



Fort Myers Beach Local Planning Agency

Town Hall Council Chambers
6231 Estero Boulevard
Fort Myers Beach, FL 33931

Agenda

Tuesday, March 10, 2026

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER
- II. INVOCATION
- III. PLEDGE OF ALLEGIANCE
- IV. APPROVAL OF FINAL AGENDA
- V. APPROVAL OF MINUTES
 - A. Local Planning Agency - February 10, 2026
- VI. PUBLIC COMMENT
- VII. PUBLIC HEARINGS
 - A. SEZ20260021, 7954 Estero Blvd
A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20260021 TO ALLOW LIKE-FOR-LIKE REPLACEMENT OF AN EXISTING 494-SQUARE-FOOT DECK, OF WHICH 89 SQUARE FEET EXTENDS INTO THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT SEAWARD OF THE 1978 COASTAL CONSTRUCTION CONTROL LINE (CCCL), RECORDED FOR THE REAL PROPERTY LOCATED AT 7954 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.
- VIII. ADMINISTRATIVE AGENDA
- IX. LPA MEMBERS ITEMS/REPORTS
- X. LPA ATTORNEY ITEMS/REPORTS
- XI. COMMUNITY DEVELOPMENT ITEMS/REPORTS
- XII. ITEMS FOR NEXT MONTHS AGENDA
- XIII. ADJOURNMENT

NOTE: THIS MEETING IS STREAMED LIVE ON YOUTUBE.

IF THE LOCAL PLANNING AGENCY UNANIMOUSLY APPROVES A REQUEST FOR A VARIANCE, EXTENSION OR SATISFACTION OF CONDITIONS, A REQUEST FOR AN ADDITIONAL HEARING BEFORE THE TOWN COUNCIL MAY BE MADE BY ANYONE IF THE REQUEST IS RECEIVED BY THE TOWN CLERK WITHIN 10 BUSINESS DAYS OF THE LOCAL PLANNING AGENCY DECISION PURSUANT TO SEC. 34-232 OF THE LAND DEVELOPMENT CODE.

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE LOCAL PLANNING AGENCY WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, HE OR SHE MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED IN ACCORDANCE WITH FLORIDA STATUTE 286.0105.



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. 239-765-0202



Fort Myers Beach Local Planning Agency

Town Hall Council Chambers
6231 Estero Boulevard
Fort Myers Beach, FL 33931

Minutes

Tuesday, February 10, 2026

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Members present: Chair Anita Cereceda, James Boan, James Dunlap, Doug Eckmann, John McLean, Jane Plummer and Don Sudduth.

II. INVOCATION

Chair Cereceda.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

LPA Member Sudduth moved to approve the final agenda, seconded by LPA Member Plummer
The motion carried unanimously.

V. APPROVAL OF MINUTES

- A. Local Planning Agency — January 13, 2026
LPA Member Dunlap moved to approve the minutes, seconded by LPA Member Boan.
The motion carried unanimously.

VI. PUBLIC COMMENT

No public comment.

VII. PUBLIC HEARINGS

Town Attorney Stuparich explained the quasi-judicial procedures and the expedited variance process. Town Clerk Baker confirmed that all agenda items were properly noticed. She swore in those providing testimony.

- A. VAR0260002, 102 Lovers Lane

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING / APPROVING WITH CONDITIONS/ DENYING VARIANCE 20260002, REQUESTING A VARIANCE FROM LDC SECTION

34-638(D)(2)(B), WHICH ALLOWS BALCONIES AND STOOPS TO ENCROACH INTO THE REQUIRED STREET SETBACK ON THE FIRST LIVING LEVEL OF RESIDENTIAL BUILDINGS WITHIN THE RC ZONING DISTRICT, TO ALLOW A SIMILAR BALCONY ENCROACHMENT ON THE SECOND LIVING LEVEL, FOR THE PROPERTY LOCATED AT 102 LOVERS LANE, GENERALLY REFERRED TO AS STRAP NUMBER: 30-46-24-W2-003N0.0080 IN FORT MYERS BEACH; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the resolution. No ex parte communications were disclosed.

Community Development Senior Planner Jason Smalley reviewed the background of the request as stated on the yellow sheet. He noted the structure was erroneously approved and staff caught it during the as-built survey phase. Staff thought it was an approvable project and was not created by the applicant. Senior Planner Smalley clarified that the applicant was asking for one variance for the single-level balcony and will request a removal of the fees from the town council.

No public comment.

LPA Member Boan moved to approve the variance, subject to the four conditions and to recommend waiving the fees, seconded by LPA Member Dunlap.

The motion carried unanimously.

B. VAR20260001, 166/168 Coconut Drive

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING / APPROVING WITH CONDITIONS/ DENYING VARIANCE 20260001, REQUESTING A 4-FOOT VARIANCE FROM LDC SETBACK TABLE 34-3, WHICH REQUIRES A 7.5-FOOT SIDE SETBACK FOR PROPERTIES WITH A WIDTH OF 50 FEET TO 75 FEET IN THE RS ZONING DISTRICT, TO ALLOW REPLACEMENT OF A STAIRCASE WITH A 3.5-FOOT SIDE SETBACK, FOR THE PROPERTY LOCATED AT 166/168 COCONUT DRIVE, GENERALLY REFERRED TO AS STRAP NUMBER: 29-46-24-W2-0070A.0160 IN FORT MYERS BEACH; AND PROVIDING FOR OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

Chair Cereceda read the title of the resolution. No ex parte communications were disclosed.

Senior Planner Smalley reviewed the background of the request as stated on the yellow sheet. The applicant had an existing structure that was slightly damaged by the hurricane and the existing stairs had to be replaced. They wanted to keep the same footprint and the setbacks were difficult to meet with a new home. The applicants would like to replace what they had. Staff

recommended approval because it was an existing structure. Senior Planner Smalley reviewed the limits of the administrative approval for setbacks and noted that there were eight or nine different types of administrative variances. Mike Martell, owner, explained that he would completely remove the non-compliant downstairs unit, and build everything above the flood plane to the new building codes. He will remove the roof and use the framing and the structure of the second floor and build a structure on top of that structure. The engineers will beef up the second floor to support the third structure. The downstairs will be open and 300 feet will be used for storage. No public comment.

LPA Member McLean moved to approve the resolution with the conditions listed in the staff report, seconded by LPA Member Plummer. The motion carried unanimously.

VIII. ADMINISTRATIVE AGENDA

A. Ex Parte Communication Policy

Ex Parte Communication Policy

LPA Member Boan distributed a handout about how to regulate meetings with developers limited to quasi-judicial representation. He noted the Florida Sunshine Laws did not restrict the authority of any board or commission to establish rules or procedures governing public hearings or contacts with local public officials. He asked whether they wanted to recommend restrictive procedures to the town council when meeting with individual developers. He felt that if they were going to meet with developers, it should not be at Town Hall.

Chair Cereceda indicated that the LPA had to decide whether to maintain the county's code, which prohibited discussing anything with anyone. The LPA decided that being a small town would be difficult and they decided that they would disclose information through ex parte communications. When Margaritaville came forward, they did extensive public outreach, but they did not include individual council members or LPA members because Chair Cereceda was the liaison. She said that now members had to disclose ex parte, but the public could not ask questions. She asked whether they would treat developers and residents differently. She proposed expanding the disclosure responses to provide the public with more information.

LPA Member Sudduth thought treating residents and developers differently was a slippery slope and felt residents and developers were the same.

LPA Member Dunlap gathered a lot of information through interactions with developers to establish a baseline and assess the impact. He described the number of interactions with the EIBC regarding food trucks. He preferred a hybrid and felt they should disclose everything they do, but the community had networks, conversations and a culture that expected them to take that into consideration.

LPA Member Eckmann felt that meeting with applicants was an opportunity to hear their side of the story. He was okay with providing more disclosure. LPA Member Plummer sometimes felt pressure from developers to disclose whether she agreed or disagreed and she preferred not to.

Chair Cereceda noted that they were not disclosing the information in quasi-judicial hearings that could or would impact their vote to the public and for the record. She questioned whether it was the quantity or the quality.

LPA Member Boan commented that the perception was that meeting with developers without complete disclosure left a gray area for the public. The public was entitled to know what transpired.

LPA Member Boan indicated that some developers were residents and the project concerned the neighbors. He felt it was important that he be as prepared as possible regarding issues from the community and the developers. He was open to meeting with anyone, but he did not think adding extra steps was practical. The meetings allowed him to probe the issues further, identify areas he would like to question and raise them at public discussions. He felt it was up to them to ensure they considered only the information presented on the record.

LPA Member Eckmann asked when they should have guidelines for disclosing communications, such as who, what, and when. Chair Cereceda thought that was a good starting point. She suggested that developers meet at the Town Hall to discuss hot-topic issues. Her goal was to present to the public, applicants and staff as much information as possible about where they were and how they got there when they entered the hearings.

LPA Member Dunlap would like to focus on disclosure guidelines and require an obligation to follow them and disclose accordingly.

Chair Cereceda asked whether they should not have meetings at all. LPA Member Boan commented that everyone had the option to say no, but guidelines might be a good step.

Town Attorney Stuparich noted that the Code of Ordinances talked about disclosures being made before or during the meeting, where the vote is taken, so that persons who have opinions contrary to those are given a reasonable opportunity to refute or respond. In the LPA's Policies and Procedures manual, there is a section regarding quasi-judicial matters and ex parte communications. She recommended that they use the framework and process that they have and comply with the rule.

Consensus was reached to allow Patrick Vanesse to comment.

Mr. Vanasse stated that some jurisdictions allow developers to meet with elected officials, while others only allow discussions before the application is in process and submitted. He felt the ability to meet one-on-one was constructive and an equal playing field. When he found out what the opinions were and what they liked and disliked, he could make adjustments to the project as they went along. He felt flexibility was good, that it worked well, and that education was the key.

LPA Member Plummer noted that most of the meetings happened before they received their agenda packet, and the meetings were informational for her. She felt the meetings were important so they could digest the information. He preferred that meetings be held at the Town Hall. Members agreed to start with the who, what, where and when for ex parte communications.

IX. LPA MEMBERS ITEMS/REPORTS

LPA Member Dunlap asked whether Senior Planner Smalley could provide a current status on all projects in March. He replied positively. Chair Cereceda asked for an update on where the projects were in the process. LPA Member Boan suggested adding the information to the website. Senior Planner Smalley replied that he would provide a running list so they could see where the projects were.

Chair Cereceda suggested inviting the developers to provide a general update on their project.

No items from other members.

Deputy Town Manager Traci Kohler noted that they would soon have a virtual assistant for the town's website. Another digital tool is Gov Well, which will help with the permitting process. A code compliance piece was coming down the road. Madison AI will keep the public records request and will help generate Senior Planner Smalley's report.

X. LPA ATTORNEY ITEMS/REPORTS

No items.

XI. COMMUNITY DEVELOPMENT ITEMS/REPORTS

Senior Planner Smalley introduced Luke Kornbau as a new staff Planner. Senior Planner Smalley stated that no large projects were coming up.

XII. ITEMS FOR NEXT MONTHS AGENDA

LPA Member Plummer requested an excused absence for March.

XIII. ADJOURNMENT

LPA Member Dunlap moved to adjourn, seconded by LPA Member Plummer. The motion carried unanimously.

The meeting was adjourned at 10:37 a.m.

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2026-335**

1. Request:

Meeting Date: March 10, 2026

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20260021 TO ALLOW LIKE-FOR-LIKE REPLACEMENT OF AN EXISTING 494-SQUARE-FOOT DECK, OF WHICH 89 SQUARE FEET EXTENDS INTO THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT SEAWARD OF THE 1978 COASTAL CONSTRUCTION CONTROL LINE (CCCL), RECORDED FOR THE REAL PROPERTY LOCATED AT 7954 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

Why the action is necessary:

The Local Planning Agency (LPA) may make a recommendation to the Town Council regarding the like-for-like special exception request or may approve the like-for-like special exception request by unanimous vote.

What the action accomplishes:

The Local Planning Agency's recommendation shall be forwarded to the Town Council, or, if the request is approved by unanimous vote, shall constitute final agency action.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Resolution

5. Background:

The applicant is requesting a special exception to allow the like-for-like replacement of an existing 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

The subject property has supported a single-family residence since 1977, and included a 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL). The residence endured substantial damage during Hurricane Ian, and the deck was destroyed. The applicant now seeks to rebuild the deck in the same location and dimensions.

Section 34-652(e) of the Town's LDC requires special exception approval for the reconstruction of accessory structures, such as decks, located within the Environmentally Critical (EC) zoning district. Accordingly, the applicant is requesting a special exception to allow the like-for-like replacement of an existing 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

The applicant proposed to maintain an existing nonconforming six (6) feet side setback from the west property boundary for the rear access staircase and deck. An administrative setback variance ADD2025-0252 was granted by the Director in February 2026 to address the nonconforming side setback associated with the existing rear access staircase.

Attachments:

1. Resolution 26-XX , SEZ 20260021 7954 Estero Boulevard
2. SEZ20260021 7954 Estero Blvd Staff Report
3. Exhibit A to Resolution - Site Plan (1)_SV

Financial Impact:

Unknown

6. Alternative Action

Denial

7. Staff Recommendations:

Staff recommends approval with conditions of SEZ20260021 for the like-for-like replacement of an existing 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

8. Recommended Approval:

_____	Date: February 20, 2026
Georgina Cid, Community Development Manager	
_____	Date: February 23, 2026
Frankie Kropacek, Community Development Director	
_____	Date: February 24, 2026
nancy stuparich, Town Attorney	
_____	Date: February 26, 2026
Amy Baker, Town Clerk	

RESOLUTION NUMBER 26-XX

A RESOLUTION OF THE FORT MYERS BEACH LOCAL PLANNING AGENCY APPROVING/ APPROVING WITH CONDITIONS/DENYING SPECIAL EXCEPTION SEZ20260021 TO ALLOW LIKE-FOR-LIKE REPLACEMENT OF AN EXISTING 494-SQUARE-FOOT DECK, OF WHICH 89 SQUARE FEET EXTENDS INTO THE ENVIRONMENTALLY CRITICAL (EC) ZONING DISTRICT SEAWARD OF THE 1978 COASTAL CONSTRUCTION CONTROL LINE (CCCL), RECORDED FOR THE REAL PROPERTY LOCATED AT 7954 ESTERO BOULEVARD; PROVIDING FOR SCRIVENER'S ERRORS, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, Kara Stewart on behalf of owner Tina Matthews Trust, (hereinafter "Applicant") is requesting a special exception to allow the like-for-like replacement of an existing 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL); and

WHEREAS, the STRAP number for the subject property is 03-47-24-W3-00300.0020; and

WHEREAS, the Property is located in the "Low Density" and "Recreation" category of the Future Land Use Map of the Comprehensive Plan; and

WHEREAS, the Property is located in the "Residential Single-Family" and the "Environmentally Critical" zoning district of the Official Zoning Map of the Town of Fort Myers Beach, Florida; and

WHEREAS, the Subject Property has supported a single-family residence since 1977, that included a 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL); and

WHEREAS, the structure was destroyed by Hurricane Ian; and

WHEREAS, the Applicant is now requesting a special exception to rebuild a deck of the same size and location; of which 89 square feet extends into the Environmentally Critical (EC) zoning district, as shown in "Exhibit A"; and

WHEREAS, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on March 10, 2026, and at said hearing the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-88 of the LDC; and

WHEREAS, in accordance with the requirements of LDC Sections 34-84 and 34-88 regarding consideration of eligibility for a Special Exception, the LPA makes the following findings and conclusions:

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

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

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

WHEREAS, eligible members of the LPA voted ___ to ___ by roll call vote to approve/ approve with conditions/ deny the requested special exception with the following conditions:

1. Approval of this special exception does not give the Applicant an undeniable right to permit approval. Development of the Property must comply with all applicable requirements of

the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.

2. Any substantial repair, removal, or replacement of the deck located within the EC Zoning District shall require the applicant to obtain a new Special Exception approval and all applicable permits prior to the commencement of construction.
3. Failure to comply with any of the above-mentioned conditions of approval for the Special Exception will render this approval null and void.

WHEREAS, Ordinance 25-18 amended Section 34-232(b) of the LDC to provide that:

(b) *Owner-initiated requests.* Owner-initiated requests for rezonings, certain special exceptions and developments of regional impact require one public hearing before the local planning agency and one public hearing before the town council. Owner-initiated requests for variances and special exceptions to replace a lawful and permitted structure(s) in the Environmentally Critical (EC) zoning district that was in effect prior to a natural disaster, which is unanimously approved by the local planning agency and there is no request for an additional public hearing before the town council made by anyone that is received by the town clerk within 10 calendar days after the date of the local planning agency decision, excluding holidays, only requires one public hearing before the local planning agency, and the local planning agency decision is final agency action.

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

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

2. SEZ20260021, with the conditions contained herein, received/ did not receive unanimous approval from eligible voting members of the LPA on March 10, 2026.

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

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

Chair Anita Cereceda	_____
Vice-Chair Jane Plummer	_____
Member James Boan	_____
Member Douglas Eckmann	_____

Member Don Sudduth _____
Member _____ _____
Member James Dunlap _____

DULY PASSED AND ADOPTED THIS ____ day of _____, 2026.

Local Planning Agency of the Town of
Fort Myers Beach

By: _____
Anita Cereceda, LPA Chair

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 _____, 2026.

Attachment:
Exhibit A: Site Plan



Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Special Exception

CASE NUMBER: SEZ20260021

CASE NAME: 7954 Estero Boulevard; special exception request for the like-for-like replacement of an existing 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of 1978 CCCL.

LPA

HEARING DATE: March 10, 2026; at 9:00 am

STAFF

RECOMMENDATION: Approval with conditions

**PREPARED/
SUBMITTED BY:** Stephanie Virga/Jason Green, AICP

I. APPLICATION SUMMARY

Applicant/Owner: Kara Stewart/Tina Matthews Trust

Request: To allow the like-for-like replacement of an existing 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

Subject property: See attached site plan

Physical Address: 7954 Estero Boulevard

STRAP #: 03-47-24-W3-00300.0020

FLU: Low Density Residential and Recreation

Zoning: Residential Single-family, and Environmentally Critical

Adjacent zoning and land uses:

North:	RESIDENTIAL SINGLE FAMILY Vacant Residential
South:	GULF OF MEXICO
East:	RESIDENTIAL SINGLE FAMILY AND RECREATION Vacant Residential and Environmentally Critical
West:	RESIDENTIAL SINGLE FAMILY AND RECREATION Vacant residential and Environmentally Critical

II. BACKGROUND AND ANALYSIS

Background:

The applicant is requesting a special exception to allow the like-for-like replacement of an existing 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

The subject property has supported a single-family residence since 1977, and included a 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL). The residence endured substantial damage during Hurricane Ian, and the deck was destroyed. The applicant now seeks to rebuild the deck in the same location and dimensions.

Section 34-652(e) of the Town's LDC requires special exception approval for the reconstruction of accessory structures, such as decks, located within the Environmentally Critical (EC) zoning district. Accordingly, the applicant is requesting a special exception to allow the like-for-like replacement of an existing 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

The applicant proposed to maintain an existing nonconforming six (6) feet side setback from the west property boundary for the rear access staircase and deck. An administrative setback variance ADD2025-0252 was granted by the Director in February 2026 to address the nonconforming side setback associated with the existing rear access staircase.

Analysis:

The purpose of the EC zoning district is to designate beaches and significant wetlands whose preservation is deemed critical to the Town of Fort Myers Beach through its comprehensive plan.

The property has supported a single-family residence since 1977, and primary structure included a 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL). This deck was destroyed during Hurricane Ian in 2022, and the applicant is seeking to rebuild the deck in the same location and square footage. Fort Myers Beach Land Development Code Section 34-652(e) allows reconstruction of accessory structures like decks into the EC district only by special exception.

Neighborhood Compatibility:

The subject property has historically supported a single-family residence with an accessory deck in this configuration since 1977. The proposed reconstruction maintains the same size, location, and functions as the pre-existing deck. No increase in intensity or encroachment is proposed. Therefore, the request is compatible with surrounding residential uses and consistent with the established neighborhood character.

III. Findings and Conclusions:

Special Exception Findings

Section 6-366(b)(3) Regulations and Considerations:

LDC Section 6-366 includes additional regulations and considerations for special exception approval of repairs in the EC zoning district:

1. *Any repairs must comply with all relevant local and state floodplain regulations.*
The development will comply with local and state floodplain requirements.
2. *Repairs may not damage existing dunes or dune vegetation.*
The repairs are proposed in conjunction with environmental review to ensure that no dunes or native vegetation will be impacted. Any planting proposed will be required to be Florida friendly, or otherwise acceptable to the Town and Florida DEP.
3. *Repairs, other than those limited to emergency repairs to enclose a damaged structure may not be completed during sea turtle nesting season.*
Sea turtle nesting season begins May 1st and ends on October 31st. Construction will be completed outside of nesting season.
4. *A new special exception must be applied for each time the structure is repaired.*
This is included as one of the conditions for approval.

LDC Sec. 34-88(b) sets forth the required findings and conclusions for the approval of a special exception:

- 1) *Whether there exist changed or changing conditions which make approval of the request appropriate.*

The existing deck was damaged during Hurricane Ian.

- 2) *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*

Policy CM-1-D-1.v. Shoreline Protection states: Development (other than minor structures) shall not be allowed seaward of the 1978 Coastal Construction Control Line. Development seaward of the 1991 Coastal Construction Control Line may be permitted provided it complies with this comprehensive plan and all state and local permitting requirements.

The proposed like-for-like replacement of an existing 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL), does not create any new development or change the location from what previously existed on the site. Therefore, staff believes that the proposed replacement does not constitute new development within the definition of development in the Town's code of ordinance:

- The LDC defines *Development* as (1) A subdivision, as defined in this chapter; or (2) Any improvement to land, as defined in this chapter.
- The LDC defines *Improvement* to land as any change to land or to any structure on the land, and shall include any movement or grading of land, except grading which is incidental to the removal of exotic vegetation and which is not prohibited by ch. 22 of this LDC; clearing of indigenous plant communities; and the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; provided, however, that any change to a building which does not involve a change in the building floor area shall not be deemed an improvement to land.

- 3) *Whether the request meets or exceeds all performance and locational standards for the proposed use.*

The request will comply with local, state, and federal air, noise and water pollution standards. It will not adversely affect water quality, and it will not create a nuisance to adjacent properties.

- 4) *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The request does not expand the footprint or intensity of the prior lawful structure and will maintain what was previously constructed on this property.

- 5) *Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.*

There is no anticipated negative impact or injury to surrounding properties.

- 6) *Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Land Development Code.*

The proposed like-for-like replacement of an existing 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL) will all be completed in compliance with the Town's Land Development Code.

IV. RECOMMENDATION

Staff find that the special exception *to allow the like-for-like replacement of an existing 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL)* is in compliance with LDC Sec. 34-88(b).

Therefore, staff recommends approval with conditions of SEZ20260021 for the like-for-like replacement of an existing 494-square-foot deck, of which 89 square feet extends into the Environmentally Critical (EC) zoning district seaward of the 1978 Coastal Construction Control Line (CCCL).

If LPA recommends approval for the requests, staff recommends the following conditions of approval.

V. CONDITIONS OF APPROVAL

- 1) Approval of this special exception does not give the Applicant an undeniable right to permit approval. Development of the Property must comply with all applicable requirements of the Fort Myers Beach Comprehensive Plan and LDC in effect at the time of permit approval, except as specifically modified herein.
- 2) Any substantial repair, removal, or replacement of the deck located within the EC Zoning District shall require the applicant to obtain a new Special Exception approval and all applicable permits prior to the commencement of construction.
- 3) Failure to comply with any of the above-mentioned conditions of approval for the Special Exception will render this approval null and void.

