

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 04- 39

WHEREAS, Joseph J Farrell has requested 2 variances from Table 34-3 of the Fort Myers Beach LDC. The first variance request asks for a 0 foot setback from the northwest property line where the Table requires a setback of 25 feet. The second variance request asks for a 0 foot setback From the northwest property line where the Table requires a 7.5 setback for a water-front lot. These variance request are to legitimize the repairs made to the existing decks, stairs and entry landing to the existing residence; and,

WHEREAS, the subject property is located at 628 Estero Boulevard, Fort Myers Beach, and the applicant has indicated the property's current STRAP number is: 24-46-23-W4-00400.0140 and the legal description attached as Exhibit A is attached hereto and incorporated herein by reference; and,

WHEREAS, a public hearing was held by the Local Planning Agency who recommended that the Town Council approve the requested variances with the Conditions listed and numbered as Conditions one (1 ); three (3), four (4), five (5), six (6), and seven (7) on Pages 2 and 3 of the Staff Report dated September 2, 2004 and which is attached hereto and incorporated herein by reference; and,

WHEREAS a hearing was held and the council considered the following criteria, recommendations and testimony of the staff, recommendations of the local planning agency, testimony from the applicant and from the public.

IT IS THE FINDING of this council that the following exist:

a. There are exceptional or extraordinary conditions or circumstances that are inherent to the property in question;

b. The exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken after to 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 in question to his property;

d. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and

e. The condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought is not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

NOW THEREFORE BE IT RESOLVED THAT THE VARIANCE IS APPROVED SUBJECT TO THE FOLLOWING conditions and requirements 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:

Conditions one (1 ); three (3), four (4), five (5), six (6), and seven (7) on Pages 2 and 3 of the Staff Report dated September 2, 2004 and which is attached hereto and incorporated herein by reference.

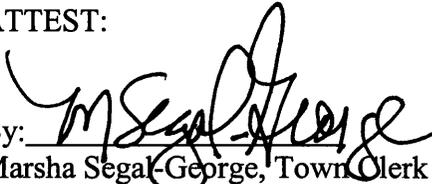
The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

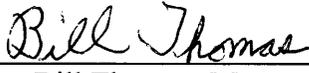
Howard Rynearson	Yes
Don Massucco	Yes
Bill Thomas	Yes
W. H. "Bill" Van Duzer	Yes
Garr Reynolds	Yes

APPLICATION DULY GRANTED this 13<sup>th</sup> day of December, 2004.

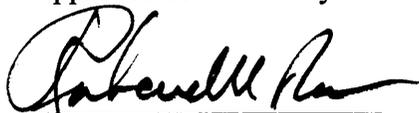
ATTEST:

TOWN OF FORT MYERS BEACH

By:   
Marsha Segal-George, Town Clerk

By:   
Bill Thomas, Mayor

Approved as to form by:

  
Richard V.S. Roosa, Town Attorney

**EXHIBIT "A"**

VAR2004-00045

**PROPERTY DESCRIPTION:**

LOT 19, BLOCK B, ZIMMER'S ADDITION TO SHELL MOUND PARK,  
ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK  
11, PAGE 54, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

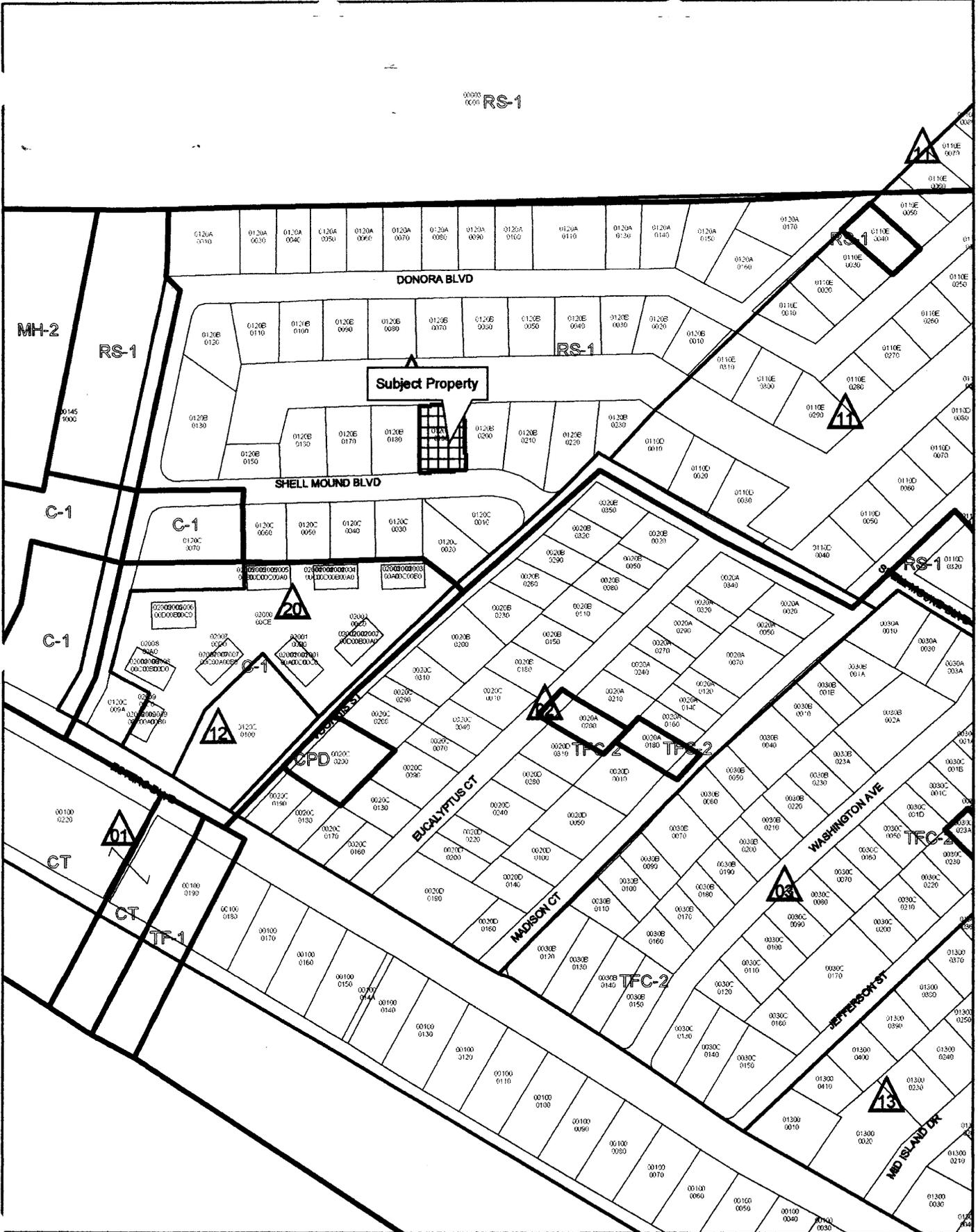
**Applicant's Legal Checked**

by  NOV 18, 2004.

RECEIVED

AUG 24 2004

ZONING



150 75 0 150 Feet

# EXHIBIT ATTACHMENT B

**SURVEY SKETCH OF BOUNDARY SURVEY**  
**NOT FOR FENCE CONSTRUCTION**  
**NOT FOR CONSTRUCTION**  
**NOT FOR DESIGN**

NOTE: THE INTENT OF THIS SURVEY IS FOR TITLE TRANSFER ONLY  
 COPYRIGHT 2004, F.L.A. SURVEYS CORP.

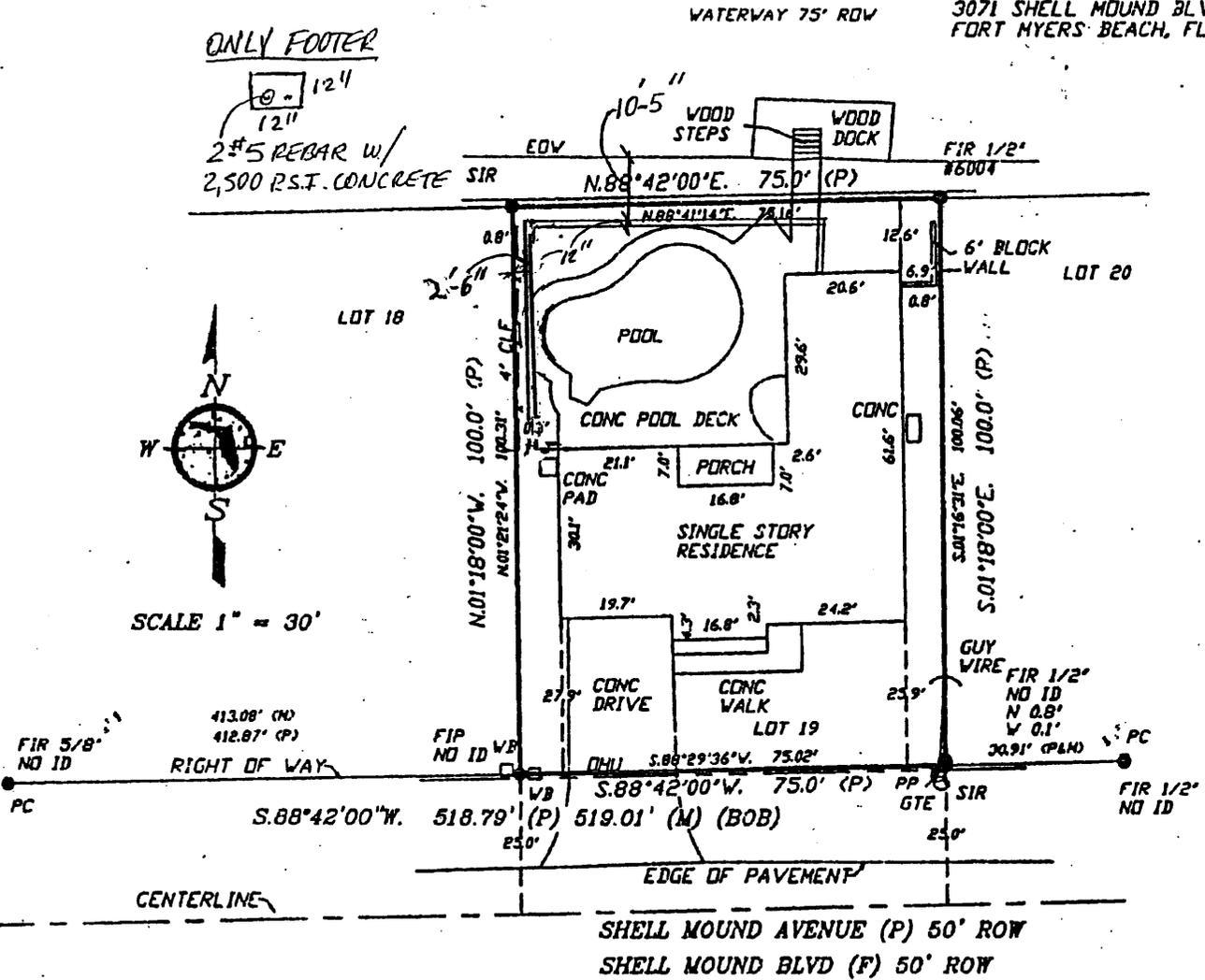
STREET ADDRESS  
 3071 SHELL MOUND BLVD  
 FORT MYERS BEACH, FLORIDA

ONLY FOOTER

12" x 12" (circled)  
 2#5 REBAR W/  
 2,500 P.S.I. CONCRETE



SCALE 1" = 30'



**LEGAL DESCRIPTION :**

LOT 19, BLOCK B, ZIMMER'S ADDITION TO SHELL MOUND PARK, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 11, PAGE 54, PUBLIC RECORDS OF LEE COUNTY, FLORIDA

**CERTIFIED TO :**

DAVID LORING WINMILL  
 FIRST MAGNUS FINANCIAL CORPORATION  
 ITS SUCCESSORS AND/OR ASSIGNS  
 FIRST FIDELITY TITLE, INC.  
 CHICAGO TITLE INSURANCE COMPANY



GRAPHIC SCALE

RECEIVED

SEP 20 2004

PERMIT COUNTER

FLOOD ZONE : A12 EL. 12  
 COMMUNITY PANEL 125124-0433B  
 INDEX DATED : 7-20-98  
 (FLOOD ZONE : "B", "C", "D", & "X" ARE NOT IN DESIGNATED FLOOD HAZARD ZONE AREA.)

CERTIFICATION :

VAR2004-00045

East:	4 single family homes zoned RM then Island Shores Condominium	Mixed Residential
South:	Gulf of Mexico	Recreation
West:	4 single family homes zoned RM then Cane Palm Beach Condominium	Mixed Residential

## II. BACKGROUND INFORMATION AND RECOMMENDATION:

**A. Recommendation:** Staff recommends APPROVAL with conditions of the applicants variance requests to allow a 0 foot street (private easement) setback and 0 foot side setback in the RM zoning district to legitimize the repairs made to the existing decks, stairs, and entry landing to the existing residence with conditions:

1. Approval of the variances are limited to the existing decks, stairs, and entry landing as shown on the survey/site plan labeled "Variance Request Site Plan" stamped received by the Lee County Permit Counter on March 23, 2004, except as modified by the following conditions.
2. The stairs leading to the driveway must be relocated against the northwest side of house and the 2 foot portion of the deck located within the walkway easement must be removed.
3. Prior to the issuance of a building permit for the deck, the applicant shall enter into a License Agreement with the holders of the easement that would allow the 4± foot encroachment into the roadway easement. If the License Agreement is approved, the applicant must record a copy of the Agreement in the Officials Records Books of Lee County, Florida, to place subsequent purchasers on notice of the encroachment and the variance decision. The applicant must pay the cost of the recording.
4. Prior to the issuance of a building permit, the applicant must record a copy of the Town of Fort Myers Beach's decision in the Officials Records Books of Lee County, Florida, to place subsequent purchasers on notice of the variance decision. The applicant must pay the cost of the recording.
5. The applicant shall obtain an after the fact building permit and shall submit a recorded copy of the License Agreement and the Town of Fort Myers Beach's decision to the Building Department.

6. **Any future additions or increases to the size of the building may not be located within the required setback areas.**
7. **Prior to the issuance of a building permit, the applicant must comply with the provisions of the Land Development Code, Sections 14-71 through 14-79 relating to the protection of Sea Turtles.**

### **Findings & Conclusions**

Based upon an analysis of the application and the standards for approval of a variance, staff makes the following findings and conclusions:

1. There are exceptional or extraordinary conditions or circumstances inherent to the property in question.

The subject property was developed with a single family residence in 1958 on a larger lot then subdivided in 1976 prior to the applicant acquiring the property.

2. The exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken after the adoption of the regulation in question.

The property is bound by development on the east and west leaving no opportunity for the applicant to acquire additional property to bring the setbacks into compliance.

3. The variances are 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 applicant repaired portions of the existing residence that have existed since 1958.

4. The granting of the variances will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The deck, stairs, and entry landing have been existing in the same location since 1958 and the abutting property owners have submitted letters of no objection to the requested variances.

5. The condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought is not of a general or recurrent nature so as to make it more reasonable and practical to amend the regulation in question.

This situation is not of a recurrent nature so as to make it more reasonable or practical to amend the regulation in question.