

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 07-37

WHEREAS, Robert Seibt, the property owner ("Applicant"), petitioned for a variance in the RC (Residential Conservation) zoning district from sections 34-638(d)(3)(b and 34-638(d)(3)c of the Town of Fort Myers Beach Land Development Code (LDC) which require a twenty-five (25) waterbody setback from a canal to allow a rear and waterbody setback of nineteen feet, two inches for extension of an existing deck; and

WHEREAS, the subject property is located at 21611 Widgeon Terrace, in Fort Myers Beach, Florida, and the applicant has indicated the property's current STRAP number is 34-46-24-W1-00006.0010 and the legal description thereof 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 August 21, 2007 at which time the LPA gave full and complete consideration to the recommendations of staff, the documents in the file, the request of applicant and the testimony of all interested persons and recommended that the Town Council approve the requested variance, subject to three conditions as set forth fully in the LPA Resolution 2007-18; and

WHEREAS, a public hearing was legally advertised and held before the Town Council on October 22nd, 2007, and during the course of this public hearing the Town Council considered the testimony of all interested persons, the documents submitted by Applicant, the Town staff report, the LPA Resolution and other materials from the LPA, and all other evidence presented by Applicant, Staff and the public.

IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

The Town Council **APPROVES** the requested variance to allow for a 19 foot, 2 inch rear and waterbody setback, subject to the following three (3) conditions that are necessary for the protection of the health, safety, comfort, convenience, and welfare of the general public and that are reasonably related to the variance requested:

1. The variance is limited to the deck shown on the site plan attached as Exhibit "B" and hereby incorporated by reference.
2. The variance will expire when the existing building is removed. Redevelopment of the site must then comply with the setback regulations in effect at time of permitting.
3. Space below the horizontal structural members of the elevated deck shall not be enclosed in any fashion whatsoever, including but not limited to open-mesh screening, decorative lattice, or solid walls.

FINDINGS AND CONCLUSIONS

Based upon the presentations by the Applicant, staff, and other interested parties at the hearing, the LPA Resolution and other material provided by the LPA, and review of the

application and the standards for granting variances, the Town Council makes the following findings and reaches the following conclusions:

1. There **ARE** exceptional or extraordinary conditions or circumstances that are inherent to the property in question and the request **IS** for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy. The Town Council finds that the exceptional or extraordinary circumstances inherent to the subject property include the fact that it was subdivided along with several nearby parcels by virtue of a 1977 variance reducing the required minimum lot depth from 100 feet to 90 feet, as outlined in further detail on page 4 of the staff report, which was undated but presented as part of the Town Council packet.
2. Any exceptional or extraordinary conditions which would otherwise justify the variance or circumstances **ARE NOT** the result of actions of the applicant taken after the adoption of the regulation in question. The Town Council finds that the applicant has taken no action after the adoption of the regulation in question which would affect the granting of this variance.
3. The variance recommended **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 Town Council finds that the requested variance is reasonable under the circumstances in that the proposed deck which gives rise to this request for reduction in the setback requirements is less intrusive than existing development in this neighborhood.
4. The granting of the variance **WILL NOT** be injurious to the neighborhood or otherwise detrimental to the public welfare. The Town Council adopts the staff representation as outlined in the staff report that granting the requested variance, as conditioned, would create no further impact on the neighborhood or otherwise detrimental to the public welfare.
5. The conditions or circumstances on the situation of the specific piece of property, or the intended use of the 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.

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

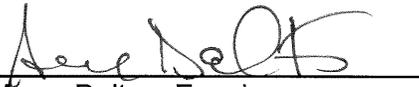
Dennis C. Boback, Mayor	<u>aye</u>
Larry Kiker, Vice Mayor	<u>aye</u>
Herb Acken	<u>aye</u>
Charles Meador, Jr.	<u>aye</u>
William Shenko, Jr.	<u>aye</u>

VARIANCE **GRANTED** AND RESOLUTION PASSED AND ADOPTED THIS 22nd day of October, 2007.

TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: 
Dennis C. Boback, Mayor

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire
Town Attorney

ATTEST:

By: 
Michelle D. Mayher, Town Clerk

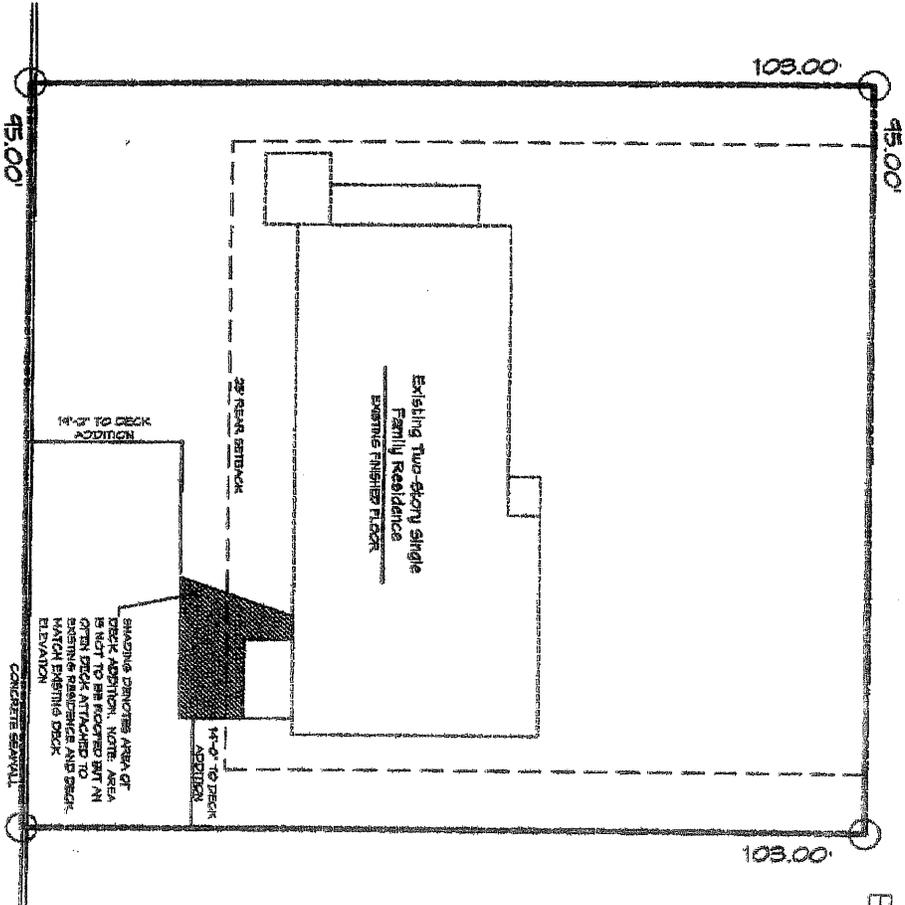
Exhibit A

FMBVAR2007-00002 Property Description

A tract or parcel of land lying in Government Lots 1 and 4, Section 33, Township 46 South, Range 24 East, Estero Island, Lee County, Florida, which parcel is described as follows:

Commencing at the Southeast corner of Lot 8, Block H, McPhie Park Subdivision Unit 2, as recorded in Plat Book 8, Page 59 of the Public Records of Lee County, Florida; thence N. $90^{\circ}00'00''$ W. on the Southerly line of said Lot 8 a distance of 10 feet to a concrete monument; thence N. $00^{\circ}00'00''$ E. on the Easterly line of a roadway easement (Widgeon Terrace) for 55.45 feet to a concrete monument marking a point of curvature; thence Northeasterly along said Easterly line along the arc of a curve concave to the Southeast having a radius of 50.00 feet through a central angle of $51^{\circ}47'30''$, a distance of 45.20 feet to a concrete monument marking a point of tangency with a line parallel with and 295 feet (as measured on a perpendicular) Northwesterly from the Northwesterly line of Block C, Flamingo Park as recorded in Plat Book 9, Page 66 of said Public Records; thence N. $51^{\circ}47'30''$ E. on said parallel line on the Southeasterly line of said roadway a distance of 285.71 feet to the **Point of Beginning** of the lands herein described; thence continue N. $51^{\circ}47'30''$ E. on said Southeasterly line of said roadway a distance of 92.12 feet; thence S. $38^{\circ}12'30''$ E. a distance of 91.09 feet to the seaward face of a concrete seawall; thence S. $50^{\circ}34'44''$ W. on the seaward face of said seawall a distance of 92.14 feet; thence N. $38^{\circ}12'30''$ W. a distance of 93.04 feet to the **Point of Beginning**.

Description based on Boundary Survey by Davis Land Surveying Inc. LB #7075. Job #07-0569, Survey Date 5/02/07 (Revised by Charles E. Davis, LS #4839 dated 8/15/07)



Widgeon Terrace

TOWN of Fort Myers Beach

F M B VAR 2007 0 0 0 0 2

RECEIVED
APR 03 2007

BY: _____

EXHIBIT (B)

<p>BUILDING DATA</p> <p>1. THIS BUILDING IS CLASSIFIED AS PER THE LOCAL ORDINANCE REGULATORY SCHEME FOR RESIDENTIAL OCCUPANCY GROUP "R-1" SINGLE-FAMILY.</p> <p>2. EXISTING FOUNDATION: AS SHOWN ON THE EXISTING FLOOR PLAN.</p> <p>3. THE CONSTRUCTION VARIATION IS AS SHOWN ON THE EXISTING FLOOR PLAN.</p>	<p>CODE COMPLIANCE</p> <p>1. THE CONSTRUCTION AND DESIGN HAVE BEEN REVIEWED AND FOUND TO BE IN COMPLIANCE WITH THE LOCAL ORDINANCE REGULATORY SCHEME FOR RESIDENTIAL OCCUPANCY GROUP "R-1" SINGLE-FAMILY.</p> <p>2. THE CONSTRUCTION VARIATION IS AS SHOWN ON THE EXISTING FLOOR PLAN.</p>	<p>ELEVATION NOTES</p> <p>1. EXISTING FLOOR ELEVATION SHALL BE AS SHOWN ON THE EXISTING FLOOR PLAN.</p> <p>2. ALL SURFACE FINISHES SHALL BE IN ACCORDANCE WITH THE LOCAL ORDINANCE REGULATORY SCHEME FOR RESIDENTIAL OCCUPANCY GROUP "R-1" SINGLE-FAMILY.</p> <p>3. FINISHES SHALL BE AS SHOWN ON THE EXISTING FLOOR PLAN.</p> <p>4. FINISHES SHALL BE IN ACCORDANCE WITH THE LOCAL ORDINANCE REGULATORY SCHEME FOR RESIDENTIAL OCCUPANCY GROUP "R-1" SINGLE-FAMILY.</p> <p>5. FINISHES SHALL BE AS SHOWN ON THE EXISTING FLOOR PLAN.</p> <p>6. FINISHES SHALL BE IN ACCORDANCE WITH THE LOCAL ORDINANCE REGULATORY SCHEME FOR RESIDENTIAL OCCUPANCY GROUP "R-1" SINGLE-FAMILY.</p> <p>7. FINISHES SHALL BE AS SHOWN ON THE EXISTING FLOOR PLAN.</p> <p>8. FINISHES SHALL BE IN ACCORDANCE WITH THE LOCAL ORDINANCE REGULATORY SCHEME FOR RESIDENTIAL OCCUPANCY GROUP "R-1" SINGLE-FAMILY.</p> <p>9. FINISHES SHALL BE AS SHOWN ON THE EXISTING FLOOR PLAN.</p> <p>10. FINISHES SHALL BE IN ACCORDANCE WITH THE LOCAL ORDINANCE REGULATORY SCHEME FOR RESIDENTIAL OCCUPANCY GROUP "R-1" SINGLE-FAMILY.</p>	<p>LEGAL DESCRIPTION</p> <p>1. THIS BUILDING IS CLASSIFIED AS PER THE LOCAL ORDINANCE REGULATORY SCHEME FOR RESIDENTIAL OCCUPANCY GROUP "R-1" SINGLE-FAMILY.</p> <p>2. THE CONSTRUCTION VARIATION IS AS SHOWN ON THE EXISTING FLOOR PLAN.</p>
<p>Project: PROPOSED DECK ADDITION TO: The Seibt Residence Location: 21611 Widgeon Terrace Fort Myers Beach, Florida</p> <p>Contractor:</p>		<p>biggs CONSULTING design • drafting • planning services 3225 Robin Road, Fort Myers, FL 33922 phone 239-216-4311</p>	<p>SOUTHERN ENGINEERING of sw florida Project # 07-116 12429 Rock Ridge Lane fort myers, florida 33913 (239) 786-8065</p> <p>DATE: 02/14/07 BY: [Signature]</p> <p>15 FEBRUARY 2007</p>

Site Layout Plan

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