply the corner lot regulations to this instance.

The subject property is an irregularly shaped 72.5 feet wide and 50 feet deep non-conforming lot (3,538.9 sq ft in area) situated along Flamingo Street. The rear yard of the property abuts the Gulf Road cul-de-sac. The property supported a single-family residence, prior to Hurricane Ian. The Applicant is requesting a variance of 5 feet from the front street setback, 15 feet from the rear/secondary street setback and 15 feet from the rear setback to build a new single-family home with a front setback of 20 feet, with a porch encroaching an additional 5 feet, and rear setback of 5 feet.

Analysis:

The purpose of the RC zoning district is to recognize certain older neighborhoods that had been zoned for duplex, multifamily, or mobile homes prior to incorporation of the Town. A conforming lot in RC zoning is at least 45 feet wide and 80 feet deep and 4,000 sq. ft. of area. The subject property is 72.5 feet wide and 50 feet deep (3,538.9 sq ft in area) and is non-conforming for depth and area.

Prior to Hurricane Ian, it appears that the property contained a single-family residence with reduced setbacks. The square footage of the previous residence appears to have been approximately 1,200 square feet of living space. No previous variances were found in the Town's record.

Based on LDC Section 34-3273 (7) *A nonconforming lot, which previously had or currently has a residence constructed on it and receives an affirmative minimum use determination per Sec. 34-3274 may request an administrative setback variance in accordance with sec. 34-268.* LDC Section 34-268 (a) (1) b. grants the director authority to modify the setbacks through an administrative variance when the modifications will be the minimum required to allow a home with a footprint of the same square footage as was previously legally constructed on that property and one story in height, above flood elevation, with no enclosure below base flood elevation. No data is available about the square footage of the previous residence. The Applicant is proposing two-stories over flood elevation and therefore does not qualify for an administrative variance.

As per LDC table 34-3, a single-family home in the RC zoning district shall provide a minimum of 25 feet street setback and a rear setback equal to 20 feet. Application of LDC table 34-3, will limit the buildable area on the subject property to less than 250 sq. ft with a 46-foot width and a 6-foot depth. Due to the odd shape of the lot, the Applicant must request a variance to build anything on this property. The Applicant is, therefore, requesting a variance of 5 feet from the front street setback, 15 feet from the rear/secondary street setback and 15 feet from the rear setback to build a new single family home with a front setback of 20 feet and rear setback of 5 feet.

Neighborhood Compatibility:

The subject property is part of an older residential neighborhood with several non-conforming lots. Prior to hurricane Ian, these properties appeared to have similar reduced street and rear setbacks. However, as per the Town's LDC Section 34-3238, Post Disaster build-back, if a residence has experienced more than 50 percent damage and requires substantial improvements, the building must comply with current building, life safety, and accessibility codes. The proposed house is similar in style and nature to the existing residences in this neighborhood.

Findings and Conclusions:

LDC Sec. 34-87 sets forth the required findings and conclusions for the approval of a variance:

- a. *That there **are**/are not exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request **is**/is not for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

There are exceptional or extraordinary conditions that are inherent to the property. The subject property is a non-conforming lot platted in 1949 with

access via Flamingo Street. The property is an oddly shaped lot that abuts the Gulf Road cul-de-sac in the rear yard. Prior to Hurricane Ian, the property supported a single-family residence with reduced setbacks. Therefore, rigid compliance is not essential to protect public policy.

At the same time, the property is part of an older residential neighborhood where several homes appear to have reduced front and rear setbacks. Granting of the requested variances will allow the Applicant to build a two-story residence of approximately 39% ground coverage.

- b. *That the conditions justifying the variance are/**are not** the result of actions of the applicant taken after the adoption of the regulation in question.*

The conditions justifying the variance are not the result of the actions of the Applicant. The subject property is a non-conforming lot that was platted in 1949. The strict application of the minimum setbacks for single family residences in RC zoning district as required by LDC Table 34-3, will limit the buildable area on the subject property to less than 250 sq. ft with a 46-foot width and a 6-foot depth. Due to the odd shape of the lot, the Applicant must request a variance to build anything on this property.

- c. *That the variance granted **is**/is not the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

As mentioned above, the strict application of the minimum setbacks as required by LDC Table 34-3, will limit the buildable area on the subject property to less than 250 sq. ft with a 46-foot width and a 6-foot depth. Due to the odd shape of the lot, the Applicant must request a variance to build anything on this property.

- d. *That the granting of the variance will/**will not** be injurious to the neighborhood or otherwise detrimental to the public welfare; and*

The granting of this variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The subject property previously supported a single-family residence with reduced setbacks. The property is part of an older residential neighborhood where several homes appear to have reduced street and rear setbacks. Therefore, the Applicant's request for a variance of 5 feet from the front street setback, 15 feet from the rear/secondary street setback and 15 feet from the rear setback, will be consistent with neighboring properties.

- e. *That the conditions or circumstances on the specific piece of property for which the variance is sought are/**are not** of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.*

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.

III. RECOMMENDATION

Staff has reviewed the request for a variance *from LDC Table 34-3 which requires a single-family home in RC zoning district to provide a minimum 25-foot street setback, 20-foot rear setback and 20-foot rear/secondary street setback* and finds that the variance request does meet the requirements set-forth in sec. 34-87.

Therefore, staff recommends **APPROVAL** of VAR20240284, a request for a variance of 5 feet from the front street setback, 15 feet from the rear yard setback and 15 feet from the secondary street setback to allow construction of a new single family with a front setback of 20 feet and rear and rear/secondary street setback of 5 feet.

At the February 13, 2024 LPA hearing the LPA recommended unanimous approval with conditions of the variance request.

IV. CONDITIONS FOR APPROVAL

If the Town's LPA recommends approval for the variance, town's staff recommends the following conditions of approval.

- 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) No encroachment, including roof overhangs, may be closer than 40 inches to any property line.

V. EXHIBITS

Exhibit A: Complete Application Packet

Exhibit B: Postcards to Adjacent Property Owners

From: [Dick Parsons](#)
To: [Sarah Propst](#)
Subject: Variance for 65 Flamingo St
Date: Thursday, February 8, 2024 9:55:43 AM

Applicant: James Ink/ Ink Engineering

Sarah Propst, Town of Fort Myers Beach

I, John Parsons, owner of 57 Flamingo St do not want the variance granted to Mr James Ink at 65 Flamingo St concerning the 25 feet set back from Flamingo St. When we built our house in 2017 we had to build it 25' back from Flamingo St and we think it is only right that everyone has to stick to the same requirements.

CASE NO: VAR20230284

Thank you,
John Parsons
Sent from my iPhone

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

From: [John Otteson](#)
To: [Sarah Propst](#); [Amy Baker](#)
Cc: johnrotteson@gmail.com
Subject: Objection to Variance at 65 Flamingo St.
Date: Monday, February 12, 2024 3:29:34 PM

Applicant: James Ink/ Ink Engineering
Sarah Propst, Town of Fort Myers Beach

I, John Otteson, owner of a nearby home at 6021 Gulf Road object to a variance being granted to Mr. James Ink at 65 Flamingo St. concerning the 25 feet set back.

My wife Christy and I also own 6011 and 6031 Gulf Road. Both houses were lost in the hurricane. Last week, we finally obtained our building permits for the construction of new homes at those addresses. The lots were tight and we had to jump through a number of hoops and architectural changes in order to comply with the setback rules. Ultimately, it's going to make for a better look on the street.

Some vacant lots left after the hurricane are just unbuildable and 65 Flamingo is such a lot.

CASE NO: VAR20230284

Thank you,
John R. Otteson

--

This email has been checked for viruses by AVG antivirus software.

www.avg.com

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☒ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☐ Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.*

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: James Ink c/o Ink Engineering Phone: 239-940-2504
Address: 2055 West First St, Fort Myers, FL 33901
Email: jink@inkengineeringinc.net Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Albert Dambrose c/o Studio AD Phone: 239-292-4098
Address: _____
Email: apd@studioad.net Fax: _____

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II – Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☒ Variance from LDC Section _____ - Table 34-3
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☐ Other. Please Explain: _____

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☒ Single Owner (individual or husband and wife)

Name: Karl Pilat Phone: _____

Mailing Address: 6700 West Road, Washington MI 48094

Email: _____ Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Karl Pilat swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature

Karl Pilat
Printed Name

STATE OF FL COUNTY OF Manatee

The foregoing instrument was certified and subscribed before me by means of physical presence OR online notarization, this 30 day of Nov., 2023, by [Signature] who is personally known to me OR who has produced

D L as identification.

KARL A. PILAT
NOTARY PUBLIC-STATE OF FLORIDA
COUNTY OF MANATEE
My Commission Expires Feb. 6, 2025
Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☐ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☐ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

_____	_____
_____	_____
_____	_____
_____	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____	_____
Signature	Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, _____ (name), as _____ (title) of _____ (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized the staff of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Name of Entity (corporation, partnership, LLP, LLC, etc)

Signature

Title

Typed or Printed Name

Date

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of ____ physical presence OR ☐ online notarization, this ____ day of _____, 20____, by _____, ☐ who is personally known to me OR ☐ who has produced _____ as identification.

Seal

Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 33-46-24-W3-00600.0180

Property Address: 65 Flamingo St,

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee

County? ☐ No. Attach a legible copy of the legal description as Exhibit 6-1.

☒ Yes. Property identified in subdivision: _____

Book: 9 Page: 8 Unit: _____ Block: _____ Lot(s): 18 less

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 72 feet
Depth (please provide an average width if irregular in shape) 50
feet Frontage on street: 95 feet. Frontage on waterbody:
0 feet Total land area: 3,538 ☐ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

3.5 miles south of Times Square, right on Flamingo, property on
right

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☒ There are no deed restrictions and/or covenants on the subject property.
☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☒ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|---|--|
| ☐ Low Density | ☐ Marina |
| ☒ Mixed Residential | ☐ Recreation |
| ☐ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

EXPLANATORY NOTES

Please do not print, copy and submit these instructions

Please submit required applications, supplemental information, exhibits and documents to zoningpermits@fmbgov.com.

Application fees are set by resolution of the Town Council of the Town of Fort Myers Beach and must be paid before any materials submitted will be considered an application.

The applicant is responsible for the accuracy and completeness of this application. Time delays or additional expenses necessitated by submitting inaccurate or incomplete information will be the responsibility of the applicant. Decisions regarding requests to waive submittal requirements are at the discretion of the Community Development Director and may not be appealed.

All information submitted with the application becomes a part of the public record and will be a permanent part of the file.

All attachments and exhibits must be legible, suitable for recording, and of a size that will fit or conveniently fold into a letter size (8 ½ by 11) folder.

Explanatory Notes – Part I

- A. Applicant's name: The applicant may be the landowner or an authorized agent.
- B. Relationship of applicant to property: Indicate if the applicant is the property owner, and if so, the type of ownership. If the applicant is not the owner of the property, indicate the relationship of the applicant to the owner and submit a notarized authorization from the owner(s) to the applicant.
- C. Agent's name: If the applicant will have others representing him/her in processing the application, indicate name, address, and phone number.
- D. Other agents: Provide contact information for any other agents that may be involved in the request.

Explanatory Notes – Part II

Indicate the requested action.

Explanatory Notes – Part III

If waiver of any application requirement has been approved by the Community Development Director, attach a copy of the approval. Please request waivers prior to applying. Exhibit 3-1

Explanatory Notes – Part IV

- A. If the property owner is an individual or husband and wife, check the box and provide the information.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Explanatory Notes – Part V

- A. If there are multiple property owners exhibit 5-1, complete the disclosure form and include the names and mailing addresses of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries. Disclosure is not required of any entity whose interests are solely equity interests that are regularly traded on an established securities market in the United States or another country.
- B. If more than one parcel is involved, submit a list of all property owners and their mailing addresses. Provide a map keyed to the list of property owners showing their interests. The applicant is responsible for the accuracy of the list and map Exhibit 5-2
- C. Where the property is a condominium or timeshare condominium, the application must be initiated by both the condominium association and no less than 75% of the total number of unit owners. To verify ownership, the list of property owners must be identified by unit number and/or timeshare period as applicable, along with proof that the owners who did not join in the application were given actual written notice of the application by the applicants, who must verify the list and the notice by sworn affidavit. Attach this affidavit as Exhibit 5-3.
- D. In addition, a letter of opinion from an attorney licensed to practice law in the State of Florida addressing the considerations in LDC Section 34-201(a)(1)b.3. must be attached as Exhibit 5-4.

Explanatory Notes – Part VI

- A. Include the street address of the subject property. List STRAP number. If more than one parcel is involved, list all STRAP numbers. If you don't know the STRAP number, you can look up the property in the records of the Lee County Property Appraiser at <http://www.leepa.org>. If the application includes only one or more undivided platted lots within a subdivision officially recorded in the Plat Books of Lee County, Florida, identify the property by lot number(s), block if applicable, subdivision unit if applicable, subdivision name, and plat book number and page number. If the property is not one or more undivided platted lots or is in an "unrecorded" subdivision, attach a metes and bounds legal description giving accurate bearings and distances for each course. If multiple parcels are involved, the metes and bounds legal description must describe the perimeter of the entire property subject to the request. The initial point in the description must be related to at least one established identifiable real property corner, such as a government corner or a recorded corner. The bearings used in the description must be clearly referenced to a well-established and monumented line. Exhibit 6-1
- B. Submit a Boundary Survey meeting the minimum technical standards for surveying set out in Chapter 61G17-6 of the Florida Administrative Code. Make sure that the surveyor is aware of any specific needs of the survey (location of Coastal Construction Lines, locations of existing structures, locations of easements, etc) that are relevant to your request. The perimeter boundary of the entire subject property should be indicated clearly with a heavy



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

- line. Exhibit 6-2
- C. Provide the property dimensions or the approximate dimensions if the property is not a regular quadrilateral.
 - D. Describe how to get to the property starting from either the Sky Bridge or the Big Carlos Pass Bridge (specify which). Exhibit 6-3
 - E. If there are any deed restrictions or covenants that might affect the requested action, provide the information. Exhibit 6-4
 - F. A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5
 - G. Attach a list of the surrounding property owners within 500 feet of the perimeter of the area of the request. Also include two sets of mailing labels providing the names and addresses of the owners on this list, and a map showing the parcel boundaries within the 500-foot radius Exhibit 6-6. This information can be acquired for a small fee by requesting a "variance report" from the Map Sales Office at the Lee County Property Appraiser's Office. Contact information for the Property Appraiser can be found at <http://www.leepa.org>.
 - H. Indicate the Future Land Use Map category or categories of the property as shown on the Fort Myers Beach Comprehensive Plan's Future Land Use Map, and whether the property is located in the "platted overlay" on the map.
 - I. Indicate the current zoning of the property. In most cases the current zoning is shown on the official zoning map of the Town of Fort Myers Beach, as adopted by ordinance. If zoning actions affecting the subject property have been taken since March 2004, call Town Hall to verify the current zoning.

Explanatory Notes – Part IV & V

The applicant must sign and submit either of the affidavits in Part V & VI, as applicable.



Case # _____

Date Received: _____

Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

Supplement PH-B

Additional Required Information for a Variance Application

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

Case Number:
Project Name: 65 Flamingo Street
Authorized Applicant: James Ink PE, c/o Ink Engineering, Inc
LeePA STRAP Number: 33-46-24-W3-00600.0180

Current Property Status: Vacant due to Hurricane Ian	
Current Zoning: Residential Conservation	
Future Land Use Map (FLUM) Category: Mixed Residential	
Comp Plan Density: 6 u/a	Platted Overlay? ☐ Yes ☐ No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

34-643 Table 34-3 - Dimensional Regulations in Conventional Zoning Districts

Complete the narrative statements below for EACH variance requested.

PART I
Narrative Statements

Request for variance from Table 34-3 (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:
See Attached Narrative

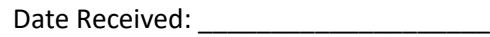
Reasons for request

Explain why the variance is needed:
See Attached Narrative

Explain the possible effect the variance, if granted, would have on surrounding properties:
See Attached Narrative

Explain the hardship (what is unique about the property) that justifies relief from the regulation:
--

See Attached Narrative



See Attached Narrative

PART 2

Submittal Requirements

All applications for a variance must be submitted electronically through our Iworq portal - [iworq \(talktomycity.com\)](http://iworq.talktomycity.com)

Required Items

- Public Hearing Request Form
- Supplemental form PH-B
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; and a clear illustration of the proposed variance
- Fee in the amount of \$1800.00 (residential)/Additional Variance \$500.00
- Variance (non-residential) \$2800.00/ Additional Variance \$700.00

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

“Variance is requested from...” Provide the section number and title of each section of the Fort Myers Beach Land Development Code from which a variance is being sought.

Narrative statements

If the application is for multiple variances, complete all of the narrative statements for each variance that is requested.

Site plan

The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

LDC Section 34-87

The guidelines for decision-making regarding a request for a variance are as follows:

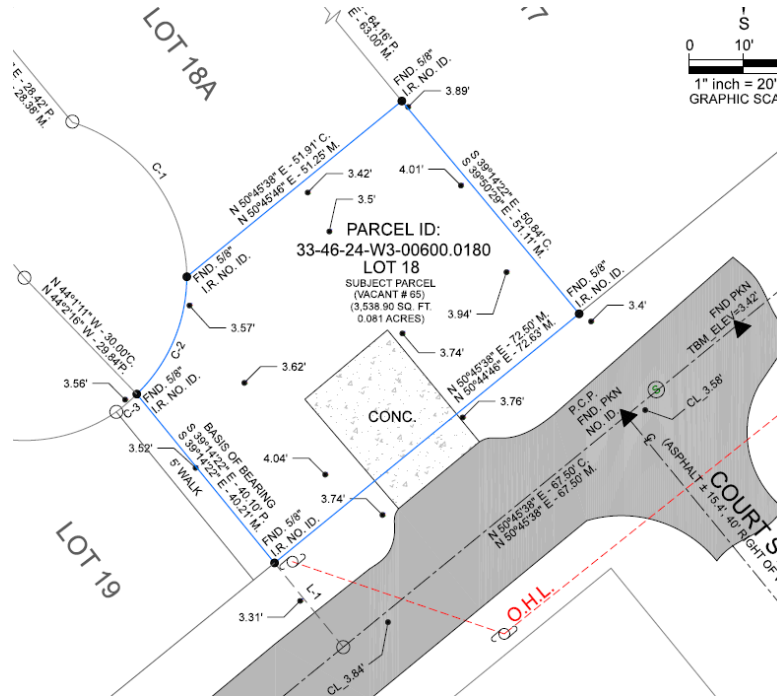
1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;
3. Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;
5. Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

Variance Justification Narrative

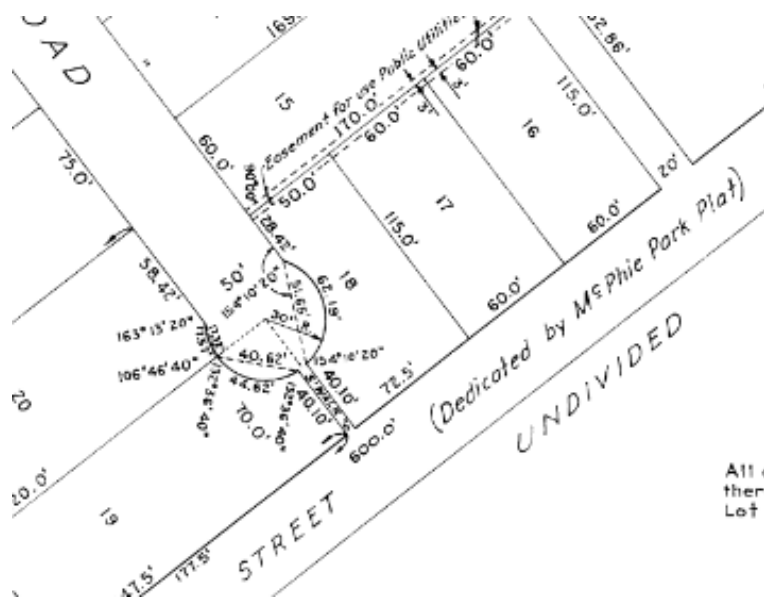
This application is to request two variances from the Fort Myers Beach Land Development Code.

Project Information

The variance request is for a single-family home site located at 65 Flamingo Street that had one dwelling unit before Hurricane. The submittal package has a boundary survey of the existing condition of a vacant lot. Unfortunately, there is no survey available for the structure before Hurricane Ian.



The parcel has 3,538.90 square feet. The current Mixed Residential future land use allows a density of six units per acre. This would require a parcel of 7,260 square feet for consistency. Since the parcel does not meet the square footage requirement this would be non-conforming per Section 34-3271(b) FMBLDC. The parcel was created February 16, 1949, as Estero Park a subdivision of Bock I, Unit 2 McPhie Park original recorded in Plat Book 8, Page 58. The subject parcel is Lot 18 of the record plat. The Estero Park plat is submitted in the application. The lot was split at an undetermined time with the Northwesternly 63.76 feet removed from Lot 18 to create 6081 Gulf Road. The 6081 Gulf Road duplex was constructed in 1951 which pre-dates the incorporation of the Town of Fort Myers Beach and implementation of the Town Comprehensive Plan and Land Development Code.



Partial Estero Park Plat a recorded in Plat Book 9 Page 8, Lot 18.



1970 Aerial showing existing of both structures on Lot 18



2021 Aerial (Pre-Ian)



2022 Aerial (Post Ian)

As shown on the Pre-Ian 2021 Aerial the home had non-conforming setbacks. Unfortunately, all existing records such as Pre-Ian surveys were lost in the storm so there is no documentation of the construction size and setbacks of the home. Therefore, this application is going to show the constraints that the current Land Development Code places on the property and the hardship that it creates to reconstruct a reasonable single-family residence of the site.

Street Setback -	25 FT
Side Setback -	7.5 FT (lot width 72.50')
Rear Setback -	20 FT
Lot Area -	4,000 SF
Lot Width -	45 FT
Lot Depth -	80 FT
Building Coverage -	40%
Building Height -	30 FT per Section 34-631 FMBLDC
Stories -	3

SITE DESIGN CRITERIA:
 ZONING - RC
 SETBACKS REQUIRED:
 FRONT- 25'-0"
 REAR- 20'-0"
 SIDE- 7'-6"
 FLOOD ZONE- VE B.F.E. = 13.0' DEP ELEV = 19.0'
 LOT SIZE - 3547 SQ. FT.
 40% LOT COVERAGE = 1418.8 SQ. FT.

INDICATES EXTENTS OF PREVIOUS HOUSE FROM 1954 PER LEEPA.

INDICATES BUILDABLE AREA PER CURRENT LDC DESIGN CRITERIA.

55'-0"

120'-0"

5'-0"

19'-2"

9'-0"

35'-11"

20'-0"

7'-6"

5'-3"

55'-0"

11'-3"

20'-0"

12'-2"±

5' WALK

5' DRIVE

BUILDABLE AREA
246.7 SQ. FT.

EXIST. CONC DRIVEWAY

GULF RD.

FLAMINGO ST.

1. Request to change the minimum square footage of lot area in Table 34-3 from the required 4,000 square feet to the actual deeded lot area of 3,538.90 square feet.
2. Request to change the minimum front street setback per Table 34-3 from the required 25 feet to 20 feet with a 15' setback above base flood at first living floor only.
3. Request to change the minimum rear setback per Table 34-3 from the required 20 feet to 5 feet.
4. Request to change the minimum rear street setback per Table 34-3 from the required 25 feet to 5 feet.



Provided the variances are granted the buildable area will be increased to 1,406 square feet and a buildable area of approximately 57.5' by 26' are reasonable building area. The required analysis for each requested variance per

Variance #1 from Table 34.3 – Minimum Lot Area

Per 34-87(c) there is guidance on before granting any variance, the town council must find that all the following exist:

1. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect the public policy.

The lot area is a fixed square footage of 3,538.90 square feet. This is below the minimum of 4,000 square feet per Table 34-3 FMBLDC. This lot was created before the incorporation of the town and therefore pre-dates Table 34-3 of the Land Development Code requirement for lot area. Granting the variance is a de minimis variance under these circumstances.

2. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

The property owner purchased the property in May 2000 with the lot area the same at purchase as exists today. There has been no change in the lot area after adoption of Table 34-3 of the Land Development Code.

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

The requested variance for the actual condition of a non-conforming lot. Granting the variance does not change the existing conditions.

4. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The existing lot area has been in existence for over 40 years and before the incorporation of the town. There is no change in the neighborhood with the granting of this variance.

5. That 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 variance for lot area to allow existing non-conforming lots to be buildable is a unique action due to the difference in platted lots created before the Land Development Codes were created. Granting the lot area variance is not general or potentially recurrent to



create a reasonable and practical Land Development code amendment to address this request.

Variance #2 from Section Table 34.3 – Front Street Setback

Per 34-87(c) there is guidance on before granting any variance, the town council must find that all the following exist:

1. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect the public policy.

The allowable front setback is 25 feet with the request being 20 feet at the ground level and allow a 15-foot setback to a balcony at the first habitable level above base FEMA and DEP elevated elevations. Historically the condition of the pre-Ian structure was approximately 20 feet and like other structures on Flamingo. There exist post hurricane three structures fronting Flamingo that have setbacks approximately 20 feet with one at 6082/6084 Gulf Road at approximately 5 feet. Evidence from the Lee Property Appraiser GIS website has the destroyed home on the parcel at 20 feet. Hurricane Ian created extraordinary circumstances and the request is to rebuild a reasonable home on the site. Granting the variance is a de minimis variance under these circumstances.

2. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

The property owner purchased the property in May 2000 with a home with an approximately 20-foot street setback. This request will allow a 26' deep home on the site. The applicant did not take any action that created the previous condition that this request petitions to be restored.

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

The requested variance for the actual condition of a non-conforming lot. Granting the variance does not change the pre-storm condition and allows for reasonable reconstruction.

4. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The requested setback is similar to pre-storm condition and structures that survived the storm on Flamingo have similar street setbacks. There is no change in the neighborhood with the granting of this variance.

5. That 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 variance for front setback to allow an existing non-conforming lot to be buildable is a unique action due to the difference in platted lots created before the Land Development Codes were created. Granting the front yard variance is not general or potentially recurrent to create a reasonable and practical Land Development code amendment to address this request.

Variance #3 from Section Table 34.3 – Rear Setback

Per 34-87(c) there is guidance on before granting any variance, the town council must find that all the following exist:

1. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect the public policy.

The allowable rear yard setback is 20 feet with the request being 5 feet. This is approximately the existing rear yard setback pre-Ian. The request is to allow the non-conforming use before the homeowner lost their home in the largest storm in Southwest Florida history. Granting the variance is a de minimis variance under these circumstances and restores the pre storm condition.

2. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

The property owner purchased the property in May 2000 with a home with an approximately 5-foot rear setback. This request will allow a 26' deep home on the site. The applicant did not take any action that created the previous condition that this request petitions to be restored.

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

The requested variance for the actual condition of a non-conforming lot. Granting the variance does not change the pre-storm condition and allows for reasonable reconstruction.

4. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The requested setback is like pre-storm condition and structures that survived the storm on Flamingo have similar street setbacks. There is no change in the neighborhood with the granting of this variance.

5. That 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 variance for rear yard setback to allow an existing non-conforming lot to be buildable is a unique action due to the difference in platted lots created before the Land Development Codes were created. Granting the rear yard variance is not general or potentially recurrent to create a reasonable and practical Land Development code amendment to address this request.

Variance #4 from Section Table 34.3 – Rear Street Setback

Per 34-87(c) there is guidance on before granting any variance, the town council must find that all the following exist:

1. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect the public policy.

The allowable street setback is 25 feet with the request being 5 feet to be the same as the requested 5-foot rear setback variance. This would the structure rear setbacks to be the same.

2. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.

The property owner purchased the property in May 2000 with a home with an approximately 5-foot street setback to Gulf Road. The applicant did not take any action that created the previous condition that this request petitions to be restored. Granting the variance does not change the pre-storm condition and allows for reasonable reconstruction.

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

The requested variance for the actual condition of a non-conforming lot. Granting the variance does not change the pre-storm condition and allows for reasonable reconstruction.

4. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

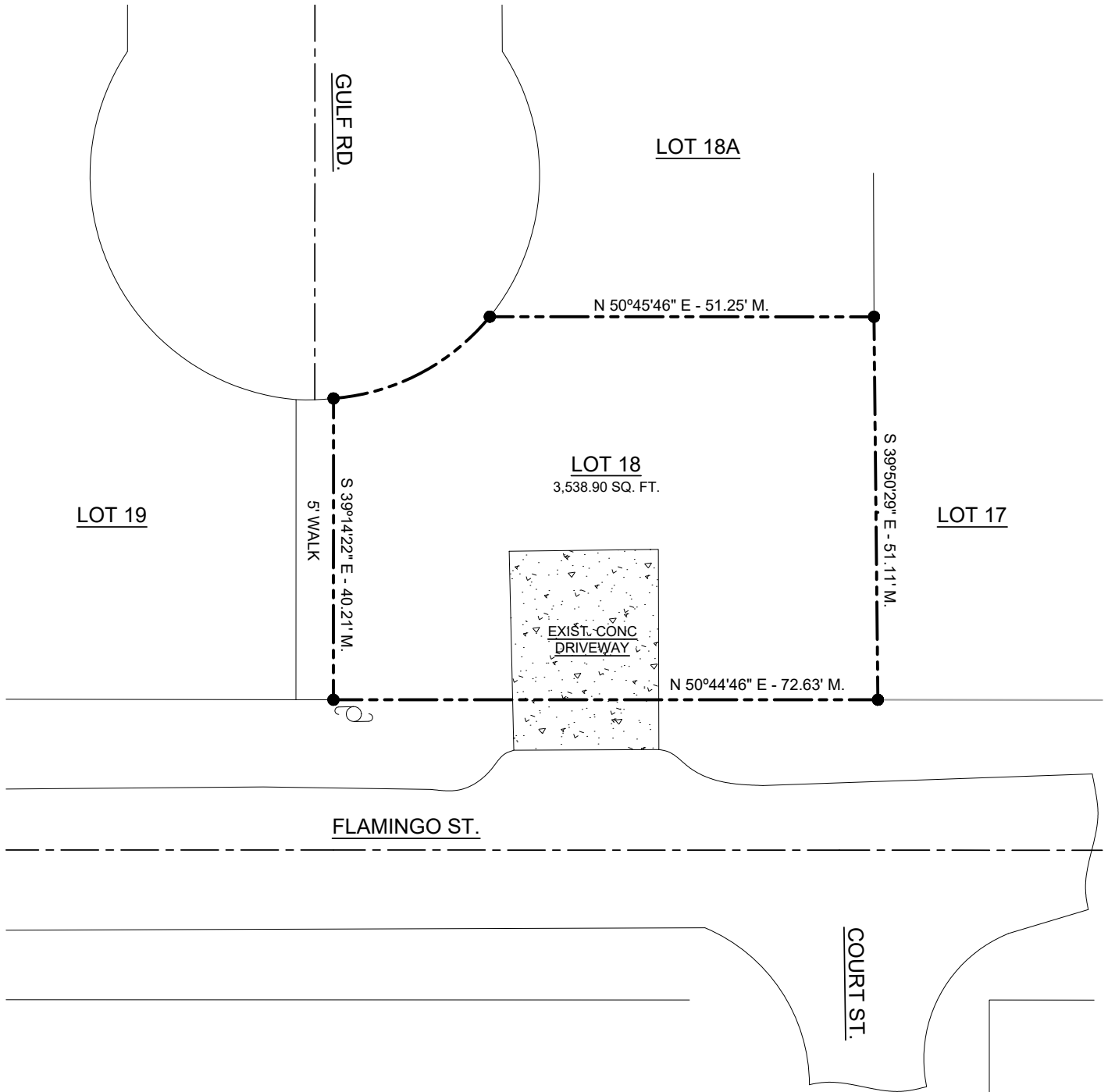
The requested setback is similar to pre-storm condition and structures that survived the storm on Flamingo have similar street setbacks. There is no change in the neighborhood with the granting of this variance.

5. That 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 variance for rear street setback to allow an existing non-conforming lot to be buildable is a unique action due to the difference in platted lots created before the Land



Development Codes were created. Granting the rear street setback variance is not general or potentially recurrent to create a reasonable and practical Land Development code amendment to address this request.



BOUNDARY SURVEY

SCALE: 1" = 20'-0"



ALBERT DAMBROSE AR93689	DATE ISSUED: 17 JULY 2023	SK-1
	REVISIONS:	

65 FLAMINGO ST. FORT MYERS BEACH, FL

SITE DESIGN CRITERIA:

ZONING - RC

SETBACKS REQUIRED:

FRONT- 25'-0"

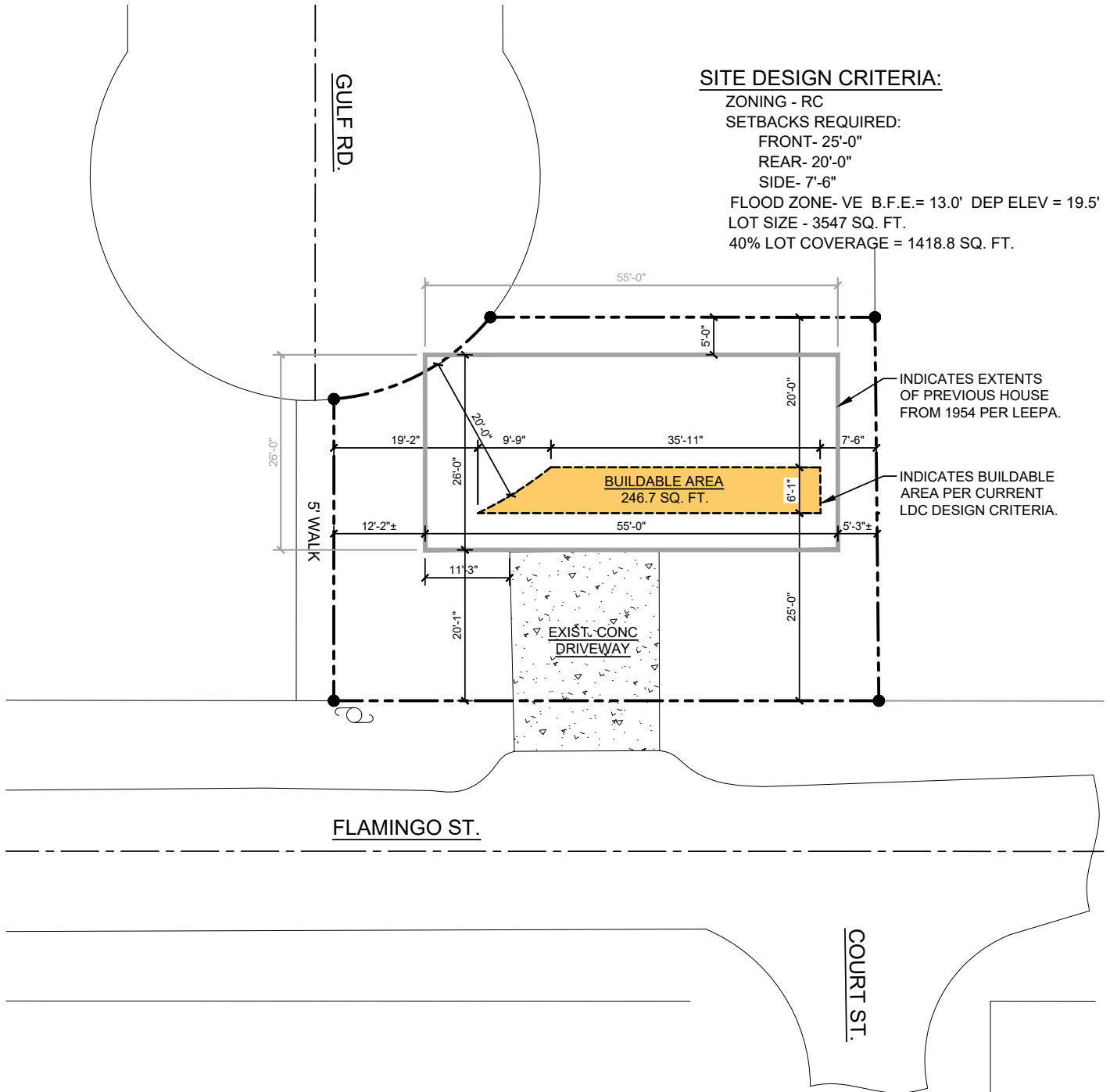
REAR- 20'-0"

SIDE- 7'-6"

FLOOD ZONE- VE B.F.E.= 13.0' DEP ELEV = 19.5'

LOT SIZE - 3547 SQ. FT.

40% LOT COVERAGE = 1418.8 SQ. FT.



INDICATES EXTENTS
OF PREVIOUS HOUSE
FROM 1954 PER LEEPA.

INDICATES BUILDABLE
AREA PER CURRENT
LDC DESIGN CRITERIA.

BUILDABLE AREA
246.7 SQ. FT.

EXIST. CONC
DRIVEWAY

FLAMINGO ST.

COURT ST.

EXISTING SITE / SETBACKS

SCALE: 1" = 20'-0"



DATE ISSUED: 17 JULY 2023

REVISIONS:

ALBERT DAMBROSE
AR93689

SK-2

65 FLAMINGO ST. FORT MYERS BEACH, FL

SITE DESIGN CRITERIA:

ZONING - RC

SETBACKS-

FRONT- 20'-0"

REAR- 5'-0"

SIDE- 7'-6"

FLOOD ZONE- VE B.F.E.= 13.0' DEP ELEV = 19.5'

LOT SIZE - 3547 SQ. FT.

40% LOT COVERAGE = 1418.8 SQ. FT.

GULF RD.

5' WALK

FLAMINGO ST.

COURT ST.

BUILDABLE AREA
1,406 SQ. FT.

PROPOSED SITE / SETBACKS

SCALE: 1" = 20'-0"

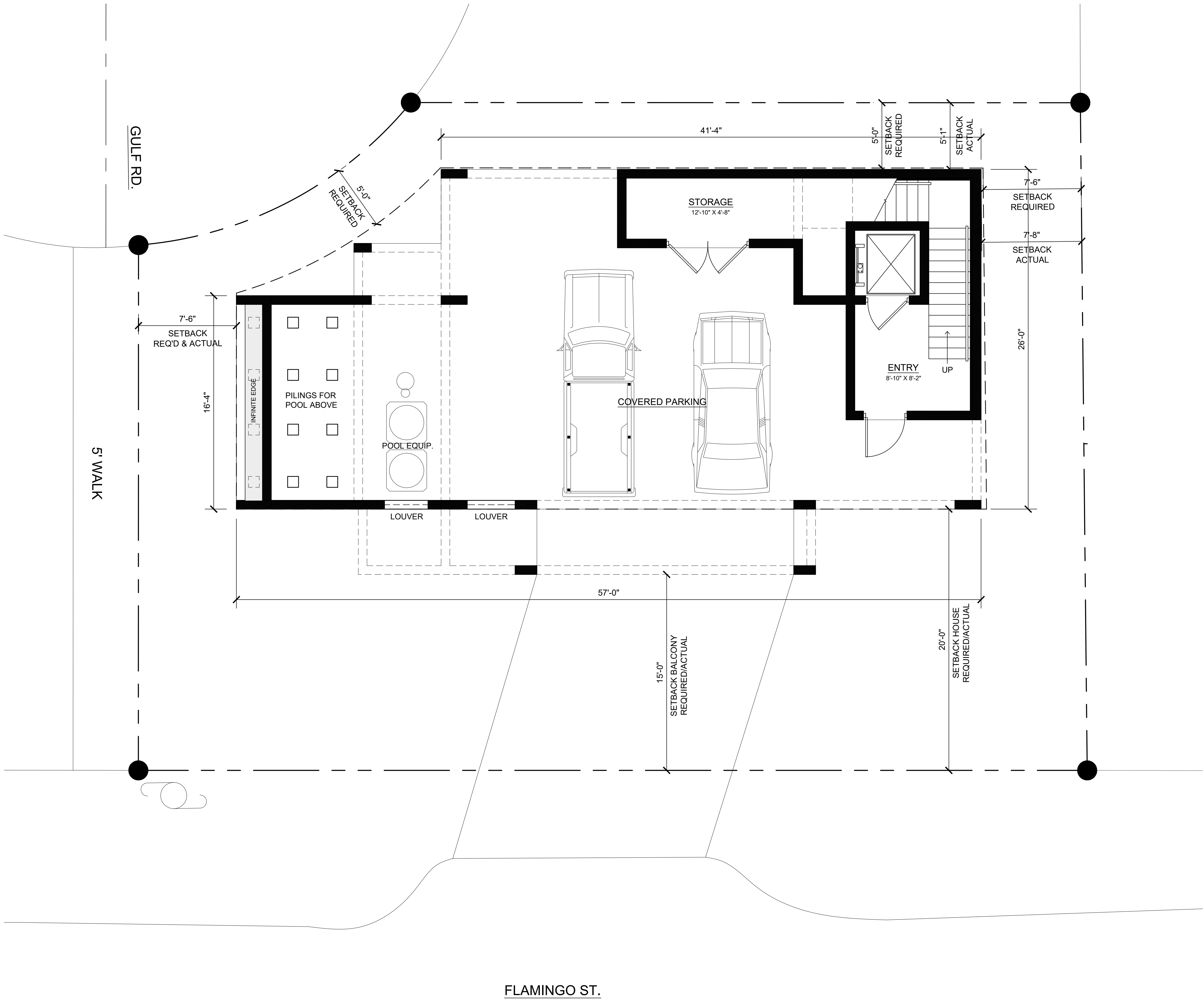
NORTH

DATE ISSUED: 17 JULY 2023

REVISIONS:

ALBERT DAMBROSE
AR93689

SK-3



SCHEMATIC SITE PLAN AND FIRST FLOOR PLAN
38% LOT COVERAGE

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A NEW HOME FOR:
THE PILAT FAMILY
65 FLAMINGO ST.
FORT MYERS BEACH, FLORIDA

CONSULTANT:

ALBERT DAMBROSE
AR93689

PRELIMINARY
REVIEW SET
NOT FOR
CONSTRUCTION

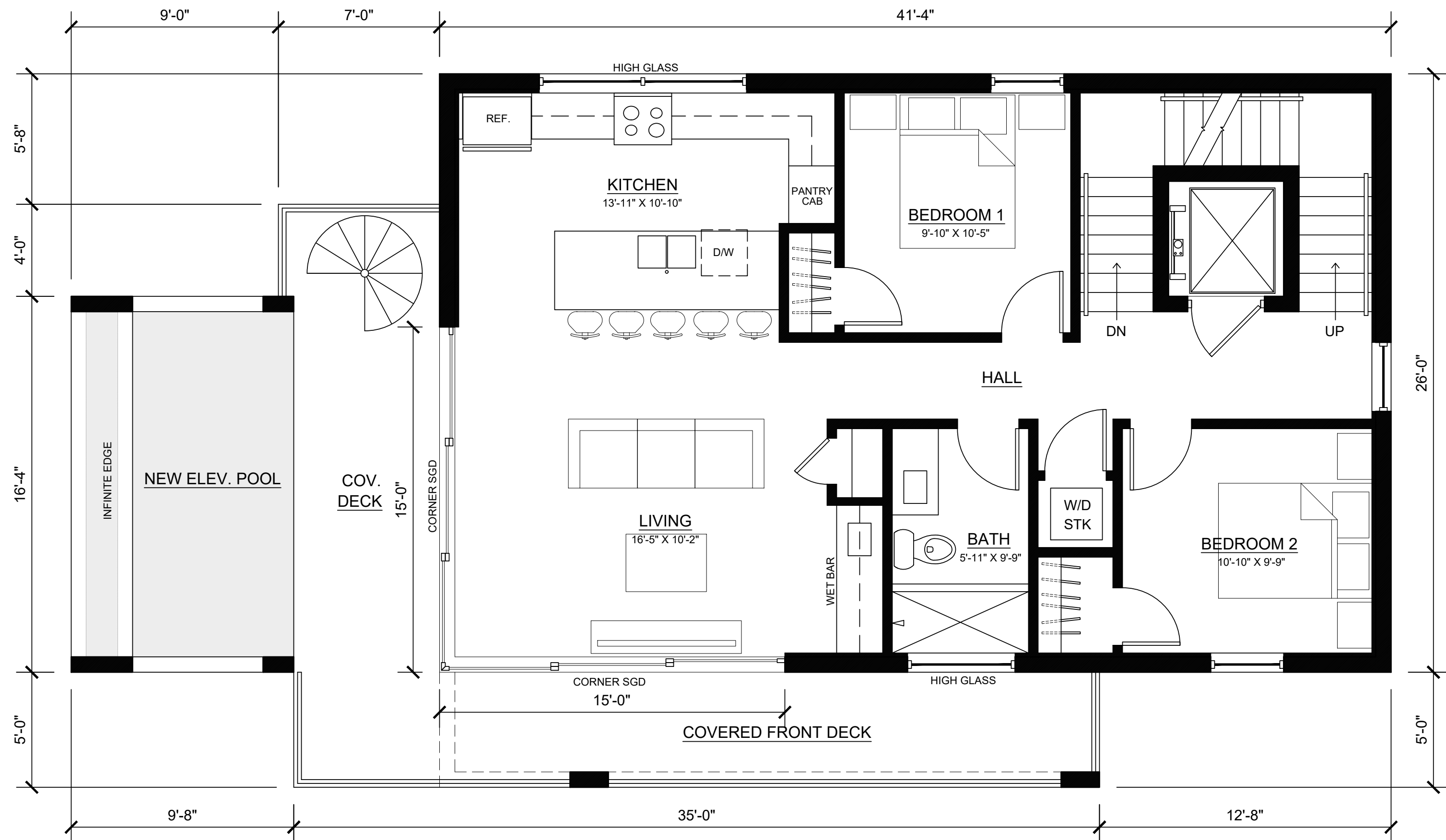
DATE ISSUED: 6 OCT 2023

REVISIONS:

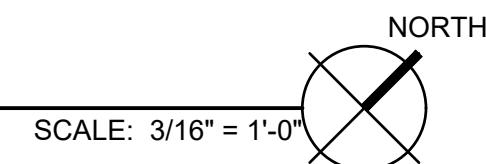
SHEET

D1

OF 2

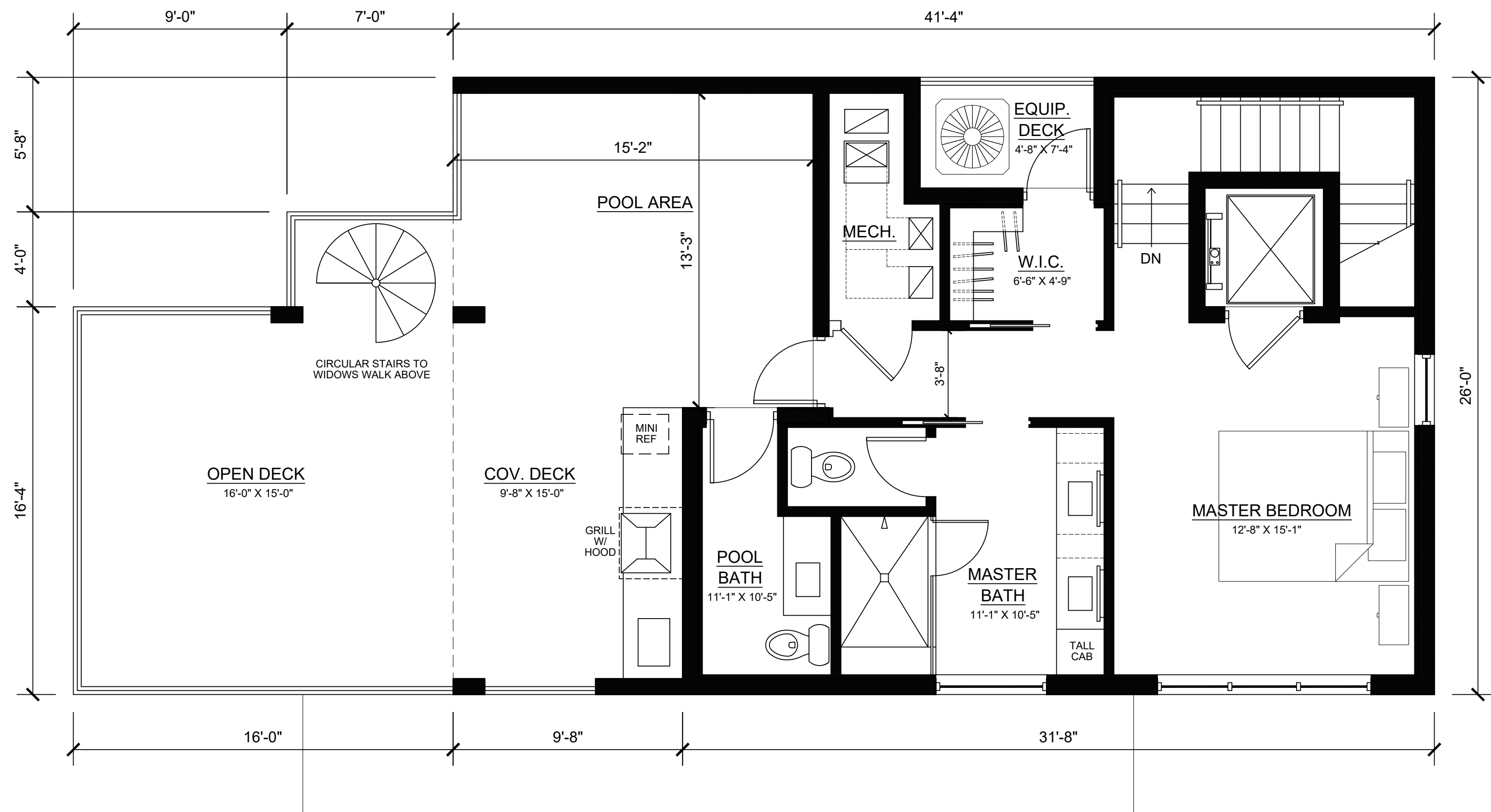


SCHEMATIC SECOND FLOOR PLAN

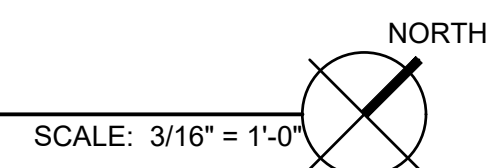


SQUARE FOOT ANALYSIS

SECOND FLOOR LIVING	1075 S.F.
THIRD FLOOR LIVING	747 S.F.
TOTAL LIVING	1601 S.F.



SCHEMATIC THIRD FLOOR PLAN



Map Tools



Measure a distance.

Graphics Tools



Measure a distance.

Color: Red Size: 3

Measure Map



Measure a distance.

LENGTH: 19.70 Feet

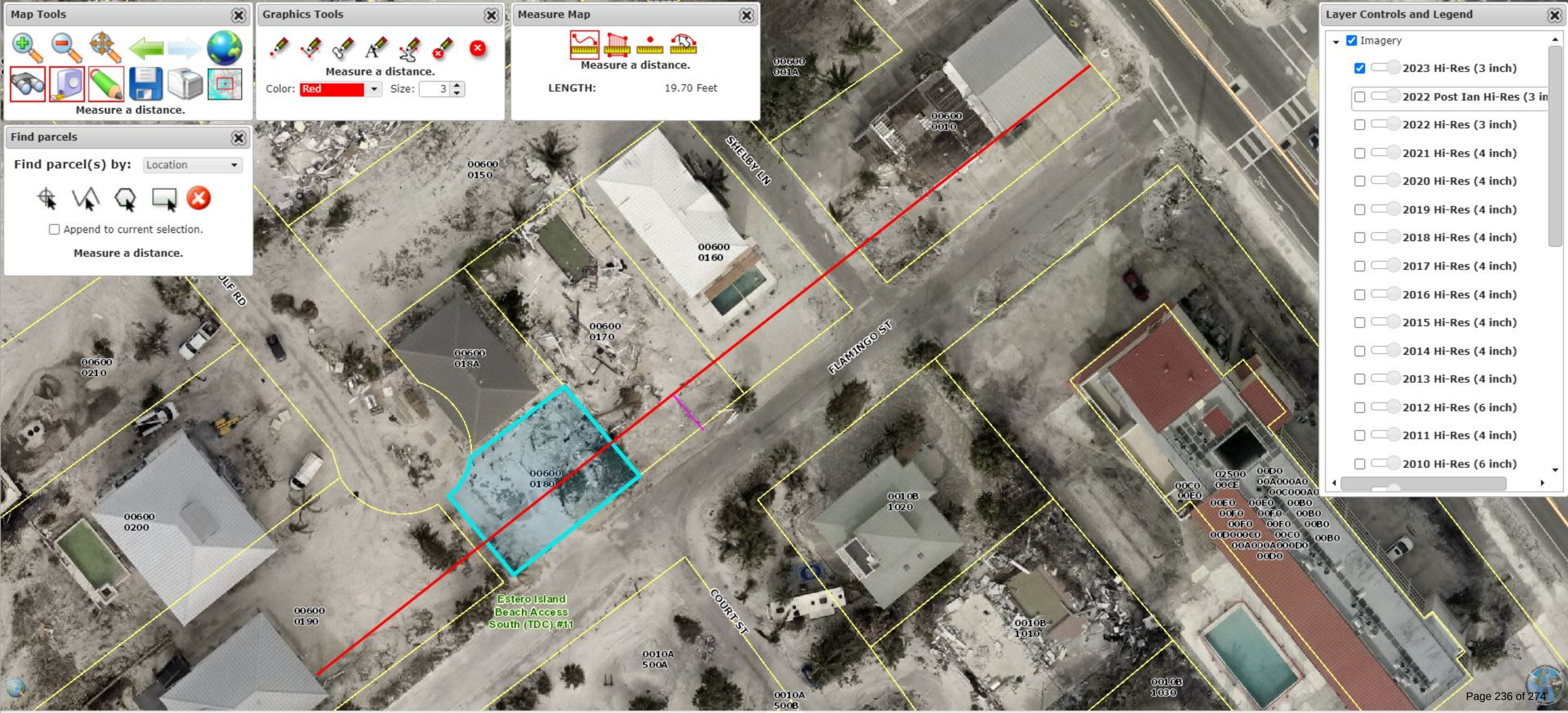
Find parcels

Find parcel(s) by: Location



☐ Append to current selection.

Measure a distance.



Layer Controls and Legend

☒ Imagery

- ☒ 2023 Hi-Res (3 inch)
- ☐ 2022 Post Ian Hi-Res (3 in
- ☐ 2022 Hi-Res (3 inch)
- ☐ 2021 Hi-Res (4 inch)
- ☐ 2020 Hi-Res (4 inch)
- ☐ 2019 Hi-Res (4 inch)
- ☐ 2018 Hi-Res (4 inch)
- ☐ 2017 Hi-Res (4 inch)
- ☐ 2016 Hi-Res (4 inch)
- ☐ 2015 Hi-Res (4 inch)
- ☐ 2014 Hi-Res (4 inch)
- ☐ 2013 Hi-Res (4 inch)
- ☐ 2012 Hi-Res (6 inch)
- ☐ 2011 Hi-Res (4 inch)
- ☐ 2010 Hi-Res (6 inch)



April 12, 2023

Karl Pilat
65 Flamingo St
Fort Myers Beach, 33931

Address: **65 Flamingo St, Fort Myers Beach, 33931**, Strap #: 334624W3006000180

Subject: MUD 20230046

Dear Karl,

At your request, I have reviewed the application for a Minimum Use Determination ("MUD") for the property at 65 Flamingo St. The property is legally described as The Southeasterly 50.84 feet of Lot Eighteen (18), of ESTERO PARK subdivision according to the plat thereof, recorded in Plat book 9, Page 8, of the Public Records of Lee County, Florida. Based upon the information provided by the applicant and reviewed by staff, it does appear the property meets the requirements of Section 34-3274 of the Fort Myers Beach Land Development Code ("LDC"). Staff determined the following findings:

1. The Lot Existed Prior to 1996: Lee County Plat records show the property was in existence prior to 1996.
2. The Lot has Direct Access to an Existing Road: The property is located at 65 Flamingo St, which is a paved and maintained public right-of-way.
3. The Lot has Access to Utilities: Potable water and sanitary sewer are available at the subject property.
4. The Lot is Located in a Future Land Use Category ("FLUM") and Zoning District that Permits Construction of a Single-family Dwelling. The property is located at 65 Flamingo St. The FLUM category is Mixed Residential, and the current zoning is RC, Residential Conservation, both of which allow the construction of a single-family dwelling.

Any determination of the presence of wetlands or other protected species may render the property subject to additional review, including but not limited to, State and Federal regulations. In accordance with Section 34-3274 of the LDC, a single-family residence may be constructed on the lot located at 65 Flamingo St, subject to compliance with all other requirements of the Comprehensive Plan, LDC, and the Florida Building Code.

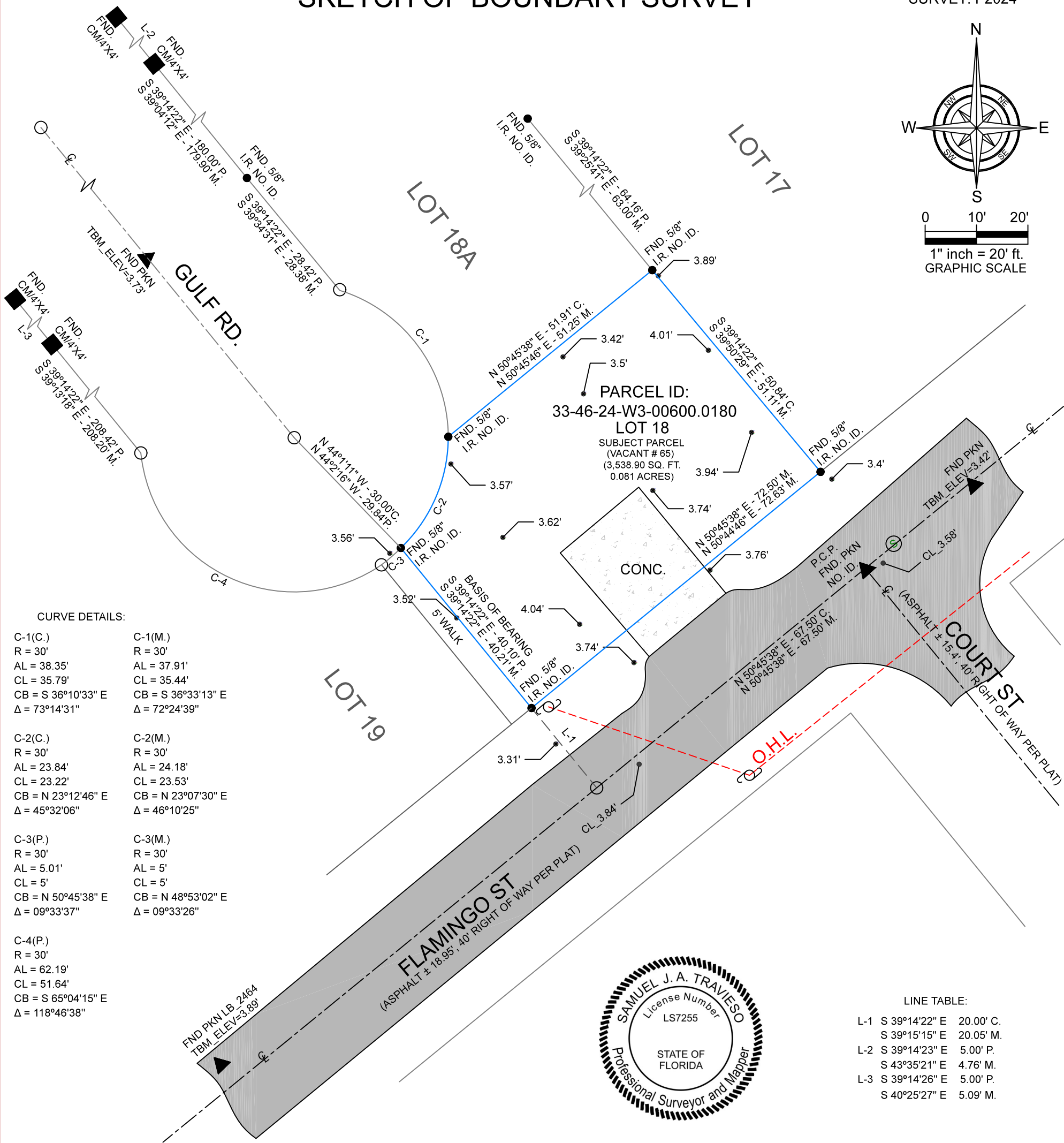
THIS ADMINISTRATIVE DETERMINATION IS NOT A BUILDING PERMIT.

APPEAL PROCEDURES: This determination may be appealed to the Fort Myers Beach Town Council by filing with the Town Clerk a written request within 15 days after issuance stating reasons for disagreement. The Town Council appeal review only allows consideration of information submitted during the process and is limited only as to whether standards in the LDC and the Comprehensive Plan have been applied to the facts of the case. The Town Council cannot consider new or additional evidence at any appeal hearing. Appeals must be filed with the Town Clerk, 2525 Estero Blvd, Fort Myers Beach, Florida 33931.

Sincerely,

Sakshi
Planner

SURVEY: P2024



P.C.P.	PERMANENT CONTROL POINT
P.L.S.	PROFESSIONAL LAND SURVEYOR
P.S.M.	PROFESSIONAL SURVEYOR AND MAPPER
P.T.	POINT OF TANGENCY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
P.R.C.	POINT OF REVERSE CURVATURE
P.R.M.	PERMANENT REFERENCE MONUMENT
P.U.E.	PUBLIC UTILITY EASEMENT
PKN	PARKER-KALON NAIL
R.	RADIAL
R/W	RIGHT OF WAY
R.O.W.	RIGHT OF WAY
S.D.	STORM DRAIN
T.B.M.	TEMPORARY BENCH MARK
TEL.	TELEPHONE FACILITIES
T.O.B.	TOP OF BANK
U.E.	UTILITY EASEMENT
W.M.	WATER METER

● I.R.	 EXISTING ELEVATION
■ CONCRETE MONUMENT	 PROPOSED ELEVATION
▲ NAIL	 WATER FLOW ARROW
⚡ EXISTING FIRE HYDRANT	 DISTANCE & BEARING LIMIT ARROW
⚡ WATER VALVE	 ANCHOR
⚡ POWER POLE	 BREAK LINE (NOT TO SCALE)
⚡ WELL	 CENTERLINE
⚡ CATCH BASIN	 FENCE LINE
● BOLLARD	 OVERHEAD LINE
● BENCH MARK	 EASEMENT LINE
● LAMP POST	 EDGE OF THE WATER LINE
● DRAIN MANHOLE	 PRIMARY STRUCTURE
● SANITARY MANHOLE	 SECONDARY STRUCTURE
● CENTER LINE	 PRIMARY PROPERTY LINE
	 SECONDARY PROPERTY LINE

Diagram illustrating the layers of a road structure from top to bottom:

- CONC. SLAB
- ASPHALT
- BRICK PAVEMENT
- WOOD DECK
- STONES
- WATER



SURVEYORS CERTIFICATE

THIS SURVEY MEETS ALL APPLICABLE REQUIREMENTS OF THE FLORIDA STANDARDS OF PRACTICE AS CONTAINED IN CHAPTER 5J-17 OF THE FLORIDA ADMINISTRATIVE CODE. PURSUANT TO SECTION 472.027 OF THE FLORIDA STATUTES.

SAMUEL J.A. TRAVIESO Digitally signed by
SAMUEL J.A. TRAVIESO
Date: 2023.02.02
14:30:28 -05'00'

SAMUEL J. A. TRAVIESO DATE SIGNED
PROFESSIONAL SURVEYOR AND MAPPERS
FLORIDA CERTIFICATE NO. LS7255. THIS SURVEY MAP IS NOT
VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL OF A
FLORIDA LICENSED SURVEYOT AND MAPPERS.

<u>Parcel I.D.:</u> 33-46-24-W3-00600.0180	<u>DATE OF SURVEY</u> 01 / 27 / 2023	<u>DRAWN BY</u> W.C.
<u>County/State:</u> Lee / Florida	<u>COMPLETION DATE:</u> 02 / 02 / 2023	<u>CHECKED BY</u> A.R.T.

PROPERTY AND OWNER INFORMATION

<u>Property Address:</u> 65 FLAMINGO ST, FORT MYERS BEACH FL 33931	<u>Legal Description As Furnished:</u> The Southeasterly 50.84 feet of Lot 18, of that certain SUBDIVISION known as ESTERO PARK, according to the map or Plat thereof on file and recorded in the office of the clerk of the Circuit Court of Lee County , Florida in Plat Book 9, Page 8.
<u>Certified to:</u> PILAT KARL, it's successor's and/or assigns and the Department of Housing and Urban Development as their interests may appear.	
<u>Flood Zone Information:</u> Community Name: TOWN OF FORT MYERS BEACH Community Number: 120673 Panel: 0566 Suffix: G Effective Date: 11/17/2022 Flood Zone: VE B.F.E. = 13.0'	

Surveyor's Notes:

1. BEARING ARE BASED ON THE SOUTHWESTERLY PROPERTY LINE OF SUBJECT PARCEL, ESTABLISHING AN ASSUMED BEARING OF AS SHOWN ON THE PLAT RECORD.
2. DESCRIPTION AS SHOWN HEREON WAS PROVIDED.
3. BASIS OF THIS SURVEY IS DESCRIPTION, RECORDED PLAT, AND MONUMENTATION FOUND IN PLACE.
4. NO UNDERGROUND INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED EXCEPT AS NOTED.
5. THIS SURVEYS OF VISIBLE FEATURES ONLY. UNDERGROUND ENCROACHMENTS, IF ANY, WERE NOT LOCATED.
6. ADDITIONS, DELETIONS, REPRODUCTION OF SURVEY DRAWINGS BY OTHER THAN THE SIGNED PARTY OR PARTIES IS PROHIBITED BY LAW WITHOUT CONSENT OF THE SIGNED PARTY OR PARTIES.
7. THIS SURVEY MAP IS VALID ONLY TO THOSE PERSONS OR ENTITIES NAMED HEREON.
8. ELEVATIONS AS SHOWN HEREON IF ANY, ARE BASED ON THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAV88).
9. PROPERTY LIES IN SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST, LEE COUNTY, FLORIDA.
10. THIS SURVEY WAS CONDUCTED WITHOUT THE BENEFIT OF A COMPLETE TITLE REPORT OR TITLE ABSTRACT.
11. THE PROPERTY SHOWN HEREON HAS A STREET ADDRESS OF 65 FLAMINGO ST, FORT MYERS BEACH, FLORIDA. (AS FURNISHED)
12. THE EXPECTED USE OF THE PROPERTY AS DESCRIBED HEREON, AS CLASSIFIED IN THE STANDARDS OF PRACTICE (5J-17 OF THE FLORIDA ADMINISTRATIVE CODE), IS "SUBURBAN". THE MINIMUM RELATIVE DISTANCE ACCURACY FOR THIS TYPE OF BOUNDARY SURVEY IS 1 FOOT IN 7,500 FEET. THE ACCURACY OBTAINED BY MEASUREMENTS AND CALCULATION OF A CLOSED GEOMETRIC FIGURE WAS FOUND TO MEET OR EXCEED THIS REQUIREMENT.



Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33931

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Local Planning Agency of the Town of Fort Myers Beach will hold a public hearing which will take place at Bay Oaks, 2731 Oak St (tentative location), Fort Myers Beach, Florida, 33931. Please be sure to visit our website at WWW.FMBGOV.com to check for any updates or changes regarding the upcoming meeting.

TIME: 9 AM

DATE: LPA February 13, 2024, and Town Council March 4, 2024

CASE: VAR20230284

ADDRESS: 65 Flamingo St

APPLICANT: James Ink/ Ink Engineering

REQUEST: The applicant is requesting a variance from LDC Table 34-3 which requires a single-family home in RC zoning district to provide a minimum 25-foot street setback, 20-foot rear setback and 20-foot rear street setback.

TOWN CONTACT: SARAH PROPST SARAH.PROPST@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing, the **Local Planning Agency** will review the application materials and hear testimony to make a **recommendation**. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.



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Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

Town of Fort Myers Beach
2525 Estero Blvd,
Fort Myers Beach, FL 33931

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»«Next Record»

«OwnerName»
«MailAddress»
«MailCity», «MailState», «MailZip»

1. **Request:**

Meeting Date: March 4, 2024

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO RATIFY AND APPROVE A CONTRACT AGREEMENT WITH LEE COUNTY SHERIFF'S OFFICE FOR EXTRA-DUTY WATERWAY DETAIL SERVICES AT THE RATES SPECIFIED IN EXHIBIT A TO THE AGREEMENT AND ADDENDUM; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

To provide marine law enforcement service on the FMB waterways.

What the action accomplishes:

Ratifies the Town's execution of the contract documents and expenditure of funds.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chadd Chustz, Environmental
Services

5. **Background:**

This agreement with the Lee County Sheriff's Office will provide marine law enforcement services using extra duty boat patrols throughout the waterways around Fort Myers Beach. An activity sheet will be sent by the Sheriff's Office for each detail worked with invoices. Boat patrol details are scheduled through the Lee County Sheriff's Office Marine Unit and are based on the availability of deputies and vessels.

\$25,000 of funding for these services is being provided by a grant by the West Coast Inland Navigation District through Lee County.

These services were required to begin prior to approval by the Town Council. Therefore, an emergency affidavit was executed by the Town Manager and is now being ratified via this resolution.

Attachments:

1. 533 Agreement for Extra Duty Detail Services-1 unsigned
2. 2024 Detail Request Form - Exhibit A
3. Final 24-09, Ratifying Lee County Sheriff Extra Duty Detail Agreement Waterways
4. Contract Addendum - (Last Revised 12-2023) (1)

Financial Impact:

This service will be funded by a \$25,000 grant from the West Coast Inland Navigation District through Lee County

6. **Alternative Action**

Do not approve.

7. **Management Recommendations:**

Approve the contract.

8. **Recommended Approval:**

Amy Baker, Town Clerk
Joe Onzick, Finance Director
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/21/2024
Approved - 2/26/2024
Approved - 2/28/2024
Approved - 2/28/2024
Final Approval - 2/28/2024

AGREEMENT FOR EXTRA-DUTY DETAIL SERVICES

This Agreement for **Extra-Duty Detail Services** ("The Agreement" or "Agreement"), effective upon the date of LCSO's signature, is made by and between Sheriff Carmine Marceno, in his official capacity as Sheriff in and for Lee County, Florida and the Lee County Sheriff's Office (hereinafter "LCSO"), and Town of Ft Myers Beach, (hereinafter "Entity"), and collectively as "the parties", hereby agree as follows:

WITNESSETH:

WHEREAS, Entity plans to engage in an event as set forth, and at a location set forth, in Exhibit A and desires, as a security measure, a law enforcement presence at said event; and

WHEREAS, the LCSO is willing to provide law enforcement personnel, acting in an extra-duty detail capacity, to provide services described herein and set forth in Exhibit A while wearing LCSO uniforms, utilizing LCSO vehicles, and other LCSO property; and

WHEREAS, Exhibit A attached hereto is a material part of the Agreement and is incorporated and merged as if fully set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and obligations undertaken by the parties as contained herein, and for other good and valuable consideration, the parties hereto agree as follows:

1. Authority.

The Entity expressly represents it or they are legally authorized to bind the Entity. The Entity fully comprehends and acknowledges the LCSO is acting in reliance on this, as well as other representations the Entity has made to members of the LCSO. The Entity further expressly represents that it or they has/have acquired all necessary applicable permits to engage in the event for which they are requesting LCSO law enforcement personnel as set forth in **Exhibit A**.

2. Description and Schedule of Event.

The description of the event, including the time, place, and duration, are set forth in Exhibit A, which is attached hereto and incorporated as if full set forth herein.

3. Term of Agreement.

The term of this Agreement shall begin on the first day of the event and terminate on the last day of the event as set forth in Exhibit A.

4. **Assessment of Security Needs and Authority Retained by LCSO.**

The Entity understands and consents to the LCSO conducting an assessment of the security needs of the Entity for the event location set forth in Exhibit A. The Entity understands the assessment of the referenced security needs by the LCSO is conducted by the LCSO, at their sole and absolute discretion, to allow LCSO to determine the minimum number of extra-duty detail law enforcement personnel adequate for the event. The Entity acknowledges the assessment of security needs by LCSO as set out herein does not constitute a representation, promise, guarantee or warranty by LCSO that LCSO will be able to supply the minimum number of off-duty or extra-duty detail law enforcement personnel which LCSO determines are required.

The Entity understands the extra duty detail services provided to the Entity are intended to offer an immediate presence of uniformed, sworn law enforcement personnel and to, by their presence alone, serve to potentially deter unruly or unlawful behavior. The Entity fully understands and accepts that by LCSO providing extra duty detail services pursuant to this Agreement LCSO is not assuming any duties of protection or care to any persons who may or may not be present at the location of the event as set forth in Exhibit A. The Entity acknowledges the extra-duty detail services provided by LCSO are merely to serve as a supplement to other measures and/or care provided or taken by the Entity and the Entity specifically DOES NOT expect or rely on LCSO to exclusively assume any duties of care.

5. **Scheduling and Command.**

The primary duties and essential functions of law enforcement personnel providing extra-duty detail services shall be as assigned by LCSO command.

The selection and scheduling of the law enforcement personnel providing extra-duty detail services shall be in accordance with the practices and policies of LCSO.

6. **Termination of Agreement.**

As set forth in Exhibit A.

7. **Compensation.**

As set forth in Exhibit A.

8. **Independent Relationships.**

The parties to this Agreement are solely independent of each other and are contracting with each other for the sole purpose of the obligations set forth in the Agreement. Nothing in this Agreement shall create a partnership, joint venture, agency, or employer/employee relationship. Neither party may make, or undertake, any commitments or obligations on behalf of the other.

9. **Waiver of Terms and Conditions.**

The failure of LCSO to insist on any one or more instances of performance of any of the terms and conditions of this Agreement or to exercise any right or privilege contained in this Agreement, or the waiver of any breach of the terms and conditions of this Agreement, shall not be considered as having waived any such terms, conditions, rights or privileges of the Agreement, and the same shall continue and remain in force and effect.

10. **Severability.**

It is the intention of the parties that this Agreement is in compliance with all relevant state and federal statutes, regulations, and governmental agency guidelines governing the relationship between the parties at the time of execution. If any provision of this Agreement is subsequently rendered invalid or unenforceable by any local, state or federal statute or regulation, or declared null and void by any court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect.

11. **Third Party Beneficiaries.**

This Agreement is intended solely for the benefit of the parties hereto and shall not, directly or by implication, create any rights, claims, obligations, or duties to any third party not a signatory to this Agreement.

12. **Assignment.**

This Agreement shall not be assigned in whole or in part by either party without the express prior written consent of the other party.

13. **Binding Effect.**

This Agreement shall be binding upon the parties hereto and shall inure to the benefit of the Entity or the LCSO, as applicable.

14. **Governing Law.**

This Agreement shall be controlled, interpreted, construed, and enforced in accordance with the laws of the State of Florida without regard to conflict of laws. The exclusive venue for any dispute arising out of this Agreement shall be in a court of competent jurisdiction in Lee County, Florida.

15. **Titles or Captions.**

The paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend, modify, amplify, or describe the scope of this Agreement or the intent of any provision hereof.

16. **Draftsmanship.**

Any conflict in the terms of this Agreement shall be construed in favor of LCSO.

17. **Amendments.**

This Agreement may only be modified or amended by the mutual written agreement of the parties. Any such modification or amendment shall be signed by each party and shall be attached to and become a part of this Agreement.

18. **Indemnification.**

The Entity agrees to indemnify and hold harmless LCSO, and its employees, volunteers, and agents for and from any and all claims (direct or derivative), damages, costs, expenses, demands of whatsoever kind or nature, and causes of action, arising from or related to the Entity's performance, nonperformance, action(s), omission(s), or failure to act related to any duty or obligation imposed upon LCSO pursuant to the Agreement. This indemnification obligation shall not be subject to any limitation as to the amount or type of recovery sought, or, on the amount or type of insurance coverage secured by the Entity. Further, the Entity shall require all their insurance carriers, with respect to all insurance policies to which they are a party, to waive all rights of subrogation against LCSO incidental to the extra-duty detail service described herein.

19. **Sovereign Immunity.**

Nothing herein contained in this Agreement is intended, nor shall be construed, to waive any of the limitations of liability and other defenses provided by sovereign immunity and the strict financial limitations set forth in Florida Statute 768.28.

20. **Extra-Duty Detail Indemnification.**

Nothing contained in this Agreement shall in any way limit or impeded application of the indemnification language in Florida Statute 30.2905.

21. **Recitals/Entire Agreement.**

The recitals above are incorporated herein as if fully restated. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter hereof.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first written above.

ENTITY

Town of Ft Myers Beach

2525 Estero Blvd, Ft Myers Beach FL 33931

By: _____

Print Name: _____

Date: _____

CARMINE MARCENO, SHERIFF O/BO/
THE LEE COUNTY SHERIFF'S
OFFICE

By: _____
Sheriff/Designee

Print Name: _____

Date: _____

Carmine Marceno
Sheriff



State of Florida
County of Lee

"Proud to Serve"

Exhibit A
Detail Request Form

Please review all information on this request form for accuracy and as the vendor, sign at the bottom. All details are a minimum of four (4) hours with the exception of boat details which are a minimum of six (6) hours and a half hour drive time to and from the detail location. When five (5) or more deputies are assigned to an event, a supervisor with the rank of Sergeant or above may be required at an upgraded hourly charge. Depending on the type of event or crowd size, it will be at the discretion of the Sheriff's Office to determine the number of deputies needed.

The current detail rates are:

Security/Funeral	\$55/hr	Traffic	\$65/hr
CSA/Dispatch Holiday	\$55/hr	Detail Supervisor	\$75/hr
CSA/Dispatcher	\$45/hr	Holiday Sup/IC	\$85/hr
Boat	\$65/hr	Civil/Prisoner Trans	\$75/hr
Holiday/Last Minute	\$75/hr	Bomb Sweep	\$65/hr

Details are charged a \$15 per deputy vehicle rate (when applicable).
All boat details are charged a \$20 per hour boat rate (when applicable).

Holidays: New Year's Day, Easter Sunday, Memorial Day, 4th of July, Labor Day, Thanksgiving Day, Christmas Eve, Christmas Day, New Year's Eve

Extra Duty Details will not be provided to any person, firm or organization whose members, business or operations are of questionable nature; or for any event that will discredit the assigned Deputy, Sheriff's Office or County. The Sheriff's Office reserves the right to cancel the detail without notice and to recall the deputy(s) when necessary for community safety without penalty. LCSO cannot guarantee detail coverage.

The Lee County Sheriff's Office will be the only armed personnel at any event where the detail is taking place. Any private security company that is hired to work alongside the Sheriff's Office will be a reputable, licensed and insured company whose employees are State D licensed unarmed security guards. Proof of the signed contract with private security company will be required.

In order to cancel a detail, notice must be given to the Detail Coordinator twenty-four (24) hours prior to the start of the detail either by phone or email. In the case of weather, notice of cancellation must be received within two (2) hours of the starting time otherwise a two (2) hour charge per deputy will be billed. In the event of a cancellation after business hours, please call 239-477-1000 and ask to have the on-call Detail Coordinator call you. If cancellation notification is not made, and LCSO Detail Deputies show up to the detail, vendor will be billed the four-hour minimum for each deputy.

Unless otherwise specified, full payment of all details must be received one (1) week prior to the start of the event in the form of a cashier's check, money order, or business check made out to Lee County Sheriff's Office. Credit card payments can be made via telephone. The Lee County Sheriff's Office does not accept cash or personal checks.
Payments can be sent to: The Lee County Sheriff's Office 14750 Six Mile Cypress Pkwy., Fort Myers, FL 33912 ATTN: Details Unit.

Total Deputy(ies) <u>1/2</u>	Total Hours <u>6 hr min</u>	Rate per Hour <u>\$65/\$75</u>	Vehicle Rate <u>\$20/per hr</u>
Supervisory Deputy(ies) _____	Total Hours _____	Rate per Hour _____	Vehicle Rate _____
Entity _____ 			



"The Lee County Sheriff's Office is an Equal Opportunity Employer"
14750 Six Mile Cypress Parkway • Fort Myers, Florida 33912-4406 • (239) 477-1000

Detail Request Form - continued

LCSO Details Main Phone Number: 239-477-1199		
Vendor Information		
Business Name: <u>Town of Ft Myers Beach</u> Street: <u>Attn: Marine Patrols 2525 Estero Blvd</u> City: <u>Ft Myers Beach</u> State: <u>FL</u> Zip Code: <u>33931</u> Business Contact: <u>Andy Hyatt</u> Phone: <u>239-765-0202</u> Email Address: <u>Chadd@fmbgov.com & andyhyatt@fmbgov.com</u>		
Event Information		
Detail Location: <u>Ft Myers Beach Waterways</u> Street: <u>Including Gulf of Mexico, Matanzas Pass & Bay areas</u> City: <u>Ft Myers Beach</u> State: <u>FL</u> Zip Code: _____ Contact During Event: _____ Phone: _____ Event Date: <u>through December 31, 2024</u> Event Time: <u>varies by patrol</u> Anticipated Crowd Size: _____ Type of Event: <u>Marine Unit Patrols</u> Additional Security Working Detail: ☐ Yes ☒ No If Yes, how many? _____ Permits Attached: ☐ Yes ☒ No Alcohol Served: ☐ Yes ☒ No		
Detail Information		
Security/Funeral ☐ CSA/Dispatcher ☐ Last Minute/Holiday ☒ Marked Vehicle ☒ Yes ☐ No Uniformed Deputy ☒ Yes ☐ No	Traffic/Boat ☒ Bomb Sweep ☐ Supervisor ☐ Unmarked Vehicle ☐ Yes ☐ No Plain Clothes Deputy ☐ Yes ☐ No	Prisoner Trans/Civil ☐ CSA Holiday ☐ Holiday Sup/IC ☐ Detail Description: Boat patrols throughout the waterways around Ft Myers Beach. An activity sheet will be sent for each detail worked with invoices. Boat patrol details are scheduled thru LCSO Marine Unit & are based on availability of deputies and vessels. Any details falling on or requested for holidays will be billed at the holiday rate of \$75/hour. Two-man crew boat details may be required for certain circumstances.



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14750 Six Mile Cypress Parkway • Fort Myers, Florida 33912-4406 • (239) 477-1000

RESOLUTION NUMBER 24-09

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO APPROVE AN AGREEMENT, WITH ADDENDUM, WITH LEE COUNTY SHERIFF'S OFFICE FOR EXTRA-DUTY WATERWAY DETAIL SERVICES AT THE RATES SPECIFIED IN EXHIBIT A TO THE AGREEMENT, SUBJECT TO FINAL LEGAL REVIEW; AUTHORIZING THE TOWN MANAGER TO SIGN THE AGREEMENT AND ADDENDUM; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the 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 services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town Council to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the law enforcement services within the Town are provided by the Lee County Sheriff's Office; and

WHEREAS, the Lee County Sheriff's Office has the capacity to provide extra waterway detail services for the Town; and

WHEREAS, approval of the the agreement for services through December 31, 2024 for the Fort Myers Beach waterways, including the Gulf of Mexico, Matanzas Pass and Bay areas is in the best interest of the residents of the Town.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

Section 1. That the foregoing whereas clauses are ratified and confirmed as being true and correct as the legislative and administrative findings of the Town Council and incorporated into this Resolution.

Section 2. That Agreement and Addendum with the Lee County Sheriff to provide extra-duty waterway detail at the rates specified in Exhibit A to the Agreement is approved subject to final legal sign-off.

Section 3. That the Town Manager is authorized to sign the agreement and addendum.

Section 4. That this Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council upon a motion _____ and seconded by _____, and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 5th day of February 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

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

Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this ____ day February 2024.

TOWN OF FORT MYERS BEACH, FLORIDA
CONTRACT ADDENDUM

THIS STANDARD CONTRACT ADDENDUM is made and entered into this ____ day of _____, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and _____ hereinafter referred to as “Contractor”, concerning that certain _____, and dated the ____ day of _____ (“Agreement”).

WITNESSETH:

WHEREAS, Section 119.0701, Fla. Stat., requires that certain public agency contracts must include certain statutorily required provisions concerning a contractor’s compliance with Florida’s Public Records Act; and

WHEREAS, Section 768.28, Fla. Stat., sets forth certain mandatory limitations on indemnification and liability for Florida public agencies; and

WHEREAS, Florida law requires that public agency contracts be subject to non-appropriation and thereby contingent upon appropriation during the public agency’s statutorily mandated annual budget approval process; and

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors; and

WHEREAS, Sections 287.133 and 287.135, Florida Statutes contain restrictions on local governments contracting with companies that are considered “Scrutinized Companies” or who appear on convicted vendor lists; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701 related to social government and corporate activism are also added by virtue of this Addendum

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

2. Public Records Compliance. Contractor agrees that, to the extent that it may "act on behalf" of the Town within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

TOWN HALL
2525 ESTERO BLVD.
FORT MYERS BEACH, FL. 33931
(239)765-0202
AMY@FMBGOV.COM

3. Public Records Compliance Indemnification. Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

4. Compliance/Consistency with Section 768.28, Fla. Stat. Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

5. Non-appropriation. Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

6. E-Verify Compliance. By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes "Employment Eligibility," as amended from time to time. This includes but is not limited to register with and use the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Florida Statutes.

7. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes. Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies

that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

8. Venue and Jurisdiction. Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement; and ii) agrees to waive the right to file any action, suit or proceeding in, or remove any action, suit or proceeding to, any Federal Court.

9. Attorneys' Fees and Costs. Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fee and costs.

10. Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

11. Data Management; Notice of Breach. Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

12. Environmental and Social Government and Corporate Activism. The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

13. Taxes. The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency as provided in Section 11.4 of the Agreement, to the

extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.

14. Additional Terms. Notwithstanding any of other provision to the contrary, the parties agree as follows:

A. None.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach

Amy Baker, Town Clerk

Dan Allers, Mayor

APPROVED AS TO FORM & SUFFICIENCY

Vose Law Firm, Town Attorney

1. **Request:**

Meeting Date: March 4, 2024

Update on Eligibility of Obtaining Tourist Development Tax Funding for Times Square

Why the action is necessary:

In response to a direction provided.

What the action accomplishes:

Fulfills direction from Town Council

2. **Agenda:**

TOWN ATTORNEY'S ITEMS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Becky Vose, Town Attorney,
Nancy Stuparich, Town
Attorney

5. **Background:**

At the February 20, 2024 Town Council meeting, Mayor Allers requested permission to direct staff to research whether the Times Square road was vacated. He noted that it was part of why they were not getting TDC funds for the area. The Town Attorneys are working with the Lee County Attorney's office regarding this request. The Town Clerk has been able to locate the attached funding denial from 2015 related to beach replenishment adjacent to Times Square.

Attachments:

1. Memo to T.Pigott, TFMB Times Square Funding Request
2. DETERMINATIONS with CAC and County Attorney comments and attachments
3. Memo to T.Pigott, TFMB Times Square Funding Request (1)

Financial Impact:

Conclusion of the research may identify additional funding sources or eliminate funding denials.

6. **Alternative Action**

7. **Management Recommendations:**

Concur.

8. **Recommended Approval:**

Jason Freeman, Legislative Liaison / Deputy Town Clerk
nancy stuparich, Town Attorney
Amy Baker, Town Clerk
Andy Hyatt, Town Manager

Created/Initiated - 2/21/2024
Approved - 2/28/2024
Approved - 2/28/2024
Final Approval - 2/28/2024

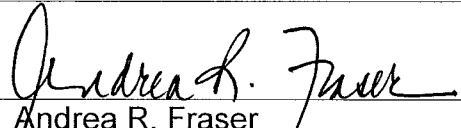
**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

VIA EMAIL ONLY

DATE: April 16, 2015

TO: Tamara Pigott
Executive Director, Visitor &
Convention Bureau

FROM:


Andrea R. Fraser
Deputy County Attorney

RE: Town of Fort Myers Beach Times Square Funding Request

In response to the letter dated April 10, 2015, from Town of Fort Myers Beach Mayor Anita Cereceda, the following is provided:

In February 2015, the Town of Fort Myers Beach officially submitted a request for beach and shoreline funding for Times Square. In the proposal, Times Square is described as an area housing "multiple restaurants, seating areas and entertainment throughout the year". It is a capital request to maintain and improve Times Square by repaving the pedestrian walkway and beach access, installing new benches, new light fixture, and for labor costs to maintain the sweeping, blowing and daily clean-up of Times Square.

Florida Statutes, Section 125.0104(5)(a) authorizes use of tourist development tax revenues as follows:

To finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river.

Based on the Town's submission for beach and shoreline funding, Times Square eligibility would be that of beach park facilities or beach improvement, maintenance or physical preservation of the beach or shoreline. However, this project request does not meet the eligibility requirement of beach park facility or beach improvement maintenance, nor the physical preservation of the beach, shoreline or inland lake.

In 1996, the Legislature amended the statute to include the financing of "beach park facilities". The word "facility" is defined as something designed, built, installed, etc., to serve a specific function affording a convenience service." Times Square, as described

Tamara Pigott
April 16, 2015
Page 2

RE: Town of Fort Myers Beach Times Square Funding Request

by the Town of Fort Myers Beach, houses multiple restaurants, seating areas, and entertainment. It is the beach with shelters, picnic tables or restrooms. As such, it would not be considered a beach park facility.

In *Lee County v. Charlie Green, Clerk of the Circuit Court*, Case No. 11-CA-002896, the Court held "...uses of this tax revenue must relate to the physical preservation of the beach, shoreline, or inland lake or river". Renovation of Times Square does not physically preserve the beach, shoreline, or inland lake or river.

Florida Statutes Section 125.0104(5)(d) prohibits the use of tourist tax revenues for any purpose not expressly authorized. "Thus, the Legislature intended to limit the expenditure of tourist tax revenues to those uses expressly authorized. By this limitation, the Legislature prohibited the expenditure of these funds for any other purpose even if authorized by the Board of County Commissioners. Otherwise, the Legislature could have included language in the statute allowing the expenditure of these fund for any purpose determined by a county to be appropriate – no matter how remote or indirect such use may be to attracting tourists." *Id.*

Based on the above, this project does not meet the criteria for tourist development revenue.

ARF:tlb

cc via email only: Anita Cereceda, Mayor, Town of Fort Myers Beach (Anita@fortmyersbeachfl.gov)

Organization Name	Project Name	Agency Priority	Amount Requested	County Attorney Opinion	County Attorney Comments	CAC Comments 3/23/2015	TDC Comments
Captiva Erosion Prevention District	1 - BN -Beach Renourishment Alternative Borrow Area	#1	\$325,000	Eligible	This project is eligible for TDC funding.	No comments.	
City of Sanibel	2 - BN -Beach and Shoreline Erosion Survey	#2	\$40,000	TDC to determine legislative finding	TDC must make a legislative finding that this project is directly related to tourism and furthers the purpose of promoting tourism.	No comments.	
Lee County Division of Natural Resources	3 - BN -Beach Renourishment Trust Fund	NA	\$2,200,000	Eligible	Beach renourishment is an authorized expenditure of TDC funding.	No comments.	
Town of Fort Myers Beach	4- BN - Beach Replenishment	#1	\$1,900,000	Ineligible	The project doesn't protect the shoreline, it enhances the beach landward of the shoreline on private property. Legally the public use may not be protected.	CAC questioned whether the beach was actively maintained. Representative replied that the beach in question is actively maintained, and although the land in question is mainly privately owned by condo complexes, the beach is very popular for attracting the public due to sandsculpting competitions, volleyball tournaments, etc. Dune plantings are a part of the plan to protect any investment made in beach replenishment.	

Organization Name	Project Name	Agency Priority	Amount Requested	County Attorney Opinion	County Attorney Comments	CAC Comments 3/23/2015	TDC Comments
Captiva Erosion Prevention District	A - Maintenance - Beach Park Facility #2 Maintenance		\$23,247	Eligible	Maintenance of a beach park is an authorized expenditure of Tourist Development Tax dollars.	No comments.	
City of Cape Coral	B - Maintenance - Beach Park Facility Maintenance	#2	\$82,000	Eligible	Maintenance is an authorized expenditure of TDC funds.	No comments.	
"Ding" Darling Wildlife Society	C - Maintenance - Beautification of Surrounding Useppa Island including Whoopie Island	#1	\$150,000	Ineligible	This project does not allow access to the public and is therefore not eligible for TDC funding.	No comments.	
City of Sanibel	D - Maintenance - Facility Beach Maintenance	#1	\$1,495,880	Eligible	Maintenance of beach facilities is an authorized expenditure of TDC funds.	No comments.	
Town of Fort Myers Beach	E - Maintenance - Beach and Shoreline Maintenance	#2	\$984,838	Eligible	Eligible for funding - Newton Beach Park, Mound House Shoreline Park, Old San Carlos Bayside Park. <i>Not eligible - Times Square.</i> Maintenance funding is eligible for beach park facilities as listed above. Times Square does not have the same elements as the other facilities.	VCB Staff will request the amount of the Times Square maintenace funding that is ineligible from the Town of Fort Myers Beach. The ineligible amount will be subtracted from the total amount requested.	*See attachment A- letter from the Mayor of Town of Fort Myers Beach regarding Times Square and County Attorney's response

Organization Name	Project Name	Agency Priority	Amount Requested	County Attorney Opinion	County Attorney Comments	CAC Comments 3/23/2015	TDC Comments
Lee County Parks and Recreation	F - Maintenance - Operation Beach and Shoreline Maintenance	#1	\$1,919,800	Eligible	Maintenance of a beach park facility is an authorized expenditure of TDC funds.	No comments.	
Lee County Parks and Recreation	G - Maintenance - County Wide Emergency Beach Cleanup	#2	\$100,000	Eligible	Cleanup of beaches is an authorized expenditure of TDC funds.	No comments.	
Lee County Government - Facilities Construction & Management	H - Maintenance - Caloosahatchee Regional Park Shoreline Stabilization	#1	\$200,000	Eligible	Shoreline protection is an authorized expenditure of TDC funds.	CAC member inquired if this is a multi-year project. Requestor informed the CAC that this is a phased project and they will be requesting funds for the next two years. They updated the CAC that they have received the Army Corps of Engineers permit to proceed with the project.	
Lee County Government - Facilities Construction & Management	I - Maintenance - Capitalized Beach Front Park Maintenance	#2	\$80,000 \$100,000	Eligible	Maintenance of a beach park is an authorized expenditure of TDC funds. <i>However, the storage building is not eligible for funding.</i>	Lee County Facilities provided the total cost of the ineligible storage shed to be \$20,000. This will reduce their request to a total of \$80,000.	
Lee County Government - Facilities Construction & Management	J - Maintenance - Boardwalk Deck Improvements	#3	\$20,000	Eligible	Maintenance of beach access is an authorized expenditure of TDC funding.	No comments.	

Organization Name	Project Name	Agency Priority	Amount Requested	County Attorney Opinion	County Attorney Comments	CAC Comments 3/23/2015	TDC Comments
Lee County Government - Facilities Construction & Management	K - Maintenance - Matlacha Bat House Park	#4	\$126,500	TDC to determine legislative finding	In order to fund this project, TDC must make a legislative finding that this project is directly related to tourism and furthers the purpose of promoting tourism in Lee County.	No comments.	
Lee County Government - Facilities Construction & Management	L - Maintenance - Causeway Islands Erosion Control	#5	\$971,650	Eligible	Erosion control of a shoreline is an authorized expenditure of TDC funds.	No comments.	
Gasparilla Island State Park	M - Maintenance - Gasparilla Island State Park Pavillion to Beach Boardwalk	#1	\$135,000	Eligible	Access to the beach and dune protection is an authorized expenditure of TDC funds.	CAC member questioned why the State of Florida isn't funding this project instead of TDC funds.	
City of Bonita Springs	N - Capital - Bay Park North Beach Park-capital project	#1	\$28,953	TDC to determine legislative finding	TDC proceeds may be committed to be used to provide public parking facilities to serve beach access areas and other beach park facilities if the TDC makes the legislative finding that such expenditure will promote tourism within the county.	TDC funds have not historically supported parking lots or parking lot maintenance. If the TDC makes a legislative finding to approve this project it sets a precedent for future projects. *Note: The Attorney General's opinion on the eligibility of beach parking facilities recently changed to allow for these types of projects.	*See attachment B- memo from County Attorney regarding funding parking

Organization Name	Project Name	Agency Priority	Amount Requested	County Attorney Opinion	County Attorney Comments	CAC Comments 3/23/2015	TDC Comments
City of Cape Coral	O - Capital - Sirenia Vista (Phase III) Manatee Observation Boardwalk	#1	\$250,000	Eligible	The use of TDC funds to protect the shoreline is an eligible expenditure of TDC funds.	No comments.	
City of Fort Myers	P - Capital - City of Fort Myers River District Redevelopment - Curved Pier Project	#1	\$3,686,060	Ineligible	This project is outside the provisions of Florida Statutes Section 125.0104(a)(5) because it is for the purposes of entertainment, <i>with the exception of the floating dock which needs a legislative finding.</i>	CAC member questioned what the entertainment portion of the project consisted of. It was discussed that perhaps the lighting, fixed pier, and access to the entertainment district may be what caused those portions to be considered entertainment and therefore ineligible. The County Attorney must make determinations based on the verbiage used in the funding requests, and it is very important that requestors are mindful of this when writing their requests. Since the floating dock portion of the request requires a legislative finding, the City of Fort Myers is to provide the cost of the floating dock should the TDC deem that portion of the request eligible.	

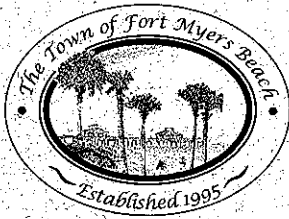
Organization Name	Project Name	Agency Priority	Amount Requested	County Attorney Opinion	County Attorney Comments	CAC Comments 3/23/2015	TDC Comments
Friends of Koreshan State Historic Site	Q - Capital - Mound Key Site Improvements Phase I	NA	\$117,350	Eligible	The funding for shoreline protection is eligible for TDC funding. <i>However, in order to fund the floating dock TDC must make a legislative finding.</i>	CAC questioned whether the project is located on the portion of Mound Key that is not private land. Requestor confirmed that the project is not located on private land, and the request for a floating dock would be less likely to damage the environment. An estimate for the floating dock needs to be provided should the TDC vote against a legislative finding.	
Koreshan State Historic Site	QQ - Capital - Koreshan Activity Pavilion	NA	\$34,000	TDC to determine legislative finding	TDC funds may be used for this type of facility if there is a legislative finding that this is a beach park facility and that expenditure of TDC funds for this project is directly related to tourism and furthers the purpose of promoting tourism in the County.	CAC questioned if they had sought state funding for this project. Requestor indicated no, however state absorbs maintenance costs. The pavillion would be an enhancement to the park and make it more attractive to tourists. Clarification was provided that it would be free to visitors and available to rent for exclusive use.	
Gasparilla Island State Park	R - Capital - Cayo Costa Restroom Project	#1	\$50,000	TDC to determine legislative finding	TDC must make a legislative finding that a restroom is a beach park facility that directly related to tourism and furthers the purpose of promoting tourism in Lee County.	CAC questioned if they had sought state funding for this project.	



Organization Name	Project Name	Agency Priority	Amount Requested	County Attorney Opinion	County Attorney Comments	CAC Comments 3/23/2015	TDC Comments
City of Sanibel	S - Capital - Lighthouse Fishing Pier Repairs	#3	\$200,000	TDC to determine legislative finding	Maintenance of the fishing pier is an authorized expenditure of TDC funds. <i>However, TDC must make a legislative finding that rod holders is directly related to and promotes tourism..</i>	No comments.	
City of Sanibel	SS - Capital Lighthouse Beach Park Main Access Boardwalk Replacement	#4	\$250,000	Eligible	Maintenance of beach facilities is an authorized expenditure of TDC funds.	No comments.	
Lee County Government - Facilities Construction & Management	T - Capital - Lynn Hall Memorial Park Boardwalk and Dune Improvements	#6	\$70,000	Eligible	Dune walkovers is an authorized expenditure of TDC funds.	No comments.	
Town of Fort Myers Beach	U - Capital -Capital Projects: Times Square	#3	\$959,100	Ineligible	This area is full a businesses and has street performances (i.e. business district) and although close to the beach, does not meet the criteria for beach and shoreline funding.	No comments.	
Town of Fort Myers Beach	V - Capital - Capital Projects: Beach & Bay Access Improvements	#5	\$278,115	Eligible	Beach access improvements are authorized expenditures of TDC funds.	No comments.	

Organization Name	Project Name	Agency Priority	Amount Requested	County Attorney Opinion	County Attorney Comments	CAC Comments 3/23/2015	TDC Comments
Town of Fort Myers Beach	W- Capital - Capital Projects: TDC Building	#6	\$50,000	Ineligible	Use of TDC revenue for building a storage facility to house equipment that assists in beach maintenance is not an authorized expenditure.	No comments.	
Town of Fort Myers Beach	X - Capital - Mound House Turn Around	NA	\$20,000	Ineligible	<i>While native landscape and signage about the property is eligible for funding,</i> moving a gate so that the traffic is better able to turn around safely is not an authorized use of TDC funding.	No comments.	
Town of Fort Myers Beach	Y - Other - Capital Projects: Trolley Service	#4	\$500,000	Ineligible	Trolleys used to alleviate traffic and congestion is not an authorized expenditure of TDC revenue. This is a general governmental function owed to the public at large.	No comments.	
Lovers Key State Park	Z - Other - Lovers Key State Park Truck and Trams	#1	\$93,700	TDC to determine legislative finding	TDC must make a legislative finding that this project directly related to tourism and furthers the purpose of promoting tourism in Lee County.	CAC commented to seek state funding for this project.	

Organization Name	Project Name	Agency Priority	Amount Requested	County Attorney Opinion	County Attorney Comments	CAC Comments 3/23/2015	TDC Comments
Sanibel-Captiva Conservation Foundation	ZA - Other - Beach Conditions Survey	#1	\$90,070	Ineligible	This project would not directly benefit the beach and shoreline based on the Court decision.	Although ineligible, CAC commented that additional reporting from SCCF on Sanibel and Captiva would be helpful, however, there is concern that this is a duplication of services presently provided by Mote Marine Lab.	
Town of Fort Myers Beach	ZB - Other - Capital Projects: Fireworks	#7	\$120,000	Ineligible	Fireworks is not an authorized expenditure of beach and shoreline funding.	No comments.	
Town of Fort Myers Beach	ZC - Other - Capital Projects: Electric Banner	NA	\$100,000	Ineligible	Electric banners providing information on real time traffic and travel is not an authorized expenditure of TDC funding.	No comments.	
			\$17,671,263				



Town of Fort Myers Beach

Anita Cereceda
Mayor

Dan Andre
Vice Mayor

Alan Mandel
Council Member

Rexann Hosafros
Council Member

Summer Stockton
Council Member

April 10, 2015

Dear Tourist Development Council,

The Town of Fort Myers Beach received the County Attorney's response in regards to the Town's request of Times Square. The Town respectfully disagrees and feels that this beach access meets the TDC criteria for beach and shoreline funding.

County Attorney Position:

This area is full of businesses and has street performances (i.e. business district) and although close to the beach, does not meet the criteria for beach and shoreline funding.

Town of Fort Myers Beach Explanation:

Every year the Town of Fort Myers Beach requests funding for the maintenance of beach accesses from the Tourist Development Council (TDC). The maintenance includes installing ropes/bollards, mobi-mats or fixing boardwalks, landscaping, signage, trash and recycling cans as well as overall access appearance.

In the 2015-2016 application the Town applied for the Town right-of-way beach access, commonly referred to as Times Square, to be included in the beach and shoreline maintenance request. The requested elements are items that meet the TDC eligible funding criteria and TDC has funded in years past.

Times Square is the largest direct beach access for pedestrians as well as providing ADA accessibility and connects Crescent Beach Family Park, Lynn Hall Memorial Park and the Fort Myers Beach Pier. It is a thoroughfare for visitors to access the shoreline, while being directly adjacent to the shoreline.

To address the County Attorney's specific comment about being a "business district," Times Square right-of-way is directly adjacent to the shoreline and our other existing funded Town of Fort Myers Beach accesses are interwoven with residential and business entities. A couple examples are beach access number 30, Palm Avenue which has the retail/rental facility Diamond Head and beach access number 35, Avenue A with Lani Kai and Gulfshore Grill next door. Both of these serve as multipurpose attractions all drawing visitors to the beach and having options of retail/business and entertainment. This mixed use is found throughout our 7 mile long island and is not unique.

Recommendation:

The Town's request for Times Square does meet the criteria for beach and shoreline funding and should be funded as requested.

Thank you,

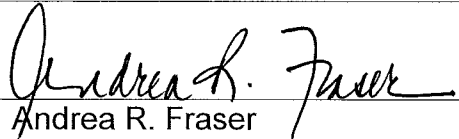
Mayor Anita Cereceda
Town of Fort Myers Beach

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

VIA EMAIL ONLY

DATE: April 16, 2015

TO: Tamara Pigott
Executive Director, Visitor &
Convention Bureau

FROM: 
Andrea R. Fraser
Deputy County Attorney

RE: Town of Fort Myers Beach Times Square Funding Request

In response to the letter dated April 10, 2015, from Town of Fort Myers Beach Mayor Anita Cereceda, the following is provided:

In February 2015, the Town of Fort Myers Beach officially submitted a request for beach and shoreline funding for Times Square. In the proposal, Times Square is described as an area housing "multiple restaurants, seating areas and entertainment throughout the year". It is a capital request to maintain and improve Times Square by repaving the pedestrian walkway and beach access, installing new benches, new light fixture, and for labor costs to maintain the sweeping, blowing and daily clean-up of Times Square.

Florida Statutes, Section 125.0104(5)(a) authorizes use of tourist development tax revenues as follows:

To finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river.

Based on the Town's submission for beach and shoreline funding, Times Square eligibility would be that of beach park facilities or beach improvement, maintenance or physical preservation of the beach or shoreline. However, this project request does not meet the eligibility requirement of beach park facility or beach improvement maintenance, nor the physical preservation of the beach, shoreline or inland lake.

In 1996, the Legislature amended the statute to include the financing of "beach park facilities". The word "facility" is defined as something designed, built, installed, etc., to serve a specific function affording a convenience service." Times Square, as described

Tamara Pigott
April 16, 2015
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RE: Town of Fort Myers Beach Times Square Funding Request

by the Town of Fort Myers Beach, houses multiple restaurants, seating areas, and entertainment. It is the beach with shelters, picnic tables or restrooms. As such, it would not be considered a beach park facility.

In *Lee County v. Charlie Green, Clerk of the Circuit Court*, Case No. 11-CA-002896, the Court held "...uses of this tax revenue must relate to the physical preservation of the beach, shoreline, or inland lake or river". Renovation of Times Square does not physically preserve the beach, shoreline, or inland lake or river.

Florida Statutes Section 125.0104(5)(d) prohibits the use of tourist tax revenues for any purpose not expressly authorized. "Thus, the Legislature intended to limit the expenditure of tourist tax revenues to those uses expressly authorized. By this limitation, the Legislature prohibited the expenditure of these funds for any other purpose even if authorized by the Board of County Commissioners. Otherwise, the Legislature could have included language in the statute allowing the expenditure of these fund for any purpose determined by a county to be appropriate – no matter how remote or indirect such use may be to attracting tourists." *Id.*

Based on the above, this project does not meet the criteria for tourist development revenue.

ARF:tlb

cc via email only: Anita Cereceda, Mayor, Town of Fort Myers Beach (Anita@fortmyersbeachfl.gov)

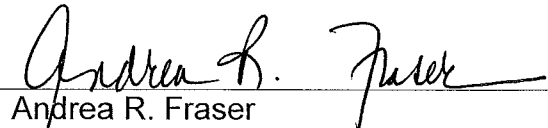
**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

VIA EMAIL ONLY

DATE: March 20, 2015

TO: Tamara Pigott
Executive Director,
Visitor & Convention Bureau

FROM:


Andrea R. Fraser
Deputy County Attorney

RE: Tourist Development Council, Beach and Shoreline Funding

Yearly, the Tourist Development Council (TDC) considers requests for Beach and Shoreline funding. Prior to granting the requests, the County Attorney's Office reviews the request and provides a legal opinion based on court cases and Attorney General Opinions. One continuous request involves providing parking. In prior years that request has been denied based on an outstanding Attorney General's Opinion. However, the Attorney General Opinion has changed and now states "tourist development tax proceeds may be... used by the County to acquire land and adjacent rights-of-way to provide public parking facilities to serve beach access areas and other beach park facilities if the County Commission makes the requisite findings that such expenditures will promote tourism within the County...". Their change in opinion is apparently based on the term "beach park facilities". According to the opinion "A review of the definition of this term indicates that such things as public parking facilities may well come within the scope of the statute. The word "facility" is defined as "something designed, built, installed, etc., to serve a specific function affording a convenience or service..."."

Based on this new opinion, requests for public parking facilities that serve beach access areas and other beach park facilities are eligible for funding should the TDC make a legislative finding that these facilities will promote tourism within the County.

ARF:tlb

cc: Nancy Macphee, Program Manager, Visitor & Convention Bureau

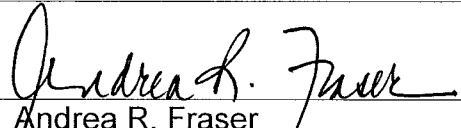
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Andrea R. Fraser
Deputy County Attorney

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ARF:tlb

cc via email only: Anita Cereceda, Mayor, Town of Fort Myers Beach (Anita@fortmyersbeachfl.gov)