

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 07-44

WHEREAS, Woodland Custom Homes, on behalf of Judith A. Stetter ("Applicant") has requested a Special Exception in the Environmentally Critical (EC) and Residential Single-family (RS) zoning districts to permit the placement of a fence to serve as a pool barrier around an existing pool, in conjunction with redevelopment of a site that was originally developed prior to 1978; and

WHEREAS, the subject property is located at 5950 Estero Blvd., Ft. Myers Beach, FL, with a STRAP number of 33-46-24-W3-0040G.0050 and with a legal description attached as Exhibit "A" and incorporated herein; and

WHEREAS, a public hearing was advertised and held before the Local Planning Agency (LPA) on October 16, 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 grant approval of applicant's request, with conditions as outlined with specificity in LPA Resolution Number 2007-23.

WHEREAS, a public hearing was advertised and held before the Town Council on November 19, 2007, at which time the Town Council gave full and complete consideration to the recommendations of staff, the LPA resolution, the documents in the file, and the testimony of all interested persons.

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

The Town Council hereby **APPROVES** Applicant's request for a special exception to permit the placement of a fence to serve as a pool barrier around an existing pool, subject to the following conditions:

CONDITIONS:

1. The special exception is limited to the placement of a minor structure in compliance with all permitting conditions required by the Florida Department of Environmental Protection.
2. Approval is limited to a fence no further seaward than the most seaward extent of the area shown as "Existing Pool" on the site plan. No other minor or major structures not permitted by right within the EC zoning district are approved.
3. No artificial lighting is approved for installation in the EC zoning district.
4. If the existing swimming pool is removed, destroyed, or replaced for any reason, this approval shall not operate to allow any new or reconstructed major or minor structures, including but not limited to swimming pools, fences, patios, and decks, within the EC zoning district on the subject property. If the swimming pool is removed, destroyed, or relocated, the fence approved herein must be

removed or relocated out of the EC zoning district as well. This condition shall not prevent the placement of any minor structure permitted by right within the EC zoning district under the Land Development Code.

FINDINGS AND CONCLUSIONS:

In accordance with the requirements of Sections 34-88 of the LDC regarding consideration of eligibility for a Special Exception, the Town Council makes the following findings and reaches the following conclusions:

1. There **EXIST** changed or changing conditions that make approval of this request, with the above conditions, appropriate.

The provisions of LDC Chapters 6 and 34 in effect today would prevent the construction of a nonhabitable major structure, such as a swimming pool, within the EC zoning district on the Gulf of Mexico, but the swimming pool on the subject property existed prior to the adoption of those regulations and has not been removed or replaced. The swimming pool's location partly within the EC zoning district became nonconforming when regulations were adopted that would have prevented the construction of nonhabitable major structures at that location. Since a swimming pool must be surrounded by a compliant pool barrier but there is no regulatory requirement that the swimming pool be removed, the creation of the nonconformity is a changed condition that makes approval of the request appropriate. On the other hand, denying the request would prevent the existing swimming pool from complying with basic life-safety requirements of the building code and the LDC, indirectly requiring that it be partly or completely removed.

2. The requested special exception as conditioned:

- a] **IS** consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.

The fence that would be allowed upon approval of the requested special exception would be located as far away from the shoreline and dune system as possible given the location of the preexisting swimming pool. Conditioned to require any future replacement of the swimming pool only in a compliant location, approval of the request would be consistent with the goals, objectives, policies, and intent of the Comp Plan.

- b] **MEETS OR EXCEEDS** all performance and locational standards set forth for the proposed use.

As proposed, the fence would extend about five feet into the EC zoning district, at the rim of the existing swimming pool. Given the location of the existing swimming pool, this location is as close as possible to the landward edge of the EC zoning district, as required by LDC Section 6-366 and Policy 5-D-1 of the Comp Plan.

c] **DOES** protect, conserve or preserve environmentally critical areas and natural resources

Approval of the requested special exception, as conditioned, would permit no new disturbance of environmentally critical areas or natural resources in any previously undeveloped areas. Recommended condition #3 would require the removal of the fence upon the removal or replacement of the swimming pool.

d] **WILL** be compatible with existing or planned uses and **WILL NOT** cause damage, hazard, nuisance or other detriment to persons or property; and

This single-family residence with an accessory swimming pool and fence, is compatible with adjacent residential uses. The property immediately to the southeast of the subject property has a swimming pool and concrete pool deck that extends similarly into the EC zoning district. On the property immediately to the northwest is a concrete retaining wall that extends about fifty feet into the EC zoning district. Placement of the fence will protect the public by securing the grade-level swimming pool from accidental intrusions, and will not measurably increase the disturbance to any undeveloped areas.

e] **WILL** be in compliance with all general zoning provisions and supplemental regulations pertaining to the use set forth in the LDC.

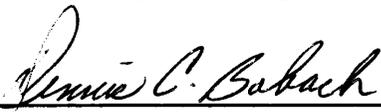
General provisions for fences in LDC Chapter 34, Article IV, Division 17 allow a fence not located within the street setback and not within 25 feet of a water body to be up to six feet in height and to be built up to the property line. LDC Section 34-652(e)(1) clarifies that a fence is a use that can be permitted by special exception in the EC zoning district. As conditioned, the requested use will comply with applicable general zoning provisions and supplemental regulations set forth in LDC Chapter 34.

The foregoing Resolution was adopted by the Town Council upon a motion by Councilmember Acken and seconded by Councilmember Meador, 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>		

DULY PASSED AND ADOPTED THIS 19th DAY OF NOVEMBER, 2007, BY THE

TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: 
Dennis C. Boback, Mayor

ATTEST:
By: 
Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:
By: 
Anne Dalton, Esquire, Town Attorney

EXHIBIT A

**LEGAL DESCRIPTION
FMBSEZ2007-00003**

Lot 5, Block G, McPhie Park Subdivision Unit 2, as recorded in Plat Book 8, Page 59, of the Public Records of Lee County, Florida.

Stetter

MAY 17 2000

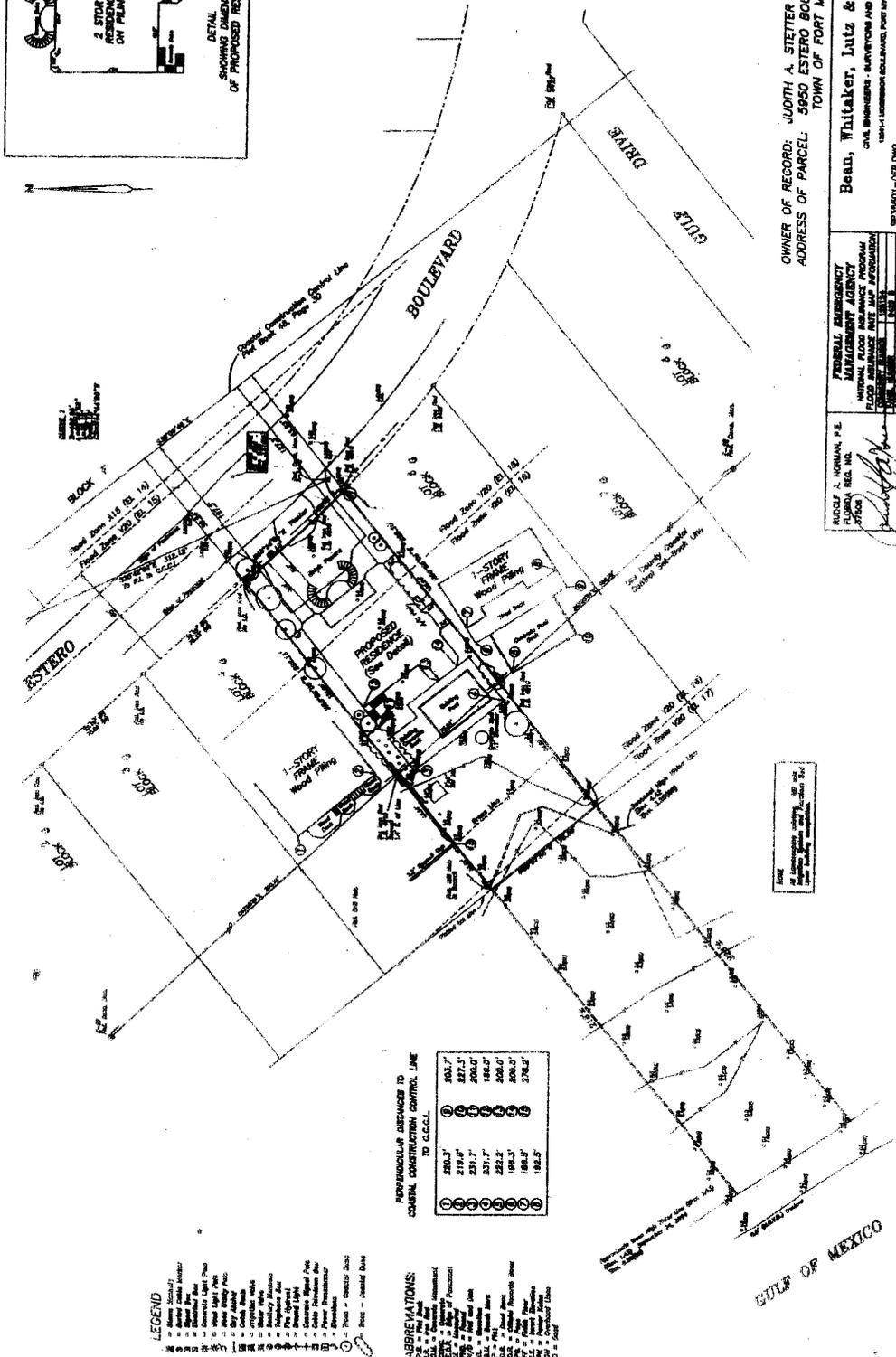
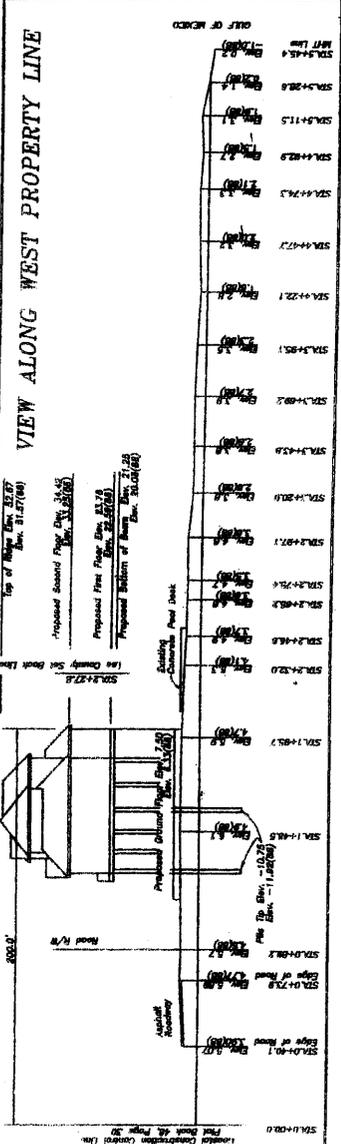
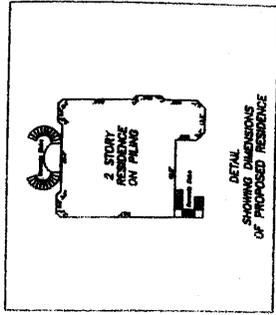
OFFICE OF BEACHES & COASTAL SYSTEMS

SITE PLAN

OF
 LOT 5, BLOCK G, MAPHIE PARK, UNIT 2
 (PLAT BOOK 8, PAGE 88)
 SECTION 33, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
 TOWN OF FORT MYERS BEACH
 LEE COUNTY, FLORIDA



EXHIBIT (A)



LEGEND

- 1. Beach Boundary
- 2. Beach Access
- 3. Beach Erosion
- 4. Beach Light Pole
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- 100. Beach Light Pole

PERPENDICULAR DISTANCES TO COASTAL CONSTRUCTION CONTROL LINE TO C.C.C.L.

1	203.7
2	227.5
3	200.0
4	188.0
5	200.0
6	188.0
7	200.0
8	188.0
9	200.0
10	188.0

OWNER OF RECORD: JUDITH A. STEITZ
 ADDRESS OF PARCEL: 5950 ESTERO BOULEVARD
 TOWN OF FORT MYERS BEACH, FLORIDA

Bean, Whitaker, Lutz & Kereh, Inc. (a 401)
 CIVIL ENGINEERS - SURVEYORS AND LANDSCAPE ARCHITECTS
 1001-11 LINDSEY BOLLWEGER, FORT MYERS, FLORIDA 33905 (941) 481-1311

RUDOLF A. NORMAN, P.E.
 FLORIDA REG. NO. 27600
 FEDERAL AGENCY FOR ENVIRONMENTAL MANAGEMENT
 NATIONAL FLOOD INSURANCE PROGRAM
 FEDERAL EMPLACEMENT PROGRAM
 FEDERAL ACQUISITION AND GRANT PROGRAMS
 FEDERAL PROPERTY MANAGEMENT PROGRAM
 FEDERAL SUPPLY SCHEDULE PROGRAM
 FEDERAL TRAVEL MANAGEMENT PROGRAM
 FEDERAL INFORMATION MANAGEMENT PROGRAM
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