

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 08-07

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 28-46-24-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 advertised and held before the Local Planning Agency (LPA) on November 13, 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 2007-25; and

WHEREAS, a public hearing was advertised and held before the Town Council on February 11, 2008, 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 variance to allow for a six and six-tenths (6.6) foot setback, subject to the following three (3) conditions:

**CONDITIONS:**

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**

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 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 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 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 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/ARE** 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 aye  
Herb Acken aye  
William Shenko, Jr. aye

Larry Kiker, Vice Mayor aye  
Charles Meador, Jr. aye

DULY PASSED AND ADOPTED THIS 11<sup>TH</sup> DAY OF FEBRUARY, 2008, 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

### FMBVAR2007-00001 Property Description

A tract or parcel of land situated in the State of Florida, County of Lee, Town of Fort Myers Beach, being a part of Section 28, Township 46 South, Range 24 East, being further bounded and described as follows:

STARTING AT THE SOUTHEAST CORNER OF THE SOUTHWEST ONE QUARTER (SW 1/4) OF SAID SECTION 28; THENCE S. 89°23'31" W. ALONG THE SOUTH LINE OF SAID SECTION 28 FOR 1643.7 FEET TO THE NORTHWESTERLY CORNER OF LOT 20, BLOCK 6, GULF HEIGHTS SUBDIVISION, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 6, PAGE 39 OF THE PUBLIC RECORDS OF SAID LEE COUNTY; THENCE N. 50°15'29" W. FOR 736.27 FEET TO THE **POINT OF BEGINNING** OF THE HEREIN DESCRIBED PARCEL, SAID POINT BEING ON THE SOUTHWESTERLY LINE OF THAT PARCEL AS DESCRIBED IN OFFICIAL RECORD BOOK 1270, PAGE 357 OF SAID LEE COUNTY PUBLIC RECORDS; THENCE S. 37°44'31" W. ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL FOR 32.87 FEET TO THE MEAN HIGH WATER LINE OF THE WATERS OF THE GULF OF MEXICO; THENCE N. 52°50'46" W. ALONG SAID WATERS FOR 68.59 FEET; THENCE N. 47°32'57" W. ALONG SAID WATERS FOR 67.11 FEET TO A POINT ON THE NORTHWESTERLY LINE OF THE AFORESAID PARCEL AS DESCRIBED IN OFFICIAL RECORD BOOK 1270, PAGE 357; THENCE N. 37°44'31" E. ALONG SAID NORTHWESTERLY LINE FOR 263.05 FEET TO THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF ESTERO BOULEVARD; THENCE S. 50°38'17" E. ALONG SAID RIGHT-OF-WAY FOR 135.52 FEET; THENCE S. 37°44'31" W. ALONG THE SOUTHEASTERLY LINE OF AFORESAID PARCEL DESCRIBED IN OFFICIAL RECORD BOOK 1270, PAGE 357 FOR 231.15 FEET TO THE **POINT OF BEGINNING**.

Said parcel contains 0.82 acres (35,910 square feet) more or less.

Bearings based on right-of-way line of Estero Boulevard as S. 50°38'17" E.

(Description from sketch and description by William E. Bean, LS 3261, dated 1/30/07, project no. 36198)

