

RESOLUTION NUMBER 05-31

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACTING ON VARIANCES FROM REQUIRED WATERBODY AND REAR LOT LINE SETBACKS FOR PROPERTY LOCATED AT 21401 WIDGEON TERRACE

WHEREAS, Dave and Kathy Ostdiek, owners of the subject property located in the RC (Residential Conservation) zoning district, have applied for two (2) variances from the dimensional regulations of Table 34-3 and Section 34-1174 of the Land Development Code (LDC) to allow the construction of an elevated pool on the rear of the lot: (1) a reduction from the minimum required waterbody setback of 25 feet from Estero Bay to allow a 10-foot waterbody setback, and (2) a reduction from the minimum required rear setback of 20 feet to allow a 5-foot rear setback; and

WHEREAS, the applicants have indicated that the address of the subject property is 21401 Widgeon Terrace, Ft. Myers Beach, in S34-T46S-R24E, Lee County, Florida, the property's current STRAP number is 34-46-24-W1-022L0.0000, and the legal description is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, a public hearing was legally advertised and held before the Local Planning Agency (LPA) on June 14, 2005, and,

WHEREAS, at its hearing on June 14, 2005, the LPA gave full and complete consideration to the recommendations of the Staff Report dated April 18, 2005, the documents in the file, and the testimony of all interested persons; and

WHEREAS, at the conclusion of the aforesaid hearing, the LPA recommended that the Town Council approve the applicants' requested variances to allow the 10-foot waterbody setback and the 5-foot rear setback subject to two conditions listed on Page 1 of LPA Resolution Number 2005-09.

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

SECTION 1. Findings of Fact and Conclusions. The Town Council makes the following Findings of Fact and Conclusions:

1. There are extraordinary conditions inherent to the property in question. There is a safety issues and a desire to not impact the neighbors by placing the pool on the side of the house. Also there is a desire to protect the height of the mangroves on this property.
2. The exceptional or extraordinary conditions or circumstances, as set forth in Paragraph 1. above, are not the result of actions of the applicant taken subsequent to the adoption of the ordinance. The applicant, due to safety and nearness to the adjacent property owner, does not desire to place the pool elsewhere on the property.
3. The variances, if granted subject to the two (2) conditions set forth below, are the minimum variances that will relieve the applicants of an unreasonable burden caused by the application of the regulations in question to their property.

4. The granting of the variances, subject to the two (2) conditions set forth below, will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The applicant presented letters of "no objection" from his neighbors.
5. The conditions or situation of the specific piece of property, or the intended use of the property, for which the variances are sought are not of a general or recurrent nature so as to make it more reasonable and practical to amend the ordinance.

SECTION 2. Granting a 10-foot Waterbody Setback Variance. The Town Council hereby grants the variance from LDC Table 34-3 and Section 34-1174 to reduce the required waterbody setback to 10 feet.

SECTION 3. Granting a 5-foot Rear Setback Variance. The Town Council hereby grants the variance from LDC Table 34-3 and Section 34-1174 to reduce the required rear setback to 5 feet.

SECTION 4. Conditions. The granted variances are subject to the following two (2) conditions:

- (a) No habitable space is permitted below the elevated pool and deck area.
- (b) No mangroves will be cut below the height of the wall around the pool and deck or 12 feet, whichever is higher.

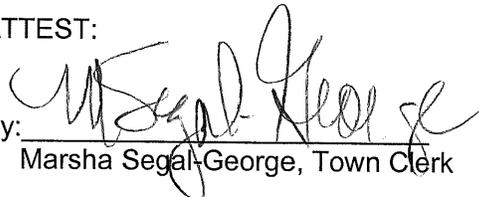
SECTION 5. Effective Date. This resolution shall take effect immediately upon its adoption by the Fort Myers Beach Town Council.

The foregoing Resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result being as follows:

Ken Katcko	NAY
Don Massucco	AYE
Garr Reynolds	AYE
Howard Rynearson	NAY
W. H. "Bill" Van Duzer	AYE

DULY ADOPTED this \_\_\_ day of October, 2005.

ATTEST:

By:   
 Marsha Segal-George, Town Clerk

TOWN OF FORT MYERS BEACH

By:   
 W. H. "Bill" Van Duzer, Mayor

Approved as to form by:

  
 Anne Dalton, Town Attorney