

ARTICLE II. ZONING PROCEDURES ADMINISTRATION[†]

DIVISION 1. GENERALLY

Sec. 34-51. **Notice of public hearings required.**

No public hearing required by this chapter shall be held by ~~the hearing examiner, local planning agency or town council Board of County Commissioners~~ until notice of the public hearing has been provided in accordance with the requirements set forth in this article.

Sec. 34-52. **Communications with public officials.** ~~Unauthorized communications. [existing § 34-52 deleted in its entirety]~~

(a) *Definitions.* The following terms and phrases, when used in this section, shall have these meanings:

Ex parte communication means any direct or indirect communication in any form, whether written, verbal or graphic, with the town council or local planning agency, by any person outside of a public hearing and not on the record, concerning substantive issues in any proposed or pending quasi-judicial action relating to appeals, variances, rezonings, special exceptions or any other quasi-judicial action assigned by statute, ordinance or administrative code.

Legislative action means the formulation of a general rule or policy, such as enacting a comprehensive plan or a comprehensive rezoning of multiple properties.

Public official means an elected or appointed member of a town board or commission that recommends or takes quasi-judicial actions, specifically including all members of the town council and the local planning agency. Members of the town staff are not public officials under this definition unless they also serve on a board or commission that recommends or takes quasi-judicial actions.

Quasi-judicial action means the application by the local planning agency or town council of a

previously adopted general rule or policy that will have an impact on a limited number of persons or property owners, such as individual appeals, variances, rezonings, and special exceptions.

Unrestricted communication means any communication by the public with public officials which are specifically allowed and encouraged, for instance, communications regarding the town budget or the general welfare of the community; or legislative actions such as proposed ordinances or general changes to the Fort Myers Beach Comprehensive Plan.

(b) Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the public official is a member.

(1) Except for quasi-judicial actions (such as appeals, variances, rezonings, and special exceptions), the town encourages unrestricted communications between all public officials and town residents, visitors, businesspeople, and property owners.

(2) When discussions on pending quasi-judicial actions (such as administrative appeals, variances, rezonings, and special exceptions) take place *prior to* an advertised public hearing, the following procedures, which mirror those in F.S. § 286.0115(1), shall remove any presumption of prejudice arising from such ex parte communications with public officials:

a. The substance of any ex parte communication with a public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.

b. A public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a public official shall not be presumed prejudicial to the action, and such written communication shall be made

[†]Cross reference(s)--Administration generally, ch. 2:

a part of the record before final action on the matter.

- c. Public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.
- d. Disclosure made pursuant to subsections a., b. and c. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. This subsection does not subject public officials to the Code of Ethics for Public Officers and Employees (part III of F.S. ch. 112) for not complying with this paragraph.

Sec. 34-53. Fees and charges.

(a) The schedule of fees and charges for matters pertaining to this chapter shall be posted in the office where permits applications are filed. of the department of community development. The charges listed may be changed by resolution of the town council. Board of County Commissioners. In the absence of a resolution by the town council, the director shall charge fees that are comparable to the fees charged by the board of county commissioners for similar applications.

(b) No permit shall be issued and no inspection, public notice, or other action relative to a zoning matter shall be instituted until after such fees and charges have been paid.

Secs. 34-54--34-80. Reserved.

DIVISION 2. TOWN COUNCIL BOARD OF COUNTY COMMISSIONERS

Sec. 34-81. Appointment of local planning agency.

The town council Board of County Commissioners shall appoint the members of the local planning agency.

Sec. 34-82. Initiation of zoning actions.

The town council Board of County Commissioners or the town manager its designee may initiate rezonings, special exceptions, variances, ~~special permits~~, developments of regional impact, and zoning ordinance land development code amendments, formal interpretations of this code and the Fort Myers Beach Comprehensive Plan, and other actions as may be specified in this code. See division 4 of this article for specific application requirements. See § 34-201.

Sec. 34-83. Functions and authority. (a) Land use ordinance amendments or adoption.

- (1) **Function.** The town council Board of County Commissioners shall hold public hearings on all proposed land use ordinance amendments or adoptions.
- (2) **Considerations.** When deciding whether to adopt a proposed land use ordinance or amendment, the town council Board of County Commissioners shall consider the Fort Myers Beach Comprehensive Plan and same criteria, recommendations and issues as set forth in § 34-115(b)(1), as well as the recommendation of the local planning agency.
- (3) **Decisions and authority.** The decision of the town council Board of County Commissioners on any proposed land use ordinance amendment or adoption is final.
- (4) **Appeals.** Appeals of any decision concerning land use ordinance amendments or adoption shall be taken in accordance with applicable state law.

Sec. 34-84. General procedures for (b) zoning actions on specific zoning applications.

- (1) **Function. a:** The town council Board of County Commissioners shall hold public hearings (see §§ 34-231 through 34-265 division 7 of this article) on the following applications: rezonings, appeals from administrative actions, variances, the special exceptions that meet the criteria for developments of county impact, and developments of regional impact, and any other action in conjunction with such applications.

- ~~b. All requests for variances, special exceptions and special permits which are part of an application for a rezoning shall be considered by the Board of County Commissioners with the application for rezoning and heard together with and at the same time as the rezoning.~~
- (2) **Prior hearings.** Public hearings before the town council shall be held after the local planning agency has held its hearing on these applications and rendered its formal recommendation to the town council, except for appeals of administrative actions, applications for interpretations of this code, and certain interpretations of the comprehensive plan, which shall require only a single public hearing before the town council.
- (2) **Considerations.** In rendering its decision, the Board of County Commissioners shall consider the following:
- a. The criteria set forth in § 34-145(c)(2).
 - b. ~~The substantive recommendation of the hearing examiner when applicable.~~
- (3) **Decisions and authority.**
- a. In exercising its authority, the town council Board of County Commissioners shall consider the recommendation of the local planning agency where applicable hearing examiner, but may, in conformity with the provisions of this chapter, reverse, affirm, or modify the recommendation ~~of the hearing examiner~~, or remand the recommendation to afford due process.
 - b. The town council Board of County Commissioners shall not approve any rezoning action other than that the rezoning published in the newspaper unless such change is more restrictive than the proposed rezoning published.
 - c. The town council Board of County Commissioners has the authority to attach conditions and requirements to any approval of a request for a special permit, special exception, development of regional impact, planned development rezoning, or variance within their purview, deemed necessary for the protection of the health, safety, comfort, convenience, or welfare of the general public. Such conditions or requirements must be reasonably related to the action requested.
- d. The decision of the town council Board of County Commissioners on any matter listed in this subsection (b) is final. If a decision of approval is not obtained, or if a tie vote results from a motion to grant a request or from a motion to deny a request, then the matter being considered shall be deemed to have been denied, unless a majority of the members present and voting agree by motion, before the next agenda item is called, to take some other action in lieu of denial. Such other action may be moved or seconded by any member, regardless of his vote on any earlier motion.
- (4) **Denials.** *[relocated from § 34-211]* Any denial by the Board of County Commissioners is denial with prejudice unless otherwise specified by the Board of County Commissioners (see § 34-211):
- a. **Denial with prejudice.**
 1. Except when specifically stated otherwise, a denial by the town council hearing examiner or Board of County Commissioners is a denial with prejudice.
 2. If an application is denied with prejudice, no similar application for rezoning, special exception, or variance or special permit covering the same property, or portion of the property, shall be resubmitted or initiated for a period of 12 months from the date of denial. However, this shall not preclude the application for a different rezoning, special exception, or variance or special permit which in the opinion of the director administrative official is substantially different from the request originally denied.
 - b. **Denial without prejudice.**
 1. When the town council hearing examiner or Board of County Commissioners denies without prejudice any application, it is an indication that, although the specifically requested action is denied, the town council hearing examiner or board is willing to consider the same request after modifications have been made, or an application for other action, without the applicant having to wait 12 months

before applying for consideration of the modified request or other action.

2. Any resubmitted application shall clearly state the modifications which have been made to the original request or other changes made in the application.
- (5) **Rehearings.** Any rehearings of decisions under this section shall be in accordance with § 34-93.
- (6) **Special master.** Final decisions under this section may be the subject of a request for relief under F.S. § 70.51 or 70.001 (see §§ 34-94 and 34-95).
- (7) ~~(4)~~ **Judicial review.** Judicial review of final decisions under this section shall be in accordance with section 34-85 96.

Sec. 34-85. Rezoning.

- (1) **Function.** The town council shall hear and decide all applications for changes in zoning district boundaries.
- (2) **Considerations.** In reaching its decision, the town council shall consider the following, whenever applicable:
 - a. Whether there exists an error or ambiguity which must be corrected.
 - b. Whether there exist changed or changing conditions which make approval of the request appropriate.
 - c. The impact of a proposed change on the intent of this chapter.
 - d. The testimony of any applicant.
 - e. The recommendation of staff and of the local planning agency.
 - f. The testimony of the public.
 - g. Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.
 - h. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
 - i. Whether urban services are, or will be, available and adequate to serve a proposed land use change.
 - j. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
 - k. Whether the request will be compatible with existing or planned uses and not cause

damage, hazard, nuisance, or other detriment to persons or property.

1. Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
- m. For planned development rezonings, see § 34-216 for additional considerations.
- (3) **Findings.** Before granting any rezoning, the town council shall find that the requested zoning district complies with:
 - a. The Fort Myers Beach Comprehensive Plan.
 - b. This chapter.
 - c. Any other applicable town ordinances or codes.
 - d. For planned development rezonings, see § 34-216 for additional findings.
- (4) **Authority.**
 - a. When rezoning land to conventional zoning districts or redevelopment districts (see §§ 34-612(1) and (2)), the town council shall not impose any special conditions or requirements beyond those contained in this code, except as authorized by subsections 34-87(4)b. related to variances and 34-88(4)b. related to special exceptions.
 - b. In reaching decisions on planned development rezonings (see § 34-612(3)), the town council shall proceed in accordance with § 34-216 and shall have the authority to adopt a master concept plan, establish permitted uses, attach special conditions, and grant deviations from this code in accordance with §§ 34-932–933.

Sec. 34-86. (a) Appeals from administrative action. [moved from § 34-145]

- (1) **Function.** The town council hearing examiner will hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, determination, or action of any administrative official charged with the administration and enforcement of the provisions of this code, chapter or any other ordinance or portion of this code which provides for similar review; provided, however, that:

- a. No appeal to the town council hearing examiner shall lie from any act by such administrative official pursuant to:
 1. An order, resolution, or directive of the town council Board of County Commissioners directing him to perform such act; or
 2. Any ordinance or other regulation or provision in this code which provides a different appellate procedure.
- b. The appeal to the town council hearing examiner shall be in writing on forms provided by the director hearing examiner, and shall be duly filed with the hearing examiner within 30 calendar days, but not thereafter, after such act or decision by the administrative official. The appeal shall specify the grounds for the appeal.
- c. No appeal shall be considered by the town council hearing examiner where it appears to be a circumvention of an established or required procedure. Specifically, in no case may an appeal be heard when the town council hearing examiner determines that the case should more appropriately be heard on a request for a variance.
- d. Appeals from administrative action do not require a public hearing before the local planning agency. Notices of hearings on appeals shall be provided in accordance with the provisions of an applicable administrative code which shall be adopted by the Board of County Commissioners.
- e. No appeal will be considered by the hearing examiner for any challenge to a development order which is controlled by F.S. § 163.3215. In cases of challenges to development orders controlled by F.S. § 163.3215, no suit may be brought and no verified complaint, as explained in F.S. § 163.3215(4), may be filed or accepted for filing until the development order giving rise to the complaint has become final by virtue of its having been issued by the director, or by virtue of its having been ordered by the county hearing examiner on an appeal reversing the director's denial of the development permit, or by the Board of County Commissioners in cases where the Board of County Commissioners has granted planned development zoning or an extension of a development order. Once a development order has been granted, the

provisions of F.S. § 163.3215 will be the sole means of challenging the approval or denial of a development order, as that term is defined in F.S. § 163.3164(6), when the approval of the development order is alleged to be inconsistent with the Lee Plan, in which case an action brought pursuant to F.S. § 163.3215 will be limited exclusively to the issue of comprehensive plan consistency.

- f. Except as may be required by F.S. § 163.3215, and then only pursuant to that statute, a third party shall not have standing to appeal an administrative decision granting or denying any development permit. Only the applicant or his agent shall be permitted to appeal such administrative action as set forth in this subsection (a).

(2) **Considerations.**

- a. In reaching its his decision, the town council hearing examiner shall consider the following criteria, as well as any other issues which are pertinent and reasonable:
 1. Whether ~~or not~~ the appeal is of a nature properly brought ~~to him~~ for decision, or whether ~~or not~~ there is an established procedure for handling the request other than through the appeal process (i.e., a variance or special exception, etc.).
 2. The intent of the ordinance which is being applied or interpreted.
 3. The effect the ruling will have when applied generally to this code the ordinance which will be affected by the hearing examiner's decision.
- b. Staff recommendations, the testimony of the appellant, and testimony of the general public shall also be considered.

(3) **Authority.**

- a. In exercising its his authority, the town council hearing examiner may reverse, affirm, or modify any decision or action of any administrative official charged with the administration or enforcement of this chapter.
- b. Subject to the limitations set forth in subsection (a)(3)a of this section, the hearing examiner may make a decision to take the appropriate action which the hearing examiner finds the administrative official should have taken. To that end, he

shall have the powers of the administrative official from whom the appeal is taken.

- (4) ~~Judicial review.~~ Judicial review of final decisions of the hearing examiner with respect to administrative actions are to the circuit court in accordance with § 34-146.

Sec. 34-87. (b) Variances. [moved from § 34-145]

- (1) **Function.** The town council hearing examiner shall hear and decide all requests for variances from the terms of the regulations or restrictions of this code (except for administrative setback variances as provided in § 34-268) chapter and such other ordinances which assign this responsibility to the town council as may be assigned to him by the Board of County Commissioners, except that no use variance as defined in this chapter shall be heard or considered.
- (2) **Considerations.** In reaching its ~~his~~ decision, the town council hearing examiner shall consider the following criteria, recommendations and testimony:
- Whether the facts support the five required findings in subsection (3) below; That exceptional or extraordinary conditions or circumstances exist which are inherent in the land, structure, or building involved and such exceptional or extraordinary conditions or circumstances create a hardship on the property owner and are not generally applicable to other lands, structures or buildings;
 - That the exceptional or extraordinary conditions or circumstances do not result from the actions of the applicant;
 - That literal interpretation of the provisions of the section of this chapter would deprive the applicant of rights commonly enjoyed by properties in the same district under terms of this chapter;
 - That granting the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare;
 - Staff recommendations and local planning agency recommendations;
 - Testimony from the applicant; and
 - Testimony from the public.
- (3) **Findings.** Before granting any variance, the town council must hearing examiner shall find that all of the following exist:

- 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;~~
 - That the exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken ~~subsequent to~~ after the adoption of the regulation in question; 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);
 - 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;
 - That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
 - 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 a nature as to make it more reasonable and practical to amend the regulation in question; ordinance.
- (4) **Authority.**
- The town council has hearing examiner shall have the authority to grant or deny, or modify, any request for a variance from the regulations or restrictions of this code chapter; provided, however, that no use variance as defined in this chapter, or any variance from definitions or procedures set forth in any ordinance, shall be granted.
 - In reaching its ~~his~~ decision, the town council has hearing examiner shall have the authority to attach such conditions and requirements ~~as are necessary~~ for the protection of the health, safety, comfort, convenience and welfare of the general public. Such conditions or requirements shall be reasonably related to the variance requested.
 - ~~Variances may be reviewed by themselves or as part of a rezoning.~~

~~d. All decisions of the hearing examiner concerning variances filed as part of a rezoning shall be in the form of a recommendation to the Board of County Commissioners. Only a party of record or his representative shall be afforded the right to address the Board of County Commissioners.~~

~~(5) *Judicial review.* Judicial review of final decisions of the hearing examiner with respect to variances are to the circuit court in accordance with § 34-146.~~

Sec. 34-88. (c) Special exceptions. [moved from § 34-145]

- (1) ***Function.*** The town council hearing examiner shall hear and decide all applications for special exceptions permitted by the district use regulations.
- (2) ***Considerations.*** In reaching ~~its~~ his decision, the town council hearing examiner shall consider the following, whenever applicable:
 - ~~a. Whether there exists an error or ambiguity which must be corrected.~~
 - ~~a. b.~~ Whether there exist changed or changing conditions which make approval of the request appropriate.
 - ~~c.~~ The impact of a proposed change on the intent of this chapter.
 - ~~b. d.~~ The testimony of any applicant.
 - ~~c. e.~~ The recommendation of staff and of the local planning agency.
 - ~~d. f.~~ The testimony of the public.
 - ~~e. g.~~ Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Lee Plan.
 - ~~f. h.~~ Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
 - ~~i. Whether urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve a proposed land use change, when proposing a change to a future urban area category.~~
 - ~~g. j.~~ Whether the request is consistent with the densities, intensities and general uses set forth in the Fort Myers Beach Comprehensive Lee Plan.
 - ~~h. k.~~ Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

~~i. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.~~

~~m. Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.~~

~~j. n. Whether a requested use will be in compliance with all applicable general zoning provisions and supplemental regulations pertaining to the use, as set forth in this chapter.~~

~~o. Whether a proposed change is to rectify errors on the official zoning map.~~

- (3) ***Findings.*** Before granting any special exceptions, the town council hearing examiner shall find that the applicant has proved entitlement to the special exception by demonstrating compliance with:
 - a. The Fort Myers Beach Comprehensive Lee Plan;
 - b. This chapter; and
 - c. Any other applicable town county ordinances or codes.
- (4) ***Authority.***
 - a. The town council hearing examiner shall grant the special exception unless ~~it~~ he finds that granting the special exception is contrary to the public interest and the public health, safety, comfort, convenience and welfare of the citizens of the town county, or that the request is in conflict with the criteria in subsection (c)(3) of this section.
 - b. In reaching ~~its~~ his decision, the town council has hearing examiner shall have the authority to attach ~~such~~ conditions and requirements ~~as are~~ necessary for the protection of the health, safety, comfort, convenience, or welfare of the general public. Such conditions or requirements shall be reasonably related to the special exception requested.
 - ~~c. Special exceptions may be reviewed by themselves or as a part of a rezoning.~~
 - ~~d. All decisions of the hearing examiner concerning special exceptions filed as part of a rezoning or that meet the criteria for a development of county impact shall be in the form of a recommendation to the Board~~

~~of County Commissioners. Only a party of record or his representative shall be afforded the right to address the Board of County Commissioners.~~

- ~~(5) *Judicial review.* Judicial review of final decisions of the hearing examiner with respect to special exceptions are to the circuit court in accordance with § 34-146.~~

Sec. 34-89. Developments of regional impact.

The town council shall hold public hearings on all applications for developments of regional impact, in accordance with the requirements of ch. 380, Florida Statutes. If a proposed development of regional impact also requires a rezoning and/or a comprehensive plan amendment, the public hearings shall be held simultaneously provided that all advertising requirements for the individual applications can be met.

Sec. 34-90. Land development code interpretations.

The town council may hear and decide applications for interpretations of this code as provided in § 34-222. Such applications shall not require a public hearing or recommendation from the local planning agency.

Sec. 34-91. Comprehensive plan interpretations.

The town council will hear and decide applications for interpretations of the Fort Myers Beach Comprehensive Plan as permitted by ch. 15 of that plan. The following types of applications will be accepted:

- (1) *Equitable estoppel.* In circumstances where development expectations conflict with the comprehensive plan but judicially defined principles of equitable estoppel may override the otherwise valid limitations imposed by the plan, such expectations may be recognized by the town through a resolution of the town council. Such applications shall not require a public hearing or recommendation from the local planning agency.
- (2) *Appeals of administrative interpretations.* Persons or entities whose interests are directly affected by the comprehensive plan have the right to certain administrative interpretations of the plan as described in

ch. 15 of the plan. That section specifies the following procedures for appealing an administrative interpretation:

- a. *An administrative interpretation may be appealed to the town council by filing a written request within fifteen days after the administrative interpretation has issued in writing. In reviewing such an appeal, the town council shall consider only information submitted in the administrative interpretation process and shall review only whether the proper standards set forth in the comprehensive plan have been applied to the facts presented. No additional evidence shall be considered by the town council.*
 - b. *The town council shall conduct such appellate review at a public meeting to be held within thirty days after the date of the written request for appeal. The town council may adopt the administrative interpretation being appealed, or may overrule it, with a written decisions to be rendered by the town clerk in writing within thirty days after the date of the hearing.*
- (3) *Legislative interpretations.* In order to apply the plan consistently and fairly, it will be necessary from time to time to interpret provisions in the plan in a manner which insures that the legislative intent of the town council which adopted the plan be understood and applied by subsequent councils, town employees, private property owners, and all other persons whose rights or work are affected by the plan. When the plan is interpreted, it should be done in accordance with generally accepted rules of statutory construction, based upon sound legal advice, and compiled in writing in a document which can be a companion to the plan itself.
- a. *Requests.* Requests for legislative interpretations may be made by any town council member, the town manager, the local planning agency, or any applicant for a type of development regulated by the plan.
 - b. *Local planning agency.* Upon receiving a request and written recommendations from the town manager, the local planning agency shall review the same and forward them to the town council with its comments and recommendations.

c. **Town council.** Upon receiving the recommendations of the local planning agency, the town council shall render a final decision as to the correct interpretation to be applied. This interpretation shall be that which is adopted by absolute majority of the town council, and, upon being reduced to a resolution drafted in response to the council majority, it shall be signed by the mayor and recorded in the town's official records. The town clerk shall be responsible for maintaining copies of all such resolutions in a single document which shall be appropriately indexed and provided to all persons upon request. The document shall be updated regularly and the latest version thereof furnished to all persons requesting copies of the plan itself.

d. **Legal effect of legislative interpretations.** Any provision of the plan specifically construed in accordance with the foregoing procedures may not be re-interpreted or modified except by a formal amendment of the plan itself. Once formally adopted in accordance with these procedures, the interpretation shall have the force of local law and all persons shall be placed on constructive notice of it. Any development orders issued in reliance on legislative interpretations of this plan are subject to challenge under the provisions of F.S. § 163.3215.

Sec. 34-92. Comprehensive plan amendments.

(a) Amendments to any part of the Fort Myers Beach Comprehensive Plan may be proposed by private parties. All amendments requested during a calendar year will be considered simultaneously with any public amendment proposals put forth by the town council or local planning agency.

(b) Private applications for amendments must be received at town hall by the last business day of the calendar year. Amendment proposals do not need to include all of the information required by § 34-201, but must be sufficient to identify the parties making the request and the exact nature of the request, and must provide adequate supporting material in support of the request.

(c) Proposals to amend the Future Land Use Map must meet Comprehensive Plan Policy 4-C-10.

Sec. 34-93 84. Rehearing of decisions.

(a) **Timely filing.** Any person who may be aggrieved by any decision of the ~~town council Board of County Commissioners~~ made pursuant to an application for rezoning, development of regional impact, ~~administrative appeal, special exception that meets the criteria of a development of county impact, or special exceptions, or variances or special permits heard as part of a rezoning may,~~ within 30 calendar days after such decision, but not thereafter, file a written request with the county administrator or his designee a request in writing for a public rehearing before by the town council to modify or rescind its decision. Board of County Commissioners for a modification or rescission thereof. The request must be filed with the director within 15 calendar days after the decision. For purposes of ~~computing the 15-~~ computation of this 30-day period, the date of the decision ~~is shall be~~ the date of the public hearing at which the ~~town council Board of County Commissioners~~ made such decision by oral motion.

(b) **Written request and response.** All requests for a public rehearing shall state with particularity ~~the any~~ new evidence or the points of law or fact which the aggrieved person argues the ~~town council Board of County Commissioners~~ has overlooked or misunderstood, and must include all documentation offered to support the request for a rehearing. In addition, if the request is filed made by one other than the original applicant, the ~~director county~~ shall notify the applicant of the filing of the request for a rehearing and the applicant shall be allowed 15 days to submit an his independent written analysis.

(c) **No oral testimony.** The ~~town council Board of County Commissioners~~ shall decide whether to grant or deny the request for a rehearing based exclusively upon the ~~aggrieved person's~~ written request, ~~and~~ supporting documentation, any response, and the director's and/or town manager's administrator's written analysis thereof. The deliberations of the ~~town council Board of County Commissioners~~ with respect to the question of whether to grant a rehearing do not constitute a public hearing, and no oral testimony shall be allowed or considered by the ~~town council Board of~~

County Commissioners in the course of these deliberations.

~~(d) (e) **Judicial review.** An aggrieved person need not request a~~ The pursuit of a request for rehearing is not required in order to exhaust his administrative remedies as a condition precedent to seeking judicial review in filing an appeal to the circuit court. The proper filing of a request petition for rehearing will not toll the 30-day time limit set forth for to file an action seeking judicial review of final decisions, in § 34-85. If a rehearing request is refused, or if the request is granted but modification or rescission of the original motion of the Board of County Commissioners is denied, any aggrieved person may, within 30 calendar days after such refusal or denial, apply for judicial review of the original motion in accordance with § 34-85. No judicial review is available to review the town council's Board of County Commissioners² decision to deny refuse a rehearing request.

(e) A request for rehearing is not an administrative appeal as that term is used in F.S. § 70.51. Filing a request for rehearing will not toll the time for filing a request for relief under F.S. § 70.51.

(f) Filing of a request for rehearing will not toll the time for seeking relief under F.S. § 163.3215.

~~(d) There shall be no right to apply to court for relief on account of any determination or recommendation of the hearing examiner in those actions listed in § 34-83(b)(1) which require public hearing before the Board of County Commissioners.~~

Sec. 34-94. Special master proceedings under the Florida land use and environmental dispute resolution act (F.S. § 70.51)

(a) **Special master proceedings.** Special master proceedings may be requested by landowners who believe that action on a development order or enforcement of this code is unreasonable or unfairly burdens the use of their property. Special master proceedings are a non-judicial approach to resolving land-use disputes and will be conducted in accordance with state law and any administrative codes designated for that purpose.

(b) **Implementation of special master recommendation.** If the town council elects to adopt

the recommendation of any duly-appointed special master, the landowner will not be required to duplicate processes in which the owner previously has participated in to effectuate the recommendation.

(c) **Modification of special master recommendation.** The town council may elect to modify a special master's recommendation and implement it by development agreement, where applicable, or by other method in the ordinary course and consistent with the town's rules and procedures, so long as it does not require the duplication of processes in which the owner has participated in to effectuate the council's will.

(d) **Waiver of procedural requirements.** In order to implement the recommendation of a special master, or a modification of that recommendation, the town council has the authority to waive any or all procedural requirements contained in town ordinances or administrative codes and to directly exercise all authority otherwise delegated to the local planning agency, the town manager or designees, or any other part of town government.

Sec. 34-95. Proceedings under the Bert J. Harris, Jr., private property rights protection act (F.S. § 70.001).

(a) **Offers of Settlement.** Within 180 days of the filing of a notice of intent to file a claim under this act, the town may offer to resolve the claim by way of a settlement offer that includes an adjustment of the initial government action. Settlement offers may entail:

- (1) an increase or modification to density, intensity, or use of the owner's property, so long as the density, intensity, and use remain consistent with Fort Myers Beach Comprehensive Plan.
- (2) the transfer of development rights;
- (3) land swaps or exchanges;
- (4) compensation and purchase of the property or property interest, or
- (5) issuance of a development permit or order.

(b) The parties to a dispute arising under the Bert J. Harris, Jr., private property rights protection act may craft settlements that exceed the town's statutory or ordinance authority provided the parties jointly file a judicial action for court approval of the settlement.

(c) In order to implement a settlement offer, the town council has the authority to waive any or all procedural requirements contained in town ordinances or administrative codes and to directly exercise all authority otherwise delegated to the local planning agency, the town manager or designees, or any other part of town government.

Sec. 34-96 85. Final decision; judicial review.

(a) Any final zoning decision of the town council on a specific application Board of County Commissioners may be reviewed by the circuit court unless otherwise provided in this article. Except for review of verified complaints filed pursuant to F.S. § 163.3215, jurisdiction for review of any final decision of the Board of County Commissioners lies exclusively in circuit court. This review may only be obtained through filing a petition for writ of certiorari pursuant to the Florida Rules of Appellate Procedure. Any such petition must be filed within 30 calendar days after the decision has been rendered. For the purposes of computing the 30-day period, the date that the decision has been rendered is the date of the public hearing at which the town council Board of County Commissioners made such decision by oral motion.

(b) The person making application to the town council Board of County Commissioners for any final decision that is entitled to judicial review is a necessary and indispensable party to any action seeking judicial review of that final decision.

(c) This section is not intended to preclude actions pursuant to F.S. § 70.51 (see § 34-94), or actions pursuant to § 163.3215 that challenge consistency of any final zoning decision on a specific application with the Fort Myers Beach Comprehensive Plan.

Secs. 34-97 86--34-110. Reserved.

DIVISION 3. LOCAL PLANNING AGENCY

NOTES:

— Previous §§ 34-111–34-115 regarding Lee County’s local planning agency are repealed in their entirety.

— New §§ 34-111–34-120 and 34-123 below incorporate and will replace Fort Myers Beach

Ordinances No. 96-02, 96-25, and 00-03, which established the town’s local planning agency.

Sec. 34-111. Agency established.

The Town of Fort Myers Beach local planning agency (LPA) is hereby established.

Sec. 34-112. Purpose and scope.

The broad objectives of town planning and the creation of the local planning agency are to further the welfare of the citizens of the town by helping to promote a better, more helpful, convenient, efficient, healthful, safe, and attractive community environment and to insure that the unique and natural characteristics of the island are preserved.

Sec. 34-113. Composition, appointment, and compensation of members.

(a) The local planning agency shall consist of not less than seven nor more than nine members appointed by the town council. No members of the local planning agency shall be salaried officials of the town.

(b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.

(c) In addition to the seven to nine voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).

Sec. 34-114. Members’ terms and vacancies.

(a) The term of office of a member of the local planning agency shall be staggered three years or until a successor has been appointed and has qualified, except that the respective terms of the members first appointed shall be two for one year, three for two years, and two for three years.

(b) Appointments shall be made annually at the first meeting of the council in January. Vacancies in the local planning agency shall, within thirty days, be filled by the council for the remainder of the term created by such vacancy.

Sec. 34-115. Forfeiture of office.

A local planning agency member shall forfeit office if the member:

- (1) Lacks at any time during the term of office any qualification for the office prescribed by town ordinance or state law; or
- (2) Violates any standard of conduct or code of ethics established by law for public officials; or
- (3) Is absent from three consecutive regular local planning agency meetings without being excused by the local planning agency.

Sec. 34-116. Election and duties of officers.

(a) The local planning agency shall elect a chairperson and a vice-chairperson each year at the first meeting of the newly appointed members.

(b) It shall be the duty of the chairperson to preside over all meetings of the local planning agency. In the absence of the chairperson, the vice-chairperson may preside.

Sec. 34-117. Clerk.

The town manager or designee shall be the clerk of the local planning agency. It shall be the duty of the clerk to keep a record of all proceedings of the local planning agency, transmit its recommendations when directed by the chairperson, maintain an updated complete file of all its proceedings at town hall, and perform such other duties as are usually performed by the clerk of a deliberative body.

Sec. 34-118. Rules and procedures.

The local planning agency shall meet at least eight times per year and shall meet no less often than bimonthly or more frequently at regular intervals to be determined by it, and at such other times as the chairperson or as it may determine. It may adopt rules for the transaction of its business. The rules may be amended from time to time, but only upon notice to all members that said proposed amendments shall be acted upon at a specified

meeting. A majority vote of the local planning agency shall be required for the approval of the proposed amendment. It shall keep a properly indexed record of its resolutions, transactions, findings, and determinations, which record shall be a public record. All meetings of the local planning agency shall be public meetings.

Sec. 34-119. Employment of staff and experts.

The local planning agency may, subject to the approval of the town council and within the financial limitations set by appropriations made or other funds available, recommend the town manager employ such experts, consultants, technicians and staff as may be deemed necessary to carry out the functions of the local planning agency. Such technical assistance to the local planning agency shall be under the day-to-day supervision of the town manager.

Sec. 34-120. Specific functions, powers, and duties as to comprehensive planning and land development regulations.

The functions, powers, and duties of the local planning agency as to comprehensive planning and adoption of land development regulations shall be to:

- (1) Acquire and maintain such information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions, and provide data for estimates of future conditions. Such information and material may include maps and photographs of man-made and natural physical features, statistics on trends and present and future estimated conditions with respect to population, property values, economic base, land uses, municipal services, various parameters of environmental quality, and such other information as is important or likely to be important in determining the amount, direction and kind of development to be expected in the town and its various parts and the necessary regulation thereof to insure that the unique and natural characteristics of the island be preserved.
- (2) Prepare principles and policies for guiding land uses and development in the town in order to preserve the unique and natural characteristics of the island, to overcome the

- island's present handicaps, and to prevent or minimize future problems.
- (3) Make or cause to be made any necessary special studies on the location, condition, and adequacy of specific facilities in the town or portion thereof. These may include, but are not limited to, studies on housing, commercial facilities, utilities, traffic, transportation, parking, and emergency evacuation.
 - (4) Review proposed land development codes and amendments thereto, and make recommendations to the town council as to their consistency with the comprehensive plan.
 - (5) Recommend to the town council annually whether the proposed capital improvements program is consistent with the comprehensive plan.
 - (6) Make administrative interpretations of the comprehensive plan when such interpretations are referred to the local planning agency by its legal counsel, in accordance with the ch. 15 of the comprehensive plan and § 34-124(3).
 - (7) Request legislative interpretations of the comprehensive plan in accordance with ch. 15 of that plan, when deemed appropriate by the local planning agency.
 - (8) Make recommendations to the town council on legislative interpretations that have been requested in accordance with ch. 15 of the comprehensive plan.
 - (9) Recommend action to the town council on any amendments that are proposed to the comprehensive plan.
 - (10) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the town council such changes in the comprehensive plan as may from time to time be required, including preparation of the periodic evaluation and appraisal reports required by F.S. § 163.3191.
 - (11) Conduct such public hearings as may be needed for updating the comprehensive plan and such additional public hearings as are specified by law.
 - (12) Aid town officials charged with the direction of projects or improvements embraced within the comprehensive plan and generally promote the realization of the comprehensive plan.

- (13) Cooperate with municipal, county and regional planning commissions and other agencies or groups to further the local planning program and to assure harmonious and integrated planning for the area.
- (14) Perform any other duties which lawfully may be assigned to it by the town council.

Sec. 34-121. Functions, powers, and duties as to zoning matters.

The functions, powers, and duties of the local planning agency as to zoning matters shall be to:
[following material moved from 34-145(d)]

(d) Zoning matters.

- (1) ~~Functions.~~ Regarding zoning matters, the hearing examiner has the following prescribed duties and responsibilities:
 - (1) a: Prepare recommendations for changes or amendments relating to the boundaries of the various zoning districts, or to the regulations applicable thereto, to the town council Board of County Commissioners.
 - (2) b: Make recommendations on the following to the town council Board of County Commissioners:
 - a. 1: Applications for rezonings; including developments of county impact, planned unit developments and planned developments.
 - b. 2: Applications for developments of regional impact and Florida Quality Developments approval, which may or may not include a request for rezoning.
 - c. 3: Special exceptions that meet the criteria for a development of county impact, as set forth in § 34-203(b).
 - d. 4: Other special exceptions and variances which are submitted simultaneously with and are heard in conjunction with a rezoning.
 - e. 5: Variances from this code and any town county ordinance which specifies that variances from such ordinance can only be granted by the town council Board of County Commissioners.
 - f. Any other applications that require action by the local planning agency pursuant to this code.
 - c. Certain amendments to development of regional impact development orders do not require a public hearing. After staff review and recommendation, proposed

amendments of this type will proceed directly to the Board of County Commissioners and will be scheduled on the administrative agenda of a regular weekly meeting. The board will vote on the following types of amendments based upon the recommendation of staff without review by the hearing examiner:

1. Amendments that incorporate the terms of a settlement agreement designed to resolve pending administrative litigation or judicial proceedings; or
2. Any amendment contemplated under F.S. § 380.06(19)(c)2.

- (2) *Considerations.* In preparing his recommendation on any matter, the hearing examiner shall consider the criteria set forth in subsection (c)(2) of this section.
- (3) *Authority.*
- a. The local planning agency hearing examiner shall serve in an advisory capacity to the town council Board of County Commissioners with respect to zoning matters as set forth in subsections (1) and (2) ~~(d)(1)~~ of this section, and in such capacity may not make final determinations.
 - b. The local planning agency hearing examiner shall not recommend the approval of a rezoning, and the town council Board of County Commissioners shall not approve a rezoning, other than the change published in the newspaper pursuant to § 34-236(b), unless such change is more restrictive and permitted within the land use classification as set forth in the Fort Myers Beach Comprehensive Lee Plan.
 - c. In reaching its his recommendations, the local planning agency hearing examiner shall have the authority to recommend conditions and requirements to be attached to any request for a planned development, special exception, or variance included under subsection (d)(1)b.3, 4 or 5 of this section.
- ~~(4)~~ *Decisions.* All decisions of the hearing examiner concerning zoning matters under this subsection (d) will be in the form of a recommendation to the Board of County Commissioners. Only a party of record or his representative will be afforded the right to address the Board of County Commissioners.

Sec. 34-122. Functions, powers, and duties as to historic preservation.

The powers, and duties of the local planning agency regarding historic preservation shall include performing all functions assigned to the historic preservation board as set forth in ch. 22, article II, division 2.

Sec. 34-123. Cooperation with the local planning agency.

Each officer and employee of the town is hereby directed to give all reasonable aid, cooperation, and information to the local planning agency or to the authorized assistants of such agency when so requested.

Sec. 34-124. Legal counsel to the local planning agency.

The local planning agency have its own legal counsel, whose duties shall include:

- (1) Advising the local planning agency as to its legal responsibilities and options during the conduct of its business.
- (2) Preparing resolutions reflecting actions of the local planning agency.
- (3) Issuing administrative interpretations of the Fort Myers Beach Comprehensive Plan or referring requests for such interpretations to the local planning agency (see § 34-120(6)) when applications are submitted to the town clerk in accordance with chapter 15 of the comprehensive plan.

Secs. 34-125~~16~~--34-200~~140~~. Reserved.

DIVISION 4. HEARING EXAMINER

~~Sec. 34-141. Office established: [deleted in its entirety]~~

~~Sec. 34-142. Appointment, qualifications: [deleted in its entirety]~~

~~Sec. 34-143. Funding: [deleted in its entirety]~~

~~Sec. 34-144. Conduct of meetings; reports and records: [deleted in its entirety]~~

~~Sec. 34-145. Functions and authority.~~

~~(a) Appeals from administrative action: [moved to § 34-86]~~

~~(b) Variances: [moved to § 34-87]~~

~~(c) Special exceptions: [moved to § 34-88]~~

- (d) *Zoning matters*: [moved to §§ 34-85 and 34-121]
- (e) *Special permits*: [deleted in its entirety]
- (f) *Notice of intent to deny based on insufficient information*: [deleted in its entirety]

Sec. 34-146. Final decision; judicial review: [deleted in its entirety]

Secs. 34-1417--34-170. Reserved.

DIVISION 5:
DEPARTMENT OF COMMUNITY
DEVELOPMENT

Sec. 34-171. Appointment of director: [deleted in its entirety]

Sec. 34-172. Powers and duties: [deleted in its entirety; relevant portions have been moved to §§ 1-6 and 34-6]

Secs. 34-173--34-200. Reserved.

**DIVISION 4 6. APPLICATIONS AND
PROCEDURES FOR CHANGES, PERMITS,
INTERPRETATIONS, AND APPROVALS**

Subdivision I. General Procedures

Sec. 34-201. General procedure for applications requiring public hearing.

(a) **Initiation of application.** An application for a rezoning, development of regional impact, special exception, appeal from administrative action, ~~special permit~~ or variance may be initiated by:

- (1) A landowner, or his authorized representative agent, for his own property; provided, however, that:
 - a. Except as provided in subsections (a)(1)b. and c. of this section, where there is more than one owner, either legal or equitable, then all such owners must jointly initiate the application or petition.
 - 1. This ~~does not mean shall not be construed to require~~ that both a husband and wife must initiate the application on private real property which is owned by them.

- 2. Where the property is subject to a land trust agreement, the trustee may initiate the application.
 - 3. Where the fee owner is a corporation, any duly authorized corporate official may initiate the application.
 - 4. Where the fee owner is a partnership, the general partner may initiate the application.
 - 5. Where the fee owner is an association, the association or its governing body may appoint an agent to initiate the application on behalf of the association.
- b. Where the property is a condominium or a timeshare condominium, as defined and regulated in F.S. chs. 718 and 721, respectively, an application or petition may be initiated by both the condominium association and no less than 75 percent of the total number of condominium unit owners, or by both the owners' association and no less than 75 percent of timeshare condominium unit owners.
- 1. For purposes of this subsection, each individually owned condominium unit within the condominium complex and each individually owned timeshare unit as defined by F.S. ch. 721 counts as one unit, regardless of the number of individuals who jointly own the unit.
 - 2. In order to verify ownership, the applicants shall furnish the town county, as part of their application, a complete list of all unit owners, identified by unit number and timeshare period, as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants, who shall verify the list and fact of notice by sworn affidavit.
 - 3. So as to protect the legal rights of nonparticipating unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents or timeshare documents, as applicable, and concluded that the act of applying or petitioning to the town county violates

none of the provisions therein, or any federal or state law regulating condominiums or timeshare plans, or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town county would violate no such rights.

- c. Where the property is a subdivision, an application or petition may be initiated by no less than 75 percent of the total number of lot or parcel owners and the homeowners' association, if applicable.
 1. For purposes of this subsection, a subdivision is an area of property defined by a specific boundary in which lot divisions have been established on a plat that has been recorded in either a plat book or official records book whereby legal descriptions are referred to by lot or parcel number. This term may include any unit or phase of the subdivision and not the entire subdivision.
 2. In order to verify ownership, the applicants shall furnish the town county, as part of their application, a complete list of all lot owners, identified by lot number, along with proof that all lot owners who did not join in the application were given actual written notice thereof by the applicants, who shall verify the list and fact of notice by sworn affidavit.
- (2) The town county, which for purposes of this section shall mean: the town council or town manager.
 - a. ~~The Board of County Commissioners.~~
 - b. ~~The hearing examiner, subject to approval by the Board of County Commissioners.~~

(b) Application submittal and official receipt procedure. The application procedure and requirements in this section shall apply to all applications for rezoning, special exceptions, appeals from administrative action, special permits and variances.

- (1) All properties within a single application must be abutting contiguous. The director may, at his discretion, allow a single application to cover non-abutting noncontiguous properties where it is in the public interest due to the size or scope and

nature of the request, and there is a rational continuity to the properties in question.

- (2) No application shall be accepted unless it is presented on the official forms provided by the director department, or on computer-generated forms containing the same information, ~~accompanied by a hold harmless agreement for the utilization of computer-generated forms.~~
 - a. Forms shall include but not be limited to disclosure forms for corporations, trusts, and partnerships, and disclosure of information regarding contract purchases and their percentages of interest.
 - b. Disclosure shall not be required of any entity whose interests are solely equity interests which are regularly traded on an established securities market in the United States or another country.
 - c. Disclosure forms shall be provided by the director ~~established by an administrative code to be approved by the Board of County Commissioners.~~ Such completed disclosure forms shall be included in the materials distributed to the local planning agency zoning hearing examiner and the town council Board of County Commissioners for all zoning cases in which the Board of County Commissioners has the final decision or for which jurisdiction has been taken.
 - d. Subsections (b)(2)a. through c. of this section shall not apply to town- county- initiated rezonings.
- (3) Before an application may be accepted, it must fully comply with all information requirements enumerated in § 34-202 and 34-203, as applicable, unless specifically stated otherwise in this chapter.
- (4) The applicant shall ensure that an application is accurate and complete. Any additional expenses necessitated because of any inaccurate or incomplete information submitted shall be borne by the applicant.
- (5) ~~The department shall review all applications for completeness. All applications shall be deemed complete unless a letter advising the applicant of any deficiencies has been mailed within ten working days of the date of the original filing. All amended applications shall similarly be deemed complete unless a subsequent letter advising the applicant of~~

- any deficiencies has been mailed within ten working days of the date of the resubmittal.
- (5) ~~(6)~~ Upon receipt of the completed application form, all required documents, and the filing fee, the director will begin reviewing the application for completeness, department will place the request on the appropriate agenda and inform the applicant of the hearing dates, or, in the case of planned development applications, begin reviewing the application for sufficiency pursuant to § 34-213 373(a)(3).

Sec. 34-202. General submittal requirements for applications requiring public hearing.

(a) ~~County-initiated~~ **All applications.** Every ~~county-initiated~~ request for actions requiring a public hearing under this chapter shall include the following. However, upon written request using a form prepared by the director, the director may modify the submittal requirements contained in this section where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request for a waiver or modification must be submitted to the director prior to submitting the application. A copy of the request and the and the director's written response must accompany the application submitted and will become a part of the permanent file. *[second and third sentences relocated from § 34-202(c)]*

- (1) **Legal description.** ~~The request shall include~~ A legal description of the property ~~upon which the action is to be initiated,~~ sufficiently detailed so as to locate the property on county maps or aerial photographs. The legal description application shall include a copy of the plat or plats, if any, and the county correct STRAP number(s). If the application includes multiple abutting parcels or consists of other than one or more undivided platted lots, the legal description must specifically describe the perimeter boundary of the total property, by metes and bounds with accurate bearings and distances for every line, but need not describe each individual parcel. However, the application must provide the STRAP number for every parcel. The director has the right to reject any legal description which is not sufficiently detailed to locate the property on official maps.

- (2) **Boundary survey or certified sketch of description.** A certified sketch of description, unless the subject property consists of one or more undivided platted lots in a subdivision recorded in the official Lee County Plat Books. The director may require a boundary survey where there is a question regarding the accuracy of the legal description of the property or a question regarding the location of structure(s) or easement(s) that may be relevant to the review of the application. All certified sketches and boundary surveys must meet the minimum technical standards for land surveying in the state, as set out in ch. 61G 17-6, F.A.C. The perimeter boundary must be clearly marked with a heavy line and must include the entire area that is the subject of the application.
- (3) **Confirmation of ownership.** If at any time during the review process the director concludes there is a question regarding ownership of the property, the director may require submittal of a title insurance policy, attorney's opinion of title, or ownership and encumbrance report.
- (4) ~~(2)~~ **Area location map.** ~~The request shall include~~ A map, at a suitable scale, drawn on an 8½-inch by 11-inch sheet of paper, that depicts indicating the property described in the legal description in relation to the surrounding neighborhood. The map shall be sufficiently referenced to ~~known major streets, waterways, and~~ or other physical boundaries so as to be clearly identifiable to the general public.
- (5) ~~(3)~~ **Property owners list.** ~~The request shall include~~ A complete list of all ~~property owners; of the property subject to this request and their mailing addresses; for all property within the area described. If multiple parcels are involved, a map showing the owners' interest must be provided. The applicant is responsible for the accuracy of the list and map. For town-initiated actions only, For the purpose of this subsection, names and addresses shall be deemed to be those appearing on the latest tax rolls of the county.~~
- (6) **Surrounding property owners list.** ~~The application shall include~~ A complete list, and two sets of mailing labels, of all property owners, and their mailing addresses, for all property within ~~500~~ 375 feet of the perimeter of the subject parcel or the portion thereof

that is the subject of the request. This list shall also include the owners of all individual condominium units within the 500-foot 375-foot perimeter, plus the managing entity of any timeshare properties. For the purpose of this subsection, names and addresses of property owners, condominium owners, and timeshare managers will be deemed to be those appearing on the latest tax rolls of the county at the time of application. The applicant shall be responsible for the accuracy of such list. In the event that more than six months lapses between the time of application and the date of mailing courtesy notices for the scheduled public hearing, the director may require the applicant to submit a new list and mailing labels. This list is for the purpose of mailing notice to property owners within 375 feet of the property described. The notice is a courtesy only and is not jurisdictional. Accordingly, failure to mail or to timely mail such notice or failure of any affected property owner to receive mailed notice will not constitute a defect in notice or bar the public hearing as scheduled.

[relocated from § 34-202(b)(3)]

(7) **Surrounding property owners map.** The application shall include a county zoning map or other similar map displaying all of the parcels of property within 500 375 feet of the perimeter of the subject parcel or the portion thereof that is subject of the request, referenced by number or other symbol to the names on the surrounding property owners list. The applicant shall be responsible for the accuracy of the map. *[relocated from § 34-202(b)(4)]*

(4) **Land use classification.** The request shall include the Lee Plan land use classification for the property in question.

(8) **Additional material.** Additional material, depending on the specific type of action requested, may be required as set forth in §§ 34-202(b) and 34-203.

(9) (5) **Filing fee.** All fees, in accordance with the fee schedule (see § 34-53), for county-initiated applications shall be paid at the time the application is submitted to the department in accordance with the duly adopted fee schedule (see section 34-53).

(b) **Additional submittal requirements for owner-initiated applications.** In addition to the submittal requirements set forth in subsection (a), every application initiated by a property owner involving a changes in the zoning district boundaries, or a request for special exception, appeal from administrative action, or variance or special permit, initiated by a landowner, or his authorized agent, for his own property, shall include the following:

(1) **Evidence of authority.**

a. **Ownership interests.** The application shall include The names of all persons or entities parties having an ownership interest in the subject property, to includeing the names of all stockholders and trust the names of beneficiaries of trusts (see § 34-201(b)(2)a. through c.).

b. **Agent authorization.** If the owner authorizes an agent to represent the owner in all matters pertaining to the application applicant has an agent, the owner must provide the agent with agent shall provide a notarized statement evidencing the agent's authority to act on the owner's behalf and encumber the property with conditions applicable to the approval requested in the application. An agent may authorize additional agents to assist in the preparation and presentation of the application. However, an agent cannot transfer authority to bind the property with respect to conditions. This later authority will only be recognized by the town when it is provided directly to the agent by the owner. document establishing his authority to represent the applicant as part of the application.

c. **Contract purchaser/vendee authorization.** If a the property is subject to a contract for purchaser or and the vendee is the applicant, a notarized statement from the property owner must be submitted authorizing the contract purchaser/vendee to act as an agent of the property owner for purposes of application submittal and agreement to conditions applicable to approval of the request. authorization form from the landowner to the applicant shall also be required as part of the application.

(2) **Legal description.** *[subject matter relocated to § 34-202(a)(1) and (2) and (b)(4)]*

- ~~(3) *Property owners list.* [relocated to § 34-202(a)(5)]~~
- ~~(4) *Property owners map.* [relocated to § 34-202(a)(6)]~~
- (2) ~~(5) **Property Deed restrictions.**~~ The application shall include a copy of the deed restrictions or other types of covenants and restrictions on the subject parcel, if any, along with a statement as to how the ~~deed~~ restrictions may affect the requested action. If there are no restrictions on the property, the applicant must indicate so on the application form.
- ~~(6) *Land use classification.*~~ The application shall include the Lee Plan land use classification for the subject property.
- ~~(7) *Affidavit regarding proposed use.* [deleted]~~
- (3) **Boundary sketch.** The boundary sketch shall include the location of existing structures on the property.
- (4) **Confirmation of ownership.** If at any time during the review process the director concludes there is a question regarding ownership of the property, the director may require submittal of a title insurance policy, attorney's opinion of title, or ownership and encumbrance report.
- (5) ~~(8) **Sketch of proposed building.**~~ *Additional material.* Additional material, depending on the specific type of action requested, shall be required as set forth in § 34-203(a) through (g). In addition, All applications for PD planned development zoning, variances, appeals from administrative action (where relevant), and special exceptions, and special permits must be accompanied by a sketch or sketches that indicate the physical character of the proposed building(s), and in the case of variances, the difference between the proposal and the configuration that would be allowed without the variance.

~~(c) *Modifications to submittal requirements.*~~
[moved to § 34-202(a)]

Sec. 34-203. Additional requirements for certain owner-initiated applications requiring public hearing.

(a) **Developments of regional impact.** All Developments of regional impact shall comply with the information submittal and procedural requirements of F.S. ch. 380, as administered

through the Southwest Florida Regional Planning Council. If the development of regional impact requires specific zoning actions (i.e., rezoning), ~~the intent of the procedures and requirements of § 34-202; and this section and article IV of this chapter shall be met.~~ Additionally, even if the development of regional impact does not require ~~any~~ specific zoning action, the applicant must submit a traffic impact statement, as described in § 34-212(6) §§ 34-373(a)(2)c and detailed in § 10-286, shall be submitted. Thresholds for developments of regional impact can be found in F.A.C. ch. ~~28-24 27F-2.~~

(b) **Planned developments.** Planned development rezonings must comply with the additional submittal requirements in § 34-212. Additional procedural requirements are set forth in §§ 34-211–220.

~~(b) *Determination of development of county impact status.* [deleted in its entirety]~~

~~(c) **Rezonings other than developments of regional impact or developments of county impact.**~~

~~(1) All Requests for rezonings, other than those determined to be a development of regional impact or a development of county impact, shall, in addition to the requirements of § 34-202, include a statement of the basis or reason for the rezoning. Such statement is to be directed, at a minimum, to the guidelines for decision-making embodied in § 34-85(2) 34-145(d)(2). This statement may be utilized by the town council Board of County Commissioners, hearing examiner and staff in establishing a factual basis for the granting or denial of the rezoning.~~

~~(2) Applications for rezonings are required to comply with § 34-202(b).~~

~~(d) **Special exceptions.** Except as preempted under subsection (b)(3) of this section, every owner-initiated Applications for a special exception shall, in addition to the requirements of § 34-202(b), include the following:~~

~~(1) A statement as to how the property qualifies for the special exception requested, and what impact granting the request would have on surrounding properties. Such statement shall be directed, at a minimum, to the guidelines for decision-making embodied in § 34-88 34-145(d)(2). This statement may be utilized by the town council hearing examiner and staff~~

- in establishing a factual basis for granting or denial of the special exception.
- (2) A site development plan detailing the proposed use, including, where applicable, the following:
 - a. The location and current use of all existing structures on the site, as well as those on adjacent properties within 100 feet of the perimeter boundaries of the site.
 - b. All proposed structures and uses to be developed on the site.
 - ~~c. Any existing public streets, easements, or land reservations within the site, and the proposed means of vehicular access to and from the site.~~
 - ~~d. A traffic impact analysis of projected trip generation for the development.~~
 - ~~c. e.~~ Proposed fencing and screening, if any.
 - ~~d. f.~~ Any other reasonable information which may be required by the director which is commensurate with the intent and purpose of this chapter.

(3) On-premises consumption of alcoholic beverages. If the request is for a consumption-on-premises permit:

- a. The site plan must include a detailed parking plan.
- b. A written statement describing the type of state liquor license to be acquired, e.g., 2 COP, SRX, 11C, etc., and the anticipated hours of operation for the business, must be submitted.

[relocated from § 34-203(g)(3)]

(e) **Variations.** Every owner-initiated Applications for a variance from the terms of this chapter shall, in addition to the requirements of § 34-202(b), include the following:

- (1) A document describing:
 - a. The section number and the particular regulation of this code chapter from which relief (variance) is requested;
 - b. The reason why the variance is needed;
 - c. What effect, if any, granting of the variance would have on adjacent properties; and
 - d. The nature of the hardship which is used to justify the request for relief; and
 - e. A statement as to how the property qualifies for the variance, directed, at a minimum, to the guidelines for decision-making embodied in § 34-87.

- (2) A site plan describing:
 - ~~a. Existing public streets, easements, or other reservations of land within the site;~~
 - ~~a. b.~~ All existing and proposed structures on the site;
 - ~~b. c.~~ All existing structures within 100 feet of the perimeter boundary of the site; and
 - ~~c. d.~~ The proposed variance deviation from the adopted standards.

(3) ~~(3) All other information required by the official forms provided by the department, and Any other reasonable information which may be required by the director department which is commensurate with the intent and purpose of this code chapter.~~

(f) Use or procedural variances. It is hereby noted that Use and procedural variances are not legally permissible, and no application for a use variance nor a procedural variance will be processed. The director Department staff will notify the applicant when a more appropriate procedure, e.g., rezoning; or special exception or special permit, is required.

~~(g) Special permits. [deleted in its entirety; certain portions have been relocated to § 34-203(d)(4)]~~

Secs. 34-204–34-210. Reserved.

~~Sec. 34-204. Applications for development approval. [deleted in its entirety]~~

~~Sec. 34-205. Applications for building permits. [deleted in its entirety]~~

~~Sec. 34-206. Grading permits. [deleted in its entirety]~~

~~Sec. 34-207. Excavation permit for stormwater retention facilities. [deleted in its entirety]~~

~~Sec. 34-208. Requests for interpretation of zoning regulations. [moved to 34-265]~~

~~Sec. 34-209. Building relocation permit. [moved to 34-1951]~~

~~Sec. 34-210. Temporary use permits. [moved to 34-3050]~~

~~Sec. 34-211. Denials and resubmission of applications. [modified and relocated to § 34-84(4)]~~

ARTICLE IV:
PLANNED DEVELOPMENTS
[moved from §§ 34-341–34-410]

DIVISION 1. GENERALLY
[deleted in its entirety]

DIVISION 2. APPLICATION AND PROCEDURE FOR APPROVAL

~~Sec. 34-371. Generally. [deleted in its entirety]~~

Subdivision II. Additional Procedures for Planned Development Zoning Districts

Sec. 34-211. Generally.

(a) Planned development zoning districts are described in §§ 34-612(3) and 34-931–990.

(b) The application and procedure requirements described in this division are a supplement to the general requirements for rezoning applications found in this article.

Sec. 34-372. Preapplication conference:

(c) The applicant may initiate the planned development process by requesting an optional preapplication conference with the department staff. In this request, the applicant shall provide a description of the property in question, the location of the property, the existing use, special features, and the use proposed. Through this meeting, the applicant may avail himself of staff in order to be oriented to the planned development process, to determine what application materials are required (if a minor planned development), and to be advised of the impacts of the Fort Myers Beach Comprehensive Zoning Plan, surrounding development and zoning, and other public policy on the development proposal.

Sec. 34-212 373. Application for a planned development.

(a) Required information. Except as specifically provided in subsection (b) of this section, An

applicant for a planned development proposal shall provide the following information, supplemented, where necessary, with written material, maps, plans, or diagrams, and conforming to the best engineering graphic and cartographic standards, in addition to the information regularly required in an application for a rezoning, etc. (see §§ 34-201, 34-202, 34-203, and 34-53). Wherever this section calls for the exact or specific location of anything on a map or plan, its the location of that thing shall be indicated by dimensions from an acceptable reference point, survey marker, or monument.

~~(1) Description of existing conditions. [deleted in its entirety]~~

~~(2) Description of proposed development. The application shall be accompanied by a description of the proposed development, consisting of, as a minimum, the following:~~

~~(1) **General application.** A general application for public hearing in accordance with the requirements set forth in §§ 34-201, 34-202, and 34-203.~~

~~(2) **Filing fee.** The filing fee (see § 34-53).~~

~~(3) **Evidence of unified control.** The same documentation evidencing unified control as is required by ch. 10 for development orders. A covenant and documentation of unified controls (see § 34-374).~~

~~(4) **Master concept plan.** a. A clearly legible master concept plan, to be no less than 24 inches by 36 inches in size and at an appropriate scale to adequately show the proposed development in detail, meeting the standards set forth in either subsection (a)(2)a.1 or subsection (a)(2)a.2 of this section, and including the following information: required in subsections (a)(2)a.3, 4 and 5 of this section:~~

~~i. The subject parcel may be divided into development areas. For each development area, the following shall be shown, either within the areas or on schedules keyed to the areas:~~

~~a. i. The general size, configuration, and location of each development area; phase, and a description of the phasing of construction, unless the development is to be constructed in a single phase;~~

~~b. ii. The maximum height of any proposed buildings or structures, using this code's means of measuring height (see § 34-631);~~

~~c. Proposed principal and accessory land uses, identifying such uses by citing the~~

- same uses allowed by a specific zoning district, or by citing the enumerated uses of one or more use groups or sub-groups as found in Tables 34-1 and 34-2 of this article.
- d. ~~iii.~~ The kinds of uses and the number of units proposed for each use, in terms of dwelling units by type, hotel or motel guest units, gross square feet of types of commercial or industrial uses, and maximum floor area ratios (see § 34-633); or other appropriate measures of intensity;
 - e. ~~iv.~~ The minimum width and composition of any ~~all~~ proposed buffers along the perimeter of the subject property, ~~as well as between the individual development areas.~~ References to types of buffers as described in ch. 10 are acceptable;
 - f. ~~v.~~ The location of any environmentally sensitive land and water, based upon standard environmental data and verified by a field inspection by town ~~the county~~ staff. An engineering survey is not required until the plan has been incorporated into an application for a development order;
 - g. ~~vi.~~ The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development, ~~and the general location of all points of vehicular ingress and egress from proposed internal rights-of-way or easements into each development area;~~
 - h. ~~vii.~~ Access and facilities for public transit, where applicable;
 - viii. The percentage of open space, unless the proposed development is in a development area consisting solely of conventional single-family dwelling units on lots of no less than 6,500 square feet. For commercial and industrial developments, the percentage of open space within each lot or outparcel shall be as set forth in § 34-414(c);
 - i. ~~ix.~~ The general location of stormwater management areas; excavations for on-site fill and wet retention;
 - j. ~~x.~~ The specific location of any requested deviations, including sample detail drawings that illustrate the effect of the proposed deviation, keyed to the schedule of deviations; and
 - k. The exact location of existing rights-of-way and easements, whether or not those easements are recorded; and
1. Proposed dedications, if any, including public beach access, boat ramps, park or recreation areas, open space, or other easements.
 - xi. ~~Where the subdivision or resubdivision of land is a feature of the proposed development, indication on the plan of the minimum size and dimensions of all of the lots, as well as all of the minimum proposed setbacks for principal structures. If conventional zoning district property development regulations, such as lot coverage regulations, will be used, reference to the specific district shall be sufficient.~~
 2. ~~If the plan does not divide the subject parcel into development areas, it shall indicate the general location of all proposed land uses, the general location and configuration and approximate dimensions of all proposed lots, parcels or outparcels, and the general location and pattern of vehicular and pedestrian circulation and movement within the site; in addition to the items listed in subsections (a)(2)a.1.ii through x of this section, for the entire site.~~
 3. The master concept plan shall also include a schedule of uses, containing the following information:
 - i. A summary of the kinds of uses proposed for the entire site. For projects containing residential uses, this shall include the types of proposed dwelling units;
 - ii. The units (gross square feet for commercial/industrial uses, number of units for residential or motel/hotel uses, beds for institutional types of uses, etc.) of each kind of use, for the entire site;
 - iii. For developments containing uses for which the parking requirements are to be determined by the director, the number of parking spaces proposed for those uses;
 - iv. The proposed percentage of open space for the entire site.
 4. The master concept plan shall also include the exact location of existing easements and rights-of-way.
 5. The master concept plan shall also include a schedule of deviations, including sample

~~detail drawings, unless such drawings would merely duplicate the information shown pursuant to subsection (a)(2)a.1.x of this section.~~

~~b. A completed questionnaire, on a form furnished by the department, detailing the conceptual surface water management program and the public infrastructure and service and facility demands anticipated from the proposed development, including impacts expected to fall on private for-profit utilities and special use districts.~~

(5) **Architectural elevations.** The master concept plan shall be accompanied by architectural elevations or a three-dimensional rendering that show, at a minimum, all building facades adjoining public streets. These drawings may substitute for the sketches required by § 34-202(b)(5) If any aspects of a proposed commercial or mixed-use building do not comply with the commercial design standards in §§ 34-991–34-1010, the applicant may request one or more deviations from those standards in accordance with § 34-932(b).

(6) **Traffic impact statement.** c: A traffic impact statement in the same a format and to the same degree of detail required for development orders (see § 10-286), unless waived by the director in accordance with § 34-202(a), by a form furnished by the county and in conformance with the adopted county administrative code.

~~d. A management plan as required by ch. 10, article III, division 8, pertaining to protected species requirements.~~

~~e. The text of the private covenants or restrictions, if any, proposed to ensure the enforcement of the limitations on permitted uses, the enforcement of the limitations on building, the integrity of open space and common facilities and the perpetual maintenance of the open space and common facilities, keeping always aware that the county shall not be party to those covenants except as they are incorporated into the planned development documents as special conditions.~~

~~f. A description of all proposed dedications, if any, including public beach access, boat ramps, park and recreation areas, open space or other types of easements.~~

~~g. A description of the program of phased construction, if the development is to be so constructed.~~

~~h. For developments of regional impact, the following: *[deleted in its entirety]*~~

Sec. 34-213. (3) Sufficiency and completeness.

a: No hearing will be scheduled for any application for a planned development until the application has been found sufficient.

(1) All applications for planned developments will be deemed sufficient unless a letter advising the applicant of insufficiencies has been mailed within 15 working days of the payment of the application fee. All amended applications will be deemed sufficient unless a subsequent letter advising the applicant of any insufficiencies has been mailed within 15 working days of the resubmittal. The contents of insufficiency letters will be limited to brief explanations of the manner in which insufficient applications do not comply with the formal requirements in this section.

(2) Subsequent to notification that the application has been found to be insufficient, the applicant has 60 days to submit supplemental or corrected documents, unless a longer time is agreed to in writing by the director and the applicant prior to the expiration of the 60 days. If the supplement or corrections are not submitted within the 60 days (or other time period agreed to) the application will be deemed withdrawn.

(3) Once an application has been found sufficient, any new information submitted by the applicant, or any changes made to information submitted by the applicant, may, at the discretion of the director, be grounds for a deferral or continuance of the public hearing, depending on the advertised status of the hearing.

(4) ~~b:~~ In those instances where a proposed planned development is identified by the director local staff as a possible development of regional impact, the applicant shall be notified that the application will be deemed sufficient only when accompanied by either a binding letter of interpretation from the state department of community affairs or a complete and sufficient ADA. ~~Failure by the county to notify the applicant in a timely manner (within 30 days of the application)~~

shall nullify any finding of insufficiency based on this requirement.

Sec. 34-214. Application for an amendment.

~~(b) *Exceptions.* (1) Amendments to application: Applications for amendments to an approved master concept plan or its attendant documentation, or for the reaffirmation of a previously vacated master concept plan (for plans approved prior to December 2, 1991), shall be treated procedurally as minor planned developments, but will require only as much information as is needed to describe the changes requested, to specify the incremental change in impacts expected from the amendment, and to detail the changes in development, environment, and background (surrounding land uses, traffic volumes, water, wastewater, and other service availability, etc.); if any, that have occurred since the original application was made. Some amendments can be approved administratively as provided in § 34-219; the remainder shall proceed through the public hearing process described in § 34-216.~~

~~(2) *Minor planned developments.* [deleted in its entirety]~~

~~(3) *Existing developments seeking planned development classification.* [deleted in its entirety]~~

~~(4) *Amendments to built planned developments (PD).* [deleted in its entirety]~~

Sec. 34-215. 374. Covenant Documentation of unified control.

(a) Any applicant for a rezoning or master concept plan confirmation under the planned development regulations as provided in this article shall submit documentation demonstrating corroborating unified control over the subject property. ~~In addition, the applicant shall submit, on a standard form, a covenant with the county setting forth and agreeing to the obligation to control the development and subsequent use of the property in accordance with this article and any special condition attached to the master concept plan in accordance with this article. This shall include the obligation to impose these restrictions and limitations on any subsequent owner of all or any part of the subject property, including lots, development parcels and outparcels.~~

~~(b) [subject matter moved to § 34-217(c)]~~

~~(b) (c) In such instance as If the initial applicant conveys all or part of the subject property to a subsequent purchaser, the conveyance shall be is subject to the original documentation demonstrating covenant of unified control and the subsequent owner shall file a document unless amended documentation is filed with the department director, accepting the obligation to enforce all conditions and restrictions attached to the master concept plan as if the original applicant. This amended documentation must shall be filed within 60 days of closing in a form acceptable to the town attorney. ; ~~and shall be recorded with other notices related to the subject planned development.~~ This requirement shall not apply to individual homesites or units (apartments) of a residential development or to any development wherein the obligation to enforce the regulations and conditions or covenants and restrictions is delegated to property owners or a condominium association or cooperative~~

~~(d) [subject matter moved to § 34-217(d)]~~

~~Sec. 34-375. Prehearing conference. [deleted in its entirety]~~

~~Sec. 34-376. Prehearing stipulation. [deleted in its entirety]~~

Sec. 34-216 377. Public hearings.

(a) **Hearing before the local planning agency hearing examiner.** After an application is complete, the staff prehearing conference required by this division; the application will be scheduled for a public hearing before the local planning agency hearing examiner.

(1) At the public hearing the local planning agency hearing examiner will consider the application in accordance with article II of this chapter.

(2) The recommendation made to the town council Board of County Commissioners must be supported by formal findings that address the guidelines set forth in § 34-85 145(c)(2) of this chapter. In addition, the findings must address whether the following criteria can be satisfied:

- a. The proposed use or mix of uses is appropriate at the subject location;
- b. Sufficient safeguards to the public interest are provided by the recommended

- conditions to the concept plan or by other applicable regulations; ~~and~~
- c. All recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
- d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:
1. Policies 4-B-4 and 4-C-3 on commercial uses in the "Mixed Residential" category.
 2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "Boulevard" category.
 3. Policy 4-C-4 on building heights taller than the standard height limit.
 4. Policy 4-C-8 on density transfers.
 5. Policy 4-E-1 on pre-disaster buildback.
 6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.
- (3) If the local planning agency hearing examiner determines that a proposed recommended condition is insufficient, ~~he~~ it may recommend an alternate condition for consideration by the town council Board of County Commissioners.
- (4) If the application includes a schedule of deviations pursuant to §§ ~~34-212(3) and 34-932(b)~~ § 34-412, the local planning agency's hearing examiner's recommendation must approve, approve with modification, or reject each requested deviation based upon a finding that:
- a. Each item enhances the achievement of the objectives of the planned development; and
 - b. The general intent of this chapter to protect the public health, safety, and welfare will be preserved and promoted; ~~and~~
 - c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
 - d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.
- If the local planning agency hearing examiner concludes that the application omits necessary deviations, ~~he~~ it may include the necessary deviations in ~~his~~ its recommendation without an additional hearing.

(5) ~~As a condition of approval of a deviation, the hearing examiner may recommend that the applicant receive administrative approval of a more detailed development plan for each affected development area. Applications for administrative approval will be processed as administrative amendments in accordance with § 34-380 of this chapter and may be granted by the director upon a finding that public health, safety, and welfare will not be adversely affected thereby.~~

(b) *Hearing before the town council. Board of County Commissioners.*

- (1) ~~Subsequent to~~ After the local planning agency's hearing examiner's hearing, an application for a planned development, together with all attendant information, staff reports, and the local planning agency's hearing examiner minutes and resolution of recommendation, shall be forwarded to the town council Board of County Commissioners, which shall consider the application in public hearing per article II of this chapter. After reviewing all information, including staff reports ~~review~~ and local planning agency hearing examiner recommendations, the town council Board of County Commissioners may either:
- a. Continue further consideration until additional information is provided by applicant or ~~the director staff~~ or until the applicant makes changes in the application, subject to re-review by the director staff and the local planning agency hearing examiner as required; or
 - b. Formally approve, approve with modification, or deny the application.
- Should the town council Board of County Commissioners deny without prejudice, it may remand the proposal to the director staff with directions to bring the application back to the local planning agency hearing examiner once the application is amended. If new or additional information, not previously provided to either the director staff or the local planning agency hearing examiner, is supplied by the applicant ~~subsequent to~~ after the local planning agency hearing examiner hearing, the town council Board of County Commissioners may remand the application to the local planning agency hearing examiner for rehearing.

- (2) ~~Any decision made by the Board of County Commissioners~~ The decision of the town council shall be supported by a formal finding, that, in addition to the appropriate guidelines set forth in article II of this chapter, the criteria set forth in subsection (a)(2) of this section ~~have or have not been satisfied.~~ are or are not met.
- (3) In addition to adopting a master concept plan for the planned development, the ~~town council~~ Board of County Commissioners may adopt such special conditions as are necessary to address unique aspects of the subject property in the interest of protecting the public health, safety, and welfare. Should any recommended special condition be found to be insufficient, the ~~town council~~ Board of County Commissioners may substitute its own language for such special condition in the final resolution.
- (4) Should a schedule of deviations from other provisions of this chapter (see ~~§§ 34-212(6) and 34-932(b)~~ § 34-412) be a part of the planned development application, the ~~town council~~ Board of County Commissioners may approve, approve with modification, or reject the entire schedule or specific items based upon their finding that for each item:
- Each item enhances the achievement of the objectives of the planned development; and
 - The general intent of this chapter to protect the public health, safety, and welfare will be preserved and promoted;
 - Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
 - Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.
- (5) ~~The Board of County Commissioners may require, as a condition of approval of the deviation, that the applicant receive administrative approval of a more specific development plan for each affected development area or parcel. Applications for administrative approval will be processed as administrative amendments in accordance with § 34-380 of this chapter and may be granted by the director only upon a finding that public health, safety, and welfare will not be adversely affected thereby.~~
- (5) If the town council denies or modifies any requested use(s), deviations(s), or other information shown on the master concept

plan, a revised master concept plan must be submitted to the director reflecting the substance of the approved resolution prior to execution of the resolution. Legible copies of the revised master concept plan must be provided in two sizes, 24 inches by 36 inches and 11 inches by 17 inches in size.

- (6) No development orders may be issued until the approved resolution has been signed by proper town officials.

Sec. 34-217 378. Effect of planned development zoning.

(a) ***Compliance with applicable regulations.*** ~~After~~ Subsequent to the adoption of the master concept plan and the conditions and auxiliary documentation that govern it, any and all development and subsequent use of land, water, and structures within any planned development shall be in compliance with the following, in order of precedence:

- (1) The ~~Fort Myers Beach Comprehensive Lee~~ Fort Myers Beach Comprehensive Plan.
- (2) This subdivision of the land development code. Divisions 1, 2, and 3 of this article.
- (3) The master concept plan and attendant conditions and auxiliary documentation.
- (4) Any applicable ~~town~~ county development regulations in force at the time of ~~final plan~~ submission of the application for a development order.
- (5) The general provisions of this chapter, unless otherwise excepted by an approved schedule of deviations.

(b) ***Applicability of development regulations.*** ~~All~~ approvals of general aspects of The master concept plan (see § 34-212(4) ~~373(a)(2)~~) is ~~are~~ conceptual only, and are development pursuant to the master concept plan is subject to all development regulations established to protect health, safety, and welfare in force at the time of ~~final plan review~~ submission of the application for a development order, except where deviations have been formally granted in accordance with § 34-932(b). Any reliance in detail on the approval of a general aspect of the master concept plan is not justified and is not in good faith.

(c) ~~Recording of notice.~~ Upon approval of a master concept plan and the conditions and auxiliary documentation that govern it, a notice of such

~~approval and its encumbrance of the real estate involved, all in proper form, shall be recorded by department on the official records of the county.~~

~~(d) Prohibitions. [deleted in its entirety]~~

(c) The obligation to enforce the conditions attached to the master concept plan remains with the original applicant until all of the subject property is developed and certified for use and occupancy, or until a subsequent owner assumes that obligation for all or part of the subject property. Completion or vacation of a phase of the development, or conveyance of a lot, development parcel, or outparcel, will relieve the original applicant only as to that phase, lot, development parcel, or outparcel, and then only when notice is filed in accordance with § 34-215. The obligation to enforce the conditions attached to a reaffirmed master concept plan will lie with whomever files the unified control documentation for that reaffirmation.

(d) If the town discovers noncompliance with the regulations or the master concept plan and its attachments, the town may withhold any permit, certificate, or license to construct, occupy, or use any part of the planned development. This will not be construed to injure the rights of tenants of previously completed and properly occupied phases.

Sec. 34-218 379. Binding nature of approval of master concept plan.

All terms, conditions, safeguards, and stipulations made at the time of the approval of a master concept plan shall be binding upon the applicant or any successor in title or interest to all or part of the planned development. Departure from the approved plans or failure to comply with any requirement, condition, or safeguard shall constitute a violation of this chapter.

Sec. 34-219 380. Administrative amendments to approved master concept plan.

(a) Amendments to an approved master concept plan or its attendant documentation may be requested at any time during the development or useful life of a planned development.

(b) Amendments that may be approved by the department director include, in general, any change to the interior of the development which does not

~~increase height, density, or intensity (i.e., number of dwelling units, hotel units, or quantity of commercial floor area), or a decrease in buffers or open space, or add additional land uses. The director shall not approve any change which results in a substantial underutilization of public resources and public infrastructure committed to the support of the development, nor shall the director approve any change which results in a reduction of total open space, buffering, landscaping, and preservation areas or which adversely impacts on surrounding land uses.~~

- (1) This authority is granted to the director to eliminate unnecessary processing delays for proposed changes that are:
 - a. substantially similar to the prior approval;
 - b. likely to be noncontroversial; and
 - c. in conformance with all town regulations and plans.
- (2) Decisions by the director pursuant to this subsection are discretionary and may not be appealed pursuant to § 34-86.

~~(c) All other requests for amendments to a master concept plan or its auxiliary documentation shall be treated procedurally as an amendment to the minor planned developments, but with application information and materials specified by § 34-214 373(b)(2). and public hearings in accordance with § 34-216.~~

~~(d) Any application for amendment that proposes a development which, taken by itself, would constitute a development of county impact (see §§ 34-203(b) and 34-341(b)) shall not be treated as a minor planned development unless it clearly meets the criteria set forth in § 34-341(c). Otherwise, it shall proceed as a new and separate planned development.~~

~~(e) Notice of any plan amendment shall be recorded in the same manner as the approved master concept plan itself.~~

Sec. 34-220 381. Duration of rights conferred by adopted master concept plan.

~~(a) Master concept plans approved prior to December 2, 1991, are subject to the following:~~

~~(1) through (4) [deleted in their entirety]~~

~~(b) Master concept plans approved after December 2, 1991, are subject to the following:~~

- (1) An approved master concept plan and its attendant documentation shall be deemed to be vacated unless the property owner obtains ~~applies for~~ a development order for the first phase ~~a substantial portion~~ of the project within three ~~five~~ years of the date of the original approval by the town council, Board of County Commissioners. ~~A substantial portion of the project shall consisting of no less than 20 percent of the lots, dwelling units, square footage, or other applicable measurements of intensity for the development in question unless a lesser percentage is approved by the town council Board of County Commissioners.~~
- (2) Timeframes for approval of subsequent portions of the development may ~~shall~~ be governed by a phasing plan, which shall be included in the resolution rezoning the subject parcel. Phases may be defined by geographical areas, units of intensity, traffic impacts, or any other units of measurement deemed appropriate by the town council, Board of County Commissioners. ~~In the absence of a specific phasing plan in the resolution, subsequent phases must proceed as follows:~~
- a. Within five years of the date of approval by the town council, the first phase must have been completed and a development order must have been obtained for the second phase, consisting of 50% of the project.
- b. Within eight years of the date of approval by the town council, the second phase must have been completed and a development order must have been obtained for the entire project.
- (3) Any phase for which a development order has not been obtained or for which development has not been completed ~~requested~~ by the time specified in the resolution and all subsequent phases shall be deemed vacated, along with all subsequent phases.
- (4) ~~Any failure to complete development within a phase or the entire project, whichever is applicable, prior to the expiration of rights established by the development order for the phase or project shall result in the vacation of the applicable phase (and all subsequent phases) of the project.~~
- (5) ~~If all or part of a master concept plan is vacated, a notice of vacation shall be sent to the owner of record of the affected property via certified mail, and the notice, accompanied by all necessary maps and documents, shall be recorded by the department on the official records of the county in order to provide notice to subsequent purchasers and others having or seeking an interest in the property. Failure to provide direct notice of a vacation or to record the notice shall not vest or extend the validity of the vacated concept plan.~~
- (4) ~~Extensions of master concept plans may be granted as follows: by the Board of County Commissioners in accordance with subsection (a)(4)a. of this section: [relocated from § 34-381(a)(4)]~~
- (4) ~~An approved master concept plan may be extended as follows:~~
- a. An approved master concept plan for a phase of or an entire planned development which has been vacated due to a failure to proceed on the applicant's part may be extended by the town council Board of County Commissioners for a period of no more than two years from the date of the extension based on the following findings of fact:
1. The master concept plan is consistent with this code and the current Fort Myers Beach Comprehensive Lee Plan, including, but not limited to, density, intensity, and concurrency requirements;
 2. The development shown by the master concept plan has not become incompatible with existing and proposed uses in the surrounding area as the result of development approvals issued subsequent to after the original approval of the master concept plan; and
 3. The development shown by the master concept plan will not, by itself or in conjunction with other development, place an unreasonable burden on essential public facilities.
- b. An application for an extension may be filed at any time after the vacation of the master concept plan and must consist of the following:

1. A completed application form provided by the director ~~department of community development~~;
 2. The approved master concept plan;
 3. The applicable zoning resolution;
 4. A written statement describing how the criteria listed in subsection (4)a. ~~(a)(4)a.~~ above have been met; and
 5. A fee, in accordance with an adopted administrative code.
- c. No more than two extensions may be granted for any development or phase thereof.
- ~~(6) Master concept plans for planned developments which do not require development orders are not subject to the timeframes for vacation in this section.~~
- (7) Phasing plans may be amended in accordance with § ~~34-214.~~ 373(b)(1).

~~Sec. 34-382. Development permit. [deleted in its entirety]~~

~~Secs. 34-221383--34-230410. Reserved.~~

DIVISION 5 7. PUBLIC HEARINGS AND REVIEW

Sec. 34-231. Definitions.

For purposes of this division only, certain terms are defined as follows:

Continuance means an action initiated by the applicant, staff, local planning agency, or the town council ~~or a hearing examiner or the Board of County Commissioners~~ to postpone, to a later time or date, a public hearing after the notice of the public hearing has been submitted to the newspaper for publication as required in § 34-236.

Deferral means an action initiated by the applicant or staff to postpone, to a later time or date, a public hearing prior to the notice of the public hearing being submitted to the newspaper for publication.

Sec. 34-232. Required hearings.

(a) *Amendment or adoption of land use ordinances.*

- (1) Any proposed amendment to this chapter or to any land use ordinance, or adoption of any new land use ordinance, shall be enacted pursuant to the requirements set forth in F.S. § ~~166.041~~ 125.66(5).
- (2) Prior to a final required hearing by the town council ~~Board of County Commissioners~~, the local planning agency shall review the amendment at a public hearing.

(b) *Owner-initiated requests.* Owner-initiated requests for rezonings, variances, special exceptions, and developments of regional impact require one public hearing before the local planning agency and one public hearing before the town council.

(c) *Town-initiated requests.* Town-initiated requests for rezonings, variances, special exceptions, and developments of regional impact require one public hearing before the local planning agency and:

- (1) Applications covering less than 10 abutting acres of land will require a single public hearing before the town council.
- (2) Applications covering more than 10 abutting acres of land will require two public hearings before the town council in accordance with F.S. § 166.041.

~~(b) *Rezoning, developments of regional impact, and special exceptions, special permits and variances submitted for simultaneous review.* [deleted in its entirety]~~

~~(c) *Other special exceptions, special permits and variances, administrative appeals.* [deleted in its entirety]~~

Sec. 34-233. Preliminary review and notice certification.

(a) *Staff review.* The director will produce a written (staff) report summarizing each application and making a formal recommendation to the local planning agency and town council to be available about 7 days before the public hearing.

- (1) No application for a land use ordinance amendment, rezoning, special exception;

development of regional impact, special permit or variance, appeal or any other action required by this chapter to proceed through the public hearing process shall be heard by the hearing examiner or Board of County Commissioners, as applicable, until after the department staff has reviewed and prepared written comments on the requested action.

- (2) All staff comments shall be forwarded to the hearing examiner or Board of County Commissioners, as applicable, prior to the scheduled public hearing.

(b) *Other LPA reviews.* No application or proposed land use ordinance amendment required under the provisions of this chapter to be reviewed by the local planning agency prior to review by the town council Board of County Commissioners shall be heard for final consideration by the town council Board of County Commissioners prior to receiving a substantive recommendation of the local planning agency. As used in this subsection, a motion to continue a matter by the local planning agency shall not be considered a substantive recommendation.

(c) *Notice certification and affidavits.* No public hearing shall be commenced by the hearing examiner, local planning agency or Board of County Commissioners unless affidavit proof of required notice publication, posting and mailing, if applicable, is presented to the hearing examiner, local planning agency or Board of County Commissioners for review and submitted to the records keeper for filing with the minutes of the meeting.

Sec. 34-234. Public participation.

(a) *Participation at public hearings, before hearing examiner or local planning agency.* At a public hearing before the hearing examiner or local planning commission agency or town council, all persons shall be heard. However, the hearing examiner or local planning agency and town council shall have the right to refuse to hear testimony which is irrelevant, repetitive, defamatory, or spurious, and may establish reasonable time limits on testimony.

(b) *Participation before Board of County Commissioners.* [deleted in its entirety]

(b) *Participation prior to public hearings.* When any person discusses a matter that is the subject of a pending quasi-judicial hearing with a member of the local planning agency or the town council, such member shall disclose the discussion at the public hearing in accordance with § 34-52(b)(2).

Sec. 34-235. Deferral or continuance of public hearing.

The following procedures and regulations for deferring or continuing a public hearing shall apply for the hearing examiner, local planning agency and town council Board of County Commissioners:

- (1) *Deferral.* A scheduled but not yet advertised public hearing may be deferred by the director department staff or by the applicant as follows:
 - a. *Town- County-initiated deferral.* The director may defer Department staff or the hearing examiner may initiate a deferral of a scheduled public hearing prior to advertising, if additional or corrected information is required to permit staff to properly or adequately review a requested application, provided that notice is mailed to the applicant, or his authorized representative agent, stating the reason for the deferral and what additional information is required to complete staff review.
 - b. *Applicant-initiated deferral.* An applicant, or his duly authorized agent, may request a deferral of the public hearing if provided that:
 1. the request is in writing and received by the director appropriate department prior to that department's submitting notice of the hearing to the newspaper for publication; and
 2. The applicant agrees to have his application rescheduled in accordance with the scheduling procedures in effect at that time.
 - c. *Fee.* There shall be no additional fee for either a town- staff-initiated or applicant-initiated deferral. However, the applicant must obtain corrected zoning notice posters and post the signs on-site.
 - d. *Staff authority.* Applicant-initiated deferral requests which meet the requirements of subsection (1)b of this section may be deferred by the director without any further

action by the Board of County Commissioners:

(2) **Continuance.** A scheduled, advertised public hearing may be continued by the town county or by the applicant as follows:

a. Town- County-initiated continuance.

1. The ~~hearing examiner~~, local planning agency or town council Board of County Commissioners, upon staff request or upon its own initiative, may continue a public hearing when it is ~~deemed~~ necessary to require additional information, public testimony, or time ~~in order~~ to render an appropriate recommendation.
2. The ~~county-initiated~~ hearing shall be continued to a date certain, and the ~~hearing examiner~~, local planning agency or town council Board of County Commissioners shall continue its consideration on the hearing matter on that date certain. Any hearing not continued to a date certain is deemed to be denied without prejudice.
3. There shall be no limitations on the number of town- county-initiated continuances.
4. The town county shall bear all renotification costs of any town- county-initiated continuance.

b. Applicant-initiated continuance.

1. The applicant, or his duly authorized agent, shall submit the request in writing to, and the request shall be received by, the appropriate department town manager at least one day prior to the advertised hearing date, or the applicant or his duly authorized agent shall appear before the ~~hearing examiner~~, local planning agency or town council Board of County Commissioners at the beginning of its scheduled agenda and orally request the continuance.
2. The ~~hearing examiner~~, local planning agency or town council Board of County Commissioners may either deny or grant the request for continuance.
 - i. If the request for continuance is denied, the hearing shall proceed in accordance with the published agenda.

- ii. If the request for continuance is approved, the ~~hearing examiner~~, local planning agency or town council Board of County Commissioners may set a date certain for hearing the application. Any hearing not continued to a date certain is deemed to be denied without prejudice.

3. The applicant shall be entitled to one continuance before the local planning agency and one continuance before the town council ~~each decision-making body~~ as a matter of right. Each ~~decision-making~~ body shall have the authority to grant additional continuances upon a showing of good cause.
4. A fee, in accordance with a duly adopted fee schedule, shall be charged for any applicant-initiated continuance to cover the costs of renotification. The applicant must bear all renotification costs of an applicant-initiated continuance.

c. Unknown hearing dates. Continuances may also be granted to unknown dates at the discretion of the local planning agency or town council. Such continuances shall be rescheduled by the director and shall be readvertised in the same manner as the originally scheduled hearing. If such a continuance was requested by an applicant, the director may charge the applicant for additional costs of renotification.

Sec. 34-236. Notices.

(a) **Minimum required information.** A notice of public hearing under this chapter shall contain the following minimum required information:

(1) *Action proposed.*

a. ~~Land use ordinance amendments or adoption.~~ The notice shall describe the chapter or section of the land use ordinance to be amended, or the subject of a new ordinance, with sufficient clarity so as to advise the public of the subject to be amended or adopted, but need not describe the exact wording or change.

a. b. *Rezoning and developments of regional impact.* All required notices shall indicate the existing zoning of the property, the

proposed zoning, and the general location of the property; by reference to common street names and addresses, ~~covered by the application~~, with sufficient clarity certainty so as to advise the public, but need not describe the proposed plans or details thereof, or the specific legal description of the property.

~~b. e.~~ *Special exceptions, special permits and variances.* All required notices shall indicate the existing zoning of the property; the proposed use by special exception ~~or special permit~~, or the requirement from which the variance is being requested and the actual degree of variance being requested; and the location of the property; by reference to common street names and addresses, with sufficient clarity certainty so as to advise the public, but need not describe the proposed plans or details thereof or the specific legal description of the property.

~~c. d.~~ *Appeals.* The notice shall summarize the decision or action upon which the appeal is based with sufficient clarity so as to advise the public of the subject matter.

- (2) *Time and place of hearing.* The notice shall specify the date, time and place that the public hearing will be held by ~~the hearing examiner~~, the local planning agency or the town council, Board of County Commissioners, as applicable.
- (3) *Public availability of information.* The notice shall indicate where copies of the proposed amendment may be obtained or reviewed, or where the application for public hearing may be reviewed.
- (4) *Location of record of notice.* A copy of such notice shall be kept available for public inspection during the regular business hours at town hall and at the director's office, ~~the office of the department of community development or hearing examiner~~, as appropriate, and indicated in the notice.

(b) *Method of providing notice.* Notices of hearings before the ~~Board of County Commissioners, the hearing examiner and the local planning agency~~ and the town council shall be provided in accordance with applicable statutes and ~~as may be set forth in the county's administrative code, subject to the requirements of subsection (a)~~ of this section.

(c) Mailed notices. The list and map of surrounding property owners required by § 34-202(a)(6) is for the purpose of mailing notice to property owners within 500 feet of the property described. The notice is a courtesy only and is not jurisdictional. Accordingly, the failure to mail or to timely mail such notice, or failure of any affected property owners to receive mailed notice, will not constitute a defect in notice or bar the public hearing as scheduled.

Secs. 34-237--34-264: Reserved.

DIVISION 6 8. INTERPRETATIONS, ENFORCEMENT, AND SPECIAL ADMINISTRATIVE ACTIONS

~~Sec. 34-261. Generally.~~ *[deleted in its entirety]*

~~Sec. 34-262. Complaints.~~ *[deleted in its entirety]*

~~Sec. 34-263. Penalties.~~ *[subject moved to § 1-5]*

~~Sec. 34-264. Persons who may be charged with violations.~~ *[moved to § 1-5(f)]*

~~Sec. 34-265. Additional remedies.~~ *[moved to § 1-5(d)]*

~~Sec. 34-266. Cease and desist orders.~~ *[subject moved to § 1-5]*

Sec. 34-265 208. Requests for interpretation of this code zoning regulations. *[moved from § 34-208]*

Where a question arises as to the meaning or intent of a section or subsection of this ~~code chapter~~, a written request stating the area of concern and the explicit interpretation requested shall be submitted to the ~~director~~, on forms provided by the director department.

- (1) The director may render decisions of an administrative nature, such as but not limited to:
 - a. Proper zoning classification for a use not specifically addressed; and
 - b. Procedures to follow in unusual circumstances.
- (2) Interpretations which, in the opinion of the director, involve policy or legislative intent issues shall be placed on the agenda of the the

town council a regularly scheduled meeting of the Board of County Commissioners for its consideration.

- a. ~~If the question involves clarification of the legislative intent of this chapter, the Board of County Commissioners may render a decision as an administrative action item.~~
 - b. ~~Decisions involving policy issues or potential conflicts with the Lee Plan shall be scheduled for a public hearing in accordance with division 7 of this article.~~
- ~~(3) Annotations of all decisions of the director or Board of County Commissioners which may have an impact on future decisions shall be periodically printed and made available to the general public.~~

Sec. 34-266. Enforcement.

The director is 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. 34-267. Forced relocation of businesses. Authority to permit uses pending a zoning action.

(a) The director is authorized to permit proposed uses that are not permitted on a subject parcel for a period of not more than 180 days under the following circumstances:

- (1) The property owner, contract purchaser, or other authorized person has filed an application for a rezoning or a special exception for the subject parcel that would, if approved, make the requested use a permitted use;
- (2) The requested rezoning or special exception, in the opinion of the director, is clearly compatible with the neighboring uses and zoning and is consistent with the Fort Myers Beach Comprehensive Lee Plan;
- (3) The proposed use of the property is a business that is being relocated due to the town's county's economic development or redevelopment efforts or as the result of threatened or ongoing condemnation proceedings;
- (4) No new principal structures are to be constructed on the subject property; and
- (5) The applicant agrees in writing that the proposed use will cease within 180 days of

the date of the administrative approval unless the town council Board of County Commissioners or hearing examiner, whichever is applicable, has rendered a final decision approving the requested rezoning or special exception. Upon execution, the agreement shall be recorded in the public records of the county.

(b) Decisions by the director pursuant to this section are discretionary and may not be appealed pursuant to § 34-86, subsection 34-145(a).

(c) The director may extend the effective date of the approval up to an additional 90 days upon good cause shown.

(d) No approval issued pursuant to this section shall excuse any property owner from compliance with any town county regulation except the list of permitted uses in the zoning district in question.

Sec. 34-268. Administrative setback variances.

(a) Upon written request using a form prepared by the director, the director is authorized to modify the setbacks in §§ 34-634, 34-1174–34-1176, and 34-1744 34-651 through 34-1041 and 34-1744 (residential fences only) of this chapter under the following circumstances:

- (1) Street, rear, side, or waterbody setbacks may be modified to permit the remodeling or additions to existing structures that are nonconforming with regard to a specific setback so long as the remodeling or addition will not result in:
 - a. ~~The remodeling or addition will not result in~~ An increase in the height of the structure; ~~and~~ or
 - b. ~~The remodeling or addition will not result in~~ A further diminution of the setback. The director may approve bay windows, chimneys, and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.
- (2) Street, rear, side, or waterbody setbacks may be modified to permit the construction of a handicapped access appurtenant to any existing structure.
- (3) Street, rear, side, or waterbody setbacks may be modified to allow the replacement of stairs

or decking that provides access into an existing dwelling unit.

- (4) Street, rear, side, or waterbody setbacks may be modified to legitimize minor errors in setbacks at the time of construction.
- (5) Street, rear, or side setbacks may be modified for a residential lot with an unusual shape or orientation where, for instance, side and rear setbacks should be reversed. Rear or side setbacks for lots that qualify for a single family determination, pursuant to the Lee Plan, may be modified to permit the construction of a single-family dwelling unit so long as the proposed lot coverage does not exceed 45 percent.
- (6) Buildings or structures that are not in compliance with current setback regulations and which can be proven to have been permitted may also be reviewed by the director for consideration under this section.

(b) The director, prior to approving the modifications, must make the following findings of fact:

- (1) There are no apparent deleterious effects upon the adjoining property owners;
- (2) The modifications will not have an adverse impact on the public health, safety, and welfare; and
- (3) The modifications will be the minimum required.

(c) Decisions by the director pursuant to this section are discretionary and may not be appealed in accordance with § 34-86. 145(a) of this chapter.

~~Sec. 34-269. Compliance agreements. [deleted in its entirety]~~

Secs. 34-269-34-610 300. Reserved.

~~ARTICLE III. RESERVED~~

~~Secs. 34-301-34-340. Reserved.~~

~~ARTICLE IV. PLANNED DEVELOPMENTS [divisions 1 & 2 moved to §§ 34-211-34-220]~~

~~DIVISION 3. DESIGN STANDARDS~~

~~Sec. 34-411. General standards. [deleted in its entirety]~~

~~Sec. 34-412. Deviations from general zoning regulations. [moved to § 34-932(b)]~~

~~Sec. 34-413. Density or intensity of use. [moved to § 34-932(c)]~~

~~Sec. 34-414. Open space. [deleted in its entirety]~~

~~Sec. 34-415. Provision of public facilities and services. [deleted in its entirety]~~

~~Secs. 34-416-34-440. Reserved.~~

~~DIVISION 4. RESIDENTIAL PLANNED DEVELOPMENTS IN RURAL OR OUTER ISLANDS [deleted in its entirety]~~

~~ARTICLE V. COMPREHENSIVE PLANNING; THE LEE PLAN*~~

~~Sec. 34-491. The Lee Plan. [moved to § 34-619]~~

~~Secs. 34-492-34-610. Reserved.~~