

**RESOLUTION NUMBER 19-13**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH FLORIDA REGARDING APPLICATION VAR 20190021, FOR A VARIANCE TO THE REQUIREMENTS OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE FOR THE PROPERTY LOCATED AT 3302 SHELL MOUND ROAD; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, applicant Lisa and James McKenzie (“Applicant”) , owners of the property located 3302 Shell Mound Blvd, are requesting a variance from Sec. 34-1174(b) of the Town of Fort Myers Beach Land Development Code (“LDC”), which does not allow accessory structures to be located closer to the street right-of-way than the principal building ; and

**WHEREAS**, the STRAP number for the subject property is 29-46-24-W1-0030A.0010 and the legal description of the subject property (“Property”) is attached as *Exhibit A*; and

**WHEREAS**, the Property is located in the ‘Residential Conservation’ zoning district of the Official Zoning Map and the ‘Mixed Residential Platted Overlay’ category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

**WHEREAS**, a public hearing on this matter was legally noticed and held before the Local Planning Agency (LPA) on April 9, 2019, at which the LPA gave full and complete consideration to the request of Applicant, recommendations of staff, the documents in the file, and the testimony of all interested persons, as required by Section 34-87 of the LDC.

**WHEREAS**, on May 6, 2019 the Town Council held a duly noticed public hearing to fully consider the request of the Applicant, the recommendations of Town staff and the LPA, the documents in the record, and testimony of all interested persons as required by Section 34-87 of the LDC, and the Town Council determined it is in the best interest of the Town to approve the request.

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

**Determination.**

Based upon the recommendations, testimony, and evidence presented by the applicant, Town staff, and interested parties, the Town Council **APPROVES** the following:

A variance (VAR) from Sec. 34-1174(b) of the LDC: No accessory use, building or structure shall be located closer to a street right-of-way line or street easement than the principal building. The variance will allow the construction of a pool 25 feet from the right of way, in front of the principal structure.

**Recommended Findings and Conclusions:**

In accordance with the requirements of Sections 34-84 and 34-87 of the LDC regarding consideration of eligibility for a variance, the LPA recommends that the Town Council make the following findings and reach the following conclusions:

- A. 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.
- B. The conditions justifying the variance **are not** the result of actions of the applicant taken after the adoption of the regulation in question.
- C. The variance granted **is** the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation to the property in question.
- D. The granting of the variance **will not** be injurious to the neighborhood or otherwise detrimental to the public welfare.
- E. 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.

**Conditions of Approval:**

1. Applicant will provide a continuous vegetative buffer between the pool fence and the right-of-way property lines maintained four (4) feet in height.
2. The applicant will ensure that the site visibility triangle from the intersection is increased to 10 feet from the required 5 feet.

**Effective Date.**

This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by Member Shamp and seconded by Member Butcher, and upon being put to a vote, the result was as follows:

DULY PASSED AND ADOPTED ON THIS 6<sup>th</sup> DAY OF MAY, 2019.

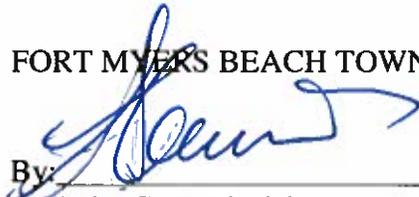
Anita Cereceda, Mayor      Aye  
Rexann Hosafros            Aye  
Joanne Shamp                Aye

Ray Murphy, Vice Mayor    Aye  
Bruce Butcher                Aye

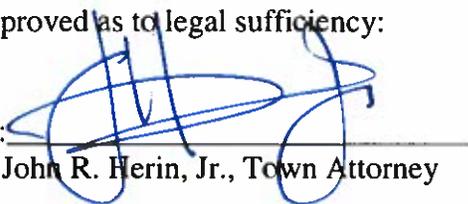
ATTEST:

FORT MYERS BEACH TOWN COUNCIL

By:   
Michelle Mayher, Town Clerk

  
By: \_\_\_\_\_  
Anita Cereceda, Mayor

Approved as to legal sufficiency:

By:   
John R. Herin, Jr., Town Attorney



A tract or parcel of land comprised of part of Lots 1 and 2 of Block A and part of vacated Monroe Street of LYNN'S HIGHLAND PARK, as recorded in Plat Book 8 at page 50 of the public records of Lee County, Florida, said parcel being described as follows:

From the corner furthest North on Madison Street of Lot 1, Block A of said LYNN'S HIGHLAND PARK run Southeasterly along the Northeasterly line of said Block A for 53.71 feet; thence at an inclusive angle of 90 degrees run Southwesterly for 25.0 feet to the Point of Beginning of the lands herein described: From said Point of Beginning continue along the same course perpendicular to the Northeasterly line of said LYNN'S HIGHLAND PARK for a distance of 110.0 feet; thence run Northwesterly parallel with and 135.0 feet distant from the Northeasterly line of said LYNN'S HIGHLAND PARK to the Southeasterly line of Madison Street; thence run Northeasterly along the Southeasterly line of Madison Street for a distance of 113.95 feet; thence run in a Southeasterly direction parallel to and 25.0 feet distant from the Northeasterly line of said LYNN'S HIGHLAND PARK to the Point of Beginning.

#### APPENDIX A

##### LEGEND OF ABBREVIATIONS

A= Arc  
 APPROX= Approximate  
 ASPH= Asphalt  
 AVE= Avenue  
 BLVD= Boulevard  
 B.M= Benchmark  
 C= Centerline  
 CH= Chord  
 CALC= Calculated  
 C.B= Chord Bearing  
 CBS= Concrete Block Structure  
 C&GS Coastal and Geodetic Survey  
 CHKD= Checked  
 CMP= Corrugated Metal Pipe  
 CO= County  
 CONC= Concrete  
 COR= Corner  
 CT= Court  
 D.E= Drainage Easement  
 Desc= Description  
 D.H= Drill Hole  
 DW= Drawn  
 EL or ELEV= Elevation  
 EOP= Edge of Pavement

EOW= Edge of Water  
 FB= Fieldbook  
 FD= Found  
 FLA= Florida  
 IP= Iron Pin  
 LN= Lane  
 M= Measured  
 M.E= Maintenance Easement  
 MH= Manhole  
 MHW= Mean High Water  
 MON= Monument  
 N/A= Not Applicable  
 NGVD= National Geodetic Vertical Datum  
 NO= Number  
 O.R Book= Official Record Book  
 ORIG= Original  
 OS= Offset  
 P.B= Plat Book  
 P.C= Point of Curvature  
 PG= Page  
 P.I= Point of Intersection  
 P.L.S= Professional Land Surveyor  
 R= Property Line  
 P.L.S= Professional Land Surveyor

P.O.B= Point of Beginning  
 P.O.C= Point of Commencement  
 P.O.L= Point on Line  
 PROP= Property  
 P.T= Point of Tangency  
 PUE= Public Utility Easement  
 R= Record or Radius  
 RAD= Radius  
 RCP= Reinforced Concrete Pipe  
 RD= Road  
 RDL= Radial  
 RES= Residence  
 R.L.S= Registered Land Surveyor  
 R.O.W= Right of Way  
 R or RGE= Range  
 SEC= Section  
 ST= Street  
 STV= Story  
 TOB= Top of Bank  
 TYP= Typical  
 T or TWP= Township  
 UE= Utility Easement  
 W= With  
 Δ= Delta or Benchmark  
 bgs= Fire Hydrant