

**1. Requested Motion:**

**Meeting Date: Oct. 7, 2013**

Motion to **APPROVE/DENY** the applicant's request for a variance from Section 34-638(b) of the Town of Fort Myers Beach Land Development Code (LDC) to allow a 12' side yard setback for the construction of an accessory structure (Chickee Hut) subject to the conditions proposed by LPA and contained in the draft Resolution 13-20.

**Why the action is necessary:**

Section 34-87 of the LDC provides that the Town Council shall hear and decide all requests for variances from the terms of the regulations or restrictions in the LDC.

**What the action accomplishes:**

**2. Agenda:**

- Consent
- Administrative
- Public Hearing

**3. Requirement/Purpose:**

- Resolution
- Ordinance
- Other

**4. Submitter of Information:**

- Council
- Town Staff – Comm. Dev.
- Town Attorney

**5. Background:**

Case: VAR2013-0002 Pointe South Setback Variance

Homer Odum, authorized agent and property manager for Pointe South Condominium, is requesting a variance from Section 34-638(b) of the LDC to allow a side setback of 12' for the construction of an accessory structure (Chickee Hut) where a 20' side setback is otherwise required on the subject property located at 5000 Estero Boulevard.

The LPA held a public hearing on the request at their August 13, 2013 meeting. Staff presented its case along with a recommendation for approval of the setback request subject to two conditions. LPA had a question and answer period with the applicant, heard public comment, and asked questions of Staff. Ultimately, the LPA voted 4-0 (Members Steele, Shamp and Kakatsch were excused) to recommend approval of the setback variance as requested, including Staff's recommended conditions.

Attachments:

- Tab A - Draft Council Resolution 13-20
- Tab B - LPA Resolution 2013-007
- Tab C - Minutes from the August 13, 2013 LPA meeting
- Tab D - Staff Report
- Tab E – Original Application



**6. Alternative Action:**

- DENY the applicant's request for a setback variance

**7. Management Recommendations:**

- APPROVE the requested setback variance subject to the conditions in draft Resolution 13-20

**8. Recommended Approval:**

<b>Town Manager</b>	<b>Town Attorney</b>	<b>Finance Director</b>	<b>Public Works Director</b>	<b>Community Development Director</b>	<b>Parks &amp; Recreation Director</b>	<b>Town Clerk</b>
						

**9. Council Action:**

Approved     Denied     Deferred     Other

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH FLORIDA  
RESOLUTION NUMBER 13-20  
VAR2013-0002 – Pointe South Condominium

WHEREAS, applicant Homer Odum, authorized agent and property manager for Pointe South Condominium, is requesting a variance from Section 34-638(b) of the Town of Fort Myers Beach Land Development Code; and

WHEREAS, the applicant has indicated that the STRAP number for the subject property is 28-46-24-W4-02000.00CE and the legal description of the subject property is attached as *Exhibit A*; and

WHEREAS, the subject property is located at 5000 Estero Boulevard, Fort Myers Beach, FL 33931 in the 'Residential Multifamily' and 'Environmentally Critical' zoning category of the Official Zoning Map and the 'Mixed Residential' and 'Recreation' category of the Future Land Use Map of the Comprehensive Plan of the Town of Fort Myers Beach, Florida; and

WHEREAS, a public hearing on this matter was legally advertised and held before the Local Planning Agency (LPA) on August 13, 2013; and

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

WHEREAS, a public hearing on this matter was legally advertised and held before the Town Council on October 7, 2013, at which time the Town Council gave full and complete consideration to the request of Applicant, LPA Resolution 2013-007, 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:

Based upon the presentations by the applicant, staff, and other interested persons at the hearing, and review of the application, LPA Resolution 2013-007 and the standards for granting variances, the Town Council makes the following findings of fact, and reaches the following conclusions:

The Town Council **APPROVE/DENY** the applicant's request for a variance from Section 34-638(b) of the Town of Fort Myers Beach Land Development Code to allow a 12' side yard setback subject to the following conditions:

**CONDITIONS OF APPROVAL:**

1. *That the request be limited to the 18' by 20' accessory structure as shown on the applicant's site plan attached as Exhibit B.*

2. *A Type B vegetative buffer as defined in LDC Section 10-416 (3) is implemented and continuous from the existing pool area to the existing grill area.*

**FINDINGS AND CONCLUSIONS:**

In accordance with the requirements of LDC Sections 34-84 and 34-87 regarding consideration of eligibility for a variance, the Town Council makes the following findings and reaches the following 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:

Alan Mandel, Mayor	AYE/NAY	Joe Kosinski, Vice Mayor	AYE/NAY
Jo List	AYE/NAY	Bob Raymond	AYE/NAY
Dan Andre	AYE/NAY		

DULY PASSED AND ADOPTED THIS **7th** day of **OCTOBER, 2013**.

By: \_\_\_\_\_  
Alan Mandel, Mayor

Approved as to legal sufficiency:

By: \_\_\_\_\_  
Fowler White Boggs, P.A.  
Town Attorney

ATTEST:

By: \_\_\_\_\_  
Michelle Mayher  
Town Clerk

## Exhibit A

## DESCRIPTION:

As Recorded in O. R. 1156 at Page 1214:

A tract or parcel of land lying in Government Lot 2, Section 20, Township 46 South, Range 24 East, Estero Island, Lee County, Florida, which tract or parcel is more particularly described as follows:

From the Southeast corner of the fractional Southwest quarter (SW 1/4) of Section 20, Township 46 South, Range 24 East, run westerly along the south line of said Section 20 for 164.37 feet to the northwesterly corner of Lot 20, Block 6 of Gulf Heights Subdivision, according to a map or plat thereof recorded in Plat Book 6 at page 39 of the Public Records of Lee County, Florida; thence run northwesterly at an angle of  $139^{\circ}39'$  east to northwest for 641.27 feet; thence run northeasterly at an angle of  $92^{\circ}00'00''$  southeasterly to northeasterly with the last mentioned course along the northwesterly line of the lands conveyed by deeds recorded in Deed Book 127, page 110 and Deed Book 260, pages 538 and 539 of said Public Records for 256 feet more or less to the centerline of Estero Boulevard (State Road No. 5-865), the Point of Beginning, of the following described tract or parcel of land. From said Point of Beginning run southeasterly, at an angle of  $88^{\circ}22'00''$  southwesterly to southeasterly for 250.00 feet to an intersection with the southeasterly line of the lands conveyed by said deeds; thence run southwesterly at an angle of  $91^{\circ}30'00''$  northwesterly to southwesterly with the last mentioned course along the said southeasterly line to the waters of the Gulf of Mexico; thence run northwesterly along said waters to an intersection with the said northwesterly line of the lands conveyed by said deeds; thence run northeasterly along said northwesterly line to the Point of Beginning. SUBJECT TO the existing right-of-way of Estero Boulevard (State Road No. 5-865).

EXHIBIT B GULF OF ME

Scale: 1" = 20'-0"

