

Town of Fort Myers Beach
Agenda Item Summary

Blue Sheet Number: 2014-037

1. Requested Motion:

Meeting Date: April 21, 2014

Motion to **APPROVE/DENY** the following requests:

1. A variance from Section 34-1174(b) to allow an accessory structure (in-ground pool) forward of the primary structure with a 5' street setback; and
2. A variance from Section 34-3234(a)(1) to allow an existing dwelling to be elevated to meet the Base Flood Elevation at the current rear setback of 6.9 feet, where 20 feet is otherwise required.

Why the action is necessary:

The property owner wishes to elevate the existing structure to meet current Base Flood Elevation, using the existing pilings. She also wishes to construct a pool, and this is the only possible location.

What the action accomplishes:

Allows the elevation of a 1970s home to meet Base Flood Elevation, and construction of an in-ground pool.

2. Agenda:

- ☐ Consent
- ☐ Administrative
- ☒ Public Hearing

3. Requirement/Purpose:

- ☒ Resolution
- ☐ Ordinance
- ☐ Other

4. Submitter of Information:

- ☐ Council
- ☒ Town Staff
- ☐ Town Attorney

5. Background:

The LPA heard the request for a pool setback variance on February 11, 2014, and the request for a reduction in rear setback for the house to remain at 6.9 feet when elevated during their April 8, 2014 meeting. The pool variance is necessary because LDC Sec. 34-1174(b) requires all accessory structures to be located no closer to the street than the primary structure. Gulf Beach Road's paved surface ends

Attachments:

- Tab a – Draft Council Resolution 14-11
- Tab b – LPA Resolutions 2014-002 and 2014-006
- Tab c – Minutes from the February 11, 2014 LPA meeting
- Tab d – February 11, 2014 LPA packet materials, including the original Staff Report and application
- Tab e – April 8, 2014 LPA packet materials, including amended Staff Report and supplemental application

6. Alternative Action:

Deny the requests

7. Management Recommendations:

Approve both variance requests, with conditions as specified in the Staff Report and LPA Resolutions.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
				JRO		

9. Council Action:

☐ Approved ☐ Denied ☐ Deferred ☐ Other

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 14-11
VAR2013-0005 – 30 Gulf Beach Road Variance

WHEREAS, William E. Whitley, authorized agent for Nancie Lumpkins, owner of property located at 30 Gulf Beach Road, Fort Myers Beach, Florida has requested the following variances from:

1. LDC Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street right of way line than the primary structure with a 5' street setback.
2. LDC Section 34-3234(a)(1) to allow an existing dwelling to be elevated to meet the Base Flood Elevation at the current rear setback of 6.9 feet, where 20 feet is otherwise required; and

WHEREAS, the subject property is located in the Boulevard Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP number for the subject property is 30-46-24-W2-0020B.0410 and the legal description is attached as *Exhibit A*; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on February 11, 2014, regarding the request for a variance from the required street setback for a pool; and

WHEREAS, after the February LPA meeting, it was discovered that a rear setback variance was needed to elevate the existing house, due to the increase in height; and

WHEREAS, a public hearing was held before the LPA on April 8, 2014, regarding the rear setback variance; and

WHEREAS, at the hearings, the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the file, and the testimony of all interested persons, as required by the Fort Myers Beach Land Development Code Section 34-87;

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on April 21, 2014, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolutions 2014-002 and 2014-006, the recommendations of Staff, the documents in the file, and the testimony of all interested persons, as required by Fort Myers Beach Land Development Code (LDC) Section 34-87.

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

The Town Council **APPROVES/DENIES** the requested variances from the following sections:

1. A variance from LDC Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street right of way line than the primary structure with a 5' street setback.

2. A variance from Section 34-3234(a)(1) to allow an existing dwelling to be elevated to meet the Base Flood Elevation at the current rear setback of 6.9 feet, where 20 feet is otherwise required.

CONDITIONS OF APPROVAL:

1. The location of the pool shall be as shown on the attached *Exhibit B*.
2. The elevation of the existing structure shall be accomplished using the existing pilings and a 6.9' rear setback. If the structure is demolished or removed, this variance will be null and void. Any new structure must comply with the required setbacks at the time of redevelopment, or must seek a new variance from the requirements of the LDC at that time.

FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-87 regarding approval of variance requests, the Town Council reaches the following findings and conclusions:

- a. There **are/are not** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is/is not** 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/are not** the result of actions of the applicant taken after the adoption of the regulation in question.
- c. The variance granted **is/is not** 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/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/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 Town Council upon a motion by Council Member _____ and seconded by Council Member _____, and upon being put to a vote, the result was as follows:

Anita Cereceda, Mayor AYE/NAY
Rexann Hosafros AYE/NAY
Summer Stockton AYE/NAY

Dan Andre, Vice Mayor AYE/NAY
Alan Mandel AYE/NAY

DULY PASSED AND ADOPTED THIS **21st** day of **APRIL, 2014**.

By: _____
Anita Cereceda, Mayor

Approved as to legal sufficiency:

By: _____
Fowler White Boggs, P.A.
Town Attorney

ATTEST:

By: _____
Michelle Mayher
Town Clerk

EXHIBIT A

Prepared by and Return Recorded Original to:

Charles R. Meador, Jr., Attorney at Law
2085 Estero Boulevard
Fort Myers Beach, FL 33931
Telephone: (239) 463-6619
Facsimile: (239) 463-6454

Property Appraiser Parcel I.D. No. 30-46-24-W2-0020B.0410
Grantee Taxpayer I.D. No. _____
Documentary Stamp Tax on Transfer: \$7700

Reserved For Recorder

(STATUTORY FORM - Section 689.02, F.S.)

WARRANTY DEED

THIS WARRANTY DEED, made this 20 day of May, A.D. 2013, between THEODORE A. RECKWERDT and JOELLYN RECKWERDT, Husband and wife, whose post office address is 30 Gulf Beach Road, Fort Myers Beach, FL 33931, hereinafter called Grantor, and NANCIE LEE LUMPKINS, a married person, whose post office address is 16730 Piney Point Road, Piney Point, MD 20674, hereinafter called Grantee.

WITNESSETH, That said Grantor, for and in consideration of the sum of Ten and No/100's Dollars (\$10.00), and other good and valuable consideration, to said Grantor in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said Grantee, and Grantee's heirs and assigns forever, the following described land, situate, lying and being in Lee County, Florida, to-wit:

Lots 41, 42 and 43, Block "B", WINKLER SUBDIVISION, according to the plat thereof recorded in Plat Book 8, Page 45, Public Records of Lee County, Florida.

LESS AND EXCEPT THE FOLLOWING:

Begin at the Northwest corner of Lot 43, Block "B", WINKLER SUBDIVISION, Plat Book 8, Page 45, Lee County Records; thence run Easterly along the Northerly line of said Lot 43 and Lots 42 and 41, said Block "B", 126.80 feet to Northeast corner of said Lot 41; thence Southerly along the Easterly line of said Lot 41, 75.0 feet; thence Westerly, parallel to the Northerly line of said Lots 41, 42 and 43, 97.56 feet, more or less, to a point on the West line of said Lot 43; thence run North along said West line of Lot 43, 80.50 feet, more or less, to the Point of Beginning.

SUBJECT TO easements, restrictions and reservations of record and taxes for the current

Reserved For Recorder

and subsequent years.

and said Grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

*"Grantor" and "Grantee" are used for singular and plural, as context requires.

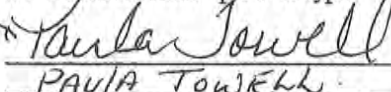
IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed in the presence of:



Charles R. Meador Jr.

#1 Witness Name - print or type



PAULA TOWELL

#2 Witness Name - print or type

 (SEAL)
THEODORE A. RECKWERDT

 (SEAL)
JOELLYN RECKWERDT

STATE OF Florida
COUNTY OF Esc

EXECUTION OF the foregoing instrument was acknowledged before me this 20
day of May, 2013, by THEODORE A. RECKWERDT and JOELLYN
RECKWERDT, Husband and wife, who is (CHECK ONE OF THE FOLLOWING AS
APPLICABLE) ☒ personally known to me, or ☐ who has produced
(Personally known) as identification.



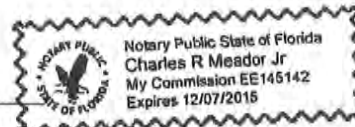
NOTARY PUBLIC - SIGNATURE ABOVE

NOTARY NAME - Charles R. Meador Jr.

COMMISSION NO. -

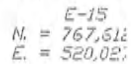
COMMISSION EXP. DATE -

(Notary Name/Commission No./Exp. Date - typed or printed)



(Notary Seal)

CONVICTION, PLAT BOOK 8, PAGE 45



RESOLUTION OF THE LOCAL PLANNING AGENCY
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2014-002
VAR2013-0005 – 30 Gulf Beach Road pool

WHEREAS, William E. Whitley, authorized agent for Nancie Lumpkins, owner of the subject property, has requested a variance from LDC Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street or right of way than the primary structure with a 5' street setback; and

WHEREAS, the subject property is located at 30 Gulf Beach Road Fort Myers Beach, Florida in the 'Residential Multi-Family' zoning category of the Official Zoning Map and 'Boulevard' Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP number for the subject property is 30-46-24-W2-0020B.0410 and the legal description is attached as *Exhibit A*; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on February 11, 2014; and

WHEREAS, at the hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the file, and the testimony of all interested persons, as required by the Fort Myers Beach Land Development Code Section 34-87;

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

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting variances, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends the Town Council **APPROVE** the request for a variance from LDC Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street or right of way than the primary structure with a 5' street setback, subject to the following conditions:

RECOMMENDED CONDITIONS:

1. The location of the pool shall be as shown on the attached *Exhibit B*.

RECOMMENDED FINDINGS AND CONCLUSIONS:

In accordance with the requirements of LDC Sections 34-84 and 34-87 regarding approval of variance requests, 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.

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

Hank Zuba, Chair	AYE	Joanne Shamp, Vice Chair	AYE
Al Durrett	AYE	John Kakatsch	AYE
Jane Plummer	AYE	Jim Steele	AYE
Chuck Bodenhafer	AYE		

DULY PASSED AND ADOPTED THIS **11th** day of **FEBRUARY, 2014**.

Local Planning Agency of the Town of Fort Myers Beach

By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

By: _____
Fowler White Boggs, P.A.
LPA Attorney

ATTEST:

By: _____
Michelle Mayher
Town Clerk

Prepared by and Return Recorded Original to:

Charles A. Meador, Jr., Attorney at Law
2085 Estero Boulevard
Fort Myers Beach, FL 33931
Telephone: (239) 463-6619
Facsimile: (239) 463-6454

Property Appraiser Parcel I.D. No. 30-46-24-W2-0020B.0410
Grantee Taxpayer I.D. No. _____
Documentary Stamp Tax on Transfer: \$7700

Reserved For Recorder

(STATUTORY FORM - Section 689.02, F.S.)

WARRANTY DEED

THIS WARRANTY DEED, made this 20 day of May, A.D. 2013, between THEODORE A. RECKWERDT and JOELLYN RECKWERDT, Husband and wife, whose post office address is 30 Gulf Beach Road, Fort Myers Beach, FL 33931, hereinafter called Grantor, and NANCIE LEE LUMPKINS, a married person, whose post office address is 16730 Piney Point Road, Piney Point, MD 20674, hereinafter called Grantee.

WITNESSETH, That said Grantor, for and in consideration of the sum of Ten and No/100's Dollars (\$10.00), and other good and valuable consideration, to said Grantor in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said Grantee, and Grantee's heirs and assigns forever, the following described land, situate, lying and being in Lee County, Florida, to-wit:

Lots 41, 42 and 43, Block "B", WINKLER SUBDIVISION, according to the plat thereof recorded in Plat Book 8, Page 45, Public Records of Lee County, Florida.

LESS AND EXCEPT THE FOLLOWING:

Begin at the Northwest corner of Lot 43, Block "B", WINKLER SUBDIVISION, Plat Book 8, Page 45, Lee County Records; thence run Easterly along the Northerly line of said Lot 43 and Lots 42 and 41, said Block "B", 126.80 feet to Northeast corner of said Lot 41; thence Southerly along the Easterly line of said Lot 41, 75.0 feet; thence Westerly, parallel to the Northerly line of said Lots 41, 42 and 43, 97.56 feet, more or less, to a point on the West line of said Lot 43; thence run North along said West line of Lot 43, 80.50 feet, more or less, to the Point of Beginning.

SUBJECT TO easements, restrictions and reservations of record and taxes for the current

Reserved For Recorder

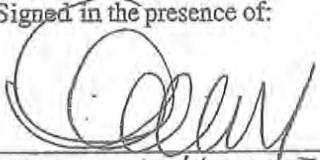
and subsequent years.

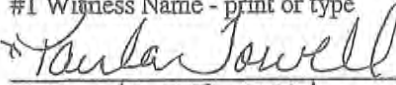
and said Grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

*"Grantor" and "Grantee" are used for singular and plural, as context requires.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed in the presence of:


Charles R. Meador Jr.
#1 Witness Name - print or type

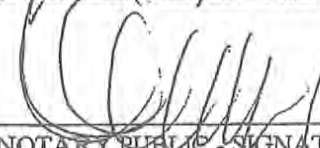

PAULA TOWELL
#2 Witness Name - print or type

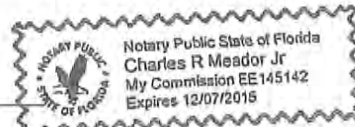
 (SEAL)
THEODORE A. RECKWERDT

 (SEAL)
JOELLYN RECKWERDT

STATE OF Florida
COUNTY OF Collier

EXECUTION OF the foregoing instrument was acknowledged before me this 20
day of May, 2013, by THEODORE A. RECKWERDT and JOELLYN
RECKWERDT, Husband and wife, who is (CHECK ONE OF THE FOLLOWING AS
APPLICABLE) ☒ personally known to me, or ☐ who has produced
(Personally known) as identification.


NOTARY PUBLIC - SIGNATURE ABOVE
NOTARY NAME - Charles R. Meador Jr.
COMMISSION NO. - _____
COMMISSION EXP. DATE - _____
(Notary Name/Commission No./Exp. Date - typed or printed)



(Notary Seal)

EXHIBIT B

UNIVERSITY, PLAT BOOK 8, PAGE 45



E-15
N. = 767,612
E. = 520,02;

RESOLUTION OF THE LOCAL PLANNING AGENCY
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2014-006
VAR2013-0005 – 30 Gulf Beach Road rear setback

WHEREAS, William E. Whitley, authorized agent for Nancie Lumpkins, owner of the subject property, has requested a variance from LDC Section 34-3234(a)(1) to allow an existing dwelling to be elevated to meet the Base Flood Elevation at the current rear setback of 6.9 feet, where 20 feet is otherwise required; and

WHEREAS, the subject property is located at 30 Gulf Beach Road Fort Myers Beach, Florida in the 'Residential Multi-Family' zoning category of the Official Zoning Map and 'Boulevard' Future Land Use Category of the Comprehensive Plan of the Town of Fort Myers Beach; and

WHEREAS, the STRAP number for the subject property is 30-46-24-W2-0020B.0410 and the legal description is attached as *Exhibit A*; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on April 8, 2014; and

WHEREAS, at the hearing the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the file, and the testimony of all interested persons, as required by the Fort Myers Beach Land Development Code Section 34-87;

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

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application and the standards for granting variances, the LPA recommends the following findings of fact, conditions for approval, and conclusions for consideration by the Town Council:

The LPA recommends the Town Council **APPROVE** the request for a variance from LDC Section 34-3234(a)(1) to allow an existing dwelling to be elevated to meet the Base Flood Elevation at the current rear setback of 6.9 feet, where 20 feet is otherwise required, subject to the following condition:

RECOMMENDED CONDITIONS:

2. The elevation of the existing structure shall be accomplished using the existing pilings and a 6.9' rear setback. If the structure is demolished or removed, this variance will be null and void. Any new structure must comply with the required setbacks at the time of redevelopment, or must seek a new variance from the requirements of the LDC at that time.

RECOMMENDED FINDINGS AND CONCLUSIONS:

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

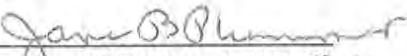
- a. There **are** exceptional or extraordinary conditions or circumstances that are inherent to the property in question, and the request **is** for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.
- b. The conditions justifying 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.

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

Hank Zuba, Chair	ABSENT	Joanne Shamp, Vice Chair	ABSENT
Al Durrett	AYE	John Kakatsch	AYE
Jane Plummer	AYE	Jim Steele	AYE
Chuck Bodenhafer	AYE		

DULY PASSED AND ADOPTED THIS **8th** day of **APRIL, 2014**.

Local Planning Agency of the Town of Fort Myers Beach

By: 
Jane Plummer, Acting Chair

Approved as to legal sufficiency:

By: _____
Fowler White Boggs, P.A.
LPA Attorney

ATTEST:

By: 
Michelle Mayher
Town Clerk

EXHIBIT A

Prepared by and Return Recorded Original to:

Charles R. Meador, Jr., Attorney at Law
2085 Estero Boulevard
Fort Myers Beach, FL 33931
Telephone: (239) 463-6619
Facsimile: (239) 463-6454

Property Appraiser Parcel I.D. No. 30-46-24-W2-0020B.0410
Grantee Taxpayer I.D. No. _____
Documentary Stamp Tax on Transfer: \$7700

Reserved For Recorder

(STATUTORY FORM - Section 689.02, F.S.)

WARRANTY DEED

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WITNESSETH, That said Grantor, for and in consideration of the sum of Ten and No/100's Dollars (\$10.00), and other good and valuable consideration, to said Grantor in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said Grantee, and Grantee's heirs and assigns forever, the following described land, situate, lying and being in Lee County, Florida, to-wit:

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LESS AND EXCEPT THE FOLLOWING:

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SUBJECT TO easements, restrictions and reservations of record and taxes for the current

Reserved For Recorder

and subsequent years.

and said Grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

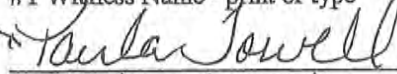
*"Grantor" and "Grantee" are used for singular and plural, as context requires.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed in the presence of:



Charles R. Meador Jr.
#1 Witness Name - print or type



PAULA TOWELL
#2 Witness Name - print or type



THEODORE A. RECKWERDT (SEAL)



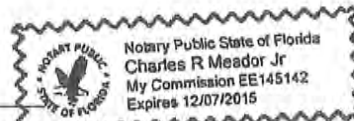
JOELLYN RECKWERDT (SEAL)

STATE OF Florida
COUNTY OF Lee

EXECUTION OF the foregoing instrument was acknowledged before me this 20
day of May, 2013, by THEODORE A. RECKWERDT and JOELLYN
RECKWERDT, Husband and wife, who is (CHECK ONE OF THE FOLLOWING AS
APPLICABLE) ☒ personally known to me, or ☐ who has produced
(Personally known) as identification.



NOTARY PUBLIC - SIGNATURE ABOVE
NOTARY NAME - Charles R. Meador Jr.
COMMISSION NO. - _____
COMMISSION EXP. DATE - _____
(Notary Name/Commission No./Exp. Date - typed or printed)



(Notary Seal)



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)
MINUTES**

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
Tuesday, February 11, 2014

I. CALL TO ORDER

Meeting was called to order at 9:03 a.m. by Chair Zuba; other members present:

Chuck Bodenhafer
Al Durrett
John Kakatsch
Jane Plummer
Joanne Shamp
James Steele
Hank Zuba

LPA Attorney, Marilyn Miller
Staff Present: Walter Fluegel, Community Development Director
Leslee Dulmer, Zoning Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. MINUTES

A. Minutes of January 14, 2014

MOTION: Vice Chair Shamp moved to approve the Minutes for January 14, 2014; second by Mr. Kakatsch.

Vice Chair Shamp noted a letter received from Attorney Grady and discussed the following regarding the January 14, 2014 LPA Meeting Minutes:

- Pages 12 (motion at the bottom of the page) – the wording applied to the front and side yard; and the Resolution as presented had only stated side yard.

Vice Chair Shamp clarified it was her intention to include both ‘front and side’ yard in the motion.

Discussion was held concerning the motion, wording, and intent [1/14/14 Minutes – Page 12].

Vice Chair Shamp noted the following correction on Page 12 of the January 14th Minutes:

- Vice Chair Shamp moved to recommend approval of Resolution 2013-17, VAR2013-0006, Houseboat, LLC Variance and approval of the requested variance from the following sections:

1. Section 34-676(b), parking lot location, to permit off-street parking in the **front and** side yard as depicted on the site plan *Exhibit E*.

LPA Attorney Miller questioned that the motion[1/14/14 Minutes – Page 12] on the subject Resolution had not included the side yard.

Vice Chair Shamp responded in the affirmative; and clarified that it the LPA’s intention was to “*allow everything that is existing there to stay; to give the special exception*”.

LPA Attorney Miller recommended Vice Chair Shamp make a motion to clarify the Resolution; that her motion intended to include the side yard; and to do so after Approval of the Minutes.

Vice Chair Shamp questioned a letter received from Attorney Grady as it pertained to the subject property marina being designated as ‘*existing only*’ [Page 19 of the January 14th Minutes].

LPA Attorney Miller noted the subject minutes reflected that she had explained “...if the Applicant wanted to modify the existing conditions they would have to seek a special exception.”

Vice Chair Shamp requested Community Development Director Fluegel to address his comments as noted on Page 19 of the January 14th Minutes.

Community Development Director Fluegel reviewed the applicable portion of the Minutes:

- Community Development Director Fluegel explained the subject property marina would be called ‘*existing only*’ and would not permit an expansion of the number of slips or marina repair facilities or anything else within the marina definition.

He added that would become a legal question (i.e. could they expand the number of slips or could they expand the uses within that definition).

Discussion ensued regarding the subject parcel (i.e. limitations in size, surrounding residential, etc.).

LPA Attorney Miller explained that the Applicant was not asking for any approval of the marina.

Chair Zuba reviewed the intention of the LPA was:

- Not to go further than 'existing only'; any expansion would require a special exception.

LPA Attorney Miller pointed out that may become an issue, if and when the Applicant tried to expand. She explained that even though the subject section of the Minutes of January 14th indicated Attorney Grady's comments were inaudible, she recalled comments by Attorney Grady pertaining to the LDC.

AMENDMENT: Vice Chair Shamp moved to correct the minutes of January 14, 2014, Page 19, to include the comments made by Attorney Grady according to her letter of February 4, 2014(*Attached*); second by Mr. Kakatsch.

VOTE: Motion approved; 7-0.

MOTION: Vice Chair Shamp clarified on Page 12 of the January 14th Minutes, Resolution 2013-17, VAR2013- 0006, Houseboat, LLC Variance, that the off-street parking was permitted in the front and side yard; second by Mr. Bodenhafer.

VOTE: Motion approved; 7-0.

PUBLIC HEARING

A. VAR2013-0005 Setback Variance for In-Ground Pool

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Chair Zuba asked if any LPA Board Member had ex-parte communication regarding this item. Mr. Durrett – none; Mr. Kakatsch – site visit; Chair Zuba – site visit; Mr. Steele – site visit; Ms. Plummer – site visit; Vice Chair Shamp – site visit; Mr. Bodenhafer – none.

Zoning Coordinator Dulmer presented comments for Variance 2013-0005, Setback Variance, at 30 Gulf Beach Road on behalf of the Town of Fort Myers Beach. She displayed an aerial view of the property and indicated the location of the subject site. She reviewed the Applicant's request, the background of the property, and the existing conditions of the subject site:

- A variance from LDC Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street right-of-way line than the primary structure with a 5' street setback.
- Gulf-front lot

- Located at the end of a paved portion of Gulf Beach Road
- Surrounded on either side multi-story condo buildings
- Pools along Gulf Beach Road (Resolution 03-04; 3830 Estero Boulevard ZB-84-118)

She noted the supporting regulations pertaining to the Applicant's request:

- Section 34-87 – gives Town Council the authority to hear and decide all requests for variances from the terms and restrictions of the LDC; Council must consider whether the facts support the five required findings, staff report and LPA recommendations, testimony from the Applicant, and testimony from the public.
- Section 34-87(3) Findings – before granting any variance, the Town Council must find that all of the following exist:
 - Section 34-87(3)(a) – *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.* The subject property is located at the terminus of the paved portion of Gulf Beach Road and is non-conforming with respect to the rear setback and limited space available in the side yard. These development constraints mean that the area shown on Exhibit B is the only remaining space available for the proposed pool and could be considered a unique condition inherent to the subject property. The proposed pool location will have little to no impact on the surrounding property owners. Staff, therefore, is of the opinion that rigid compliance is not necessary to protect the public in this instance.
 - Section 34-87(3)(b) – *That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.* The conditions are not the result of actions of the applicant taken after the adoption of the regulation in question, because the existing structure was built in 1976 prior to the incorporation of the Town of Fort Myers Beach and the adoption of LDC Section 34-1174(b), the regulation in question, in 2004.
 - Section 34-87(3)(c) – *That 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.* Staff agrees with the applicant and recommends that the minimum variance necessary is to allow the in-ground pool to be located closer to the street than the existing building and allowing a 5' setback for the swimming pool from the front property line.
 - Section 34-87(3)(d) – *That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.* The granting of the variance would not be injurious to the neighborhood or detrimental to the overall public welfare. If granted, as recommended by staff, the variance will allow the property owner reasonable use of the subject property.
 - Section 34-87(3)(e) – *That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general a nature as to make it more reasonable and practical to amend the regulation in question.* The variance, as requested, is not so general or recurrent in nature as to require an amendment to Chapter 34.

She reported staff recommended approval with conditions of the variance request from LDC Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street right-of-way line than the primary structure with a 5' street setback, subject to the following condition: 1) The location of the pool shall be as shown on the attached Exhibit B [site plan where pool area is indicated in red].

Ms. Plummer questioned that the subject pool was to be an in-ground pool and not higher than 42".

Zoning Coordinator Dulmer responded in the affirmative.

Discussion was held concerning in-ground and above-ground pools.

Ms. Plummer asked if there was any indication that the pool would not be higher than 42" above-ground.

Discussion ensued regarding setbacks for other pools on Gulf Beach Road; and potential for reconfiguration of the pool as it pertained to parking on the subject property.

Zoning Coordinator Dulmer noted it was staff's opinion that the proposed location would have very little impact on the surrounding neighborhood given the consideration that the site was at the end of a street; that the paved portion stopped before the pool area; and the subject property was a non-parking beach access point.

Mr. Whitley, Contractor for the Applicant, stated he was present and prepared to answer any questions.

Ms. Plummer asked Mr. Whitley to confirm that the top of the pool would not be higher than 42".

Mr. Whitley responded in the affirmative.

Mr. Steele questioned the height and composition of the fence surrounding the pool.

Mr. Whitley stated it was his belief that the fence would be 42" in height (for child safety); and indicated the pool contractor would have the fence specifications.

Zoning Coordinator Dulmer reported fences for pools were required to be 48"; and added a chain-link fence was not permitted in a front yard.

Mr. Steele indicated his concern if the fence was to be a 48" solid that could restrict view.

Mr. Whitley pointed out that the nearby condominium fence extended out further [seaward] than the proposed subject location.

Zoning Coordinator Dulmer explained that since the subject property was located seaward of the 1991 Coastal Construction Control Line that DEP and State approval was required; and a Letter of Local Consistency was required from the local municipality indicating no rules would be violated.

Public Comment opened.

Robert Johnson, owner of condominium at 2650 Estero Boulevard, noted his concern regarding the "vagueness of the drawings" showing the pool and how it would be constructed, and the proposed fencing. He described a constant problem his condominium experienced with regard to people coming off the beach utilizing their pool. He asked if the subject property was a single-family residence.

Zoning Coordinator Dulmer reported the subject property had two units.

Mr. Johnson questioned how the use of the pool would be controlled by the two units; and if the proposed pool might impact the sea turtles and the beach itself.

Discussion was held concerning the dimensions of the proposed pool and the location of the parking on the subject property.

Howard Hay, owner of Unit #1 at 2580 Estero Boulevard, indicated the location of his condo unit on the overhead projection screen as it related to the subject property. He noted his concerns regarding security issues for the proposed pool and added he would prefer a "see-through" fence.

Ken Turner, owner of Unit #102 at 2650 Estero Boulevard, indicated there were many residents from his condominium present in the audience. He noted his concern regarding the requested variance for the subject property and how granting the variance may cause noise issues for the condominium residents. He mentioned the condominium residents had concerns about any potential structural height increase to the subject property.

Birdie Murphy, resident at 2650 Estero Boulevard, concurred with Mr. Turner's comments; and noted her concerns regarding the variance request and the fact that no specifications for the pool were submitted. She questioned the location of the proposed pool in relation to the walkway.

Zoning Coordinator Dulmer explained that the pool contractor would be required to submit drawings and plans for the pool; and there would be additional technical drawings submitted to the Town that would be held to all the standards of the LDC and any conditions of approval. She added that she did not have an exact measurement as it related to the location of the pool to the walkway.

Chair Zuba explained the issue before the LPA was the issue of the setback.

Jean Johnson asked if the proposed pool would go into the sea grass area where the turtles nested.

Zoning Coordinator Dulmer responded in the negative.

Town of Fort Myers Beach – Local Planning Agency

February 11, 2014

Page 6 of 11

Public Comment closed.

Ms. Plummer explained how the LPA would review the variance request as it related to the standards for granting the variance for a setback.

Vice Chair Shamp noted the State's specific regulations as it pertained to 'high-velocity zone' pools; and indicated her concern regarding setbacks.

Discussion was held regarding the intent of a 25' setback from a main street/boulevard (i.e. safety, aesthetics, etc.); and Gulf Beach Road and location of the right-of-way.

Chair Zuba recognized Mr. Johnson in the audience.

Mr. Johnson displayed and commented on a drawing depicting the location of the pool which was helpful.

Vice Chair Shamp discussed her view on requesting the proposed pool shape to be changed to more of a rectangular shape which would be more "*de minimis*".

Discussion ensued regarding the irregular shape of the proposed pool.

MOTION: Mr. Bodenhafer moved to recommend approval of VAR2013-0005, Setback Variance, for 30 Gulf Beach Road subject to the **Recommended Findings and 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.

and the **Recommended Conditions:**

1. The location of the pool shall be as shown on the attached Exhibit B.
2. The pool shall not exceed 42" in height.

SECOND: Ms. Plummer.

VOTE: Motion approved; 7-0.

Public Hearing closed.

Adjourn as LPA and reconvened as Historic Preservation Board – Withdrawn.

Adjourn as Historic Preservation Board and reconvene as the LPA – Withdrawn.

V. LPA MEMBER ITEMS AND REPORTS

Mr. Kakatsch – no items or reports.

Mr. Steele – no items or reports.

Vice Chair Shamp – requested an excused absence from the April LPA Meeting. She questioned the status of the Historic Preservation ordinance.

Discussion was held.

Community Development Director Fluegel reported the Historic Preservation ordinance would be placed on a Council agenda in May.

Vice Chair Shamp questioned seeing survey stakes for beach access near the Flamingo area.

LPA Attorney Miller explained there had been funding from the TDC regarding improvements to beach accesses and Public Works Director Lewis would have that information.

Discussion ensued concerning beach access surveys.

Mr. Durrett – no items or reports.

Mr. Bodenhafer – pointed out that at the December LPA meeting a motion was approved to schedule a meeting the following week with the Town Manager and department heads; however, the meeting did not occur.

Community Development Director Fluegel reported Mr. Kakatsch reached out to him and asked to rescind his motion and not have the meeting. He stated the LPA needed to rescind the motion or go ahead and schedule the meeting.

Mr. Kakatsch noted the recent Town Manager position change; and added that he would be meeting with the new Town Manager and at that time he would determine if Town Manager Stilwell was interested in pursuing such a meeting.

Discussion was held concerning the meeting with the Town Manager.

Mr. Kakatsch explained he would like to pursue the original motion and have the meeting with the Town Manager at a special LPA Meeting.

Community Development Director Fluegel stated he would move forward with scheduling the meeting.

Ms. Plummer – discussed her concern regarding the new stormwater management improvements as it pertained to the lack of some type of preventive measure (i.e. flap at the seawall) that would keep water from coming back onto her property and flood the street if a full moon and a high tide hit on the same night. She also discussed problems she was encountering with the generator used for the improvement project (i.e. noise, fumes, discharge, etc.). She questioned if a 'stop work order' had been issued for 301 Palermo for the pool deck structure

Community Development Director Fluegel responded in the negative; and noted subject structure was lawfully permitted for a pool deck structure and was structurally independent.

Discussion was held concerning whether the subject structure was attached to or detached from the principal structure.

Mr. Kakatsch discussed concerns regarding the water table on Fairweather Lane as it related to the stormwater management improvements.

Mr. Durrett told of his experience with constructing his pool as it related to DEP and Town regulations concerning the water table and disposal of the ground water in the pool during construction. He suggested dewatering regulations should be discussed with Environmental Sciences Coordinator Laakkonen.

LPA Attorney Miller stated she would discuss the matter with Environmental Sciences Coordinator Laakkonen and Public Works Director Lewis.

Mr. Kakatsch asked LPA Attorney Miller to find out if where water was pumped out in front of buildings if it would impact the foundation.

Chair Zuba – requested an excused absence from the March LPA Meeting; and possibly from the April Meeting, too.

Discussion was held concerning which LPA Members would be attending the March and April Meetings.

VI. LPA ATTORNEY ITEMS

LPA Attorney Miller – noted there was a meeting on Thursday for the group reviewing the outdoor display matter.

VII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Community Development Director Fluegel – clarified his earlier statement regarding in-ground versus above-ground pools.

Discussion was held concerning in-ground versus above-ground pools and enclosures.

VIII. LPA ACTION ITEM LIST REVIEW

No discussion.

IX. ITEMS FOR NEXT MONTH'S AGENDA

No discussion.

X. PUBLIC COMMENT

Public Comment opened.

Summer Stockton, resident, discussed her reading and interpretation of the codes as it pertained to a 'breezeway'.

LPA Attorney Miller noted the section of the code which addressed 'breezeway'.

Interim Town Manager Stilwell addressed the LPA Members and expressed his pleasure to be able to work with them.

Mr. Kakatsch expressed his thoughts on the Estero Boulevard Improvement Project to Interim Town Manager Stilwell.

Interim Town Manager Stilwell pointed out there were issues with the rights-of-way on Estero Boulevard.

Public Comment closed.

XI. ADJOURNMENT

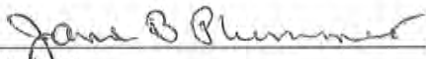
MOTION: Motion by Vice Chair Shamp, seconded by Mr. Durrett to adjourn.

VOTE: Motion approved; 7-0.

Meeting adjourned at 10:40 p.m.

Adopted April 8, 2014. Without changes. Motion by Kakatsch, Second by Bodenhafer

Vote: 5-0, Zuba and Shamp excused


Signature

End of document.



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR2013-0005

LPA HEARING DATE: February 11, 2014

LPA HEARING TIME: 9:00 AM

I. APPLICATION SUMMARY

Applicant: Gene Whitley, agent
Nancie Lumpkins, owner

Request: A variance from LDC Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street right of way line than the primary structure with a 5' street setback.

Subject property: Attached as *Exhibit A*

Physical Address: 30 Gulf Beach Road Fort Myers Beach, FL 33931

STRAP #: 30-46-24-W2-0020B.0410

FLU: Boulevard

Zoning: Residential Multi Family (RM)

Current use(s): Multi-Family Residential

Adjacent zoning and land uses:

North:	Multi Family Residential RESIDENTIAL MULTI FAMILY (RM) Boulevard
South:	Beach & Gulf of Mexico ENVIRONMENTAL CRITICAL (EC) Recreation
East:	Estero Beach Club East RESIDENTIAL MULTI FAMILY (RM)

Boulevard

West: Estero Beach Club
RESIDENTIAL MULTI FAMILY (RM)
Boulevard

II. BACKGROUND AND ANALYSIS

Background:

This application is a request for a variance from the Land Development Code Section 34-1174(b) which requires all accessory structures to be located no closer to the street right-of-way line than the primary structure (essentially prohibiting accessory structures in the front yard) to allow an in ground pool with a 5' setback from the street.

The subject property is a Gulf front lot located at the terminus of the paved portion of Gulf Beach Road (see *Exhibit B*) where it turns into a beach access point. To the east and west are Estero Beach Club East and Estero Beach Club, each multi-story condominium complexes, and to the north is a two-story multi-family building.

The property owner purchased the subject property in May of 2013 and among other improvements to the existing building, wishes to install a pool. The existing configuration of the building on the lot has resulted in the request for a variance to locate an in ground pool closer to the street than the primary structure.

Analysis:

When reviewing this request, it is important to consider the site configuration, including the location of the existing multifamily building in relation to the front, side, and rear yards. See *Exhibit B*. The property line adjacent to Gulf Beach Road (west) is considered the 'front yard' requiring a front and/or street setback, while the property line opposite (east) would be considered the rear yard. The property line on the gulf side (south) is also the 1978 Coastal Construction Control Line and is considered to be a side lot line, while the property line opposite (north) would be considered the other side lot line. Thus, the existing building is located only 6.9' from the rear yard and appears to exceed the required 25' street setback from the front, although the survey provided does not give an exact dimension.

LDC Section 34-1174(b) states that no accessory structures shall be permitted closer to the street right of way or street easement than the primary structure, with a few minor exceptions allowed for signs, fences and similar structures.

The request of this application is to approve a variance from Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street than the primary structure with a 5' street setback.

A logical location for the pool that would not require a variance would be to locate it north of the building in the 30.9' available between the existing building and the north property line. However, when Staff suggested this alternative the applicant and property owner stated that in that northern location the pool would receive very little sun and would be in the shadow of tall buildings on the east, south and west. In addition, that portion of the lot

is used for parking and access. The applicant, therefore, has deemed the location shown on *Exhibit B* to be the only location available on the subject property for the pool.

The property immediately adjacent and to the north of the subject property, a three unit rental building, applied for and was granted a very similar request. In 2003 the property owner of 50 Gulf Beach Road was granted a variance by Town Council to allow an accessory structure (in-ground pool) closer to the street than the primary structure. (See *Exhibit C*) That approval, however, included a requirement that the pool still meet the 25' street setback.

The next property down Gulf Beach road is the Beach Shell Inn located at the corner of Estero Boulevard and Gulf Beach. (See *Exhibit D*) This property also has a pool located along Gulf Beach Road, however, the horseshoe configuration of the buildings on this property renders that pool compliant with Section 34-1174(b) and thus a variance was not necessary in that instance.

As evidenced by Resolution 03-04, from time to time Town Council, and Lee County before incorporation, have granted variances for situations similar to the request of this case. Another example of an approved pool closer to the street than the primary structure is found at 3830 Estero Boulevard, see *Exhibit E*. This variance was requested and granted in 1984 noting that the owner had been denied a request to install a pool seaward of the 1978 CCCL and that "to deny this would deny the owner rights normally enjoyed by others in similar situations."

It is very common, especially on the northern end of the island where development occurred prior to the adoption of zoning and setback requirements, that developed properties are non-conforming due to setbacks. This does create situations where redevelopment and improvement is more difficult to accomplish. The LDC requires that pools be located in side or rear yards, however when side or rear yards are dramatically reduced, as in the case of the subject property, alternatives must be considered.

The subject property essentially has no rear yard. One side yard is limited by the 1978 CCCL and the other side yard is utilized for parking and building access. The location of the pool as shown in *Exhibit B* between the street and the primary structure is the only remaining open space on the subject property where a pool can be located. The subject property is located at the end Gulf Beach Road, where the paved portion of the road terminates about halfway down the property line and becomes a shell covered beach access point with no parking. Allowing the pool to be located along this edge of the property and 5' from the property line will not impede the access of any vehicles and will not have a negative impact on any surrounding neighbors.

Findings and Conclusions:

Based upon an analysis of the application and the standards for approval of variance a found in Section 34-87 of the LDC, Staff makes the following findings and conclusions:

- a. *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

The subject property is located at the terminus of the paved portion of Gulf Beach road and is non-conforming with respect to the rear setback and there is limited space available in the side yard. These development constraints mean that the area shown on *Exhibit B* is the only remaining space available for the proposed pool and could be considered a unique condition inherent to the subject property. The proposed pool location will have little to no impact on the surrounding property owners. Staff, therefore, is of the opinion that rigid compliance is not necessary to protect the public in this instance.

- b. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.*

The conditions are not the result of actions of the applicant taken after the adoption of the regulation in question, because the existing structure was built in 1976 prior to the incorporation of the Town of Fort Myers Beach and the adoption of LDC Section 34-1174(b), the regulation in question, in 2004.

- c. That the variance granted is the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

Staff agrees with the applicant and recommends that the minimum variance necessary is to allow the in-ground pool to be located closer to the street than the existing building and allowing a 5' setback for the swimming pool from the front property line.

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

The granting of the variance will not be injurious to the neighborhood or detrimental to the overall public welfare. If granted as recommended by Staff, the variance will allow the property owner reasonable use of the subject property.

- e. That 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.*

The variance, as requested, is not so general or recurrent in nature as to require an amendment to Chapter 34.

III. RECOMMENDATION

When considering the existing site development limitations on the subject property, Staff recommends **APPROVAL** of the request for a variance from Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street than the primary structure with a 5' street setback subject to the following condition:

1. The location of the pool shall be as shown on the attached *Exhibit B*.

IV. CONCLUSION

The subject property effectively has no rear yard. One side yard is limited by the 1978 CCCL and the other side yard is utilized for parking and building access. The location of the pool as shown in *Exhibit B* and closer to the street than the primary structure is the only remaining open space on the subject property where a swimming pool can be located.

Therefore, Staff recommends **APPROVAL WITH CONDITIONS** of the request for a variance from LDC Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street than the primary structure with a 5' street setback.

Exhibits:

- A – Legal Description
- B – Site Plan
- C – Resolution 03-04
- D – Aerial View
- E – ZB-84-118

EXHIBIT A

Prepared by and Return Recorded Original to:

Charles R. Meador, Jr., Attorney at Law
2085 Estero Boulevard
Fort Myers Beach, FL 33931
Telephone: (239) 463-6619
Facsimile: (239) 463-6454

Property Appraiser Parcel I.D. No. 30-46-24-W2-0020B.0410
Grantee Taxpayer I.D. No. _____
Documentary Stamp Tax on Transfer: \$7700

Reserved For Recorder

(STATUTORY FORM - Section 689.02, F.S.)

WARRANTY DEED

THIS WARRANTY DEED, made this 20 day of May, A.D. 2013, between THEODORE A. RECKWERDT and JOELLYN RECKWERDT, Husband and wife, whose post office address is 30 Gulf Beach Road, Fort Myers Beach, FL 33931, hereinafter called Grantor, and NANCIE LEE LUMPKINS, a married person, whose post office address is 16730 Piney Point Road, Piney Point, MD 20674, hereinafter called Grantee.

WITNESSETH, That said Grantor, for and in consideration of the sum of Ten and No/100's Dollars (\$10.00), and other good and valuable consideration, to said Grantor in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said Grantee, and Grantee's heirs and assigns forever, the following described land, situate, lying and being in Lee County, Florida, to-wit:

Lots 41, 42 and 43, Block "B", WINKLER SUBDIVISION, according to the plat thereof recorded in Plat Book 8, Page 45, Public Records of Lee County, Florida.

LESS AND EXCEPT THE FOLLOWING:

Begin at the Northwest corner of Lot 43, Block "B", WINKLER SUBDIVISION, Plat Book 8, Page 45, Lee County Records; thence run Easterly along the Northerly line of said Lot 43 and Lots 42 and 41, said Block "B", 126.80 feet to Northeast corner of said Lot 41; thence Southerly along the Easterly line of said Lot 41, 75.0 feet; thence Westerly, parallel to the Northerly line of said Lots 41, 42 and 43, 97.56 feet, more or less, to a point on the West line of said Lot 43; thence run North along said West line of Lot 43, 80.50 feet, more or less, to the Point of Beginning.

SUBJECT TO easements, restrictions and reservations of record and taxes for the current

Reserved For Recorder

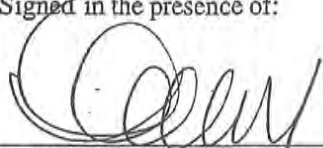
and subsequent years.

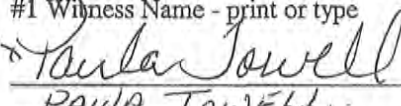
and said Grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

*"Grantor" and "Grantee" are used for singular and plural, as context requires.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed in the presence of:



Charles R. Meador Jr.
#1 Witness Name - print or type


PAULA TOWELL
#2 Witness Name - print or type

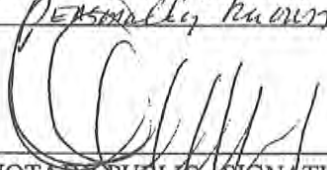


THEODORE A. RECKWERDT (SEAL)

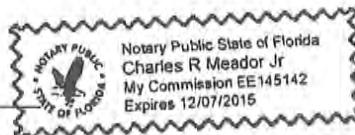

JOELLYN RECKWERDT (SEAL)

STATE OF Florida
COUNTY OF ccc

EXECUTION OF the foregoing instrument was acknowledged before me this 20
day of May, 2013, by THEODORE A. RECKWERDT and JOELLYN
RECKWERDT, Husband and wife, who is (CHECK ONE OF THE FOLLOWING AS
APPLICABLE) ☒ personally known to me, or ☐ who has produced
(personally known) as identification.



NOTARY PUBLIC - SIGNATURE ABOVE
NOTARY NAME - Charles R. Meador Jr.
COMMISSION NO. - _____
COMMISSION EXP. DATE - _____
(Notary Name/Commission No./Exp. Date - typed or printed)



(Notary Seal)

$$\begin{aligned} N. &= 767,61\% \\ E. &= 520,02\% \end{aligned}$$

EXHIBIT C

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 03-04

WHEREAS, Daniel W. Hahn, the property owner has requested a variance from the LDC Sections 34-715, 34-1174(b) and 34-2191 to allow a proposed swimming pool and deck in front of an existing residence to be located 10 feet from the street right-of-way where accessory structures must meet the minimum requirement of a 25 foot street setback; and,

WHEREAS, the subject property is located at 50 Gulf Road, Fort Myers Beach, in S30-T46S-R24E, Lee County, FL.; and,

WHEREAS, the applicant has indicated the property's current STRAP number is: 30-46-24-W2-0020B.041A, and the legal description is attached hereto and incorporated herein by reference as Exhibit A; and,

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) and a motion made and seconded to approve the variance subject to conditions, the Local Planning Agency failed to pass the motion and therefore recommended that the Town Council deny the Applicant's variance request; and,

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

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

- a. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question and that do not apply generally to the other nearby properties in the same zoning district;
- b. That the exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to the adoption of the ordinance (any action taken by an applicant pursuant to lawfully adopted regulations preceding the adoption of the ordinance from which this chapter is derived will not be considered self-created);
- c. That the variance 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. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and

e. That 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 nature as to make it more reasonable and practical to amend the ordinance.

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.

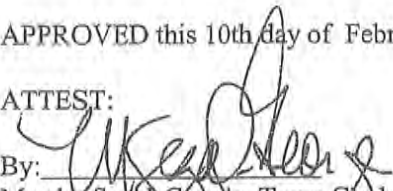
1. All portions of the pool and deck must be set back a minimum of 25 feet from Gulf Beach Road. No overhang or other structure may encroach this setback.
2. The variance is limited to a swimming pool and deck with the deck set back a minimum of 10.0 feet from the property line to the north and a minimum of 27 feet from the property line to the south.
3. The swimming pool and deck are landscaped with a vegetative buffer with a minimum of 5 native trees and 30 linear feet of native shrubbery adequate to screen the use from Gulf Beach Road so as to prevent it from being a traffic distraction. The same vegetative buffer is required along the north property line from the front buffer to the building.
4. No pool cage shall be permitted.
5. The required number of parking spaces will be provided on site.

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

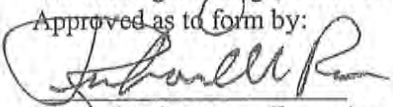
Howard Rynearson	<u>Yes</u>
Daniel Hughes	<u>No</u>
Bill Thomas	<u>Yes</u>
W. H. "Bill" Van Duzer	<u>Yes</u>
Terry Cain	<u>Yes</u>

APPROVED this 10th day of February, 2003.

ATTEST:

By: 
Marsha Segar George, Town Clerk

Approved as to form by:


Richard V.S. Roosa, Town Attorney

TOWN OF FORT MYERS BEACH

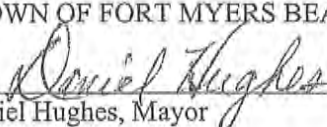
By: 
Daniel Hughes, Mayor

Exhibit 'A'

VAR2002-00042
DANIEL HAHN SWIMMING POOL

PROPERTY DESCRIPTION

A TRACT OR PARCEL OF LAND IN THE WINKLER SUBDIVISION, PLAT BOOK 8, PAGE 45, PUBLIC RECORDS, LEE COUNTY, FLORIDA, SECTION 30, TOWNSHIP 46, RANGE 24, LEE COUNTY, FLORIDA, WHICH TRACT OR PARCEL IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 43, BLOCK "B", OF SAID WINKLER SUBDIVISION, THENCE S.68°37'24"E. ON THE NORTHERLY LINE OF LOT 43 AND LOTS 42 AND 41 OF SAID BLOCK "B" AND THE SOUTHERLY RIGHT OF WAY LINE OF ESTERO BLVD. FOR 126.68 FEET TO THE NORTHEAST CORNER OF SAID LOT 41; THENCE S.21°23'56"W. ON THE EASTERLY LINE OF SAID LOT 41 FOR 75.10 FEET; THENCE N.68°44'00"W. FOR 97.39 FEET TO A POINT ON THE WEST LINE OF SAID LOT 43; THENCE N.00°08'06"W. ON SAID WEST LINE OF SAID LOT 43 AND THE WESTERLY RIGHT OF WAY OF GULF BEACH BLVD. FOR 123.57 FEET TO THE POINT OF BEGINNING.

Applicant's Legal Checked
by ALM 2002/03

[illegible]

GULF BEACH RD

GULF BEACH RD

ESTERO BLVD

BILLED

9.00

EXHIBIT E

RESOLUTION NUMBER ZB-84-118

OFF. REC. 1757 PG 879

RESOLUTION OF THE ZONING BOARD

1875866

OF LEE COUNTY, FLORIDA

RECORD VERIFIED - CHARLIE GREEN, CLERK
BY: H. FERNSTROM, D.C.

WHEREAS, Shelia Rose Watson Challis, has properly filed an application for: In the RS-1 district: a) Variance from the requirement no accessory building or structure shall be located closer to a street right-of-way line than the principal building to allow a pool patio closer to a street right-of-way line than the principal building (Sec.500.1.B.1.B); and b) Variance from the requirement fences outside the front building line shall be limited to a maximum height of 3 feet to 8 feet (Sec.500.15.B.3) on a piece of property located at the South 100 feet of Lot 82 just west of the Baymar Drive - Estero Boulevard intersection, described more particularly as;

Section 29, Township 46S, Range 24E, Lee County, Florida

South 100 feet of lot 82, Case Subdivision, as recorded in PB 1, Page 58, Public Records of Lee County, Florida (Per DB131, Page 300/304)

WHEREAS, the public hearing on this matter was advertised and conducted legally and properly; and,

WHEREAS, the Zoning Board considered the recommendation of the Staff, the Local Planning Authority, documents on file with the County and the testimony of all interested persons; and,

The Zoning Board does hereby make the following findings of fact:

The proposed Zoning Hearing is consistent with the Lee County Comprehensive Plan. Staff is supportive of request to locate accessory structure closer to the road right-of-way than the principal structure. Staff is confident that it was not the legislative intent of the Board in enacting Section 500.1 to prevent this type of building arrangement. To deny this would deny the owner rights normally enjoyed by others in similar situations. Denial will prevent erection of accessory buildings but will not otherwise effect principal use. Further, applicants have been denied a variance from the Coastal Construction Code to build pools between principal structure and gulf.

Staff cannot support request to increase the height of the wall from 3' to 8' as the hardship criteria has not been asserted nor proven for this variance request. Staff would like to point out, however, that Section 500.14.D.1.b requires that inground pools be enclosed by fence, wall or screen enclosure at least 4' in height and will support a variance to 4' in order to meet that criteria.

NOW, THEREFORE, BE IT RESOLVED BY THE LEE COUNTY ZONING BOARD, LEE COUNTY, FLORIDA, that the Zoning Board does hereby grant in the RS-1 District: a) Variance from the requirement no accessory building or structure shall be located closer to a street right-of-way line than the principal

building to allow a pool patio closer to a street right-of-way line than the principal building (Sec.500.1.B.1.b); and b) Variance from the requirement fences outside the front building line shall be limited to a maximum height of 3 feet to 4 feet (Sec.500.15.B.3).

The foregoing Resolution was adopted by the Lee County Zoning Board upon a motion by Zoning Board Member Taylor, and seconded by Terrell and, upon being put to a vote, was as follows:

Emily Barefield	Absent	Robert Terrell	Aye
Nat Hunter	Aye	Truman A. Morris	Aye
Thad Taylor	Aye	Kay Williams	Aye
Larry Hyman	Aye		

DULY PASSED AND ADOPTED this 29th day of May, A.D., 1984, by the Lee County Zoning Board.

Approved as to action by:

[Signature]
County Attorney

[Signature]
Clerk
CLERK OF CIRCUIT COURT

Nov 30 2 28 PM '84
RECORDED IN OFFICIAL
RECORDS
LEE COUNTY, FLORIDA
RECORD VERIFIED



Town of Fort Myers Beach

Community Development
2523 Estero Blvd Fort Myers Beach, Florida 33931
Phone: 239-765-0202 Fax: 239-765-0591

December 17, 2013

Gene Whitley
22501 Buccaneer Lagoon
Fort Myers Beach, FL33931

Re: VAR2013-0005

Dear: Mr. Whitley,

The Community Development Department has reviewed the information provided for the above zoning application. The Town of Fort Myers Beach Land Development Code (LDC) required additional information for the application to be found sufficient. Please respond to each requirement not satisfied on the attached sufficiency checklists. For your assistance, we have enclosed any additional memoranda from the various other Town reviewing departments.

If you do not provide the requested supplements or corrections within 60 calendar days of this letter, the LDC requires that this application be considered withdrawn. Please feel free to contact me if you have any questions or require further clarification.

Sincerely,

A handwritten signature in cursive script, reading "Leslee Dulmer".

Leslee Dulmer
Zoning Coordinator
Town of Fort Myers Beach
Community Development



Town of Fort Myers Beach

Community Development

2523 Estero Blvd Fort Myers Beach, Florida 33931

Phone: 239-765-0202 Fax: 239-765-0591

ZONING REVIEW – Leslee Chapman

The application and drawings submitted for the referenced project have been reviewed in accordance with the LDC, Florida Statutes as well as other applicable codes and ordinances as adopted by the Town of Fort Myers Beach. Your application requires the following additional information:

Please address each of the following decisions making factors as listed below:

- a. *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy;*
- b. *That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question*
- c. *That 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. *That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare;*
- e. *That 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.*

Describe the additional information needed or how the project does not meet the code section.

Please make the corrections and resubmit with the necessary information so we can process your application. Please note that these comments represent only those of the reviewer signing below. Other comments may be forthcoming, and a re-submittal shall not occur until all reviewer comments are addressed.

Leslee Dulmer
Zoning Coordinator
239-765-0202 ext 105

W^m. E. Whitley Construction
22501 Buccaneer Lagoon • Fort Myers Beach, Florida 33931
(239) 463-0203 • FAX (239) 463-5010

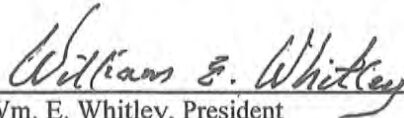
December 18, 2013

Leslee Dulmer
Zoning Coordinator
Town of Ft. Myers Beach
Community Development

RE: **VAR 2013-0005**
Additional information request dated 12-17-13

LDC Section 34-87:

- A. The unique location of the property relative to surrounding public activity makes rigid code compliance not necessary to protect the public.
- B. The applicant has only recently purchased the property and has taken no actions after the adoption of the regulation in question.
- C. The requested variance is not only the minimum but the only location on the property to relieve the applicant of an unreasonable burden caused by the regulation in question.
- D. The neighborhood or public welfare would not be negatively impacted by the granting of this variance. -See attached picture taken from the proposed pool location, looking to the southeast.
- E. The conditions of this specific property are rare enough to make it unreasonable to amend the regulation in question.



Wm. E. Whitley, President

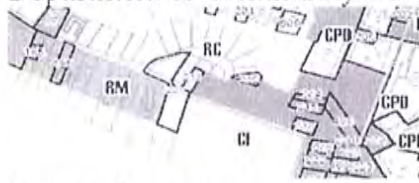


2013/12/18

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Town of Fort Myers Beach
Department of Community Development



Zoning Division

Supplement PH-B

**Additional Required Information for a
Variance Application**

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

Case Number:	VAR-2013-0005
Project Name:	
Authorized Applicant:	
LeePA STRAP Number:	30-46-24-W2-0020B.0410

Current Property Status:	
Current Zoning:	Multi-FAMILY RM
Future Land Use Map (FLUM) Category:	Boulevard
Comp Plan Density:	Platted Overlay? Yes ☐ No ☒

Variance is requested from:

LDC Section Number

Title of Section or Subsection

34-1174B

Complete the narrative statements below for EACH variance requested.

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

PART I
Narrative Statements

Request for variance from 34-1174B (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought:

Swim Pool Can not be forward
of Primary Structure

or with 25' front Setback

Reasons for request

Explain why the variance is needed:

The Pie Shaped Lot renders the only legal place for a pool would be in the drive way which accesses the parking under the Structure, therefore eliminating four parking spaces and restricting Access for the fire department. Also the view would be the back side of a condominium instead of the Gulf of Mexico.

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Explain the possible effect the variance, if granted, would have on surrounding properties:

There would be no perceived negative impact on neighboring Properties.

To the front, Estero Beach Club Condominium, View is looking at the side of a 50 unit building

To the back, Estero Beach Club East Condo, View is looking at the side of a 49 unit building

To the Side, Triplex Rental Building with Pool in front of Primary Structure

Second door is Beach Shell Inn Motel with Pool on Gulf Beach Road

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

Please, Part I "Why the variance is needed"
See

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

Please See Attached Site plan and lee property Appraiser Geo View Map.

One may observe:

1. The Condos on each Side have pools on the gulf
2. The Triplex next door has a pool forward of the primary Structure

Note: The area chosen on the Survey is the only Location that affords these Same Privileges

3. The paved road Stops approximately 50' before the beach access bridge therefore creating only a pedestrian foot Path of Shell on the Street Side of the proposed Pool Location

4. The existing Vegetation (to be left in Place) forms a buffer between the pool Area and the foot path (the foot bridge was built on the West Side of the right of way)

Summation

The only function of the South End of Gulf Beach Road is to access the owners drive way (no parking allowed) and for public foot traffic to the beach, neither a major breach of the FMB Land development Code Setbacks

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

PART 2 Submittal Requirements

All applications for a variance must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

- Public Hearing Request Form
- Supplemental form PH-B
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; and a clear illustration of the proposed variance

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

"Variance is requested from..." Provide the section number and title of each section of the Fort Myers Beach Land Development Code from which a variance is being sought.

Narrative statements

If the application is for multiple variances, complete all of the narrative statements for each variance that is requested.

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Site plan

The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

LDC Section 34-87

The guidelines for decision-making regarding a request for a variance are as follows:

1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a de minimis variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;
3. Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;
5. Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

8/29/2013



320 240 160 80 0

320 Feet

THE INFORMATION CONTAINED IN THIS REPORT IS GOVERNED BY FLORIDA STATUTE 119.071
(GENERAL EXEMPTIONS FROM INSPECTION OR COPYING OF PUBLIC RECORDS).



Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

This is a two part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit *one ORIGINAL paper copy, eleven (11) copies and one digital/electronic copy* of all required applications, supplemental information, exhibits and documents. Please do not print and copy the instructions at the end of the application.

PROJECT NUMBER: VAR2013-0005 DATE: 09/13/2013

Site Address: 30 Gulf Beach Rd 40

STRAP Number: 30-46-24-W2-0020B.0410

Applicant: _____ Phone: _____

Contact Name: Gene Whitley Phone: 239-463-0203

Email: Whitley GC @ G-Mail - COM Fax: 239-463-5010

Current Zoning District: Multi-Family

Future Land Use Map (FLUM) Category: _____

FLUM Density Range: _____ Platted Overlay: ☐ YES ☒ NO

ACTION REQUESTED

- ☐ Special Exception
- ☒ Variance
- ☐ Conventional Rezoning
- ☐ Planned Development ☐ Commercial ☐ Residential
- ☐ Master Concept Plan Extension
- ☐ Appeal of Administrative Action
- ☐ Vacation of Platted Right-of-way and Easement
- ☐ Other - cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

- PH-A
- PH-B
- PH-C
- PH-D
- PH-E
- PH-F
- PH-G
- attach on separate sheet

PART I - General Information

A. Applicant*: NANCIE LUMPKINS Phone: 301-904-9707

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.*

Please see PART III to complete the appropriate Affidavit form for the type of applicant.

Applicant Mailing Address: 16730 Piney Point Rd. Piney Point, MD. 20674

Email: NANCIE.LUMPKINS@IMAGINE-ONE.COM Fax: 301-866-4091

Contact Name: NANCIE Phone: 301-904-9707

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☒ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☐ Other* (please indicate) _____ | |

**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.*

Please see PART III to complete the appropriate Affidavit form for the type of applicant.

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: William E. Whitley Phone: 239-463-0203

Address: 22501 Buccaneer Lagoon Ft. Myers Beach, FL 33931

Email: Whitley GC @ G Mail . Com Fax: 239-463-5010

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Barnes Pools, Inc. Phone: 239-433-5575

Address: 16261 Old U.S. 41 Ft. Myers Florida 33912

Email: Katie @ Barnes Pools . Net Fax: 239-433-1523

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

Name: _____ Phone: _____

Address: _____

Email: _____ Fax: _____

PART II - Nature of Request

Requested Action (each request requires a separate application)

- ☐ Special Exception
- ☒ Variance from LDC Section 34 - 11.74B
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____
- ☐ Appeal of Administrative Action
- ☐ Vacation ☐ Right-of-Way ☐ Easement
- ☐ Other. Please Explain: _____
- _____
- _____

PART III - Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV - Property Ownership

- ☐ Single Owner (individual or husband and wife)

Name: Nancia Lumpkins Phone: 301-904-9707

Mailing Address: 16730 Piney Point Rd. Piney Point, MD. 20674

Email: Nancia.Lumpkins@imagine-one.com Fax: 301-866-4091

☐ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

☐ Complete Disclosure of Interest Form (see below)

☐ Attach list of property owners as Exhibit 4-1

☐ Attach map showing property owners interests as Exhibit 4-2 (for multiple parcels)

☐ For condominiums and timeshares see Explanatory Notes Part IV (Page 11)

DISCLOSURE OF OWNERSHIP INTEREST

STRAP: 30-46-24-W2-0020B.0410

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership

<u>Nancie Lumpkins</u>	
<u>16730 Piney Point Rd. Piney Point, MD.</u>	<u>100%</u>
<u>20674</u>	

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address	Percentage of Interest

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address	Percentage of Ownership

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office	Percentage of Stock

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

Nancie Lumpkins
Signature

Nancie Lumpkins
Printed Name

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was sworn to (or affirmed) and subscribed before me on Aug. 27, 2013 (date) by Nancie Lumpkins (name of person providing oath or affirmation), who is personally known to me or who has produced Maryland Drivers License (type of identification) as identification.



Kim Ford
Signature

Kim Ford
Printed Name

PART V - Property Information

A. Legal Description:

STRAP: 30-46-24-W2-0020B.0410

Property Address: 30 Gulf Beach Rd. Ft Myers Beach, FL 33931

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee

County? ☐ No. Attach a legible copy of the legal description as Exhibit 5-1.

☒ Yes. Property identified in subdivision: Winkler

Prop. Appraiser: 919 Book: 1493 Page: 2466 Unit: 717 Block: B Lot(s): 41 thru 43
(Part of)

B. Boundary Survey:

☐ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 5-2.

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 97.59 feet

Depth (please provide an average width if irregular in shape) 259.46 feet

Frontage on street: 268.61 feet. Frontage on waterbody: 0 feet *

Total land area: 12213.39 ☐ acres ☒ square feet

* 53.87' ON COASTAL CONSTRUCTION SETBACK LINE

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Go South from Sky Bridge - Turn Right @ Exit #25
Last house on left - Gulf Front

☒ Attach Area Location Map as Exhibit 5-3

E. Property Restrictions (check applicable):

☒ There are no deed restrictions and/or covenants on the subject property.

☐ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 5-4.

☐ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 5-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☐ Attach a list of surrounding property owners within 500 feet as Exhibit 5-6.
- ☐ Attach a map showing the surrounding property owners as Exhibit 5-7.
- ☐ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|--|--|
| ☐ Low Density | ☐ Marina |
| ☐ Mixed Residential | ☐ Recreation |
| ☒ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |

H. Zoning (see official Zoning Map):

- | | |
|--|--|
| ☐ RS (Residential Single-family) | ☐ CF (Community Facilities) |
| ☐ RC (Residential Conservation) | ☐ IN (Institutional) |
| ☒ RM (Residential Multifamily) | ☐ BB (Bay Beach) |
| ☐ RPD (Residential Planned Development) | ☐ EC (Environmentally Critical) |
| ☐ CM (Commercial Marine) | ☐ DOWNTOWN |
| ☐ CO (Commercial Office) | ☐ SANTOS |
| ☐ CB (Commercial Boulevard) | ☐ VILLAGE |
| ☐ CR (Commercial Resort) | ☐ SANTINI |
| ☐ CPD (Commercial Planned Development) | |

PART VI

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, NANCIE Lumpkins swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that

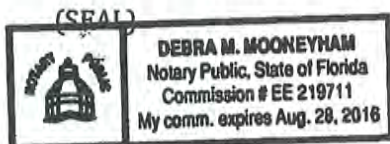
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Nancie Lumpkins
Signature of owner or authorized agent

August 26, 2013
Date

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was sworn to (or affirmed) and subscribed before me on 8-26-13 (date) by Nancie Lumpkins (name of person providing oath or affirmation), who is personally known to me or who has produced Maryland Drivers License (type of identification) as identification.



Debra M. Mooneyham
Signature
Debra M. Mooneyham
Printed Name

Lee Property Appraiser GeoView Map

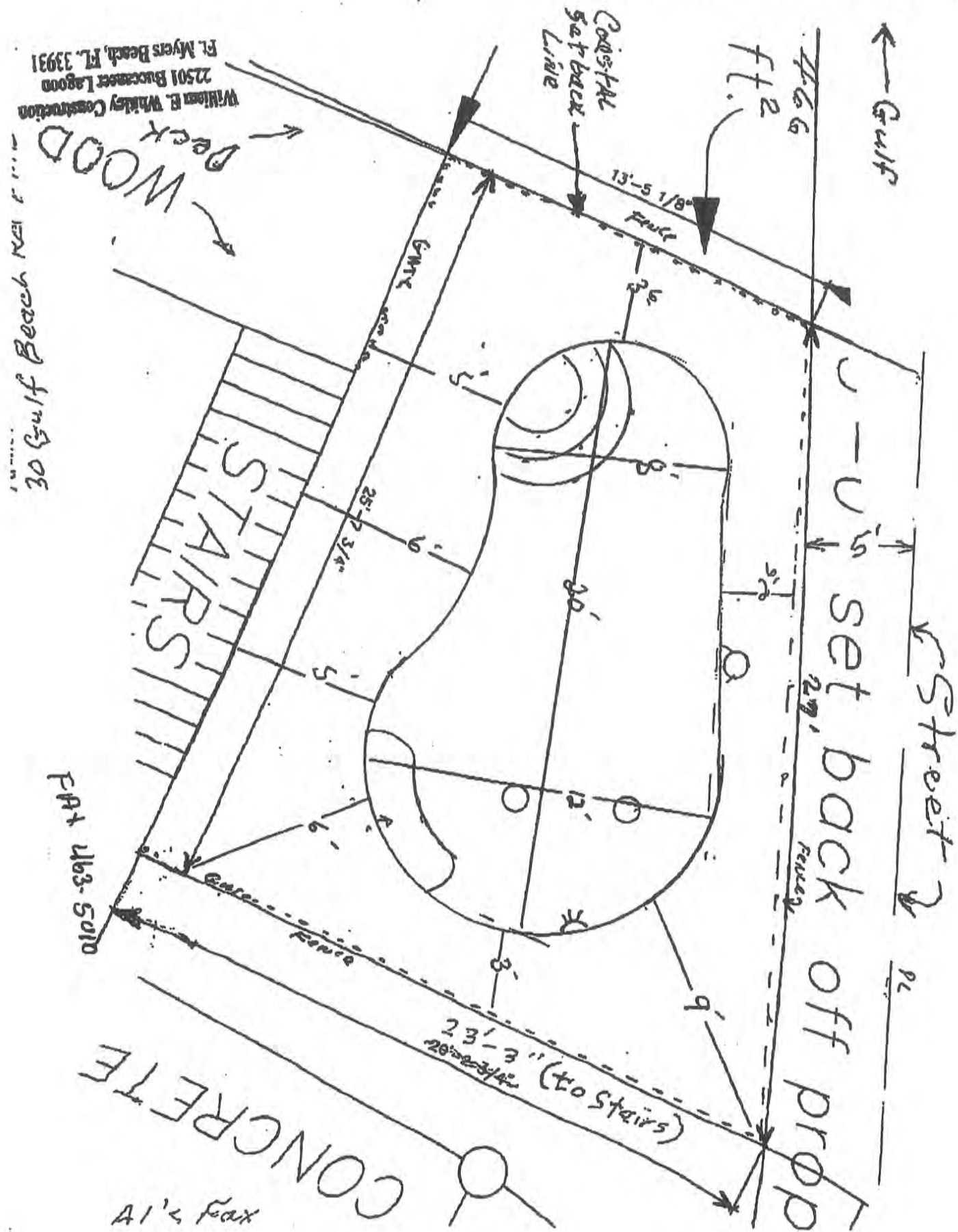


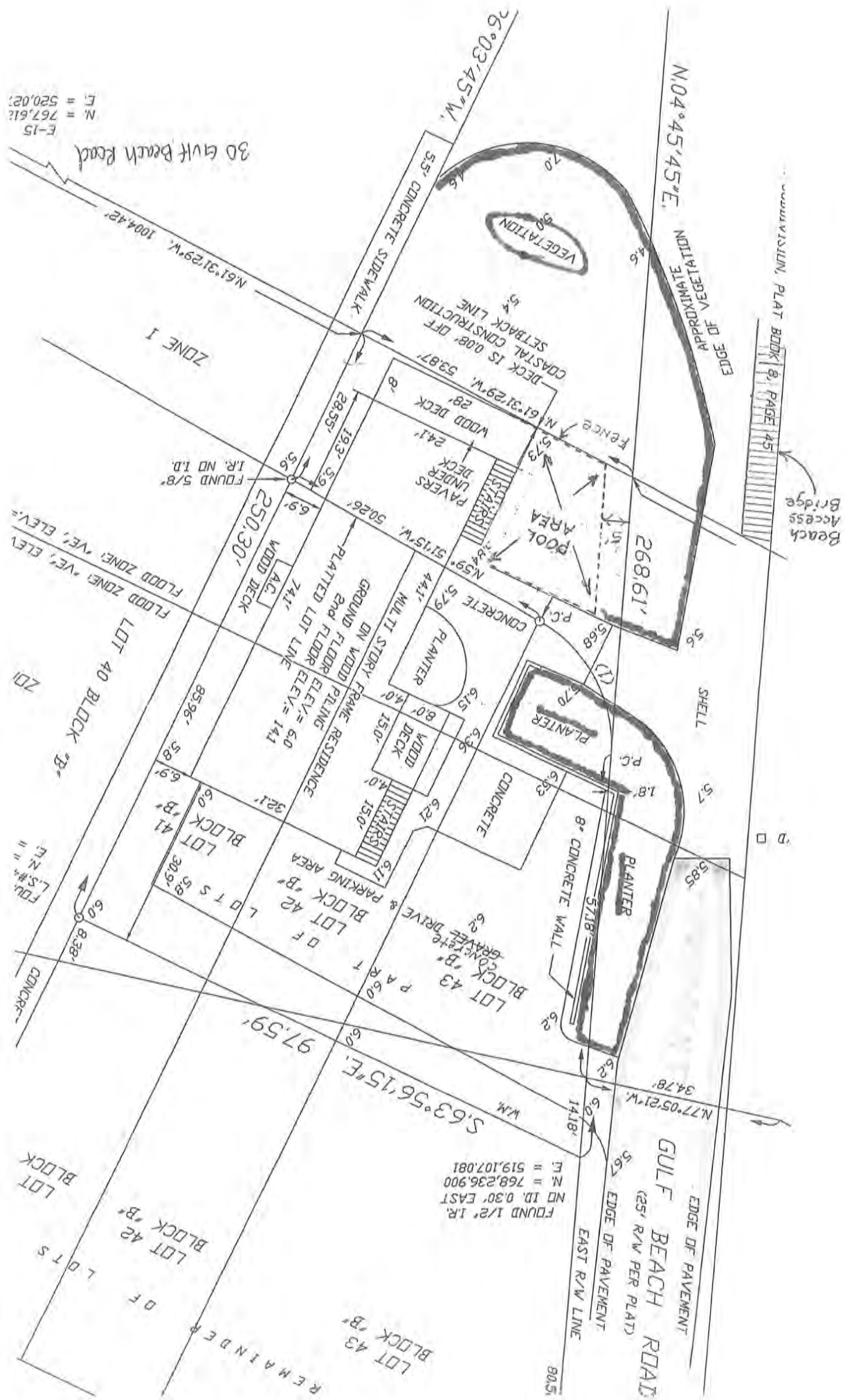
Map printed: 8/23/2013 2:11 PM



- Aerial Imagery
- 2013 Hi-Res (4 inch)
- Parcels and Streets
- Parcel Lines
- Street Centerlines
- Delinquent Tax Parcels

Disclaimer: Maps and documents made available to public by the Lee County Property Appraiser's office are not legally recorded maps or surveys and therefore are not intended to be used as such. The maps and documents are created as part of a Geographic Information System (GIS) that compiles records, information and data from various departments, cities, county, state and federal sources. The source data may contain errors. Users are encouraged to examine the documentation or metadata associated with the data on which the map is based for information related to its accuracy, currentness, and limitations.







Town of Fort Myers Beach

COMMUNITY DEVELOPMENT DEPARTMENT STAFF REPORT

TYPE OF CASE: Variance

CASE NUMBER: VAR2013-0005

LPA HEARING DATE: February 11, 2014

ADDITIONAL LPA HEARING DATE: April 8, 2014

LPA HEARING TIME: 9:00 AM

I. APPLICATION SUMMARY

Applicant: Gene Whitley, agent
Nancie Lumpkins, owner

Request: 1) A variance from LDC Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street right of way line than the primary structure with a 5' street setback.
2) A variance from Section 34-3234(a)(1) to allow an existing dwelling to be elevated to meet the Base Flood Elevation at the current rear setback of 6.9 feet, where 20 feet is otherwise required.

Subject property: Attached as *Exhibit A*

Physical Address: 30 Gulf Beach Road Fort Myers Beach, FL 33931

STRAP #: 30-46-24-W2-0020B.0410

FLU: Boulevard

Zoning: Residential Multi Family (RM)

Current use(s): Multi-Family Residential

Adjacent zoning and land uses:

North:	Multi Family Residential RESIDENTIAL MULTI FAMILY (RM) Boulevard
South:	Beach & Gulf of Mexico

	ENVIRONMENTAL CRITICAL (EC) Recreation
East:	Estero Beach Club East RESIDENTIAL MULTI FAMILY (RM) Boulevard
West:	Estero Beach Club RESIDENTIAL MULTI FAMILY (RM) Boulevard

II. BACKGROUND AND ANALYSIS

Background:

This application is a request for a variance from the Land Development Code Section 34-1174(b) which requires all accessory structures to be located no closer to the street right-of-way line than the primary structure (essentially prohibiting accessory structures in the front yard) to allow an in ground pool with a 5' setback from the street. **The second request is for a variance from LDC Sec. 34-3234, which allows a nonconforming building due to setback to be physically enlarged, either laterally or vertically, so long as the enlargement which increases the height complies with the required setback.**

The subject property is a Gulf front lot located at the terminus of the paved portion of Gulf Beach Road (see *Exhibit B*) where it turns into a beach access point. To the east and west are Estero Beach Club East and Estero Beach Club, each multi-story condominium complexes, and to the north is a two-story multi-family building.

The property owner purchased the subject property in May of 2013 and among other improvements to the existing building, wishes to install a pool. The existing configuration of the building on the lot has resulted in the request for a variance to locate an in ground pool closer to the street than the primary structure. **In addition, the existing building does not comply with the requirement for a 20-foot rear setback. The applicant intends to elevate the existing building straight up, using the existing pilings, to comply with the Base Flood Elevation requirements. The existing setback of 6.9 feet will be maintained, but the house will comply with the flood elevation requirements of the Town's LDC and Department of Environmental Protection.**

Analysis:

When reviewing this request, it is important to consider the site configuration, including the location of the existing multifamily building in relation to the front, side, and rear yards. See *Exhibit B*. The property line adjacent to Gulf Beach Road (west) is considered the 'front yard' requiring a front and/or street setback, while the property line opposite (east) would be considered the rear yard. The property line on the gulf side (south) is also the 1978 Coastal Construction Control Line and is considered to be a side lot line, while the property line opposite (north) would be considered the other side lot line. Thus, the existing building is located only 6.9' from the rear yard and appears to exceed the required 25' street setback from the front, although the survey provided does not give an exact dimension. **Also, in order to elevate the existing building, the Land Development Code requires the structure to come into compliance with the required rear setback of 20 feet. The**

applicant has requested a variance from this requirement to retain the existing 6.9' setback and elevate using the existing pilings.

LDC Section 34-1174(b) states that no accessory structures shall be permitted closer to the street right of way or street easement than the primary structure, with a few minor exceptions allowed for signs, fences and similar structures.

The request of this application is to approve a variance from Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street than the primary structure with a 5' street setback.

A logical location for the pool that would not require a variance would be to locate it north of the building in the 30.9' available between the existing building and the north property line. However, when Staff suggested this alternative the applicant and property owner stated that in that northern location the pool would receive very little sun and would be in the shadow of tall buildings on the east, south and west. In addition, that portion of the lot is used for parking and access. The applicant, therefore, has deemed the location shown on *Exhibit B* to be the only location available on the subject property for the pool.

The property immediately adjacent and to the north of the subject property, a three unit rental building, applied for and was granted a very similar request. In 2003 the property owner of 50 Gulf Beach Road was granted a variance by Town Council to allow an accessory structure (in-ground pool) closer to the street than the primary structure. (See *Exhibit C*) That approval, however, included a requirement that the pool still meet the 25' street setback.

The next property down Gulf Beach road is the Beach Shell Inn located at the corner of Estero Boulevard and Gulf Beach. (See *Exhibit D*) This property also has a pool located along Gulf Beach Road, however, the horseshoe configuration of the buildings on this property renders that pool compliant with Section 34-1174(b) and thus a variance was not necessary in that instance.

As evidenced by Resolution 03-04, from time to time Town Council, and Lee County before incorporation, have granted variances for situations similar to the request of this case. Another example of an approved pool closer to the street than the primary structure is found at 3830 Estero Boulevard, see *Exhibit E*. This variance was requested and granted in 1984 noting that the owner had been denied a request to install a pool seaward of the 1978 CCCL and that "to deny this would deny the owner rights normally enjoyed by others in similar situations."

It is very common, especially on the northern end of the island where development occurred prior to the adoption of zoning and setback requirements, that developed properties are non-conforming due to setbacks. This does create situations where redevelopment and improvement is more difficult to accomplish. The LDC requires that pools be located in side or rear yards, however when side or rear yards are dramatically reduced, as in the case of the subject property, alternatives must be considered.

The subject property essentially has no rear yard. One side yard is limited by the 1978 CCCL and the other side yard is utilized for parking and building access. The location of the pool as shown in *Exhibit B* between the street and the primary structure is the only remaining

open space on the subject property where a pool can be located. The subject property is located at the end Gulf Beach Road, where the paved portion of the road terminates about halfway down the property line and becomes a shell covered beach access point with no parking. Allowing the pool to be located along this edge of the property and 5' from the property line will not impede the access of any vehicles and will not have a negative impact on any surrounding neighbors.

The alignment of the parcel is unconventional, with the front of the lot running perpendicular to the Gulf of Mexico. Since "Lot line, rear" is defined as "that lot line which is parallel to or concentric with and most distant from the front lot line of the lot", the rear is also perpendicular to the Gulf of Mexico. Due to the appeal of a gulf-front home, the configuration of the building on the parcel takes advantage of the view of the Gulf, which makes the "rear" of the structure appear to be the side of the building. Furthermore, the existing setback of 6.9' is more similar to the required side setback of 7.5' than the required rear setback of 20'. The applicant has requested to maintain the existing setback when they elevate the structure and rebuild a second living level of the house. The structure will be raised using air jacks and the existing pilings will be extended vertically to support the elevated structure.

Findings and Conclusions:

Based upon an analysis of the application and the standards for approval of variance a found in Section 34-87 of the LDC, Staff makes the following findings and conclusions:

- a. *That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy.*

The subject property is located at the terminus of the paved portion of Gulf Beach road and is non-conforming with respect to the rear setback and there is limited space available in the side yard. These development constraints mean that the area shown on *Exhibit B* is the only remaining space available for the proposed pool and could be considered a unique condition inherent to the subject property. The proposed pool location will have little to no impact on the surrounding property owners. Staff, therefore, is of the opinion that rigid compliance is not necessary to protect the public in this instance.

The alignment of the property along a dead-end road and the Gulf of Mexico causes some confusion as to which perimeters are front, rear and sides. The Gulf is the most appealing view, which relegates the "rear" to the side of the building. The existing setback of 6.9' functions as a side setback, which is how the structure appears from the Gulf. Staff, therefore, is of the opinion that rigid compliance is not necessary to protect the public in this instance.

- b. *That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question.*

The conditions are not the result of actions of the applicant taken after the adoption of the regulation in question, because the existing structure was built

in 1976 prior to the incorporation of the Town of Fort Myers Beach and the adoption of LDC Section 34-1174(b), the regulation in question, in 2004.

Further, the structure was built prior to 1984 when Lee County joined the National Flood Insurance Program. The structure was built substantially lower than the current Base Flood Elevation. The applicant is attempting to comply with the required flood elevation, but the existing setback will remain.

- c. *That the variance granted is the minimum variance that will relieve that applicant of an unreasonable burden caused by the application of the regulation in question to his property.*

Staff agrees with the applicant and recommends that the minimum variance necessary is to allow the in-ground pool to be located closer to the street than the existing building and allowing a 5' setback for the swimming pool from the front property line.

The applicant is using the existing pilings to elevate the house straight up to comply with the Base Flood Elevation. Therefore, the existing setback of 6.9' will remain, which is the minimum variance necessary to elevate the house on the existing pilings.

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

The granting of the variance will not be injurious to the neighborhood or detrimental to the overall public welfare. If granted as recommended by Staff, the variance will allow the property owner reasonable use of the subject property.

The rear setback of 6.9' has existed since 1976, and abuts a side yard for the Estero Beach Club East Condominium. If granted, the setback will not be injurious to the neighborhood or be detrimental to the public welfare.

- e. *That 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.*

The variance, as requested, is not so general or recurrent in nature as to require an amendment to Chapter 34.

Currently, this request is not so general or recurrent in nature as to require an amendment to Chapter 34. As property owners begin to recognize a need to elevate existing structures to the minimum required Base Flood Elevation, rather than rebuild, it is likely that there are many existing Pre-FIRM (Flood Insurance Rate Map) structures with setbacks that do not comply with the setbacks required by the Town's LDC. The LDC should encourage property owners to comply with minimum necessary life safety measures current in our codes, but the LDC Sec. 34-3234 requirement to come into compliance with setbacks acts as a disincentive.

III. RECOMMENDATION

When considering the existing site development limitations on the subject property, Staff recommends **APPROVAL** of the request for a variance from Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street than the primary structure with a 5' street setback subject to the following condition:

1. The location of the pool shall be as shown on the attached *Exhibit B*.

Staff also recommends **APPROVAL** of the requested variance from Section 34-3234(a)(1) to allow an existing dwelling to be elevated to meet the Base Flood Elevation at the current rear setback of 6.9 feet, where 20 feet is otherwise required, subject to the following condition:

2. The elevation of the existing structure shall be accomplished using the existing pilings and a 6.9' rear setback. If the structure is demolished or removed, this variance will be null and void. Any new structure must comply with the required setbacks at the time of redevelopment, or must seek a new variance from the requirements of the LDC at that time.

IV. CONCLUSION

The subject property effectively has no rear yard. One side yard is limited by the 1978 CCCL and the other side yard is utilized for parking and building access. The location of the pool as shown in *Exhibit B* and closer to the street than the primary structure is the only remaining open space on the subject property where a swimming pool can be located. **The existing home will be elevated on the existing pilings, maintaining the existing 6.9' rear setback, which has existed since the home was constructed in 1976.**

Therefore, Staff recommends **APPROVAL WITH CONDITIONS** of the request for a variance from LDC Section 34-1174(b) to allow an accessory structure (in-ground pool) closer to the street than the primary structure with a 5' street setback, **and the request for a variance from Section 34-3234(a)(1) to allow an existing dwelling to be elevated to meet the Base Flood Elevation at the current rear setback of 6.9 feet, where 20 feet is otherwise required**

Exhibits:

- A – Legal Description
- B – Site Plan
- C – Resolution 03-04
- D – Aerial View
- E – ZB-84-118

EXHIBIT A

Prepared by and Return Recorded Original to:

Charles R. Meador, Jr., Attorney at Law
2085 Estero Boulevard
Fort Myers Beach, FL 33931
Telephone: (239) 463-6619
Facsimile: (239) 463-6454

Property Appraiser Parcel I.D. No. 30-46-24-W2-0020B.0410
Grantee Taxpayer I.D. No. _____
Documentary Stamp Tax on Transfer: \$7700

Reserved For Recorder

(STATUTORY FORM - Section 689.02, F.S.)

WARRANTY DEED

THIS WARRANTY DEED, made this 20 day of May, A.D. 2013, between THEODORE A. RECKWERDT and JOELLYN RECKWERDT, Husband and wife, whose post office address is 30 Gulf Beach Road, Fort Myers Beach, FL 33931, hereinafter called Grantor, and NANCIE LEE LUMPKINS, a married person, whose post office address is 16730 Piney Point Road, Piney Point, MD 20674, hereinafter called Grantee.

WITNESSETH, That said Grantor, for and in consideration of the sum of Ten and No/100's Dollars (\$10.00), and other good and valuable consideration, to said Grantor in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said Grantee, and Grantee's heirs and assigns forever, the following described land, situate, lying and being in Lee County, Florida, to-wit:

Lots 41, 42 and 43, Block "B", WINKLER SUBDIVISION, according to the plat thereof recorded in Plat Book 8, Page 45, Public Records of Lee County, Florida.

LESS AND EXCEPT THE FOLLOWING:

Begin at the Northwest corner of Lot 43, Block "B", WINKLER SUBDIVISION, Plat Book 8, Page 45, Lee County Records; thence run Easterly along the Northerly line of said Lot 43 and Lots 42 and 41, said Block "B", 126.80 feet to Northeast corner of said Lot 41; thence Southerly along the Easterly line of said Lot 41, 75.0 feet; thence Westerly, parallel to the Northerly line of said Lots 41, 42 and 43, 97.56 feet, more or less, to a point on the West line of said Lot 43; thence run North along said West line of Lot 43, 80.50 feet, more or less, to the Point of Beginning.

SUBJECT TO easements, restrictions and reservations of record and taxes for the current

Reserved For Recorder

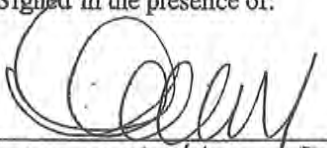
and subsequent years.

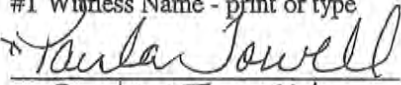
and said Grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

*"Grantor" and "Grantee" are used for singular and plural, as context requires.

IN WITNESS WHEREOF, Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Signed in the presence of:

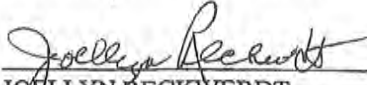


Charles R. Meador Jr.
#1 Witness Name - print or type


PAULA TOWELL
#2 Witness Name - print or type



THEODORE A. RECKWERDT (SEAL)



JOELLYN RECKWERDT (SEAL)

STATE OF Florida
COUNTY OF Lee

EXECUTION OF the foregoing instrument was acknowledged before me this 20
day of May, 2013, by THEODORE A. RECKWERDT and JOELLYN
RECKWERDT, Husband and wife, who is (CHECK ONE OF THE FOLLOWING AS
APPLICABLE) ☒ personally known to me, or ☐ who has produced
(Personally known) as identification.



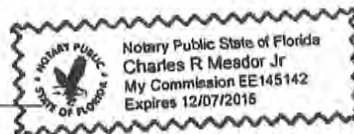
NOTARY PUBLIC - SIGNATURE ABOVE

NOTARY NAME - Charles R. Meador Jr.

COMMISSION NO. - _____

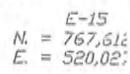
COMMISSION EXP. DATE - _____

(Notary Name/Commission No./Exp. Date - typed or printed)



(Notary Seal)

COMMUNISIM, PLAT BOOK 8, PAGE 45



Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Town of Fort Myers Beach
Department of Community Development



Zoning Division

TOWN OF
FORT MYERS BEACH

MAR 11 2014

RECEIVED BY

Supplement PH-B

**Additional Required Information for a
Variance Application**

This is the second part of a two-part application. This part requests specific information for a variance. Include this form with the Request for Public Hearing form.

Case Number:
Project Name: <i>NANCIE LUMPKIN RESIDENCE - 30 GULF BEACH RD.</i>
Authorized Applicant: <i>WILLIAM E. WHITLEY</i>
LeePA STRAP Number: <i>30-46-24-W2-0020B-0410</i>

Current Property Status: <i>EXISTING TRIPLEX</i>
Current Zoning: <i>MULTI-FAMILY RM</i>
Future Land Use Map (FLUM) Category:
Comp Plan Density: <i>8-10 UNITS</i> Platted Overlay? ☐ Yes ☒ No

Variance is requested from:

LDC Section Number

Title of Section or Subsection

<i>34-3234</i>	<i>Enlarging a non-conforming building</i>

Complete the narrative statements below for EACH variance requested.

PART I
Narrative Statements

Request for variance from 34-3234 (LDC Section number)

Explain the specific regulation contained in this section from which relief is sought: Enlarging a nonconforming building

b. The enlargement itself, including any enlargement which increases the HEIGHT or Volume of the structure, complies with all the Setback requirements

(the rear Setback is 6.9 feet, not twenty)

Reasons for request

Explain why the variance is needed:

The owner wishes to make Substantial improvements in excess of 50% of the value of the building and also curb flood Insurance rates. FEMA mandates she must elevate the Structure to or above Base Flood Elevation in order to accomplish this.

The Town rescinded the permit contingent on the Variance being granted.

The State permit is in place As per The Town's DEP Zoning Consistency Letter dated August 20, 2013

Explain the possible effect the variance, if granted, would have on surrounding properties:

No perceived Negative effects

Explain the hardship (what is unique about the property) that justifies relief from the regulation:

When the house was built in 1976 the County may have thought the rear setback was the side setback. What happened will forever remain a mystery as the County has lost all records pertaining to this property.

Upon buying this parcel the new owner had no knowledge the setback regulation could prevent her from elevating the structure to BFE as indeed even Ft. Myers Beach Zoning initially overlooked this requirement. We believe this creates a hardship that justifies relief from the regulation.

Explain how the property qualifies for a variance. Direct this explanation to the guidelines for decision-making in LDC Section 34-87.

The LDC Section 34-3234 is obviously at odds with FEMA's desire to elevate non conforming homes to comply with current floodplain regulations. Whereas there are numerous older homes on the island that are non conforming as to setbacks such as this one, the Town should immediately inform those who make application for a permit to raise a house, that a variance is required. (not wait six months as in this case).

It seems the better option would be to issue an administrative variance to excuse something that happened 38 years ago, or ammend the LDC to be more FEMA friendly. Either option would go to save the LPA and the Council members time for more important issues. FINALLY, this property should qualify for a variance because all properties in this same scenario should qualify for a Variance.

The letter from Community Development dated Feb. 20, 2014 States our plans did not include moving the structure so that it will comply with the 20 foot rear Setback.

This is not a viable option because the structure would then encroach the front Setback.

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

PART 2

Submittal Requirements

All applications for a variance must submit fourteen (14) copies of this application form and all applicable exhibits.

Required Items

- Public Hearing Request Form
- Supplemental form PH-B
- Site Plan (to scale) including the current use of all existing structures on the site, and those on adjacent properties within 100 feet of the perimeter; and a clear illustration of the proposed variance

Guide to filing PH-B Additional Required Information for a Variance Application

Cover page

Case Number will be inserted by Community Development staff.

Project Name must be the same as the name used on the Request for Public Hearing form.

Applicant must be the same as on the Request for Public Hearing form.

STRAP numbers must be the same as on the Request for Public Hearing form.

Current status of property must be the same as on the Request for Public Hearing form.

"Variance is requested from..." Provide the section number and title of each section of the Fort Myers Beach Land Development Code from which a variance is being sought.

Narrative statements

If the application is for multiple variances, complete all of the narrative statements for each variance that is requested.

Case # _____
Planner _____

Date Received _____
Date of Sufficiency/Completeness _____

Site plan

The site plan must show all existing structures on the site; all existing structures within 100 feet of the perimeter boundary of the site; and a clear illustration of the proposed variance.

LDC Section 34-87

The guidelines for decision-making regarding a request for a variance are as follows:

1. Whether there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or whether the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not necessary to protect public policy;
2. Whether the exceptional or extraordinary conditions justifying the variance are or are not the result of actions of the applicant taken after the adoption of the regulation in question;
3. Whether the requested variance is the minimum variance to relieve the applicant of an unreasonable burden caused by the application of the regulation in question;
4. Whether granting the variance would be injurious to the neighborhood or otherwise detrimental to the public welfare;
5. Whether the conditions or circumstances of the specific piece of property or the intended use of the property for which the variance is sought are of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

