

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2008-40

WHEREAS, LaVerne F. Kosinski, the property owner ("Applicant"), by and through her agent, Beverly Grady, petitioned for a variance in the RS (Residential Single-family) zoning district from section 34-637 and Table 34-3 of the Town of Fort Myers Beach Land Development Code (LDC); and

WHEREAS, the subject property is located at 135 Gulfview Avenue, in Fort Myers Beach, Florida, and the applicant has indicated the property's current STRAP number is 29-46-24-W3-0080C.0210 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 September 30, 2008 and 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 if Town Council chooses to vacate the adjacent twenty (20) foot drive. However, if Town Council chooses not to vacate the adjacent twenty(20) foot drive, the LPA recommends that the Town Council **REJECTS** the requested variance as the application for a variance would be moot and the variance would be unnecessary.

If the variance is approved as provided above, the LPA further **RECOMMENDS** that Town Council's approval be subject to the following condition that is necessary for the protection of the health, safety, comfort, convenience, and welfare of the general public and that is reasonably related to the variance requested:

1. A perpetual easement for public purposes over the area requested to be vacated must be executed and recorded in the public records prior to execution of the Town Council resolution approving this variance. The easement document shall specify that (a) no additional impervious surfaces will be placed within the easement area and (b) access to the existing Ocean Harbor wall must be maintained for maintenance purposes.

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 they **do justify** granting the requested variance if Town Council chooses to vacate the twenty (20) foot drive associated with the subject property; and

The triangular shape of the subject property and its orientation toward a publicly dedicated 20-foot drive are extraordinary circumstances made inherent to the subject property by virtually irreversible events in the distant past. These events include the adoption of a rectangular public land survey system by the federal government, the platting of Hyde Park Subdivision by Charles Hyde, and the construction of a single-family home on the subject property in 1974. If and only if the Town Council chooses to vacate the 20-foot drive, the property's shape and orientation are extraordinary circumstances that justify the requested variance. If the Town Council chooses not to vacate the 20-foot drive, these extraordinary circumstances do not justify this particular variance.

2. The conditions justifying the variance **are not** the result of actions of the applicant taken after the adoption of the regulation in question; and

As noted above, the cadastral survey system, Robert Gilbert's original acquisition of the property from the United States of America, the collective decision of early settlers to orient development toward the shoreline, the platting of the subdivision, and the construction of the existing house all substantially predate the applicant's acquisition of the subject property. Applicant's desire to construct additional improvements on the subject property does not cause the conditions that justify the variance.

3. The variance requested **is** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question; and

Application of LDC Section 34-637 and Table 34-3 would be unreasonable if the Town Council chooses to vacate the public interested in the 20-foot drive. Otherwise, the regulation would create no burden on the subject property because as a nonconforming lot it would remain protected by the provisions of LDC Chapter 34, Article V. The requested variance is the minimum variance necessary to relieve the burden in the event the Town Council chooses to vacate the 20-foot drive.

4. The granting of the variance **will not be** injurious to the neighborhood or otherwise detrimental to the public health; and

As conditioned, an easement for public purposes over the 20-foot drive in favor of the Town will be maintained in perpetuity, protecting the foreseeable public uses of this area. Allowing the easement area to be combined with the subject property would not injure the neighborhood or cause detriment to the public health.

5. The conditions or circumstances on the specific piece of 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.

Only a few other lots on Estero Island are triangle-shaped because of the rectangular survey system and the creation of subdivisions and street layouts from pieces of the original homesteads. The specific conditions of this variance are not so generally problematic that amending the regulation would be a more practical means of alleviating any similar burden on other property owners.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Van Duzer and seconded by LPA Member Barnes, and upon being put to a vote, the result was as follows:

Dennis Weimer, Chair aye
Evie Barnes aye
Joanne Shamp aye
Joe Yerkes aye

Alan Mandel, Vice Chair aye
Rochelle Kay aye
Bill Van Duzer aye

DULY PASSED AND ADOPTED THIS 30th day of September, 2008

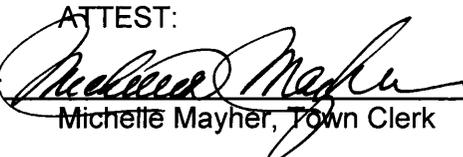
LPA of the Town of Fort Myers Beach

By: 
Dennis Weimer, LPA Chair

Approved as to legal sufficiency:

By: 
Anne Dalton, Esquire
LPA Attorney

ATTEST:

By: 
Michelle Mayher, Town Clerk