

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/DENY** 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/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 LPA upon a motion by LPA Member _____ and seconded by LPA Member _____, and upon being put to a vote, the result was as follows:

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

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

Local Planning Agency of the Town of Fort Myers Beach

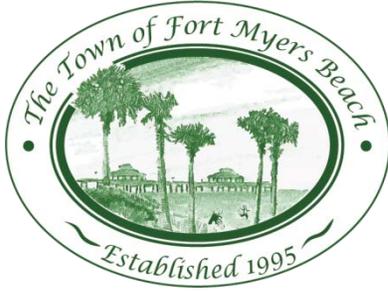
By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

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

ATTEST:

By: _____
Michelle Mayher
Town Clerk



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 Jan, 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:

[Signature]
Charles R. Meador Jr

#1 Witness Name - print or type
Paula Towell
PAULA TOWELL

#2 Witness Name - print or type

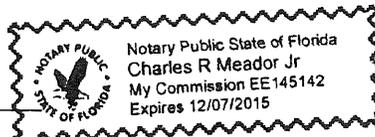
Theodore A. Reckwerdt (SEAL)
THEODORE A. RECKWERDT

Joellyn Reckwerdt (SEAL)
JOELLYN RECKWERDT

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.

[Signature]
NOTARY PUBLIC - SIGNATURE ABOVE
NOTARY NAME - Charles R. Meador Jr
COMMISSION NO. - _____
COMMISSION EXP. DATE - _____



(Notary Seal)

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

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.

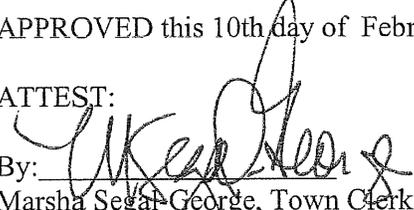
1. All portions of the pool and deck must be set back a minimum of 25 feet from Gulf Beach Road. No overhang or other structure may encroach this setback.
2. The variance is limited to a swimming pool and deck with the deck set back a minimum of 10.0 feet from the property line to the north and a minimum 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:

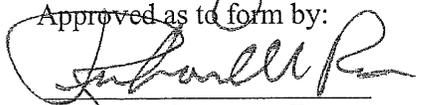
Howard Rynearson	<u>Yes</u>
Daniel Hughes	<u>No</u>
Bill Thomas	<u>Yes</u>
W. H. "Bill" Van Duzer	<u>Yes</u>
Terry Cain	<u>Yes</u>

APPROVED this 10th day of February, 2003.

ATTEST:

By: 
Marsha Segal George, Town Clerk

Approved as to form by:


Richard V.S. Roosa, Town Attorney

TOWN OF FORT MYERS BEACH

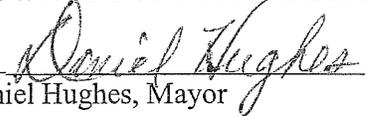
By: 
Daniel Hughes, Mayor

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 *AMY 200202*

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. FERNSSTROM, 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:

Deals Montgomery
County Attorney

Charles Green
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 that reads "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

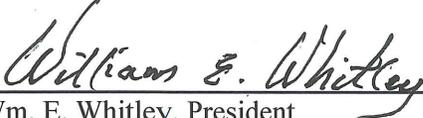
December 18, 2013

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

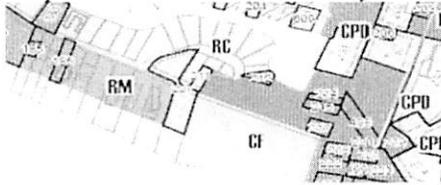


2013/12/18

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? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Variance is requested from:

LDC Section Number	Title of Section or Subsection
34-1174B	

Complete the narrative statements below for EACH variance requested.

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.

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

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.

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.

IDC 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.

VARIANCE REPORT

8/29/2013

Subject Parcels: 1 Affected Parcels: 207 Buffer Distance: 500 ft



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

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 BC @ 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:

- | | | |
|---|---|--|
| <input checked="" type="checkbox"/> Owner* | <input type="checkbox"/> Land Trust* | <input type="checkbox"/> Partnership* |
| <input type="checkbox"/> Corporation* | <input type="checkbox"/> Association* | <input type="checkbox"/> Condominium* |
| <input type="checkbox"/> Subdivision* | <input type="checkbox"/> Timeshare Condo* | <input type="checkbox"/> Contract Purchaser* |
| <input type="checkbox"/> Authorized Representative* | <input type="checkbox"/> 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: NANCIE LUMPKINS Phone: 301-904-9707
 - Mailing Address: 16730 Piney Point Rd. Piney Point, MD. 20674
 - Email: NANCIE.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>20674</u>	<u>100%</u>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

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
<hr/>	<hr/>

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.

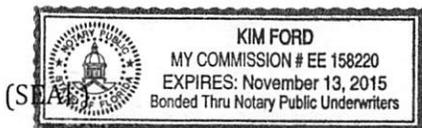
The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

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: ~~1993~~ 717 Page: 2466 Unit: _____ 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):

- | | |
|--|--|
| <input type="checkbox"/> Low Density | <input type="checkbox"/> Marina |
| <input type="checkbox"/> Mixed Residential | <input type="checkbox"/> Recreation |
| <input checked="" type="checkbox"/> Boulevard | <input type="checkbox"/> Wetlands |
| <input type="checkbox"/> Pedestrian Commercial | <input type="checkbox"/> Platted Overlay |

H. Zoning (see official Zoning Map):

- | | |
|--|--|
| <input type="checkbox"/> RS (Residential Single-family) | <input type="checkbox"/> CF (Community Facilities) |
| <input type="checkbox"/> RC (Residential Conservation) | <input type="checkbox"/> IN (Institutional) |
| <input checked="" type="checkbox"/> RM (Residential Multifamily) | <input type="checkbox"/> BB (Bay Beach) |
| <input type="checkbox"/> RPD (Residential Planned Development) | <input type="checkbox"/> EC (Environmentally Critical) |
| <input type="checkbox"/> CM (Commercial Marine) | <input type="checkbox"/> DOWNTOWN |
| <input type="checkbox"/> CO (Commercial Office) | <input type="checkbox"/> SANTOS |
| <input type="checkbox"/> CB (Commercial Boulevard) | <input type="checkbox"/> VILLAGE |
| <input type="checkbox"/> CR (Commercial Resort) | <input type="checkbox"/> SANTINI |
| <input type="checkbox"/> 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.

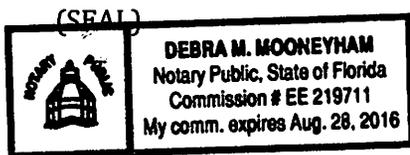
Nancie Lumpkins
Signature of owner or authorized agent

August 26, 2013
Date

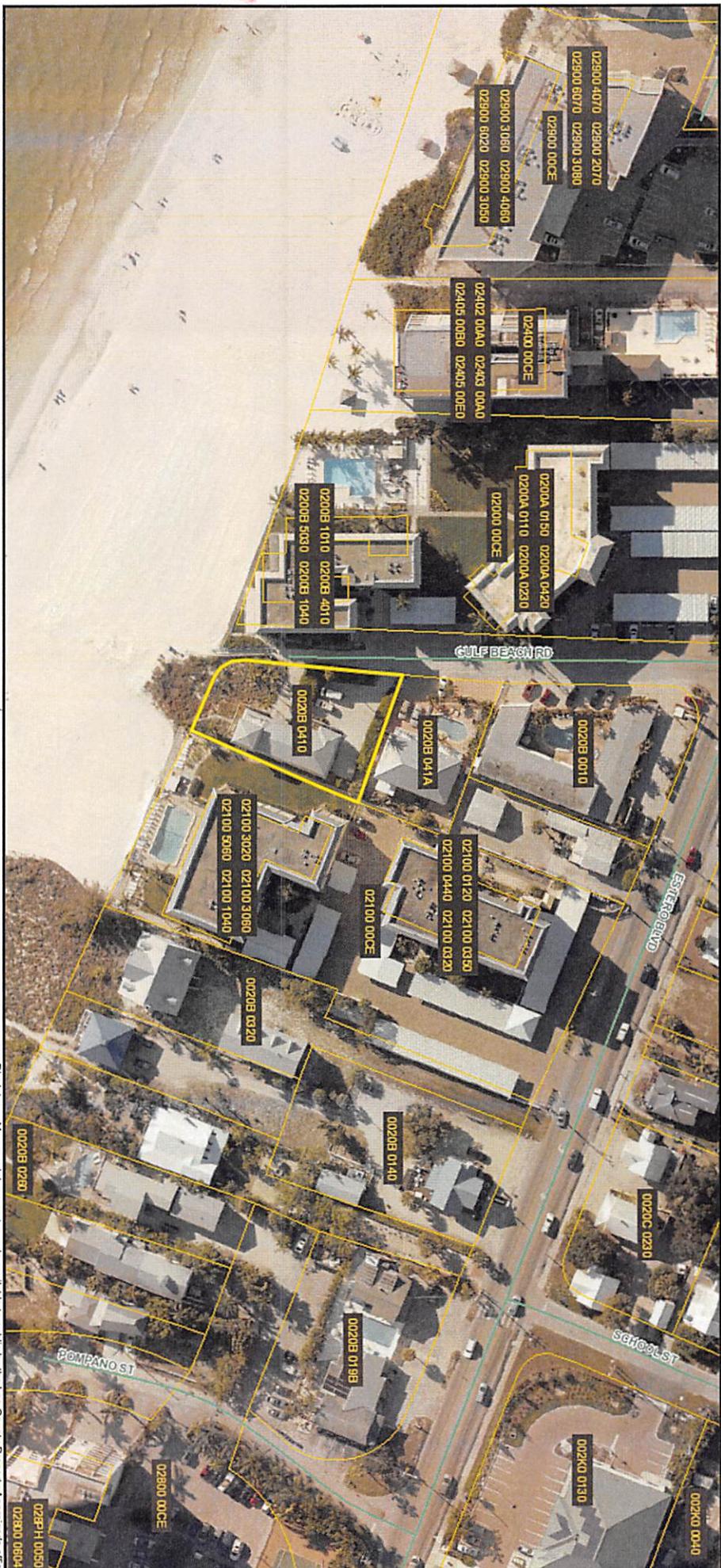
STATE OF FLORIDA)
COUNTY OF LEE)

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.

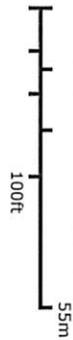
Debra M. Mooneyham
Signature
Debra M. Mooneyham
Printed Name



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.

