

RESOLUTION OF THE LOCAL PLANNING AGENCY OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 2007-25

WHEREAS, the Kahlua Owners Association, Inc., on behalf of the owners' association and at least 75% of the unit owners of Kahlua Beach Club, Condominiums ("Applicant"), petitioned for a variance in the RM (Residential Multifamily) zoning district from sections 34-638(b) and 34-1174(d)(2) and Table 34-3 of the Town of Fort Myers Beach Land Development Code (LDC) which require a twenty foot (20) setback to allow six and six-tenths feet (6.6) setback to replace a spa; and

WHEREAS, the subject property is located at 4950 Estero Boulevard, in Fort Myers Beach, Florida. The Applicant has indicated the property's current STRAP number is 34-46-24-W4-02400.1010 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 November 13, 2007. At such hearing, 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.

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

The LPA recommends that the Town Council **APPROVE** the requested variance to allow for a six and six-tenths (6.6) foot 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 spa and associated equipment shown on the site plan attached as Exhibit "B" and hereby incorporated by reference.
2. The variance will expire if and when the existing building is removed. Redevelopment of the site must then comply with the setback regulations in effect at time of permitting.
3. The deck around the spa must be constructed of pervious materials.

**FINDINGS AND CONCLUSIONS**

Based upon the presentations by the Applicant, staff, and other interested parties at the hearing, and review of the application and the standards for granting variances, the LPA 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 LPA finds that the exceptional or extraordinary circumstances inherent to the subject property include the fact that the structures existed prior to Hurricane Charley.

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 LPA 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 LPA finds that the requested variance is reasonable under the circumstances in that the variance, if granted, allows only the structure which existed before to be replaced.
4. The granting of the variance **WILL NOT** be injurious to the neighborhood or otherwise detrimental to the public welfare. The LPA 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 LPA upon a motion by LPA Member Mandel and seconded by LPA Member Barnes, and upon being put to a vote, the result was as follows:

Tom Babcock aye  
 Evie Barnes aye  
 Rochelle Kay aye  
 Denny Weimer aye

Alan Mandel aye  
 Bob Raymond aye  
 Bob Simon aye

DULY PASSED AND ADOPTED THIS 13<sup>th</sup> day of November, 2007.

LPA of the Town of Fort Myers Beach

By:   
 Tom Babcock, LPA Chair

Approved as to legal sufficiency:

By:   
 Anne Dalton, Esquire  
 LPA Attorney

ATTEST:

By:   
 Michelle Mayher, Town Clerk