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MEMORANDUM

TO: Marsha Segal-George, Fort Myers Beach Town Manager
FROM: Bill Spikowski
DATE: July 22, 2004
SUBJECT: Replacement Pages for the Land Development Code and Comprehensive Plan

In late June the Town Council adopted Ordinances 04-08 and 04-09 amending the Land Development Code and Ordinance 04-10 amending the Comprehensive Plan's Future Land Use Map. Attached to this memo are replacement pages that can be used to update all existing codifications of the LDC and comp plan.

Those with complete LDC binders should make the following changes:

- ▶ Discard the front page (table of contents); replace it with the new table of contents dated June 30, 2004
- ▶ Discard pages 28 through 38 from Chapter 6; replace them with new pages 28 through 41 dated June 30, 2004
- ▶ Discard pages 75, 76, 77, and 78 from Chapter 34; replace them with new pages 75, 76, 77a, 77b, 77c, 77d, 77e, and 78 dated June 30, 2004

To update the Comprehensive Plan, insert the revised title page and the revised Future Land Use Map into each volume. (The only changes to the original 1999 map are the redesignation of town-owned property at 216 Connecticut Street and 4600, 4610 and 4650 Estero Boulevard from "Mixed Residential" to "Recreation.")

The entire land development code, including these changes, can also be downloaded and printed at no charge from this web page: <http://www.spikowski.com/beach.htm>

ATTACHMENTS:

- ▶ *Replacement table of contents for Land Development Code*
- ▶ *Replacement pages 28-41 for LDC Chapter 6 (as amended by Ordinance 04-09)*
- ▶ *Replacement pages 75-78 for LDC Chapter 34 (as amended by Ordinance 04-08)*
- ▶ *Replacement title page for Comprehensive Plan (to reflect amendments in Ordinance 04-10)*
- ▶ *Replacement Future Land Use Map for Comprehensive Plan (as amended by Ordinance 04-10)*

TOWN OF FORT MYERS BEACH, FLORIDA

LAND DEVELOPMENT CODE

CHAPTER 1	General Provisions	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 02-01, 2/4/02
CHAPTER 2	Administration	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 00-11, 6-29-00 Amended by Ord. No. 02-01, 2/4/02 (§§2-301–459) Amended by Ord. No. 03-12, 12/15/03 (§§2-420–459)
CHAPTER 6	Maintenance Codes, Building Codes, and Coastal Regulations	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 00-12, 6/29/00 Amended by Ord. No. 02-01, 2/4/02 (§§6-401–474) Amended by Ord. No. 04-09, 6/30/04 (§§6-401–474)
CHAPTER 10	Development Orders and Engineering Standards	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 04-01, 1/5/04
CHAPTER 14	Environment and Natural Resources	Adopted by Town Charter, 12/31/95 Amended by Ord. No. 98-3, 4/6/98 Replaced by Ord. No. 02-01, 2/4/02 Amended by Ord. No. 02-29, 9/26/02 (§§14-6, 14-78)
CHAPTER 22	Historic Preservation	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 02-01, 2/4/02
CHAPTER 26	Marine Facilities	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 02-01, 2/4/02
CHAPTER 27	Personal Watercraft and Parasailing	Adopted by Ord. No. 96-27, 12/2/96 Replaced by Ord. No. 01-05, 9/24/01
CHAPTER 28	Parasailing	Adopted by Ord. No. 97-2, 1/21/97 Amended by Ord. No. 99-4, 4/19/99 Repealed and then integrated into Chapter 27 by Ord. No. 01-05, 9/24/01
CHAPTER 30	Signs	Adopted by Town Charter, 12/31/95 Amended by Ord. No. 99-1, 2/1/99 Amended by Ord. No. 99-11, 9/13/99 Amended by Ord. No. 99-14, 11/15/99 Amended by Ord. No. 03-06, 6/2/03
CHAPTER 34	Zoning Districts, Design Standards, and Nonconformities	Adopted by Town Charter, 12/31/95 Amended by Ord. No. 96-6, 7/1/96 Amended by Ord. No. 96-20, 9/3/96 Amended by Ord. No. 97-9, 8/11/97 Amended by Ord. No. 97-21, 12/15/97 Amended by Ord. No. 99-16, 12/20/99 Amended by Ord. No. 00-13, 6/29/00 Amended by Ord. No. 02-04, 6/24/02 Replaced by Ord. No. 03-03, 3/3/03 Amended by Ord. No. 03-11, 11/3/03 (§§34-3048, 51) Amended by Ord. No. 04-08, 6/30/04 (§§34-677, 678)

- (3) Consistent with the Fort Myers Beach Comprehensive Plan; and
- (4) Approved by the Florida Department of Environmental Protection whenever changes are proposed seaward of the 1991 coastal construction control line.

Sec. 6-368. References.

Assistance in determining the design parameters and methodologies necessary to comply with the requirements of this article may be obtained from:

- (1) Shore Protection Manual, U.S. Army Corps of Engineers, fourth edition, 1984.
- (2) U.S. Department of the Army, Coastal Engineering Research Center's Technical Papers and Reports.
- (3) State department of environmental protection, division of beaches and shores, technical and design memoranda.
- (4) Naval Facilities Engineering Command Design Manual, NAVFACDM-26, U.S. Department of the Navy.

Secs. 6-369--6-400. Reserved.

ARTICLE IV. FLOODPLAIN REGULATIONS

DIVISION 1. GENERALLY

Sec. 6-401. Reserved.

Sec. 6-402. Findings of fact.

(a) The Town of Fort Myers Beach is subject to periodic inundation which may result in the loss of life and property, as well as health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(b) These flood losses are caused by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated or floodproofed or otherwise unprotected from flood damages.

Sec. 6-403. Purpose of article.

It is the purpose of this article to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion; and
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

Sec. 6-404. Objectives of article.

The objectives of this article are to:

- (1) Protect human life and health;
- (2) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (3) Minimize prolonged business interruptions;

- (4) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in floodplains; and
- (5) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas.

Sec. 6-405. Definitions.³

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Unless specifically defined in this section, words or phrases used in this article shall be interpreted so as to give them the meanings they have in common usage and to give this article its most reasonable application.

Accessory structure means a building or structure which is customarily incidental and subordinate to a principal building or to the principal use of the premises, and located on the same premises.

Addition means any walled and roofed expansion that increases the floor space of an existing building in which the addition is connected by a common loadbearing wall other than a firewall. Any walled and roofed addition which is connected by a firewall or is separated by independent perimeter loadbearing walls is considered new construction.

Appeal means a request for a review of the coordinator's interpretation of any provision of this article. A request for a variance from the precise terms of this article is not an appeal.

Area of special flood hazard means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The entire Town of Fort Myers Beach has been designated an area of special flood hazard by the Federal Emergency Management Agency (see § 6-408).

³Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Breakaway walls means any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building materials, which are not part of the structural support of the building and which are designed and constructed to collapse under specific lateral loading forces without causing damage to the elevated portion of the buildings or the supporting foundation system on which they are used.

Building means any structure built for support, shelter, or enclosure for any occupancy or storage.

Coastal high-hazard area means the area subject to high-velocity waters caused by storms. The coastal high-hazard area is designated on the flood insurance rate map as zones V1--V30.

Coordinator means Lee County's flood insurance coordinator, who has been designated by the Board of County Commissioners to implement, administer, and enforce the county's floodplain regulations.

Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, dredging, filling, grading, paving, excavating, drilling operations, or storage of materials or equipment.

Elevated building means a building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), or shear walls.

Existing, when referring to a building or structure, means that construction had commenced on the building or structure, or portion thereof, prior to August 31, 1984.

Existing manufactured home park or manufactured home subdivision means a parcel or contiguous parcels of land divided into two or more manufactured home lots or sites for rent or sale for which the construction of facilities for servicing the lot or site on which the manufactured home is to be affixed, including, at a minimum, the installation of utilities, either final site grading or the pouring of

concrete pads, and the construction of streets, was completed prior to August 31, 1984.

Expansion to an existing manufactured home park or manufactured home subdivision means the preparation of additional sites by the construction of facilities for servicing the sites on which the manufactured homes are to be affixed, including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets.

Flood and **flooding** mean a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood insurance rate map (FIRM) means the official map of Fort Myers Beach on file with the coordinator, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones for Fort Myers Beach, including base flood elevations and coastal high hazard areas (V zones).

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and/or their contents. There are three major kinds of floodproofing in coastal areas:

- (1) Elevation of the lowest floor is the most common and economical method for floodproofing structures and is the only acceptable method under this code for floodproofing new or substantially improved residential structures.
- (2) For dry floodproofing, a commercial building is made watertight up to the base flood elevation and strengthened to resist all hydrostatic and hydrodynamic loads and to counter the effects of buoyancy. See § 6-472(4).
- (3) For wet floodproofing, damage to a building is avoided by allowing flood waters to temporarily fill the building to equalize loads and prevent buoyancy. See §§ 6-446(e) and 6-472(5)b.

Floor means the top surface of an enclosed area in a building, i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used for parking vehicles.

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of passengers. The term does not include longterm storage, manufacture, sales, or entertainment facilities.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register of Historic Places; or
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district; or
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior and also listed on a local inventory of historic places, either individually or as a contributing structure in a historic district, pursuant to ch. 22 of this code.

Lowest floor means the lowest floor of the lowest enclosed area, including any floors below grade. An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the non-elevation design requirements of this article.

Mangrove stand means an assemblage of mangrove trees, which are mostly low trees noted for a copious development of interlacing adventitious roots above the ground, which contains

one or more of the following species: black mangrove (*Avicennia nitida*), red mangrove (*Rhizophora mangle*), white mangrove (*Languncularis racemosa*), and buttonwood (*Conocarpus erecta*).

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. This definition includes mobile homes and most park trailers (those larger than 400 square feet and/or not towable by a light duty truck), as defined in F.S. § 320.01(2), but does not include other types of recreational vehicles, as defined in F.S. § 320.01(1). However, a manufactured building as defined in F.S. ch. 553, pt. IV is not considered a manufactured home.

Market value of the structure, depending on the context, means either:

- (1) the value of the structure prior to the start of the improvement, or
- (2) in the case of damage, the value of the structure prior to the damage occurring.

Value will be as determined (for the structure only) by the Lee County Property Appraiser or by a private appraisal acceptable to the coordinator. This value shall not include the value of the land on which the structure is located, nor the value of other structures or site improvements on the site, nor the value of the structure after the proposed improvements are completed. Any proposed value submitted via private appraisal that exceeds the Property Appraiser's valuation by more than 35 percent shall be subject to peer review by a qualified local appraiser, to be commissioned by the coordinator, with the full cost of the review appraisal paid by the applicant to the town prior to initiation of the review process.

Mean sea level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this article, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, to which base flood elevations shown on the flood insurance rate map are referenced.

National Geodetic Vertical Datum (NGVD), as corrected in 1929, is a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means structures for which the start of construction commenced on or after May 1, 1990, and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads, is completed on or after August 31, 1984.

Primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

Reconstruction means an improvement to an existing building that substantially replaces all or a portion of an existing building with a new building, or physically moves an existing building to a different location.

Recreational vehicle means, for floodplain management purposes, a vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Registered architect means an architect registered or licensed by the state of Florida to practice architecture, or who is authorized to practice architecture in Florida under a reciprocal registration or licensing agreement with another state.

Registered professional engineer means an engineer registered or licensed by the state of Florida to practice engineering, or who is authorized to practice engineering in Florida under a reciprocal registration or licensing agreement with another state.

Registered land surveyor means a land surveyor registered or licensed by the state of Florida to practice land surveying, or who is authorized to practice surveying in Florida under a reciprocal registration or licensing agreement with another state. This term includes professional surveyors and mappers registered by the state of Florida.

Rehabilitation means an improvement to an existing building that does not expand its external dimensions.

Repair means the replacement or renewal of nonstructural elements of an existing building.

Reinforced pier means a system designed and sealed by a state-registered architect or engineer which is an integral part of a foundation and anchoring system for the permanent installation of a manufactured home or recreational vehicle, as applicable, so as to prevent flotation, collapse or lateral movement of the manufactured home or recreational vehicle due to flood forces. At a minimum, a reinforced pier would have a footing adequate to support the weight of the manufactured home or recreational vehicle under saturated soil conditions such as occur during a flood. In areas subject to high-velocity floodwaters and debris impact, cast-in-place reinforced concrete piers may be appropriate. Nothing in this division shall prevent a design which uses pilings, compacted fill or any other method, as long as the minimum flood and wind standards are met.

Repetitive loss means flood-related damages sustained by a structure on two separate occasions during any ten-year period, for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damages occurred. For the purposes of computing this 25 percent cost only, the cost of nonstructural interior finishings may be deducted from the cost of repairs, including, but not limited to, the cost of finish flooring and floor coverings, base molding, nonstructural substrates, drywall, plaster, paneling,

wall covering, tapestries, window treatments, decorative masonry, paint, interior doors, tile, cabinets, moldings and millwork, decorative metal work, vanities, electrical receptacles, electrical switches, electrical fixtures, intercoms, communications and sound systems, security systems, HVAC grills and decorative trim, freestanding metal fireplaces, appliances, water closets, tubs and shower enclosures, lavatories, and water heaters.

Sand dunes means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Start of construction, for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Public Law 97-348), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure, whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage

occurred. Actual repair work need not have been performed on flood-related damage.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cumulative cost of which equals or exceeds, over any five-year period, 50 percent of the market value of the structure either before the start of construction of the improvement or, if the structure has been damaged and is being restored, before the damage occurred. The term "substantial improvement" includes structures that have incurred "substantial damage" or "repetitive loss," regardless of the actual repair work performed. The term "substantial improvement" does not, however, include either:

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or
- (2) costs of alterations or improvements whose express purpose is the mitigation of future storm damage, provided they do not exceed 50 percent of the market value of the structure over any one-year period; examples of such mitigation include the installation of storm shutters or shatterproof glass, strengthening of roof attachments, floors, or walls, and minor floodproofing.
 - a. Storm mitigation improvements may be made during the same year as other improvements, but the total cost of improvements of both types that are made over any one-year period may not exceed 50% of the market value of the structure.
 - b. The annual allowance for storm mitigation improvements is not applicable to any costs associated with a lateral or vertical addition to an existing structure or to the complete replacement of an existing structure; or
- (3) any alteration of a "historic structure" provided that the alteration would not preclude the structure's continued designation as a "historic structure."

Variance means a grant of relief to a person from the requirements of this article which permits construction in a manner otherwise prohibited by

this article where specific enforcement would result in unnecessary hardship.

Sec. 6-406. Penalty for violation of article.

The director and the coordinator are authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article.

Sec. 6-407. Applicability of article.

This article shall apply to the entire Town of Fort Myers Beach. No structure or land shall be located, extended, converted, or structurally altered without full compliance with the terms of this article.

Sec. 6-408. Basis for establishing flood regulations.

The entire Town of Fort Myers Beach has been designated an area of special flood hazard by the Federal Emergency Management Agency. Their maps illustrating the minimum federal floodplain regulations as adopted on September 19, 1984, and all revisions thereto, are adopted by reference and declared to be a part of this article. These flood insurance rate maps show base flood elevations and coastal high-hazard areas (V zones) for the entire town and are available for inspection at town hall and at the Lee County Administration Building, 2115 Second Street, Fort Myers, or can be viewed at www.fema.gov, or can be purchased by calling 1-800-358-9616. The individual map panels are numbered as follows:

<i>General area shown</i>	<i>Panel number</i>	<i>Latest</i>
Bowditch – Donora	125124 0429D	9/20/96
Donora – Gulfview	125124 0433B	9/19/84
Gulfview – Flamingo	125124 0441B	9/19/84
Flamingo – Buccaneer	125124 0442C	7/20/98
Buccaneer – Big Carlos	125124 0444D	7/20/98

Sec. 6-409. Reserved.

Sec. 6-410. Conflicting provisions.

Where this article and any other part of this code conflict or overlap, whichever imposes the more stringent restriction shall prevail.

Sec. 6-411. Reserved.

Sec. 6-412. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This article shall not create liability on the part of the town council, or by any officer or employee thereof, for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

Secs. 6-413--6-440. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 6-441. Designation of administrator.

Lee County's flood insurance coordinator ("coordinator") is hereby appointed to administer and implement the provisions of this article on behalf of the Town of Fort Myers Beach.

Secs. 6-442. Reserved.

Sec. 6-443. Permit required.

All land-disturbing activities and improvements to land that are defined in this article as "development" must comply with all provisions of this article and must obtain permits in accordance with the procedures in this division.

Sec. 6-444. Applications and certifications.

(a) The provisions of this article will be enforced concurrently with review of proposed building permits and development orders. No separate application is required. However, the following information is required on the plans submitted for review:

- (1) Elevation, in relation to mean sea level, of the proposed lowest floor of all structures;
- (2) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed;
- (3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in § 6-472, when dry or wet floodproofing is proposed; and
- (4) An operation and maintenance plan when dry floodproofing is proposed:
 - a. At a minimum this plan must identify who is responsible for maintenance and installation of the flood barriers that will protect wall and door openings and where the flood barriers will be stored when not in use.
 - b. This plan must also provide a realistic estimate of the manpower, time, and equipment required for installation.
 - c. This plan must also include a binding commitment for present and future owners to conduct a test installation annually of all flood barriers, with advance notice provided to the coordinator and the town manager to allow them to witness this test.

(b) Prior to issuance of approvals, applicants must supply evidence that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(c) A permit holder must submit to the coordinator a floor elevation or floodproofing certification after the lowest floor is completed, or, in instances where the structure is subject to the regulations applicable to coastal high-hazard areas, after placement of the horizontal structural members of the lowest floor:

- (1) Within 21 calendar days of establishment of the lowest floor elevation, or floodproofing by whatever construction means, or upon placement of the horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the coordinator a certification of the elevation of the lowest floor, floodproofed elevation, or the elevation

of the lowest portion of the horizontal structural members of the lowest floor, whichever is applicable, as built, in relation to mean sea level. Such certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by a registered land surveyor or professional engineer.

- (2) When floodproofing is utilized for a particular building, the certification shall be prepared by or under the direct supervision of a registered professional engineer or architect and certified by a registered professional engineer or architect.
- (3) Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk.

(d) The coordinator shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make the corrections required by this section shall be cause to issue a stop work order for the project.

Sec. 6-445. Appeals.

Any affected person may file an appeal alleging that there has been an error in any requirement, decision or determination made by the coordinator in the enforcement or administration of this article. Such appeals shall be processed and decided in the same manner as for appeals under ch. 34 of this code.

Sec. 6-446. Variances.

(a) Variances from base flood elevation requirements may only be granted upon a clear showing by the applicant that an exceptional hardship would result from compliance with the requirements. If a variance is granted, the coordinator shall notify the applicant, in writing, that:

- (1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage; and

- (2) Such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

(b) Variances shall only be granted upon a determination, based upon competent substantial evidence presented by the applicant, that:

- (1) It will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing regulations or ordinances; and
- (2) The lot or parcel in question is so small or has such unusual characteristics that the prescribed standards cannot be met without some relief so as to allow a reasonable use of the property.

(c) Variances shall only be issued upon a determination that the variance being granted is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances may be issued for repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(e) Variances may be issued to allow non-residential buildings other than those already identified in § 6-472(5) to contain wet-floodproofed space below the base flood elevation, provided:

- (1) the building is not in the coastal high-hazard areas; and
- (2) such action is determined to be in the public interest.

Any such buildings must meet the technical standards for wet floodproofing found in § 6-472(5)b.

(f) A variance is a deviation from the exact terms and conditions of this article. Requests for variances shall be processed and decided in the same manner as for variances under ch. 34 of this code following public hearings before the local planning agency and town council.

(g) In passing upon variance applications, the town council shall consider all technical

evaluations, all relevant factors including local and federal policies on flood protection, all standards specified in this article, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage, and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, in the case of a functionally dependent facility;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters, and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(h) Upon consideration of the factors listed in subsection (g) of this section and purposes of this article, the town council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

Secs. 6-447--6-470. Reserved.

DIVISION 3. STANDARDS

Sec. 6-471. General standards.

The following general standards must be followed within the Town of Fort Myers Beach:

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure;
- (2) Manufactured homes shall be securely anchored to an adequately anchored foundation system to prevent flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;
- (3) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (4) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (5) Electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities shall be designed and located so as to prevent water from entering or accumulating within the components during conditions of flooding. Utility equipment shall be exempt from this requirement as long as the utility company which owns the equipment accepts the sole responsibility for any flood damage to the equipment by filing written acceptance of such responsibility with the local building director prior to claiming the exemption;
- (6) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters; and
- (8) Any alteration, repair, reconstruction, or improvement to a structure which is in compliance with the provisions of this article

shall meet the requirements of new construction as contained in this article.

Sec. 6-472. Specific standards.

The following specific standards must be followed within the Town of Fort Myers Beach:

- (1) ***Conventional residential construction.*** New construction or substantial improvement of any residential structure shall have the lowest floor elevated to or above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of subsection (5) of this section. (See subsection (7) for additional restrictions in V zones.)
 - a. When an improvement to an existing residential structure involves reconstruction or includes an addition, and the improvement's cost exceeds the 50 percent threshold in this article's definition of "substantial improvement," then the reconstruction or addition shall be elevated the same as new construction, with its lowest floor elevated to or above the base flood elevation.
 - b. Some partial reconstructions or additions to existing residential structures may fall below the 50 percent threshold and are therefore not considered to be "substantial improvements." In this situation:
 1. If the structure was approved **after** 1984 and thus was elevated in accordance with this code, the reconstructed or additional floor space shall also be elevated the same as new construction, with its lowest floor at or above the base flood elevation. Any enclosed space below the base flood elevation shall be subject to the same restrictions that apply to post-1984 structures as found in subsection (5) of this section.
 2. If the structure was approved **before** 1984, the reconstructed or additional floor space must be elevated to or above the

elevation of the structure's existing lowest floor. Any enclosed space below the structure's existing lowest floor shall be subject to the same restrictions that apply to post-1984 structures as found in subsection (5) of this section. For purposes of this subsection only, "existing lowest floor" does not include enclosed space of less than 500 square feet below an elevated structure and does not include any space that has been used to park vehicles.

- (2) ***Manufactured homes.*** New or expanded parks or subdivisions for manufactured homes are not allowed in the Town of Fort Myers Beach. Where zoning allows existing manufactured homes to be replaced or substantially improved:
- on individual subdivision lots, replacement or substantially improved manufactured homes must be elevated so that the lowest floor of the manufactured home is at or above the base flood elevation in compliance with the anchoring requirements of § 6-471(2), or
 - on an existing site in a mobile home park, the manufactured home chassis must be supported by reinforced piers, or other foundation elements of at least equivalent strength, that are no less than 36 inches in height above grade, and the manufactured home shall comply with the anchoring requirements of § 6-471(2). However, the 36-inch alternative in subsection (2)b. may not be used if a manufactured home on that specific site has incurred "substantial damage" from flooding, as defined in this article; if "substantial damage" has occurred, the manufactured home or a replacement manufactured home on that site must be elevated so that the lowest floor is at or above the base flood elevation in compliance with the anchoring requirements of § 6-471(2).

- (3) ***Recreational vehicles.*** New parks or subdivisions for recreational vehicles are not allowed in the Town of Fort Myers Beach. Where zoning allows recreational vehicles to

be placed or substantially improved on a site located in an existing recreational vehicle park, they must be either:

- placed on the site for fewer than 180 consecutive days and fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions); or
- elevated so that the lowest floor of the recreational vehicle is at or above the base flood elevation in compliance with the anchoring requirements of § 6-471(2).

- (4) ***Nonresidential construction.*** New construction or substantial improvement of any commercial or other nonresidential structure shall either:

- have the lowest floor elevated to or above the base flood elevation, or,
- together with attendant utility and sanitary facilities, be dry-floodproofed so that below the base flood level the structure is watertight, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 - Dry-floodproofing up to the base flood elevation is the preferred alternative for providing sidewalk-level commercial space in the Future Land Use Map's Pedestrian Commercial category.
 - A registered professional engineer or architect shall certify that the dry-floodproofing standards of this subsection are satisfied. Such certification shall be provided to the coordinator.
 - An operation and maintenance plan must be submitted in accordance with § 6-444(a)(4). Failure to conduct the annual test installation required by this plan shall subject the owner to the code enforcement

- mechanisms provided in this code (for example, § 1-5, or article V of ch. 2).
- c. No person may construct a series of improvements, additions, and/or demolitions that connects two or more existing structures in a manner that evades the requirement to either elevate or dry-floodproof new construction or substantial improvements to nonresidential structures.
- (5) ***Space below elevated buildings (A zones).*** New construction or substantial improvements of elevated buildings, both residential and non-residential, may contain space below the base flood elevation that is usable solely for parking, building access, or storage (additional restrictions for coastal high-hazard areas are provided in subsection (7) below).
- a. The amount of such space is limited only by setback and other regulations of ch. 34 provided the space is not enclosed or is enclosed only by latticework or decorative screening with less than 50 percent solid surfaces. This 50 percent enclosure rule can also be met with full-height solid walls that enclose no more than 50 percent of the perimeter of the floor area, or with partial-height solid walls that extend less than 50 percent of the height of all walls, or any equivalent combination. For purposes of this rule, operable doors and windows shall be considered solid surfaces.
- b. In addition to the unenclosed or 50 percent enclosed space described in subsection a., space below the base flood elevation may include garages and fully enclosed areas formed by exterior walls provided that this space is wet-floodproofed, designed to preclude finished living space in the area below the base flood elevation, and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on such exterior walls below the base flood elevation. Fully enclosed areas must comply with all setback requirements for the zoning district in which located. Fully enclosed space below the base flood elevation cannot extend beyond the perimeter of the elevated structure.
1. Designs for complying with this requirement must either be certified by a registered professional engineer or architect, or meet the following minimum criteria:
- a- A minimum of two openings shall be provided having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
- b- The bottom of all openings shall be no higher than one foot above grade; and
- c- Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
2. Electrical, plumbing, and other utility connections are prohibited below the base flood elevation.
3. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage or other overhead door), limited storage of maintenance equipment used in connection with the premises (standard exterior door with no more than a single door opening of up to 36 inches in any single wall segment, or windowless double exterior doors with no more than 72 inches of opening in any single wall segment), plus internal entry to the living area (stairway or elevator).
4. The interior portion of such enclosed area shall not be partitioned, temperature-controlled, or finished into separate rooms.
5. All structural and non-structural components must be constructed of materials that are durable, resistant to flood forces, and resistant to deterioration caused

- by repeated inundation by flood water.
6. These provisions apply to space below the base flood elevation to be used for parking, building access, or storage. Other uses proposed for wet-floodproofed space may be approved by variance as provided in § 6-446(e), and may include functionally dependent facilities, historic buildings, and utility structures.
7. Any application for a garage or other enclosed area formed by exterior walls below the base flood elevation must be accompanied by a signed and notarized acknowledgment of the limitations on allowable uses of the enclosed space, using a form provided by the coordinator. This agreement shall be recorded in the official record books in the office of the clerk of the circuit court to provide additional notice of these limitations to future purchasers.
- (6) **Accessory structures.** Accessory structures may be exempted from meeting the elevation requirements only if:
- The structure is securely anchored to resist flotation or lateral movement and offers the minimum resistance to the flow of floodwaters; and
 - The total cost of the structure does not exceed \$16,000 or 10% of the market value of the principal building, whichever is greater; and
 - The structure is used exclusively for nonhabitable recreational, security, or storage purposes and not used as offices, kitchens, or living space; and
 - All electrical, air conditioning, or heating equipment is elevated above the base flood elevation or floodproofed; and
 - Openings to equalize hydrostatic pressure during a flood are provided in conformance with § 6-472(5)b.1; and
 - For accessory structures located in coastal high-hazard zones (V zones), the following additional requirements also apply:
- Only breakaway walls may be used below the base flood elevation.
 - The structure must be constructed with a piling or column foundation system that is adequately embedded to resist scour and lateral deflection.
 - Floor slabs may not be structurally attached to pilings or columns and must be located at existing grade.
 - The lowest horizontal structural member of roof systems, including plates and beams connecting the pilings or columns, must be placed at or above the base flood elevation.
- (7) ***Coastal high-hazard areas (V zones).*** Certain areas of the town are designated as coastal high-hazard areas (V zones) because they have special flood hazards associated with wave wash. In V zones, the following additional provisions shall apply:
- All new construction shall be located landward of the reach of the mean high tide line.
 - All new construction and substantial improvements shall be elevated so that the lowest supporting horizontal member, excluding pilings or columns, is located at or above the base flood elevation level, with all space below the lowest supporting member open so as not to impede the flow of water. Breakaway walls may be permitted and must be designed to wash away in the event of abnormal wave action in accordance with the remainder of this subsection.
 - Some partial reconstructions or additions may fall below the 50 percent threshold and are therefore not considered to be "substantial improvements" as defined by this chapter. In this situation:
 - If the structure was approved after 1984 and thus was elevated in accordance with this code, the reconstructed or additional floor space shall also be elevated the same as new construction in V zones. Space

- below this elevation shall be subject to the same restrictions as for new structures.
2. If the structure was approved before 1984, the reconstructed or additional floor space shall be elevated to or above the elevation of the structure's existing lowest floor. Any enclosed space below the structure's existing lowest floor shall be subject to the same restrictions as for new structures in V zones. For purposes of this subsection only, "existing lowest floor" does not include enclosed space of less than 500 square feet below an elevated structure and does not include any space that has been used to park vehicles.
 - d. All new construction and substantial improvements shall be securely anchored on pilings or columns.
 - e. All pilings and columns and the attached structures shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components. The anchoring and support system shall be designed with wind and water loading values which equal or exceed the 100-year mean recurrence interval (one percent annual chance flood).
 - f. Compliance with the provisions contained in subsections (7)b, d, and e of this section shall be certified by a registered professional engineer or architect.
 - g. There shall be no fill used as structural support.
 - h. There shall be no man-made alteration to sand dunes and mangrove stands that would increase potential flood damage.
 - i. Nonsupporting breakaway walls, latticework or decorative screening shall be allowed below the base flood elevation provided it is not part of the structural support of the building and is designed so as to break away, under abnormally high tides or wave action, without damage to the structural integrity of the building on which it is to be used, and provided the following design specifications are met:
1. Design safe loading resistance of each wall shall be not less than ten and not more than 20 pounds per square foot; or
 2. If more than 20 pounds per square foot, a registered professional engineer or architect shall certify that the design wall collapse would result from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water loads acting simultaneously on all building components during the base flood event. Water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval). Wind loading values shall be those required by local and state law.
 - j. If breakaway walls are utilized, such enclosed space shall not be used for human habitation, but shall be designed to be used only for parking of vehicles, building access or limited storage of maintenance equipment used in connection with the premises. Space enclosed by latticework and breakaway walls in a V zone is subject to the same limitations as to size, usage, and formal acknowledgments that apply below base flood elevation in an A zone, as provided in subsection (5)a. and (5)b. above.
 - k. Prior to construction, plans for any structure that will have breakaway walls must be submitted to the coordinator for approval.
 - l. Any alteration, repair, reconstruction, or improvement to a structure shall not enclose the space below the lowest floor except with breakaway walls, and except as provided for in the remainder of this subsection.

- m. The placement of manufactured homes is prohibited. A replacement recreational vehicle may be placed in an existing recreational vehicle park, provided the mobility standards of § 6-472(3)a. are met.

Sec. 6-473. Reserved.

Sec. 6-474. Standards for subdivision proposals.

(a) All subdivision proposals shall be consistent with the need to minimize flood damage.

(b) All subdivision proposals shall have public utilities and facilities such as sewers, electrical and water systems located and constructed to minimize flood damage.

(c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(d) Base flood elevation data shall be provided for all subdivision and development proposals.

CHAPTERS 7--9 RESERVED

DOWNTOWN

(e) **Parking garages.** The town has identified three potential locations for mid-block parking garages through its Old San Carlos Boulevard / Crescent Street Master Plan.

- (1) Each potential location is indicated in black on Figure 34-7. Construction of these parking garages is not required by this code, but the regulations for the DOWNTOWN district are designed to place new buildings on these sites so that they will not block a parking garage from being built there in the future.

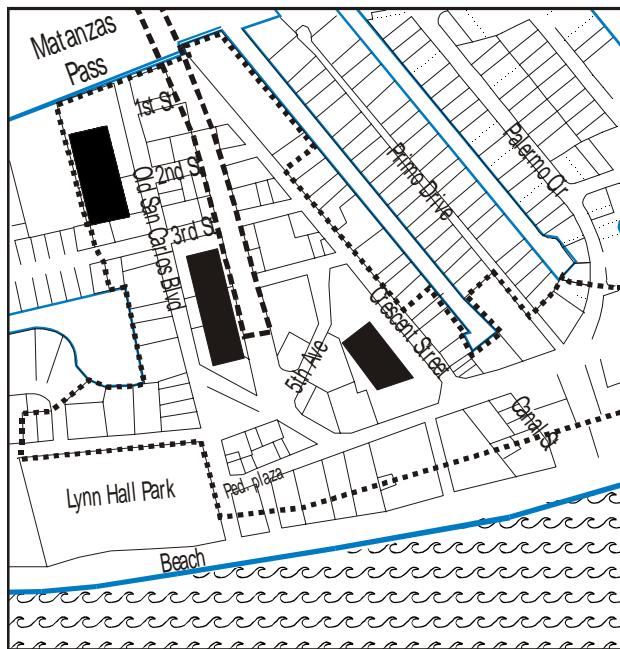


Figure 34-7

- (2) All levels of parking garages must be separated from primary streets and pedestrian plazas by a liner building that provides usable building space at least 20 feet deep (see Figure 34-8).
 - a. Liner buildings must be two stories or more in height and must be at least as tall as the parking garage.
 - b. Liner buildings may be detached from or attached to the parking garage.
 - c. Parking garages and their liner buildings are required to meet the commercial design standards (see §§ 34-991–1010).

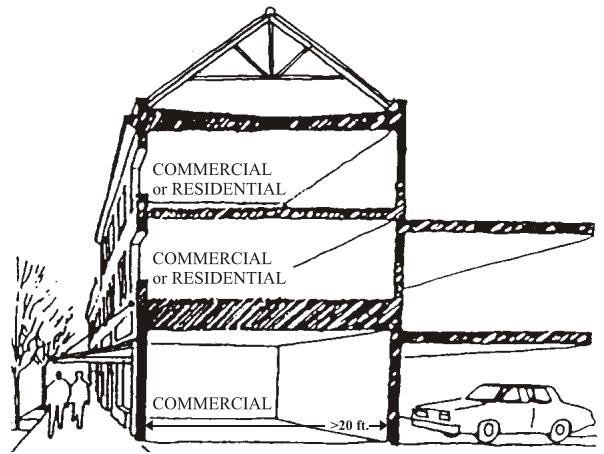


Figure 34-8

- (3) Access to a parking garage may be provided as follows:
 - a. Access to a secondary street or road easement is preferred.
 - b. Access to a primary street is not permitted except in unusual circumstances where no other access is feasible and when approved as a variance or deviation to this code.
 - c. Access may not be provided across a pedestrian plaza.
- (4) Parking garages can be approved only by rezoning to the Commercial Planned Development zoning district.

(f) **Drive-through lanes.** Drive-through lanes are generally not allowed in the DOWNTOWN district because traffic generated by drive-through lanes harms a pedestrian environment. The only exception to this rule is that Type 1 drive-throughs (see definition in § 34-2) may be approved by special exception on the north side of Estero Boulevard east of Palermo Circle. In this situation, the number of drive-thru lanes is limited to two lanes, and they shall not be accessed directly, for either entrance or exit, from a separate driveway on Estero Boulevard; they may be accessed from any of the secondary streets or from a shared driveway on Estero Boulevard.

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Sec. 34-677. Additional requirements.

(a) ***Commercial design standards.*** The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built, and to “substantial improvements” to such buildings as defined in § 6-405.

(b) ***Open space and buffers.*** There are no minimum open space and buffer requirements in the DOWNTOWN district comparable to the standards found in ch. 10, except in three instances:

- (1) Portions of properties that lie east of Palermo Circle and more than 300 feet beyond the north edge of the Estero Boulevard right-of-way shall retain 50% of that portion as open space. This open space may be a stabilized sodded area useable for overflow parking.
- (2) Residential buffers are required between commercial or mixed-use buildings and single-family residential lots for properties on the north side of Estero Boulevard east of Palermo Circle. These buffers shall be constructed in accordance with the buffer requirements of ch. 10 of this code.
- (3) Buffers are required between any off-street parking lot and a public street in accordance with the buffer requirements of ch. 10 of this code.

- (1) Outdoor display of merchandise allows retailers an opportunity to inform and interest the public by offering a small sample of the products that are available inside. Outdoor display can also be appropriate for small retail products that are meant to be used outside, such as garden ornaments, windsocks, and beach toys.
- (2) Outdoor display of merchandise is not intended to expand retail space or to assist in liquidating clearance or discarded items. The principal purpose of outdoor display in the DOWNTOWN district is to enliven sidewalks and pedestrian plazas by promoting pedestrian-oriented businesses, not to expand businesses or provide locations for freestanding businesses or for mobile vendors (which are regulated in § 34-3002).
- (3) Restaurants are encouraged by this code to provide outdoor dining. Outdoor dining between a restaurant and a street is regulated by this section. The sale of alcoholic beverages outdoors is also regulated by state liquor laws and by § 34-1264 of this code.
- (4) See separate regulations for temporary outdoor displays during special events at § 34-2441 et seq.

Sec. 34-678. Outdoor display and sales of merchandise and food.

(a) ***Generally.*** Merchandise, food, and beverages may be displayed or sold outdoors in the DOWNTOWN zoning district only in accordance with this section.

(b) ***Purpose.*** The purpose of these regulations is to enhance the pedestrian environment of the town’s business district through the creative use of outdoor spaces by providing businesses the opportunity to display a sample of their products and to sell food and beverages in a manner that enhances the public realm, creates an interesting and comfortable shopping and dining district, and maintains and improves the town’s sense of place and property values.

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(c) **Allowable locations for outdoor activities.** Table 34-4 summarizes the allowable locations for outdoor display of merchandise and outdoor dining in the DOWNTOWN zoning district.

Table 34-4 — Outdoor Activities in the DOWNTOWN Zoning District				
<i>Display Type</i>	<i>Location</i>		PRIVATE PROPERTY (between store & street)	PUBLIC PROPERTY (Times Square pedestrian plaza)
	<i>On porch</i>	<i>On patio</i>	<i>see (f)</i>	
MERCHANDISE , as further limited by other provisions of § 34-678:				
<i>Vending carts – see (d)(1)</i>	no	YES	no	
<i>Clothing racks – see (d)(2)</i>	YES	no	no	
<i>Specialized displays – see (d)(3)</i>	YES	YES	no	
<i>Mannequins – see (d)(4)</i>	YES	YES	no	
<i>Tables/shelves – see (d)(5)</i>	YES	no	no	
<i>Freestanding displays – see (d)(6)</i>	YES	YES	no	
DINING:				
<i>Vending carts – see (d)(1)</i>	no	YES	no	
<i>Dining tables – see (d)(7)</i>	YES	YES	YES	

(d) **Types of outdoor displays.**

(1) **Vending carts** are limited to 2 wheels, must have integral roofs or umbrellas, and may use traditional or creative designs. Vending carts that have been manufactured to be secured at night, with fitted side panels, may be left outside when a business is closed. All other vending carts must be moved indoors when the business is not open. Within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center, all vending carts must be moved indoors, removed from the county, or placed within an approved off-island storage area. Figure 34-9.1 shows two suggested vending cart designs.



Figure 34-9.1

(2) **Clothing racks** are limited to one support rod up to 6 feet long on which clothing is hung. Similar displays whose principle function is for the display of clothing, swimwear, and other garments shall be considered a clothing rack. Clothing racks are often mounted on wheels. Figure 34-9.2 shows a typical clothing rack.



Figure 34-9.2

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- (3) **Specialized display racks** are unique displays for a specific type of product. An example is a rack to hold beach toys or accessory items. Specialized display racks are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area. Figure 34-9.3 shows a specialized display rack.



Figure 34-9.3

- (4) **Freestanding mannequins** are used to display clothing or swimwear. Figure 34-9.4 shows a typical freestanding mannequin.



Figure 34-9.4

- (5) **Tables or freestanding shelves** are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area, and may not be more than 3 feet in height. Figure 34-9.5 shows a typical freestanding table with merchandise.



Figure 34-9.5

- (6) **Freestanding product displays** can be used for products such as lawn and garden accessories or windsocks that are appropriately displayed on their own. These types of products may be displayed within a 4-foot by 8-foot area or with a maximum of 7 individual products. Figure 34-9.6 shows typical freestanding product displays.



Figure 34-9.6

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- (7) **Dining tables** are used to serve food and beverages to the public. Figure 34-9.7 shows typical dining tables on the Times Square pedestrian plaza.



Figure 34-9.7

(e) PRIVATE PROPERTY: number, location, and types of outdoor displays and dining tables.

Retail businesses may sell their regular merchandise outdoors on private property between their stores and a street right-of-way only if the merchandise is placed on a raised porch or a patio, as defined in this subsection. No business may have more than two outdoor displays of merchandise, as defined in subsection (d). For example, a business may qualify for two vending carts, or one vending cart and one clothing rack, or one mannequin and one table, etc. Multiple occupancy structures with two or more businesses are limited to one outdoor display for each business up to a maximum of four outdoor displays per multiple occupancy structure.

- (1) **Porches and patios.** Subsection (c) also indicates whether the outdoor display is permitted on a porch, patio, or either. For purposes of this section, porches and patios are defined as follows:

- Porch** is a wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. A porch must be covered or covered with an awning, roof, or umbrellas. Wood must be painted or stained. Businesses with existing porches are encouraged to utilize them for outdoor display. New or expanded porches must comply with all chapters of this code.
- Patio** is an area covered with paver bricks, concrete, wood, or similar material and

located at ground level immediately adjacent to the front of the building. Asphalt or earthen spaces are not considered a patio. Patios are encouraged to be shaded with an awning or umbrella or with a roof that is an integral part of the outdoor display. Businesses without porches are encouraged to use patios. New or expanded patios must comply with all chapters of this code.

- (2) **Permitted merchandise and types of outdoor display.** The following types of merchandise may be displayed outdoors using the display type described in subsection (d):

- Art** (prints, sculpture, etc.): 1, 3, 5, 6
- Bathing suits and swimwear**: 1, 2, 4
- Beach accessories** (umbrellas, chairs, etc.): 1, 6; rental of beach equipment on the beach is regulated in § 14-5 of this code.
- Beach towels**: 1, 2, 3, 5
- Beach toys, rafts, and floats**: 1, 3, 5
- Clothing**: 1, 2, 4, 5
- Clothing accessories** (jewelry, purses, etc.): 1, 3, 4, 5
- Kites and windsocks**: 1, 6
- Lawn and garden accessories**: 1, 6
- Small retail items** (souvenirs, suntan lotion, flowers, books, etc.): 1, 5
- Merchandise not specifically listed**: 1, or on permitted display type for the most similar item.
- Personal services** including tattoos, temporary tattoos, hair braiding, and hair wrapping are not permitted outdoors.

- (3) **Additional rules for outdoor displays of merchandise.**

- A retail store wishing to display merchandise outdoors in the DOWNTOWN zoning district must obtain a permit for this use (see subsection (e)(5)) in addition to meeting all other requirements of this code.
- Merchandise that is displayed outdoors must be available for sale inside the store.
- All outdoor displays must be brought indoors during any hours that the business is not open, except as provided for vending carts in subsection (d)(1).

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- d. Outdoor displays may contain no business or product identification signage whatever; each display may have one 4 inch by 6 inch sign to display prices.
 - e. All outdoor displays must be non-motorized and movable by hand and may be no taller than 10 feet.
 - f. Merchandise may not be attached to the building or to a railing unless incorporated into an approved type of outdoor display, such as a specialized display rack, mannequin, or freestanding product display (see subsection (d)).
- (4) ***Outdoor dining.*** A restaurant wishing to provide outdoor seating between the restaurant and a street must obtain a permit for this use (see subsection (e)(5)) in addition to meeting all other requirements of this code. The seating must be located on a porch or patio as defined in this subsection. The sale of alcoholic beverages outdoors is regulated by state liquor laws and by § 34-1264 of this code.
- (5) ***Permit required.*** A permit is required for each business wishing to display merchandise outdoors or to place outdoor seating in conformance with this section.
- a. Permits may be issued for up to one year and shall expire each year on September 30.
 - b. Permit applications may be filed at any time using forms available from town hall. Applications should be accompanied by photographs or drawings that clearly indicate the type, character, number, and size of outdoor displays or dining tables that are being proposed.
 - c. Permits may be issued by the town manager. The town manager may also choose to refer an application to the town council for its consideration in lieu of administrative issuance or rejection.
 - d. Permits may include modifications to the standards in this section to better accomplish the purposes set forth in subsection (b). Other reasonable conditions may also be imposed regarding the layout and physical design of porches, patios, vending carts, specialized display racks, shelves, tables, and umbrellas.
- e. Outdoor display and dining permits may be suspended by the town manager for noncompliance with the permit. Suspensions may be appealed to the town council in accordance with procedures set forth in § 34-86 for appeals of administrative decisions. Suspension of a permit does not preclude the town from pursuing any of the other enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2).
- (f) ***PUBLIC PROPERTY:*** No merchandise may be displayed outdoors on public property. Restaurants may extend their operations onto public sidewalks and plazas only as follows:
- (1) ***General location.*** These provisions are limited to the Times Square pedestrian plaza (see Figure 34-6) and other locations if explicitly approved by the town council.
 - (2) ***Who may operate.*** Vending rights are available only to the owner of the private property that immediately abuts the sidewalk or pedestrian plaza, or in the case of leased property, only to the primary lessee; vending rights may not be further sub-leased.
 - (3) ***Specific location.*** Vending rights can be used only in the area directly in front of the private property and lying between 90-degree extensions of the side property lines.
 - (4) ***Outdoor dining.*** No fixed or moveable equipment may be placed on a public sidewalk or plaza to sell or serve food except that tables, umbrellas, and chairs may be placed by restaurants for the use of their customers; no signage is permitted.
 - (5) ***Permit required.*** Vending rights for dining on public property may be exercised only upon issuance of a permit by the town that sets forth the conditions of private use of a public sidewalk or plaza, including:
 - a. Additional restrictions on the degree which tables, umbrellas, chairs, and carts may interfere with pedestrian movement;
 - b. Restrictions on the extent to which food not available in the abutting business may be sold;
 - c. Requirements for keeping the area surrounding the tables or carts from debris and refuse at all times;

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- d. Insurance requirements;
- e. Payment of fees established by the town for vending rights;
- f. Limitations on leasing of vending rights, if any; and
- g. Other reasonable conditions as determined by the town, including full approval rights over the design of umbrellas, carts, tables, etc.

Permitting procedures and enforcement shall be the same as provided in subsection (e)(5).

Secs. 34-678--34-680. Reserved.

SANTINI***Subdivision III. SANTINI Zoning District*****Sec. 34-681. Purpose.**

The purpose of the SANTINI district is to provide alternative futures for the Santini Marina Plaza, either a continuation of the current marina and shopping center or their transformation into a pedestrian-oriented neighborhood center.

- (6) The existing stores and marina in the SANTINI district may continue in full operation and may be renovated or redeveloped in accordance with § 34-682.
- (7) As an alternative, the SANTINI district provides a second set of regulations (in § 34-683) that would allow the transformation of the shopping center and marina into a pedestrian-oriented neighborhood center:
 - a. The SANTINI district can become a neighborhood center to serve visitors and the populous south end of the island in accordance with the design concepts in the Fort Myers Beach Comprehensive Plan (see Policies 3-C-1, 3-C-2, and 4-F-2-ii).
 - b. The site could support additional mixed-use buildings if provided with shared parking, a pattern of smaller blocks, and an urban plaza.
 - c. Full realization of this concept will require a partnership between the property owners and the town that will transform the adjoining portion of Estero Boulevard from a rural highway with deep swales into a street with shaded sidewalks and some on-street parking.

Sec. 34-682. District map and applicability.

The area indicated on Figure 34-10 is the outer boundary of the SANTINI district.

- (1) Properties that are zoned in a planned development (PD) district are governed by the terms of the PD zoning resolution rather than the requirements of the SANTINI district, even if the property is shown on Figure 34-10.

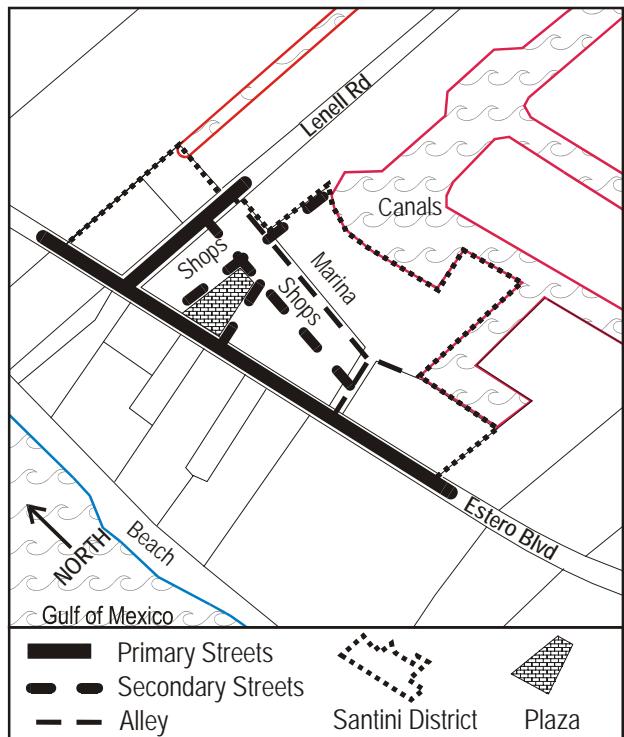


Figure 34-16

- (2) For properties zoned into the SANTINI district rather than in a PD district, the applicable regulations are as follows:
 - a. **Continued use of existing buildings.** The regulations in this subdivision apply to the continued use of existing buildings and structures for allowable uses as defined in Tables 34-1 and 34-2 for the SANTINI zoning district.
 - b. **Renovating, enlarging or replacing individual buildings.**
 1. Existing buildings may be renovated, enlarged, or replaced as follows:
 - a- Physical enlargement of existing buildings is permitted provided that the improvements do not constitute a "substantial improvement" as that term is defined in § 6-405 of this code, and
 - b- Replacements for existing buildings are permitted provided that they will not increase the existing floor area ratio, as that term is defined in § 34-633.

FORT MYERS BEACH

COMPREHENSIVE PLAN

TOWN COUNCIL:

Mayor Anita Cereceda
Vice-Mayor Ray Murphy
Councilman Daniel L. Hughes
Councilman John Mulholland
Councilman Garr Reynolds
Former Vice-Mayor Ted FitzSimons
Former Councilman Rusty Isler

LOCAL PLANNING AGENCY:

Co-Chair Betty Davis Simpson
Co-Chair Roxie Smith
Former Chair John Mulholland
Linda Beasley
Johanna Campbell
Lena Heyman
Daniel L. Hughes
Ron Kidder
David Smith
Bill Van Duzer

AMENDMENTS TO THIS PLAN – PART 1			
Application Number:	Adopting Ordinance:	Pages Changed:	Effective Date:
2000-1-TEXT	00-15	11-22	11/21/2000
2000-2-TEXT	00-15	15-4	11/21/2000
2000-3-MAP	[rejected]	—	—
2001-1-TEXT	01-07	11-22	11/21/2001
2001-2-TEXT	01-07	4-49-50	11/21/2001
2001-3-TEXT	[withdrawn]	—	—
2002-1-TEXT	02-07	11-22	11/15/2002
2002-2-TEXT	[rejected]	—	—
2002-3-TEXT	02-07	10-17, 18, 25-27	11/15/2002
2003-1-TEXT	03-13	11-22	3/8/2004

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Mohsen Salehi Consulting Services
Smith•Osborne Associates
Camp Dresser & McKee Inc.

EFFECTIVE DATE: JANUARY 1, 1999

AMENDMENTS TO THIS PLAN – PART 2			
Application Number:	Adopting Ordinance:	Pages Changed:	Effective Date:
SSA-04-01	[rejected]	—	—
SSA-04-02	[rejected]	—	—
SSA-04-03	04-10	future land use map	7/22/2004
SSA-04-04	04-10	future land use map	7/22/2004

