

ORDINANCE No. 05-08

AN ORDINANCE AMENDING ZONING REGULATIONS IN CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES”; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. AUTHORITY. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. ADOPTION OF AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE. Chapter 34 of the Town of Fort Myers Beach land development code is titled “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES.” Chapter 34 is hereby amended as shown in Exhibit A. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 34:

Article I. In General.

Sec. 34-1. Purpose and intent of chapter.

Sec. 34-2. Definitions.

Article II. Zoning Procedures.

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

Sec. 34-87. Variances.

Sec. 34-88. Special exceptions.

Sec. 34-90. Land development code interpretations.

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

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

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

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

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

Sec. 34-214. Application for an amendment.

Sec. 34-216. Public hearings.

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

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

Sec. 34-265. Requests for interpretation of this code.

Sec. 34-268. Administrative setback variances.

Article III. Zoning District Regulations.

Sec. 34-613. Designation of district boundaries.

Sec. 34-614. Official zoning map.

Sec. 34-615. Current zoning map.

Sec. 34-616. Historic zoning map.

Sec. 34-6176. Rules for interpretation of district boundaries.

Sec. 34-621. Allowable uses of land described.
Sec. 34-631. Building heights.
Sec. 34-632. Density.
Sec. 34-638. Minimum setbacks.
Sec. 34-651. BB (Bay Beach) zoning district.
Sec. 34-652. EC (Environmentally Critical) zoning district.
Sec. 34-662. Build-to lines and setback lines.
Sec. 34-673. Allowable uses.
Sec. 34-674. Building placement.
Sec. 34-676. Circulation and parking.
Sec. 34-677. Additional requirements.
Sec. 34-678. Outdoor display and sales of merchandise and food.
Sec. 34-682. District map and applicability.
Sec. 34-694. Regulations for existing mobile homes and recreational vehicles.
Sec. 34-702. Applicability.
Sec. 34-994. Exterior walls.
Sec. 34-998. Reserved. Signage.

Article IV. Supplemental Regulations.

Sec. 34-1171. Applicability of division.
Sec. 34-1174. Location and setbacks generally.
Sec. 34-1175. Satellite dishes and amateur radio antenna/towers.
Sec. 34-1351. Automobile repair
Sec. 34-1411. Assisted living facilities.
Sec. 34-1441. Purpose and intent.
Sec. 34-1443. Commercial antennas mounted on alternative support structures.
Sec. 34-1444. Commercial antennas mounted on communication towers.
Sec. 34-1552. Determination of paraphernalia.
Sec. 34-1575. Coastal zones.
Sec. 34-1617. Exemptions from property development regulations.
Sec. 34-1744. Location and height of fences and walls.
Sec. 34-1745. Buffer for commercial uses.
Sec. 34-1749. Entrance gates.
Sec. 34-1831. Purpose and applicability of division.
Sec. 34-1832. Definitions.
Sec. 34-1833. Technical standards for lighting.
Sec. 34-1834. Permits for lighting.
Sec. 34-1861. Boats, floating structures, floating equipment, and live-aboards.
Sec. 34-2020. Required parking spaces.
Sec. 34-2022. Seasonal parking lots.
Sec. 34-2032. Performance standards, creation of nuisance.
Sec. 34-2051. Property development regulations.
Sec. 34-2052. Parking.
Sec. 34-2053. Expansion of existing place of worship.
Sec. 34-2054. Living quarters.
Sec. 34-2394. Enforcement and penalties.
Sec. 34-2411. Location and construction.
Sec. 34-3002. Mobile vendors and transient merchants prohibited.
Sec. 34-3004. Outdoor display of merchandise for sale or rent.
Sec. 34-3005. Storage facilities.

- Sec. 34-3067. Definitions.
- Sec. 34-3131. Vehicle visibility at intersections.
- Sec. 34-3151. Water-oriented rental establishments.

Article V. Nonconformities.

- Sec. 34-3237. Pre-disaster buildback.
- Sec. 34-3238. Post-disaster buildback.
- Sec. 34-3273. General requirements for residential uses on nonconforming lots.

SECTION 3. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law, or contrary to the policy of express law although not expressly prohibited, or against public policy, or for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way shall affect the validity of all other provisions of this ordinance.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Rynearson and seconded by Council Member Massucco; upon being put to a vote, the result was as follows:

Bill Thomas	absent
Garr Reynolds	aye
Howard Rynearson	aye
W. H. "Bill" Van Duzer	nay
Don Massucco	aye

DULY PASSED AND ENACTED this 18th day of April, 2005.

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Marsha Segal-George, Town Clerk

By: _____
W. H. "Bill" Van Duzer, Mayor

Approved as to form by:

Anne Dalton, Interim Town Attorney

EXHIBIT A

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 34 — ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

ARTICLE I. IN GENERAL

Sec. 34-1. Purpose and intent of chapter.

(a) *[this subsection unchanged]*

(b) *[this subsection unchanged]*

(c) *[this subsection unchanged]*

(d) Other chapters of this code also provide standards that supplement this chapter. For example, ch. 10 includes standards for:

- (1) Mandatory construction of sidewalks during development along major streets; see § 10-289.
- (2) Approved piping materials for use in rights-of-way; see § 10-296(d).
- (c) Driveways that cross drainage swales, including residential driveways; see § 10-296(o).
- (4) Stormwater discharge and erosion control requirements; see § 10-601–608.

Sec. 34-2. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates a different meaning:

Animal clinic or kennel means an establishment providing for the diagnosis and treatment of ailments of animals other than humans, or for the temporary care of more than four dogs or cats (except litters of four months of age or less) for a fee ~~others~~, and which may include facilities for overnight care. See division 7 of article IV of this chapter.

Duplex: ~~See *Dwelling unit, types*.~~

Religious facilities means religious-related facilities and activities, which may include but are not limited to bus storage facilities or areas, convents, rectories, monasteries, retreats, church or synagogue ministries involving classes for more than 100 children during the week, and assisted living facilities. ~~homes for the aged.~~

Seawall has the meaning provided in § 26-41 for both seawalls and retaining walls.

Setback means the minimum horizontal distance required between a specified line and the nearest point of a building or structure. See also “build-to” lines in § 34-662 and setback exceptions in § 34-638(d).

- (1) ***Street setback*** means the setback extending across the front of a lot measured from the edge of an existing street right-of-way or street easement. See definition of “Lot line, front” and § 34-638.
- (2) ***Side setback*** means the setback, extending from the required street setback to the required rear lot line, or opposing street setback in the case of a double-frontage lot, measured from the side lot line. There are two types of side setbacks, those applying to waterfront lots and those applying to non-waterfront lots. See definition of “Lot line, side” and § 34-638.
- (3) ***Rear setback*** means the setback, extending across the rear of a lot, measured from the rear lot line. See definition of “Lot line, rear” and § 34-638.
- (4) ***Water body setback*** means the setback measured from the mean high water line (MHWL), or the control elevation line if applicable, of a water body. See § 34-638.

Variance means a departure from the provisions of this chapter or from any town ordinance (excluding building codes) relating to building and other structural setbacks, lot dimensions such as width, depth, or area, structure or building height, open space, buffers, parking or loading requirements, floor area ratio, design, landscaping, and similar regulations. A variance may not involve the actual use of the property, building, or structures, procedural requirements, or definitions. ~~This definition excludes provisions specifically indicated as requiring a special exception and variances from impact fees.~~ A variance may be granted in accordance with the procedures set forth in § 34-87. See *Variance, use* and *Variance, procedural*.

Variance, de minimis means a variance that differs so little from an adopted regulation that the variance's effects on the public health, safety, and welfare would be inconsequential. See § 34-87(3).

**ARTICLE II.
ZONING PROCEDURES**

DIVISION 2. TOWN COUNCIL

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

- (1) **Function.** The town council 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) and such other ordinances which assign this responsibility to the town council, except that no use variance or procedural variance as defined in this chapter shall be heard or considered.
- (2) **Prior hearings.** *[this subsection unchanged]*
- (3) **Decisions and authority.**
 - a. *[this subsection unchanged]*
 - b. *[this subsection unchanged]*
 - c. The town council has the authority to attach special conditions and requirements to any approval of a request for a 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 special conditions or requirements must be reasonably related to the action requested.

- d. *[this subsection unchanged]*
- (4) **Denials.** *[this subsection unchanged]*
 - a. *Denial with prejudice.*
- (5) **Rehearings.** *[this subsection unchanged]*
- (6) **Special master.** *[this subsection unchanged]*
- (7) **Judicial review.** *[this subsection unchanged]*

Sec. 34-87. Variances.

- (1) **Function.** *[this subsection unchanged]*
- (2) **Considerations.** *[this subsection unchanged]*
- (3) **Findings.** Before granting any variance, the town council must find that all of the following exist:
 - a. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a de minimis variance under circumstances or conditions where rigid compliance is not essential to protect public policy;
 - b. That the ~~exceptional or extraordinary~~ conditions justifying the variance or circumstances are not the result of actions of the applicant taken after the adoption of the regulation in question;
 - c. That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;
 - d. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
 - e. That the ~~conditions or circumstances on~~ situation of the specific piece of property; or the intended use of the property; for which the variance is sought are is not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.
- (4) **Authority.**
 - a. The town council has the authority to grant or deny, or modify, any request for a variance from the regulations or

restrictions of this code; 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.

- b. In reaching its decision, the town council has the authority to attach special conditions and requirements necessary for the protection of the health, safety, comfort, convenience and welfare of the general public. Such special conditions or requirements shall be reasonably related to the variance requested.
- (5) Setback, height, and similar variances granted to accommodate an existing building will expire when the building is removed. Redevelopment of the site must then comply with the setback and height regulations in effect at the time of redevelopment.

Sec. 34-88. Special exceptions.

- (1) **Function.** *[this subsection unchanged]*
- (2) **Considerations.** *[this subsection unchanged]*
- (3) **Findings.** Before granting any special exceptions, the town council must ~~shall~~ find that the applicant has ~~proved entitlement to the special exception by demonstrating compliance~~ demonstrated that the requested special exception complies with the standards in this section and with:
 - a. The Fort Myers Beach Comprehensive Plan;
 - b. This chapter; and
 - c. Any other applicable town ordinances or codes.
- (4) **Authority.**
 - a. The town council shall grant the special exception unless it finds that granting the special exception is contrary to the public interest and the health, safety, comfort, convenience and welfare of the citizens of the town, or that the request is in conflict with the criteria in this section.
 - b. In reaching its decision, the town council has the authority to attach special conditions and requirements necessary for the protection of the health, safety, comfort, convenience, or welfare of the general public. Such special conditions or requirements shall be reasonably related to the special exception requested.

Sec. 34-90. Land development code interpretations.

The town council may hear and decide applications for interpretations of this code as provided in § 34-265. Such applications shall not require a public hearing or recommendation from the local planning agency. Applications for such interpretations must be accompanied by the submittals described in § 34-202(a)(4)–(9); the director may waive any submittals that are not applicable to the type of interpretation being requested.

DIVISION 3. LOCAL PLANNING AGENCY

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

(a) The local planning agency shall consist of not less than five ~~seven~~ nor more than seven ~~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 five ~~seven~~ to seven ~~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 ~~May~~ 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. 34-121. 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:

- (1) *[this subsection unchanged]*
- (2) Make recommendations on the following to the town council:
 - a. Applications for rezonings including planned developments.
 - b. Applications for developments of regional impact and Florida Quality Developments approval, which may or may not include a request for rezoning.
 - c. Special exceptions.
 - d. Variances from this code and any town ordinance which specifies that variances from such ordinance can only be granted by the town council.
 - e. Extensions of master concept plans for planned developments (see § 34-220(4)).
 - f. ~~e.~~ Any other applications that require action by the local planning agency pursuant to this code.
- (3) *Authority.*
 - a. *[this subsection unchanged]*
 - b. *[this subsection unchanged]*
 - c. In reaching its recommendations, the local planning agency shall have the authority to recommend special conditions and requirements to be attached to any request for a planned development, special exception, or variance.

**DIVISION 4.
APPLICATIONS AND PROCEDURES**

Subdivision I. General Procedures

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

(a) *All applications. [this subsection unchanged]*

(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 change in the zoning district boundaries, or a request for special exception, appeal from administrative action, or variance, for his own property, shall include the following:

(1) *Evidence of authority.*

a. *Ownership interests.* The names of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries (see § 34-201(b)(2)a. through c.).

b. *Applicant's statement.* Notwithstanding the requirements of § 34-201(a)(1)a., the applicant for any action requiring a public hearing must sign a statement, under oath, that he is the owner or the authorized representative of the owner(s) of the property and that he has full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of the action approved by the town in accordance with this code. This must also include a statement that the property owner will not transfer, convey, sell, or subdivide the subject parcel unencumbered by the covenants and restrictions imposed by the approved action.

c. ~~b.~~ *Agent authorization.* If the owner authorizes an agent to represent the owner in all matters pertaining to the application, the owner must provide the agent with 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 The applicant may

authorize ~~additional~~ agents to assist in the preparation and presentation of the application. The town will presume that any agent authorized by the applicant has the authority to bind the property with respect to conditions. 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.~~

~~c. Contract purchaser/vendee authorization. If a contract purchaser or 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.~~

- (2) *[this subsection unchanged]*
- (3) *[this subsection unchanged]*
- (4) *[this subsection unchanged]*
- (5) *[this subsection unchanged]*

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

- (a) *[this subsection unchanged]*
- (b) *[this subsection unchanged]*
- (c) *[this subsection unchanged]*
- (d) *[this subsection unchanged]*
- (e) *[this subsection unchanged]*
- (f) *[this subsection unchanged]*
- (g) *[this subsection unchanged]*

(h) Modifications to submittal requirements.

Upon written request, on a form prepared by the director, the director may modify the submittal requirements contained in this section or in other portions of this code where modifications are specifically authorized, where it can be clearly demonstrated by the applicant that the submission will have no bearing on the review and processing of the application. The request and the director's written response must accompany the application submitted and will become a part of the permanent file. The decision of the director is discretionary and may not be appealed.

**Subdivision II.
Additional Procedures for Planned
Development Zoning Districts**

Sec. 34-214. Application for an amendment.

(a) Applications for amendments to an approved master concept plan or its attendant documentation, including a time extension, or for the reaffirmation of a previously vacated master concept plan (for plans approved prior to December 2, 1991); 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 surrounding land uses, if any, that have occurred since the original application was made.

(b) In addition, the application and master concept plan must update the entire planned development:

- (1) Precise locations of newly constructed buildings must be shown.
- (2) All deviations previously approved or now requested must be clearly indicated.
- (3) If the land development code has changed since the previous approval, the proposed amendment must be based on the current regulations (for example, the proposed uses and deviations must reflect the terminology and regulations in the current code).
- (4) The intent is to have resolutions that amend a planned development be current and complete and not require references to a previous resolution on the same property.

(c) Some amendments can be approved administratively as provided in § 34-219; the remainder shall proceed through the public hearing process described in § 34-216.

Sec. 34-216. Public hearings.

(a) ***Hearing before the local planning agency.*** After an application is complete, the application will be scheduled for a public hearing before the local planning agency.

- (1) *[this subsection unchanged]*
- (2) The recommendation made to the town council must be supported by the guidelines set forth in § 34-85 of this chapter. In

addition, the findings must address whether the following criteria can be satisfied:

- a. *[this subsection unchanged]*
 - b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;
 - c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
 - d. *[this subsection unchanged]*
- (3) *[this subsection unchanged]*
 (4) *[this subsection unchanged]*

(b) **Hearing before the town council.** *[this subsection unchanged]*

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

(a) **Compliance with applicable regulations.** *[this subsection unchanged]*

(b) **Applicability of development regulations.** *[this subsection unchanged]*

(c) The terms and conditions of the planned development zoning approval (other than the master concept plan as set forth in § 34-220) run with the land and remain effective in perpetuity or until a new zoning action is approved by the town council. All developments must remain in compliance with the terms and conditions of the zoning approval.

~~(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) *[this subsection unchanged]*

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

Master concept plans 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 a development order for the first phase of the project within three years of the date of the original approval by the town council, 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.
- (2) *[this subsection unchanged]*
- (3) *[this subsection unchanged]*
- (4) When any portion of a master concept plan is vacated pursuant to subsection (1), the vacated area will remain zoned planned development, but no additional development can occur or be approved until a new master concept plan is approved or the original master concept plan is extended, or until the property is rezoned by the town council.
- (5) ~~(4)~~ Extensions of master concept plans may be granted as follows:
 - a. An approved master concept plan for a phase of or an entire planned development which has been or may be vacated due to a failure to proceed on the applicant's part may be extended by the town council 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 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 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 up to one year after the vacation of the master concept plan and must consist of the following:
 1. A completed application form provided by the director;
 2. The approved master concept plan;
 3. The applicable zoning resolution;
 4. A written statement describing how the criteria listed in subsection (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) ~~(5)~~ Phasing plans may be amended in accordance with § 34-214.

DIVISION 6. INTERPRETATIONS, ENFORCEMENT, AND SPECIAL ADMINISTRATIVE ACTIONS

Sec. 34-265. Requests for interpretation of this code.

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

- (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 town council for its consideration (see § 34-90).

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 §§ 34-638, 34-1174–34-1176, and 34-1744 of this chapter under the following circumstances:

- (1) Street, rear, side, or waterbody setbacks may be modified to permit the remodeling of 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. An increase in the height of the structure; or
 - b. 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.
- (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.
- (7) Requirements for large satellite dishes may be modified as provided in § 34-1175(a)(6).

(b) *[this subsection unchanged]*

(c) *[this subsection unchanged]*

ARTICLE III. ZONING DISTRICT REGULATIONS

DIVISION 1. MAPPING OF ZONING DISTRICTS

Sec. 34-613. Designation of district boundaries.

(a) Major revisions to this chapter were approved by the Town of Fort Myers Beach in 2003, including the establishment of new zoning districts and the assignment of all land in the town to one of these zoning districts.

- (1) The new zoning district assignments ~~were~~ are shown on the interim zoning map contained in Exhibit A of ~~the amending~~ Ordinance 03-03. The new zoning district assignments took effect on March 3, 2003, the date that Ordinance 03-03 was adopted. Previous approvals of variances, special exceptions, special permits, and other zoning actions that did not change zoning district boundaries were not shown on the interim zoning map due to its scale but were not affected by the adoption of the interim zoning map. These approvals were still ~~are~~ indicated on the current zoning maps that were being maintained for the town by Lee County.
- (2) ~~Within one year after approval of the amending ordinance,~~ On May 17, 2004, the town council ~~shall~~ approved by Resolution 04-16 adopting a new official zoning map of the town as described in § 34-614 that reflected ~~reflects~~ these new zoning districts and other zoning approvals that remained in effect, such as variances, special exceptions, and special permits.
- (3) Also on May 17, 2004, the town council approved Resolution 04-17 adopting a historic zoning map of the town as described in § 34-616.

(b) The boundaries of each zoning district as shown on the interim zoning map, the official zoning map as described in § 34-614, ~~and~~ the current zoning map as described in § 34-615, and the historic zoning map as described in § 34-616 shall be as much a part of this chapter as if fully described in this chapter.

(c) There is no right to rely solely on the interim, official, ~~or~~ current, or historic zoning maps to vest development or private rights. In addition to the zoning districts shown on these maps, development rights may be limited by other factors such as the Fort Myers Beach Comprehensive Plan; conditions on zoning resolutions for planned development districts, special exceptions, special permits, or variances; and the precise terms of prior administrative approvals.

Sec. 34-614. Official zoning map.

(a) *Generally.* The official zoning map of the town consists of computer-generated ~~section~~ maps which ~~are~~ shall be adopted by the town council by resolution. The first official zoning map was adopted by the town council on May 17, 2004 through Resolution 04-16.

- (1) The first official zoning map ~~shall~~ reflected the new zoning district boundaries adopted in 2003 through the interim zoning map (see § 34-613) plus two additional zoning district boundary changes adopted by separate resolutions through April 1, 2004.
- (2) The first official zoning map ~~shall~~ also reflected ~~past~~ approvals of variances, special exceptions, special permits, and similar approvals from the previous zoning map, which had been approved by Lee County Resolution 94-03-27 on March 16, 1994 and subsequently amended by incremental decisions by officials of Lee County and the Town of Fort Myers Beach through April 1, 2004.
- (3) When adopting ~~its new~~ official zoning maps, the town council may delete from the previous maps references to past approvals that are believed to have expired or which have become obsolete due to changed regulations or conditions. However, the deletion of such approvals from the official zoning map does ~~shall~~ not affect any rights that landowners may have under explicit terms of this code (see § 34-616).

(b) *District boundaries.* [*this subsection unchanged*]

(c) *Other boundaries.* The perimeter of legal descriptions affected by variances, special exceptions, planned developments, and similar approvals shall be noted with a symbol or key

number referencing additional zoning information, which may include the nature of the action, the hearing date, and any special conditions that were imposed.

(d) **Mapping conventions.** *[this subsection unchanged]*

(e) **Errors.** *[this subsection unchanged]*

(f) **Public availability.** *[this subsection unchanged]*

(g) **Records management.** *[this subsection unchanged]*

Sec. 34-615. Current zoning map.

(a) **Description.** The current zoning map of the town consists of ~~scaled~~ computer-generated ~~section~~ maps depicting the same information on the official zoning map as it has been subsequently modified by rezonings, zoning amendments, special exceptions, variances, administrative decisions, mapping corrections, etc. that have been entered into the computer data base since the most recent adoption of the official zoning maps. For purposes of this section, the term “mapping corrections” means corrections applied to the current zoning map to provide an accurate reflection of the legal description affected by a duly adopted zoning resolution.

(b) **Printed copies.** *[this subsection unchanged]*

(c) **Public availability.** *[this subsection unchanged]*

(d) **Changes.**

- (1) No changes or amendments to the ~~existing~~ official or current zoning maps shall be made except in compliance and conformity with all the procedures of this chapter, including the correction of errors resulting from clerical or drafting mistakes. Changes in district boundaries or other subject matter portrayed on the official zoning map shall be made promptly on copies of the current zoning map after official adoption of the amendment. All amendments and changes approved by the town council or other authorized bodies shall become effective at the end of the appeal period specified in article II of this chapter.

The filing of an appeal stays the effectiveness of the change. If no appeal is filed the director shall forthwith authorize the approved changes to be made on copies of the current zoning map.

- (2) Changes to the current zoning map authorized by the town will be entered into the computer data base and then reflected on the current zoning map in the following manner:
 - a. The property affected by a zoning district change, special exception, variance, or other approval shall be noted with a symbol or key number referencing additional zoning information.
 - b. The additional zoning information may include the resolution number, any change of zoning district, the nature of any other action, the hearing date, and any special conditions that were imposed.

Sec. 34-616. Historic zoning map.

A historic zoning map was approved by the town council through Resolution 04-17 on May 17, 2004. This historic zoning map reflects the zoning districts that applied to all properties immediately prior to the adoption of Ordinance 03-03 and all variances, special exceptions, special permits, and similar approvals that had been approved by Lee County or the Town of Fort Myers Beach prior to the adoption of Ordinance 03-03. This map provides a historic record of past zoning actions and prior zoning status that may affect the nonconforming status of certain properties within the town. This map also includes key numbers that are explained by detailed notes that provide a history of prior rezonings, variances, special exceptions, special permits, and similar approvals that had been approved before Ordinance 03-03 was adopted on March 3, 2003.

Sec. 34-6176. Rules for interpretation of district boundaries.

(a) *[this subsection unchanged]*

(b) When a parcel is split by two or more zoning districts, the property development regulations for the largest proportional district prevail. ~~However, permitted uses and accessory uses are restricted to the uses permitted in the respective districts.~~ However, each portion of the parcel is limited to only the permitted uses allowed on that portion, plus their allowable accessory uses. Accessory uses including parking lots may not be placed on portions of parcels that do not contain the principal use to which they are incidental and subordinate. Docks, however, are governed by the regulations for the upland property to which they are attached. See also § 34-1174.

~~Secs. 34-617-34-618. Reserved.~~

DIVISION 2. ALLOWABLE LAND USES IN EACH ZONING DISTRICT

Sec. 34-621. Allowable uses of land described.

(a) **Applicability.** *[this subsection unchanged]*

(b) **Use tables.** Table 34-1 of this article lists specific uses followed by a symbol indicating whether the use is permitted by right (P), special exception (SE), administrative approval (AA), existing only (EO), or temporary use permit (TP). In all instances, unless specifically noted to the contrary, the symbols used in the use regulations tables shall have the following meaning:

- AA *Administrative approval required.* The director has the authority to approve the use when in compliance with the referenced sections of this code.
- EO *Existing only.* The use is permitted only if it that use lawfully existed on the same property on August 1, 1986. Such lawfully existing use shall have the same rights as a permitted use and may be expanded or reconstructed on the same parcel in accordance with all applicable regulations.
- P *Permitted.* The use is permitted by right when in compliance with all applicable regulations.
- SE *Special exception required.* The town council may approve the use after public hearing upon a finding that the use is consistent with the standards set forth in § 34-88, as well as all other applicable regulations. The town council may place restrictions on the use as a condition of approval.
- TP *Temporary use permit.* The use may be granted a temporary use permit in accordance with §§ 34-3041 and 34-3050.
- AA/ SE *The use is permissible either through administrative approval or special exception, subject to the regulations set forth in the specified section (for example, in § 34-1264(a)).*
- EO/ SE *Lawfully existing uses are permitted, but new uses are permissible only by special exception.*
- (I) *Parenthesized number.* The use is limited as set forth in the referenced footnote.

Table 34-2 — Use Sub-Groups Permitted in Each Zoning District ¹

	<i>Residential</i>	<i>Lodging</i>	<i>Office</i>	<i>Retail</i>	<i>Marine</i>	<i>Civic</i>
	Use Groups and Sub-Groups (Restricted, Limited, Open)					
RS Residential Single-family	(R)	(R)	(R)	—	(R)	(R)
RC Residential Conservation	(L)	(L)	(R)	—	(R)	(R)
RM Residential Multifamily	(O)	(L)	(L)	(R)	(R)	(L)
CR Commercial Resort	(O)	(O)	(O)	(L)	(L)	(L)
CM Commercial Marina	(R) =	(R) =	(L)	(L)	(O)	(L)
CO Commercial Office	(O)	(L)	(O)	(L)	(L)	(O)
SANTOS	(L)	(L)	(O)	(L)	(L)	(L)
IN Institutional	(L)	(L)	(L)	(R)	(L)	(O)
CF Community Facilities	(R)	(R)	(L)	(R)	(L)	(O)
BB Bay Beach	— see § 34-651(b) —					
EC Environmentally Critical	— see § 34-652(d) & (e) —					
DOWNTOWN	(O)	(O)	(O)	(O)	(L)	(O)
SANTINI	(O)	(O)	(O)	(O)	(O)	(O)
VILLAGE	(L) ²	(L) ²	(L) ²	(L) ²	—	(L)
CB Commercial Boulevard	(O)	(L)	(L) ³	(L) ³	(L)	(O)
RPD Residential Planned Dev. ⁴	(R)(L)(O)	(R)(L)	(R)(L)	(R)(L)	(R)(L)	(R)(L)
CPD Commercial Planned Dev. ⁴	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)	(R)(L)(O)

Note 1: See Table 34-1 for a specific list of Use Groups (Residential, Lodging, Office, Retail, Marine, and Civic) and Sub-Groups of each (Restricted, Limited, and Open).

Note 2: See § 34-692(3) which provides a pre-approved redevelopment option for the VILLAGE district that can also permit residential, lodging, office, and retail uses in the Open Sub-Group under specified conditions.

Note 3: See § 34-702–703 for exceptions and limitations on new and expanded commercial uses.

Note 4: See § 34-933. The resolution approving a planned development zoning district (RPD or CPD) will specify which of the use groups or sub-groups enumerated in Table 34-1 will be permitted on that parcel.

Note that some potential use sub-groups are not listed above for the RPD zoning district because they may not be approved in any RPD zoning resolution.

DIVISION 3. EXPLANATION OF PROPERTY DEVELOPMENT REGULATIONS FOR ALL ZONING DISTRICTS

Sec. 34-631. Building heights.

(a) **Methods of measurement.** Maximum building heights specified in this code are measured in two ways, as shown in Figure 34-1.

- (1) *Measured in stories*, the height includes space at ground level as the first story, provided it is six feet or more in height.
 - a. Space within a roofline that is entirely non-habitable shall not be considered to be a separate story, for example overhead space enclosed by a cathedral ceiling, cupola, or similar roof enclosure.
 - b. Any single story cannot exceed 16 feet in height, including structural members.
- (2) *Measured in feet*, the height is the vertical distance between the base flood elevation (BFE), as established by the maps described in § 6-408, and the top of the structural members that serve as the ceiling for the highest habitable story of the building.
 - a. Where ceilings are sloped, height is measured to the highest vertical point on a wall of the highest habitable story of the building.
 - b. For parking garages, height is measured to the top of the structural members of the highest ceiling, or if parking is allowed on the roof level, to the highest point on the rooftop parking level.
- (3) Specific height regulations are provided for each zoning district.
 - a. For conventional zoning districts, see Table 34-3 in division 4 of this chapter.
 - b. For redevelopment zoning districts, see individual districts in division 5 of this chapter.

- chapter.
- c. For planned development zoning districts, see division 6 of this chapter.

(b) **Exceptions to height regulations.**

- (1) Roof structures and parapet walls may exceed the height limit defined in any zoning district provided there is no habitable space inside the roof structure.
- (2) Non-habitable architectural appurtenances such as cupolas, clerestories, towers, flagpoles, and steeples may also extend above the height limit if they do not exceed an area of 250 square feet. A habitable roofed tower up to 150 square feet, whether open-sided or enclosed, may also qualify as an acceptable architectural appurtenance and extend above the height limit provided it is roofed in a manner consistent with the design of the building. Decks do not qualify as architectural appurtenances for the purposes of this subsection. Any proposed appurtenance taller than an additional 15 feet or larger than the specified sizes 250 square feet would require a variance from this code.



Roofed towers, Figure 34-1-b

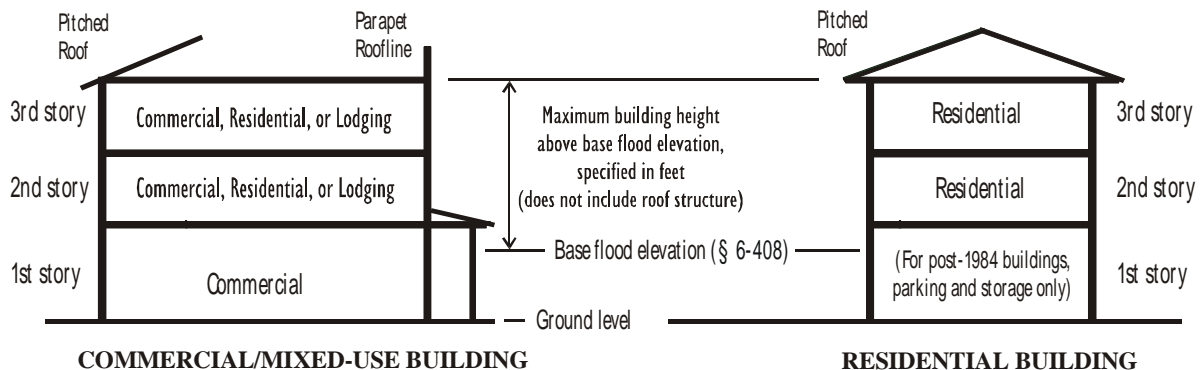


Figure 34-1-a

As Adopted by Ordinance 05-08 on April 18, 2005

- (3) Mechanical or structural appurtenances such as elevator and stairwell enclosures, air-conditioning equipment, and antennas may also extend above the height limit provided these appurtenances:
 - a. do not exceed 250 square feet per type; and
 - b. screening is provided as required by this code (see, for example, § 6-2(f) for rooftop mechanical equipment).
- (4) *[this subsection unchanged]*
- (5) *[this subsection unchanged]*
- (6) *[this subsection unchanged]*
- (c) *[this subsection unchanged]*.

Sec. 34-632. Density.

Residential density cannot exceed the maximum levels established in the Fort Myers Beach Comprehensive Plan. Additional dwelling units are not allowed in the “Marina” or “Tidal Waters” categories on the Comprehensive Plan’s future land use map; live-aboards are permitted in accordance with § 34-1861.

- (1) *[this subsection unchanged]*
- (2) **Determining lot area.** For purposes of this section, a site’s lot area includes the gross acreage within the site’s private property line, minus wetlands, canals or other water bodies that extend beyond the site, minus all primarily commercial and other non-residential land, and minus any land designated “Recreation” on the Comprehensive Plan’s future land use map. For any site with wetlands or land designated “Recreation,” the maximum number of dwelling units shall be increased by one unit per 20 acres of such land.
- (3) **Existing subdivisions.** In existing subdivisions where lots are smaller than 15,000 square feet each:
 - a. Residential densities may be computed based on the actual lot size plus one-half the width of adjoining streets and canals water bodies, but in no case may more than 35 feet be counted as the allowance for one-half of an adjoining water body.
 - b. Computed densities greater than 1.5 DU/acre may be rounded up to two dwelling units where two-family and multifamily dwelling units are permitted.

- c. This method for determining densities cannot be used for:
 - 1. Three or more lots that are being combined into a development project; or
 - 2. Any lot that was created after December 31, 1995, as described in § 34-3272.
- (4) **Mixed-use buildings.** Residential densities may be computed without deleting any acreage for commercial uses that are located on other floors of mixed-use buildings. However, any acreage used primarily for commercial purposes cannot be included in computations of residential density.
- (5) **Adjustments to density computations.** The following rules shall apply when measuring density for living units or guest units that may not also qualify as dwelling units:
 - a. When permitted on a property, certain other land uses such as assisted living facilities and hotels/motels are limited by using equivalency factors between those uses and dwelling units, such as provided in §§ 34-1415 and 34-1803.
 - b. For density purposes, each living unit shall count as one dwelling unit except where this code explicitly provides a different measure for measuring density (see, for example, § 34-1178(d) regarding accessory apartments in owner-occupied homes).
 - c. Lock-off accommodations in multiple-family buildings and timeshare units are living units and ~~thus~~ are calculated as separate dwelling units for density purposes.
 - d. Live-aboards are considered to be living units but not dwelling units as defined by the Fort Myers Beach Comprehensive Plan. Where live-aboards are permitted in accordance with § 34-1861, they are not subject to residential density computations.
- (6) *[this subsection unchanged]*

Sec. 34-638. Minimum setbacks.

- (a) **Generally.** Most zoning districts require minimum setbacks between all buildings and structures and the street, the side lot line, the rear lot line, and any water body.
 - (1) Setbacks are minimum horizontal distances between a property line and the nearest point of all structures that ensure a minimum area

without buildings. Detailed definitions are provided under “setback” in § 34-2.

- a. Where an unusual lot configuration or orientation makes it unclear which property lines are street, side, or rear lot lines, the director will establish street, side, and rear lot lines for setback purposes after taking into account existing buildings on the same block as well as the intent of this code. Where access is provided by a shared driveway rather than a street, the director may determine that no street setback applies to that lot.
- b. Once established through this process, the same setbacks will be applied by the director to other lots on that block.
- (2) There are two types of side setbacks:
 - a. *Side setbacks – waterfront lots.* Larger side setbacks are required for waterfront lots, defined as lots that immediately adjoin a tidally influenced body of water, whether artificial or natural (see definitions in § 34-2).
 - b. *Side setbacks – non-waterfront lots.* Smaller side setbacks are required for all other lots.
- (3) The distinction between street setback lines and build-to lines is explained in § 34-662.
- (4) Certain exceptions to minimum setbacks are provided in subsection (d) below.

(b) *[this subsection unchanged]*

(c) ***Additional wetlands buffers.*** New development must maintain a 75-foot separation between wetlands and buildings or other impervious surfaces, in accordance with Policy 4-C-12 of the Fort Myers Beach Comprehensive Plan.

- (1) This requirement does not apply to lawfully existing subdivided previously platted lots
- (2) This requirement also does not apply to a previously approved development order to the extent it cannot reasonably be modified to comply with this requirement (see ch. 15 of the Fort Myers Beach Comprehensive Plan for details).

(d) ***Exceptions to setback dimensions.*** In addition to the following general exceptions to minimum setbacks, commercial buildings that are subject to the commercial design standards may

encroach into certain setbacks as provided in § 34-991–1010.

(1) ***Exceptions to all setbacks.***

- a. *[this subsection unchanged]*
- b. *[this subsection unchanged]*
- c. *[this subsection unchanged]*
- d. *[this subsection unchanged]*
- e. *[this subsection unchanged]*
- f. *Two-family dwelling units.* If a two-family dwelling unit is on a lot of sufficient size to allow it to be subdivided into a separate lot under each dwelling unit (see Table 34-3), the side setback regulations in this section shall not be interpreted to forbid such subdivision. Existing two-family buildings that are being subdivided must be separated by not less than 1-hour fire resistance.
- g. *Mechanical equipment.* Mechanical equipment such as air conditioners may encroach up to three feet into rear and water body setbacks but must meet the same street and side setbacks as the building it serves. These requirements apply to new buildings and to new mechanical equipment but will not apply to replacement of mechanical equipment on existing buildings if the equipment was installed in conformance with prior regulations.

(2) ***Exceptions to street setbacks.***

Certain structures are exempt from the street setback requirements as follows: See also § 34-1174.

- a. *[this subsection unchanged]*
- b. *[this subsection unchanged]*
- c. *[this subsection unchanged]*
- d. *[this subsection unchanged]*
- e. *[this subsection unchanged]*
- (3) *[this subsection unchanged]*
- (4) *[this subsection unchanged]*

DIVISION 4. CONVENTIONAL ZONING DISTRICTS

Sec. 34-651. BB (Bay Beach) zoning district.

(a) The purpose of the BB zoning district is to implement the binding agreement that settled litigation over development rights in Bay Beach and to recognize prior rights granted for the construction and use of docks.

(b) Land uses in the BB zoning district shall conform to all requirements of the stipulated settlement agreement between Stardial Investments Company and the Town of Fort Myers Beach dated February 23, 2001, a copy of which is recorded in O.R. Book 3414, Pages 4775–4786, as amended in O.R. Book 3414, Pages 4787–4789, and including any future amendments to this agreement. Land uses in the BB zoning district must also conform to DRI development order #12-9394-124 regarding dock construction that was issued by Lee County on December 5, 1994, notice of which is recorded in O.R. Book 2586, Pages 1851–1854.

- (1) Allowable land uses include those uses in lawful existence as of February 23, 2001, and those additional uses as defined in the settlement agreement and in the DRI development order.
- (2) Building size and placement shall be governed by the regulations in this code, including the property development regulations in the RM district, except where specifically superseded by terms of the settlement agreement.
- (3) Replacement buildings cannot exceed the height, square footage of floor and parking areas, and all other measurable parameters of the original buildings. See buildback regulations in § 34-3237–3238.

Sec. 34-652. EC (Environmentally Critical) zoning district.

- (a) *[this subsection unchanged]*
- (b) *[this subsection unchanged]*
- (c) *[this subsection unchanged]*
- (d) *Permitted uses.* In the EC district, no land or water use shall be permitted by right except for those uses and developments permitted by the Fort Myers Beach Comprehensive Plan in wetlands,

beaches, or critical wildlife habitats, as applicable, including:

- (1) Boating, with no motors permitted except electric trolling motors.
- (2) Fishing.
- (3) Removal of intrusive exotic species or diseased or dead trees, and pest control.
- (4) Hiking and nature study, including pedestrian boardwalks and dune crossovers.
- (5) Outdoor education, in keeping with the intent of the district.
- (6) Recreation activities, residential accessory uses, and resort accessory uses that are performed outdoors. These activities and uses include passive recreation and ~~that~~ active recreation that requires requiring no permanent structures or alteration of the natural landscape (except as may be permitted by special exception (see § 6-366 and subsection (e) below). Any temporary structure used in conjunction with such uses must comply with all provisions of this code (for instance, see chapters 14 and 27). Artificial lighting may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process (see §§ 6-366 and 14-76).
- (7) Wildlife management, as wildlife preserves.

(e) *Special exception uses and structures.* Upon a finding that the proposed use or structure is consistent with the standards set forth in § 34-88, as well as all other applicable town regulations, the town council may permit any specific use or structure from the following list as a special exception, subject to conditions set forth in this chapter and in the resolution of approval:

- (1) Accessory structures, to include any building, structure, or impervious surface area which is accessory to a use permitted by right or by special exception in the EC district (see § 6-366).
- (2) Nature study center, noncommercial, and its customary accessory uses.
- (3) Single-family residence and its customary accessory uses at a maximum density of one dwelling unit per twenty acres.

(f) *[this subsection unchanged]*

Table 34-3 — Dimensional Regulations in Conventional Zoning Districts

ZONING DISTRICT	Setbacks (see § 34-638 for explanation and exceptions)						Lot size (see § 34-637 for explanations and exceptions)			F.A.R. §34-633	Building Coverage § 34-634	Density § 34-632	Height (see § 34-631)	
	street	side-waterfront lot	side-non-waterfront	rear	water body (1)	Gulf of Mexico (2)	area	width	depth	ratio	percentage	feet	stories	
RS Residential Single-family	±0 <u>25</u>	±0 <u>7.5</u> (8)	7 <u>7.5</u> (8)	20	25	50	7,500	75	100	—	40%	(3), (4)	25	3
RC Residential Conservation	±0 <u>25</u>	7 <u>7.5</u>	5 <u>7.5</u>	20	25	50	4,000	45	80	—	40%	(3), (4), (5)	25	3
RM Residential Multifamily	±0 <u>25</u>	20 (6)	7 <u>20</u> (6)	20	25	50	7,500	75	100	1.2	—	(3), (4), (5)	30	3
CR Commercial Resort	10	20	15	20	25	50	20,000	100	100	1.2	—	(3)	30	3
CM Commercial Marina	20	20	20	20	0	50	20,000	100	100	1.0	—	(3) =	35	3
CO Commercial Office	10	10	7	20	25	50	7,500	75	100	1.2	—	(3), (4), (5)	30	3
SANTOS	10	7	5	20	25	50	5,000	50	100	0.5 <u>0.6</u>	—	(1), (2) (3), (4), (5)	25	3
IN Institutional	20	10	7	20	25	50	7,500	75	100	0.8	—	(3)	35	3
CF Community Facilities	20	15	10	20	25	50	N/A	N/A	N/A	0.1	—	(3)	35	3
BB Bay Beach	— see § 34-651(b) —													
EC Environmentally Critical	20	25	—	25	20	50	(7)	N/A	N/A	.01	—	(3), (7)	25	2

Note (1): An additional wetland buffer is required for new development; see § 34-638(c).
 Note (2): See § 34-638(d)(3)a.
 Note (3): Maximum densities are established by the Fort Myers Beach Comprehensive Plan; see § 34-632.
 Note (4): Accessory apartments are allowed in owner-occupied homes under certain conditions; see §34-1178.
 Note (5): A second dwelling unit or accessory apartment may be allowed on larger lots; for details, see §§ 34-632, 34-1177, and 34-1178.
 Note (6): Single-family and two-family homes on waterfront lots in the RM zoning district must maintain only a 7.5-foot ~~±0-foot~~ side setback.
 Note (7): See § 34-652(e)(3).
 Note (8): For all RS lots fronting on Matanzas Street and Matanzas Court, all side setbacks shall be at least 10 feet.

DIVISION 5. REDEVELOPMENT ZONING DISTRICTS

Subdivision II. Generally

Sec. 34-662. Build-to lines and setback lines.

- (a) **Build-to and setback lines distinguished.** [this subsection unchanged]
- (b) **General requirements for build-to lines.** [this subsection unchanged]
- (c) **General requirements for setback lines.**
 - (1) *Setbacks from property lines.* Minimum setbacks from property lines are defined for each zoning district. See § 34-638 for general requirements on setbacks.
 - (2) *Setbacks from water bodies.* Minimum setbacks from water bodies including the Gulf of Mexico are provided in § 34-638(d)(3).

Subdivision II. DOWNTOWN Zoning District

Sec. 34-673. Allowable uses.

In the DOWNTOWN district, allowable uses are defined in Table 34-2, § 34-676(f), and § 34-678.

Sec. 34-674. Building placement.

- (a) **Build-to lines established.** [this subsection unchanged]
- (b) **Setback lines established.** Setback lines (see § 34-662) are established as follows:
 - (1) For principal buildings:
 - a. Minimum rear setbacks are 25 feet from rear property lines, except as follows:
 - 1. In Times Square, as defined on Figure 34-6, the minimum rear setback is 10 feet.
 - 2. In areas where parking garages could be built, as defined on Figure 34-7, buildings shall be placed so as not to

- preclude future parking garages from being built on the interiors of these blocks. Along Old San Carlos Boulevard blocks with potential parking garages, this requirement means that principal buildings shall not extend further to the rear of lots than 50 feet back from the right-of-way for Old San Carlos Boulevard.
- ~~3. Minimum (rear) setbacks of 25 feet shall also be observed along those portions of properties abutting the town-owned parking lot between Old Carlos Boulevard and the Sky Bridge that had been platted as "Center Street" in Plat Book 9, Page 9.~~
 - b. Minimum side setbacks are 5 feet from side property lines, except they may be 0 feet for properties fronting on Old San Carlos, Estero Boulevard, and in Times Square (see also § 34-674(b)(1)c).
 - c. Minimum setbacks from water bodies are set forth in § 34-638(d)(3).
 - d. Minimum setbacks along those portions of properties abutting the town-owned parking lot between Old Carlos Boulevard and the Sky Bridge that had been platted as "Center Street" in Plat Book 9, Page 9 shall be the same as if those properties abutted any other private property.
- (2) For accessory structures, minimum setbacks are set forth in § 34-1171-1176.

Sec. 34-676. Circulation and parking.

- (a) **Off-street parking reductions.** The DOWNTOWN district is planned as a "park-once" district, with preference given to pedestrian movement within the district. On-street parking will be provided by the town along Old San Carlos Boulevard and other public parking is available under the Sky Bridge. For these reasons, substantial reductions are allowed to the normal off-street parking requirements found in § 34-2020. The follow percentages shall be multiplied by the number of off-street parking spaces normally required by § 34-2020 to determine the adjusted off-street parking requirements along various streets in the DOWNTOWN district:
 - (1) Old San Carlos Boulevard, multiply by 50%.
 - (2) ~~Times Square and Bayfront pedestrian plazas (see Figure 34-6), multiply by 0% for~~

~~existing building space~~ and multiply by 50% for ~~new building space~~. No parking spaces may be provided in the ~~Times Square or Bayfront pedestrian plazas~~, but the required spaces must be located within 750 feet in single-purpose, shared, or joint-use parking lots (see division 26 of this chapter).

- (3) Times Square pedestrian plaza (see Figure 34-6), multiply by 0%.
- (4) ~~(3)~~ All other streets in the DOWNTOWN district, and all land on Crescent Street regardless of zoning district, multiply by 67%.

- (b) *[this subsection unchanged]*
- (c) *[this subsection unchanged]*
- (d) *[this subsection unchanged]*
- (e) *[this subsection unchanged]*
- (f) *[this subsection unchanged]*

Sec. 34-677. Additional requirements.

(a) **Commercial design standards.**
[this subsection unchanged]

(b) **Open space and buffers.**
[this subsection unchanged]

(c) **Core area overlay district.** An optional core area overlay district was adopted by the town by Ordinance 96-20. That district was replaced with the DOWNTOWN zoning district by Ordinance 03-03. Landowners who chose to be governed by the core area overlay district agreed in writing to be bound by its provisions for ten years. Compliance with this code, including all requirements of the DOWNTOWN zoning district, is deemed by the town as satisfying those agreements. However, all provisions of those agreements relating to off-site parking remain in full effect.

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

- (a) **Generally.** *[this subsection unchanged]*
- (b) **Purpose.** *[this subsection unchanged]*
- (c) **Allowable locations for outdoor activities.**
[this subsection unchanged]
- (d) **Types of outdoor displays.** *[this subsection unchanged]*

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

- (1) **Porches and patios.** Subsection (c) also indicates whether the outdoor display is permitted on a porch, patio, or either. For purposes of this section, porches and patios are defined as follows:
 - a. **Porch** is a wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. A porch must be covered ~~or covered~~ with an awning, roof, or umbrellas. Wood must be painted or stained. Businesses with existing porches are encouraged to utilize them for outdoor display. New or expanded porches must comply with all chapters of this code.
 - b. **Patio** is an area covered with paver bricks, concrete, wood, or similar material and located at ground level immediately adjacent to the front of the building. Asphalt or earthen spaces are not considered a patio. Patios are encouraged to be shaded with an awning or umbrella or with a roof that is an integral part of the outdoor display. Businesses without porches are encouraged to use patios. New or expanded patios must comply with all chapters of this code.

(f) **PUBLIC PROPERTY:** No merchandise may be displayed outdoors on public property. Restaurants may extend their operations onto public sidewalks and plazas only as follows:

- (1) **General location.** These provisions are limited to the Times Square pedestrian plaza (see Figure 34-6) and other locations if explicitly approved by the town council.

- (2) **Who may operate.** Vending rights are available only to the owner of the private property that immediately abuts the sidewalk or pedestrian plaza, or in the case of leased property, only to the primary lessee; vending rights may not be further sub-leased.
- (3) **Specific location.** Vending rights can be used only in the area directly in front of the private property and lying between 90-degree extensions of the side property lines. Vending rights may extend onto public property only as far as specified in the annual permit and may be further modified by the town as necessary to provide adequate room for pedestrian movement and to ensure fair treatment for restaurants located on opposite sides of the Time Square pedestrian plaza.
- (4) **Outdoor dining.** No fixed or moveable equipment may be placed on a public sidewalk or plaza to sell or serve food except that tables, umbrellas, and chairs may be placed by restaurants for the use of their customers; no signage is permitted.
- (5) **Permit required.** Vending rights for dining on public property may be exercised only upon issuance of a permit by the town that sets forth the conditions of private use of a public sidewalk or plaza, including:
 - a. Additional restrictions on the degree which tables, umbrellas, chairs, and carts may interfere with pedestrian movement;
 - b. Restrictions on the extent to which food not available in the abutting business may be sold;
 - c. Requirements for keeping the area surrounding the tables or carts from debris and refuse at all times;
 - d. Insurance requirements;
 - e. Payment of fees established by the town for vending rights;
 - f. Limitations on leasing of vending rights, if any; and
 - g. Other reasonable conditions as determined by the town, including full approval rights over the design of umbrellas, carts, tables, etc.
 Permitting procedures and enforcement shall be the same as provided in subsection (e)(5).

**Subdivision III.
SANTINI Zoning District**

Sec. 34-682. District map and applicability.

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

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

**Subdivision IV.
VILLAGE Zoning District**

Sec. 34-694. Regulations for existing mobile homes and recreational vehicles.

- (a) *[this subsection unchanged]*

(b) **1987 site plan approvals.** Lee County approved site plans for Gulf View Colony and Red Coconut in 1987 to formally acknowledge the right to replace mobile homes and non-transient recreational vehicles in portions of each park in accordance with previous regulations. These site plans were approved in accordance with Lee County Ordinance 86-36. The Town of Fort Myers Beach will continue to recognize those rights, which are incorporated into the regulations set forth in this section.

- (1) *[this subsection unchanged]*
- (2) *[this subsection unchanged]*
- (3) *[this subsection unchanged]*
- (4) Permits shall also be issued for reroofing and roof repairs for any existing mobile home, park ~~trailer, model,~~ or recreational vehicle, regardless of lot size.
- (c) *[this subsection unchanged]*

(d) **Red Coconut:** Parts of a site plan for the Red Coconut were approved by Lee County on June 2, 1987. This plan was drawn by David Depew and was dated May 20, 1987.

- (1) *[this subsection unchanged except for the following]*
 - c. Replacement mobile home or park trailers on these sites, including lawful additions, storage sheds, and utility rooms, cannot be placed closer than 20 feet to any publicly maintained street.
- (2) *[this subsection unchanged except for the following]*
 - e. ~~Additions may not be constructed.~~
 - e. Replacement mobile home or park trailers on these sites, including lawful additions, storage sheds, and utility rooms, cannot be placed closer than 20 feet to any publicly maintained street.
- (3) **Transient RV park.** The remainder of the sites shown on this plan may continue in operation as a transient RV park. These sites can be identified on the 1987 site plan as follows: on the Gulf of Mexico, sites 1-53; on the bay side of Estero Boulevard, sites CE1-CE7, CWO0-CW6, CRD, H1-H10, J1-J10, K1, K3-K18, L1-L4, M1-M4, N1-N14, P1, R1-R3, Y-Y-Y-Y, and Z1. The following regulations apply to these 147 sites:
 - a. *[this subsection unchanged]*
 - b. *[this subsection unchanged]*
 - c. *[this subsection unchanged]*
 - d. All travel trailers, motor homes, or camping trailers may not be left unattended for more than two weeks during the months of June through December. For purposes of this section only, the term “unattended” shall be interpreted to mean that the owner of the unit has not provided for a person to be responsible for the unit in the event of a hurricane watch alert as set forth in the following subsection.
 - e. *[this subsection unchanged]*
 - f. Transient recreational vehicles cannot be placed closer than 20 feet to any publicly maintained street.

**Subdivision V.
CB Zoning District**

Sec. 34-702. Applicability.

- (a) *[this subsection unchanged]*
- (b) **Enlarging or replacing buildings for existing commercial uses.** The regulations in this subdivision also apply to the following activities:
 - (1) Physical enlargement of buildings or structures ~~housing~~ containing existing commercial uses, provided that the improvements do not constitute a “substantial improvement” as that term is defined in § 6-405 of this code, and
 - (2) Replacement buildings for existing commercial uses that will not increase the existing floor area ratio, as that term is defined in § 34-633.
- (c) *[this subsection unchanged]*
- (d) *[this subsection unchanged]*

**DIVISION 7.
COMMERCIAL DESIGN STANDARDS**

Sec. 34-994. Exterior walls.

- (a) **Generally.** *[this subsection unchanged]*
- (b) **Finish materials for walls.** *[this subsection unchanged]*
- (c) **Types of exterior walls.** Principal facades are defined in § 34-993 and their requirements are described in § 34-995. Exterior walls that are *not* defined as principal facades require a lesser degree of finish and transparency, but must meet the following requirements:
 - (1) Transparent windows must cover at least 30% of the wall area below the expression line and at least 10% of the wall area between the expression line and the cornice. These requirements shall not apply to walls facing and roughly parallel to rear lot lines, or to side walls being built closer than 5 feet to a side lot line if the adjoining lot also has a building with a side wall closer than 5 feet to

the same side lot line. However, some rear and side walls qualify as principal facades in accordance with § 34-993 and must meet the more stringent requirements of § 34-995.

- (2) All windows must have their glazing set back at least 3 inches from the surface plane of the wall, or set back at least 2 inches when wood frame construction is used.
- (3) Rectangular window openings shall be oriented vertically (except for transom windows).

Sec. 34-998. Reserved. Signage.
[this section is being eliminated; its substance has been incorporated into § 30-153]

**ARTICLE IV.
 SUPPLEMENTAL REGULATIONS**

**DIVISION 2. ACCESSORY USES,
 BUILDINGS, AND STRUCTURES**

Sec. 34-1171. Applicability of division.

This division provides minimum regulations for those accessory uses, buildings, and structures customarily incidental and subordinate to the principal use or building, which are not specifically regulated elsewhere in this code chapter.

Sec. 34-1174. Location and setbacks generally.

(a) *Permitted locations.* *[this subsection unchanged]*

(b) *Setback from streets.* No accessory use, building, or structure shall be located closer to a street right-of-way line or street easement than the principal building, except for

- (1) fences and wall as provided for in division 17, ~~for~~
- (2) signs, where permitted by ch. 30 and placed in accordance with §§ 30-93 and 30-153,
- (3) outdoor display of merchandise, subject to the provisions of division 36 of this article,
- (4) garbage enclosures as provided for in § 6-11,
- (5) a single flagpole on a lot,
- (6) swimming pools, tennis courts, shuffleboard courts, and other similar recreation facilities that are accessory to a multiple-family development, or a hotel/motel, provided that they are part of a planned development or a site plan approved in accordance with ch. 10 and provided they comply with the minimum setbacks for streets,
- (7) as provided for in the exceptions to setbacks in § 34-638(d), or
- (8) ~~as set forth in this subsection. (1) Accessory uses, buildings, and structures may be located on through lots as follows. a. For purposes of this subsection only, secondary street is defined as the street opposite the street which provides principal vehicular access as determined by the prior development pattern of that block. b. on through lots, accessory~~

uses, buildings, and structures may be placed closer to the secondary street opposite the street that provides principal vehicular access than the principal building as long as the minimum setbacks for streets as set forth in § 34-638 are maintained.

~~(2) In the following cases, accessory uses, buildings, and structures may be closer to the street than the principal building, but shall not be closer than the minimum setbacks for streets as set forth in § 34-638:~~

- ~~a. Swimming pools, tennis courts, shuffleboard courts, and other similar recreation facilities accessory to a multiple-family development, or a hotel/motel, provided that they are part of a planned development or a site plan approved in accordance with ch. 10;~~
- ~~b. Outdoor display of merchandise, where permitted, subject to the provisions of division 36 of this article, and ch. 30, pertaining to signs;~~

~~(c) *Setback from bodies of water.* [this subsection unchanged]~~

~~(d) *Setbacks from side and rear property lines.* [no changes to this subsection]~~

~~(e) *Administrative setback variances.* [this subsection unchanged]~~

~~(f) *Prohibited locations.* [this subsection unchanged]~~

~~(g) *Signs.* Signs are subject only to the setback requirements as set forth in ch. 30;~~

~~(g) ~~(h)~~ *Fences.* [this subsection unchanged]~~

Sec. 34-1175. Satellite dishes and amateur radio antenna/towers.

~~(a) *Satellite dishes.* Satellite dishes shall be permitted as accessory uses subject to the following:~~

- ~~(1) Dishes shall comply with the minimum side and rear property line setbacks for the zoning district in which located; and~~
- ~~(2) Satellite dishes shall not be placed closer to the street right-of-way than the principal building;~~

(a) *Satellite dishes.* The following restrictions apply to satellite dishes that are installed as

accessory structures if the dishes exceed two meters (78.74 inches) in diameter in zoning districts that allow Retail/Open or Lodging/Open land use sub-groups (see Table 34-2) or if the dishes exceed one meter (39.97 inches) in diameter in all other zoning districts.

(1) **Setbacks.** Satellite dishes must meet the minimum requirements for accessory structures in § 34-1174(b)-(d).

(2) **Allowable size.** No satellite dish may exceed ten feet in diameter.

(3) **Location and placement.**

a. Except as provided below, satellite dishes may not be mounted on a roof or on any other building surface.

b. *Exception.* Satellite dishes may be mounted on buildings that exceed 35 feet in height (as measured in accordance with § 34-631(b)), provided the satellite dish is not visible at ground level from any abutting right-of-way, street easement, or any property under separate ownership and zoned or used for residential purposes.

(4) **Height.** Ground-mounted satellite dishes may not exceed ten feet in height.

(5) **Landscaping.** Ground-mounted satellite dishes exceeding two meters (78.74 inches) in diameter must include a landscaped buffer of at least three feet in width between the facility and any right-of-way or ingress/egress or access easement. The buffer must be at least four feet in height at installation and be maintained at a minimum of five feet in height within one year after time of planting.

(6) **Administrative variances.** The director may modify requirements of subsection (a) where an applicant can demonstrate in writing that full compliance with these provisions will materially limit transmission or reception with the proposed satellite dish. See § 34-268. The director may not modify any requirement to a greater extent than is required to ensure that transmission or reception is not materially limited.

(b) *Amateur radio antenna/towers.* [this subsection unchanged]

DIVISION 8. AUTOMOTIVE BUSINESSES

Sec. 34-1351. Automobile repair

(a) All services performed by an automobile repair establishment, including repair, painting, and body work activities, shall be performed within a completely enclosed building.

(b) Whenever an automotive repair establishment is within 75 feet of a residential use, all refuse and vehicle parts shall be stored within a completely enclosed area.

(c) New or expanded automobile repair establishments can be permitted only through approval of a suitable planned development zoning district (see § 34-620(d)) or as a special exception where allowed by Tables 34-1 and 34-2 in § 34-622.

DIVISION 10. CARE AND ASSISTED LIVING FACILITIES

Sec. 34-1411. Assisted living facilities.

(a) **Location.** Assisted living facilities (ALF's) may be located in zoning districts ~~by right or by special exception~~, as specified in Tables 34-1 and 34-2 in § 34-622 ~~the district use regulations~~, but they are subject to the maximum density for the land use category applicable to the subject property, with density calculated in accordance with §§ 34-1415.

(b) **Design.** [this subsection unchanged]

(c) **Parking.** [this subsection unchanged]

DIVISION 11. COMMERCIAL ANTENNAS AND COMMUNICATION TOWERS

Sec. 34-1441. Purpose and intent.

(a) The purpose of this division is to regulate commercial antennas, the structures on which they are located, and communication towers. Wireless telephone service providers are also affected by F.S. 365.172.

(b) Cellular telephones and other personal communications services rely on a network of antennas. Due to its location, Fort Myers Beach can be served partially by nearby antennas on the mainland and partially by antennas placed on tall buildings within the town. Only rarely, if ever, will a free-standing communications tower be needed to support any type of commercial antenna. These regulations are designed to facilitate the location of commercial antennas on tall buildings and also to provide a procedure for approving a new communication tower where it can be demonstrated conclusively that one is required.

(c) Amateur radio antenna/towers and satellite dishes are not regulated by this division; see § 34-1175.

Sec. 34-1443. Commercial antennas mounted on alternative support structures.

(a) **Zoning districts.** Commercial antennas on alternative support structures may be approved in all zoning districts, except that no commercial antenna may be permitted on a single family, ~~duplex~~, or two-family home or its accessory building or structure.

(b) **Administrative approval required.** The town manager may issue administrative approval for commercial antennas to be mounted on alternative support structures when they comply with the standards in subsection (c) and the remainder of this code. The town manager's decision may be appealed in accordance with § 34-86.

(c) **Standards.** Commercial antennas mounted on alternative support structures must meet the following standards:

- (1) Neither the antenna, its supporting structure, or any ancillary structure may extend more than 10 feet above the highest existing point of the roof; and
- (2) The antenna and related structures including equipment rooms shall be concealed from view or designed and maintained to blend into the surrounding environment.
 - a. Concealment may be accomplished using parapet walls or existing mechanical facilities, or through the use of screening devices such as lattice enclosures.
 - b. Blending may be accomplished through the physical arrangement of antenna elements and through painting or coating

of surfaces to match the primary structure in a way that makes them visually unobtrusive.

- (3) The antenna and related structures must be insured against damage to persons and property. A certificate of insurance must be provided to the town manager annually.

(d) **Nonconformities.** The installation of a commercial antenna on a nonconforming building or a building containing a nonconforming use will not be deemed to constitute the expansion of the nonconformity.

Sec. 34-1444. Commercial antennas mounted on communication towers.

(a) **Required zoning approvals.** New communication towers suitable for commercial antennas may be approved by special exception, as provided in division 2 of article III of this chapter, subject to the additional requirements of this division. Special exception applications for communication towers must also include the same documentation for antenna-supporting structures required by Lee County through its land development code.

(b) *[this subsection unchanged]*

(c) **Development standards for communication towers.** The owner/operator of any new communication tower must also obtain a development order and comply with the specific application requirements and development standards for antenna-supporting structures ~~communication towers~~ required by Lee County through its land development code.

**DIVISION 12.
DRUG PARAPHERNALIA**

Sec. 34-1552. Determination of paraphernalia.

In determining whether an object is drug paraphernalia, the special master, hearing examiner, court, jury, or other enforcing authority shall consider, in addition to all other logically relevant factors, the following:

- (1) *[remainder of section unchanged]*

**DIVISION 13.
ENVIRONMENTALLY SENSITIVE AREAS**

Sec. 34-1575. Coastal zones.

(a) Development, other than minor structures as defined in § 6-333, is prohibited seaward of the 1978 coastal construction control line as established by the state department of environmental protection, as such line existed in 1988. This line has been incorporated into the future land use map of the Fort Myers Beach Comprehensive Plan as the landward boundary of the beachfront Recreation category (see also Policy 5-D-1.v), and as the landward boundary of the EC zoning district (see § 34-652). Regulations for minor structures in the EC zoning district (seaward of the 1978 coastal construction control line) are found in § 6-366.

~~(b) For purposes of this section, minor structures mean:~~

- ~~(1) pile-supported elevated dune and beach walk-over structures;~~
- ~~(2) beach access ramps and walkways;~~
- ~~(3) stairways;~~
- ~~(4) fences, and~~
- ~~(5) pile-supported viewing platforms, boardwalks, and lifeguard support stands.~~

~~(b) (e)~~ Minor structures do not include structures supported by or extensions of the principal structure. The minor structures identified as acceptable in this section are considered expendable under design wind, wave, and storm forces.

~~(c) (d)~~ No vehicular or foot traffic from developments or access strips to crossovers will be allowed to cross over directly on dune ridges or beach escarpments. Access to the beach must be via elevated dune walkovers (see §§ 6-366 and 10-415(b)).

~~(d) (e)~~ No development will be permitted which alters the dune system, except for excavations for the installation of pilings necessary for the construction of elevated structures as permitted by the state department of environmental protection.

**DIVISION 14. ESSENTIAL SERVICES,
ESSENTIAL SERVICE EQUIPMENT, AND
ESSENTIAL SERVICE BUILDINGS**

Sec. 34-1617. Exemptions from property development regulations.

Essential services or essential service equipment shall be exempt from the property development regulations which set forth minimum lot size, area, dimensions, and setbacks, except that above-ground essential services or essential service equipment may not be placed closer than 3 feet to any sidewalk or bike path or to the right-of-way of Estero Boulevard.

**DIVISION 17. FENCES, WALLS,
AND ENTRANCE GATES**

Sec. 34-1744. Location and height of fences and walls.

(a) **Setbacks.** Except as may be specifically permitted or required by other sections of this chapter or chapter 10, no fence or wall, excluding seawalls, shall be erected, placed, or maintained:

- (1) Within any street right-of-way or street easement, or closer than 3 feet to any sidewalk or bike path or to the right-of-way of Estero Boulevard.
- (2) Closer to the Gulf of Mexico than permitted by ch. 6, article III.
- (3) Closer than five feet to the mean high-water line along natural water bodies, including canals created from sovereign lands, except that, where the canal is seawalled, the fence may be built immediately landward or on top of the seawall.

(b) **Height.** *[this subsection unchanged]*

Sec. 34-1745. Buffer for commercial uses.

Some land uses are required to provide perimeter buffers in accordance with §§ 34-3005 or 10-416. Where buffers are required by other provisions of this code, this division will not interpreted to restrict the height, location, or other features of required buffers.

Sec. 34-1749. Entrance gates.

(a) Entrance gates are not permitted on public or private streets. Decorative entrance features that do not restrict access may be placed along public or private streets provided permission is granted by the town and others entity with authority over the right-of-way or easement.

(b) Entrance gates may be placed on private property that is not subject to any access easements in order to control access to a private parking lot or to a parking lot that lawfully rents parking spaces to the general public. Adequate stacking space must be provided in front of the gate to avoid interference with traffic flow on adjoining streets.

(c) *[this subsection unchanged]*

**DIVISION 22. LIGHTING STANDARDS
RESERVED**

Sec. 34-1831. Purpose and applicability of division.

- (c) **Purpose.** The purposes of this division are:
- (a) to curtail and reverse the degradation of the night time visual environment by minimizing light pollution, glare, and light trespass through regulation of the form and use of outdoor lighting, and
 - (2) to conserve energy and resources while maintaining night-time safety, utility, security, and productivity.

(d) **Applicability.** All new luminaires, regardless of whether a development order is required, must comply with the provisions and standards of this division.

- (e) **Exemptions.** The following are generally exempt from the provisions of this division:
- (a) Emergency lighting required for public safety and hazard warning luminaires required by federal or state regulatory agencies;
 - (2) Outdoor light fixtures producing light directly by the combustion of fossil fuels such as kerosene and natural or bottled gas;
 - (3) Low wattage holiday decorative lighting fixtures (comprised by incandescent bulbs of less than 8 watts each or other lamps of output less than 100 lumens each) used for holiday decoration; and
 - (4) Lighting for public roads except as provided in § 14-77.

Sec. 34-1832. Definitions.

The following words, terms, and phrases, when used in this division, shall have the following meanings, unless the context clearly indicates a different meaning:

Back-lighted means a surface that is at least partially transparent and is artificially illuminated from behind.

Direct light means light emitted directly from the lamp, off the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

Footcandle means the quantify of light striking a surface, measured in lumens per square foot.

Full cutoff means that a light fixture in its installed position does not emit any light, either directly or by reflection or diffusion, above a horizontal plane running through the lowest light-emitting part of the fixture. Additionally, the fixture in its installed position does not emit more than 10% of its total light output in the zone between:

- (1) the horizontal plane through the lowest light-emitting part of the fixture, and
- (2) 10 degrees below the horizontal plane (80 degrees above the vertical plane).

Lumen means a unit of light emission. For example, incandescent light bulbs with outputs of 60, 75, and 100 watts emit approximately 840, 1170, and 1690 lumens respectively.

Luminaire means a complete unit for producing artificial light, commonly referred to as a lighting fixture.

Mercury vapor means a high-intensity discharge light source that is filled with mercury gas under pressure and which emits a blue/white light.

Non-essential lighting means lighting that is not necessary for an intended purpose after the purpose has been served. For example, lighting for a business sign, architectural accent lighting, and parking lot lighting may be considered essential during business or activity hours, but is considered non-essential once the activity or business day has concluded.

Shielded means that an outdoor light fixture that is fully and permanently blocked by a physical device or by its integral design from discharging light in specific directions.

Sec. 34-1833. Technical standards for lighting.

(a) **Generally.** This section contains minimum and maximum standards that apply whenever outdoor lighting is provided.

- (1) In addition to the standards and criteria in this section, there are standards for artificial lighting near sea turtle nesting habitat in ch. 14, article II of this code.

(2) When specific standards are not addressed in these sources, the standards of the Illuminating Engineering Society of North America (IESNA) will apply.

(b) Specific standards.

(1) **ILLUMINANCE.** The following table indicates minimum and maximum illumination levels. These levels are specified for general use categories and are measured in footcandles on the task surface (for example, the lighted parking lot or walkway) with a light meter held parallel to the ground, facing up, unless otherwise specifically stated.

<u>Use/Task</u>	<u>Minimum</u>	<u>Maximum</u>
	<u>(1)</u>	<u>(average)</u> <u>(1), (2),</u> <u>(3), (4)</u>
<u>PARKING LOTS – MULTI-FAMILY:</u>		
<u>Medium vehicular/pedestrian activity</u>	<u>0.8</u>	<u>3.2</u>
<u>Low vehicular/pedestrian activity</u>	<u>0.3</u>	<u>1.2</u>
<u>PARKING LOTS – COMMERCIAL/ INSTITUTIONAL/ MUNICIPAL:</u>		
<u>Medium activity, e.g., major shopping districts, cultural/civic/ recreational facilities</u>	<u>0.8</u>	<u>3.2</u>
<u>Low activity, e.g., neighborhood retail, offices, employee parking, school/church parking</u>	<u>0.3</u>	<u>1.2</u>
<u>NON-RESIDENTIAL WALKWAYS & BIKEWAYS</u>	<u>0.3</u>	<u>1.5</u>
<u>CANOPY OVER FUEL PUMPS</u>	<u>6.0</u>	<u>30.0</u>

NOTES:

(1) The specified illumination levels are the initial levels to be measured at the time of final inspection for a certificate of compliance. Outdoor lighting must be maintained so the average illumination levels do not increase above the specified maximum values. The minimum illumination levels may decrease over time consistent with the Light Loss Factor (LLF) associated with the installed fixtures.

(2) In no case may the illumination exceed 0.5 footcandles measured at the property line. The amount of illumination projected onto a residentially zoned property or use from another property may not exceed 0.2 footcandles measured at 10 feet from the property line onto the adjacent residential property.

(3) Maximum values listed in this column are the average of actual measurements taken throughout the lighted area at the time of final inspection.

(4) Where all-night safety or security lighting is to be provided, the lighting intensity levels should provide the lowest possible illumination to discourage crime and undesirable activity and to effectively allow surveillance, but may not exceed 50 percent of the levels normally permitted for the use as specified in this code.

(2) **Lamp standards.** Lamp types and colors must be in harmony with the adjacent community, any special circumstances existing on the site, and with surrounding installations. Lamp types must be consistent with the task and setting and should not create a mix of colors unless otherwise specifically approved by the director for a cause shown. Specifically, mercury vapor lamps are prohibited. Lighting of outdoor recreational facilities (public or private) such as athletic fields and tennis courts is exempt from the lamp type standards provided that all other applicable provisions are met.

(3) **Luminaire (fixture) standards.** Fully shielded, full cutoff luminaires with recessed bulbs and flat lenses are the only permitted fixtures for outdoor lighting, with the following exceptions:

- a. Luminaires that have a maximum output of 260 lumens per fixture (the approximate output of one 20-watt incandescent bulb), regardless of number of bulbs, may be left unshielded provided the fixture has an opaque top to keep light from shining directly up.
- b. Luminaires that have a maximum output of 1,000 lumens per fixture (the approximate output of one 60-watt incandescent bulb), regardless of number of bulbs, may be partially shielded, provided the bulb is not visible, and the fixture has an opaque top to keep light from shining directly up.
- c. Sensor-activated lighting may be unshielded provided that:
 - 1. The light is located in such a manner as to prevent direct glare and lighting into properties of others or into a public right-of-way, and
 - 2. The light is set to only go on when activated and to go off within five minutes after activation has ceased, and

- 3. The light must not be triggered by activity off the property.
 - d. Flood or spot luminaires with a lamp or lamps rated at 900 lumens or less may be used except that no spot or flood luminaire may be aimed, directed, or focused such as to cause direct light from the luminaire to be directed toward residential buildings on adjacent or nearby land, or to create glare perceptible to persons operating motor vehicles on public ways, or directed skyward, or directed towards the shoreline areas.
 - 1. The luminaire must be redirected or aimed so that illumination is directed to the designated areas and its light output controlled as necessary to eliminate such conditions.
 - 2. Illumination resulting from such lighting must be considered as contributing to the illumination levels specified herein.
 - e. All externally illuminated signs must be lighted by shielded fixtures mounted at the top of the sign and aimed downward. Illumination resulting from sign lighting must be considered as contributing to the illumination levels specified herein.
 - f. Fixtures used to accent architectural features, materials, colors, style of buildings, landscaping, or art must be located, aimed, and shielded so that light is directed only on those features. Such fixtures must be aimed or shielded to minimize light spill onto adjacent properties or into the night sky in conformance with illumination and luminaire standards.
 - g. All non-essential exterior commercial lighting must be turned off after business hours.
- (4) **Luminaire mount standards.** The following standards apply to luminaire mountings.
- a. **Freestanding luminaires.** Light poles must be placed on the interior of the site. When light poles are proposed to be placed on the perimeter of the site, specific consideration should be addressed to compliance with the illumination standards at the property line and off the property onto adjacent residential property. The maximum height of light poles for parking lots and vehicular use areas may not exceed 15 feet measured from the ground level directly below the luminaire to the bottom of the lamp itself (see additional restrictions in ch. 14 for luminaires near sea turtle nesting habitat). Light poles located within 50 feet of a residentially zoned property or use may not exceed 12 feet. Poles used to illuminate pedestrian walkways may not exceed 12 feet. Lighting of outdoor recreational facilities (public or private) such as athletic fields and tennis courts is exempt from the mounting height standards provided that all other applicable provisions are met.
 - b. **Building-mounted luminaires.** These luminaires may only be attached to the building walls and the top of the fixture may not exceed the height of the parapet for flat roofed buildings or the lowest point on the nearest sloped roof.
 - c. **Canopy lighting.** Luminaires mounted on the underside of a canopy must be fully shielded full cutoff fixtures. As an alternative (or supplement) to canopy ceiling lights, indirect lighting may be used where the light is beamed upward and then reflected down from the underside of the canopy. When this method is used, light fixtures must be shielded so that direct illumination is focused exclusively on the underside of the canopy. No part of the canopy may be back-lighted. Lights may not be mounted on the top or sides (fascias) of the canopy. The sides (fascias) of the canopy may not be illuminated in any manner.
 - d. **Trees and landscaping.** To avoid conflicts, locations of all light poles and fixtures must be coordinated with the locations of all trees and landscaping whether existing or shown on the landscaping plan. Vegetation screens may not be employed to serve as the means for controlling glare. Glare control must be achieved through the use of such means as cutoff fixtures, shields, and baffles, and appropriate application of fixture mounting height, wattage, aiming angle, and fixture placement.

Sec. 34-1834. Permits for lighting.

(a) Development order and building permit criteria. The applicant for any development order or building permit involving outdoor lighting fixtures, must submit as part of the application evidence that the proposed work will comply with the outdoor lighting standards of this code. Specifically the submission must include the following:

- (1) Plans indicating the location on the premises and the type of illuminating devices, fixtures, lamps, supports, reflectors, and other devices.
- (2) A detailed description of the illuminating devices, fixtures, lamps, supports, reflectors, and other devices. The description must include manufacturer's catalogue cuts and drawings, including pictures, sections, and proposed wattages for each fixture.
- (3) All applications for development orders or building permits, except for single-family and two-family building permits, must provide photometric data, such as that furnished by the manufacturer of the proposed illuminating devices, showing the angle of cut-off and other characteristics of the light emissions including references to the standards contained herein.
- (4) All applications for development orders or building permits, except for single-family and two-family building permits, must provide photometrics in initial footcandles output for all proposed and existing fixtures on-site shown on a 20' by 20' grid on an appropriately scaled plan. On-site lighting to be included in the calculations must include, but is not limited to, lighting for parking lot, canopies, and building-mounted and recessed lighting along the building facades and overhangs. The photometric plan must include a table showing the average, minimum, and maximum footcandles of illumination on the site and within 50 feet of the site and the calculations deriving the averages. Evidence must be provided demonstrating that the proposed lighting plan will comply with the requirements of this code. The use of a light loss factor (LLF) is not permitted in these photometrics. This photometric plan must be coordinated with the landscape plan to identify the location of trees and other landscaping features with respect to the lighting devices. Rejection or

acceptance of the photometric plan will be based on this code.

(b) Compliance.

- (1) Prior to the final inspection for a certificate of compliance pursuant to § 10-183, site-verified footcandle readings must be provided demonstrating that the outdoor lighting, as installed, conforms with the proposed photometrics and the letter of substantial compliance provided by a registered professional engineer must include a certification that the outdoor lighting is in compliance with this code.
- (2) If any outdoor light fixture or the type of light source therein is changed after the permit or development order has been issued, a change request or development order amendment must be submitted for approval together with adequate information to assure compliance with this code. This request or amendment must be approved prior to the installation of the proposed change.
- (3) Outdoor lighting must be maintained in compliance with this code.

(c) Existing outdoor lighting. Light pole height requirements do not apply to existing light poles. Existing light fixtures must be brought into compliance with this code by January 1, 2010. Any fixtures replaced after the date of the adoption of this code must be replaced with fixtures that comply with the standards established herein. Illuminance levels specified in this code apply to all outdoor lighting.

Secs 34-1835-1860. Reserved.

**DIVISION 21. MARINE FACILITIES,
AND LIVE-ABOARD VESSELS***

 *Cross reference(s)-~~Marina design, § 10-257; Marine facilities and structures generally, ch. 26; marine sanitation, § 26-111 et seq.~~

Sec. 34-1861. Boats, floating structures, floating equipment, and live-aboards.

- (a) [this subsection unchanged]
- (b) [this subsection unchanged]
- (c) [this subsection unchanged]

(d) Except as provided in this subsection, no person shall live aboard any vessel under his command or control, which is moored to real property or to any dock, pier, seawall, or other structure attached to real property in the town. The provisions of this subsection shall not apply to:

- (1) Live-aboard vessels equipped with a discharge device that is listed by the United States Coast Guard as an approved marine sanitation device, and occupied by a licensed captain and his immediate family;
- (2) Commercial vessels, such as commercial fishing boats, tugs, barges, salvage vessels, passenger vessels, or cargo vessels, when used in commerce and navigation; or
- (3) The mooring of any vessel necessitated by an emergency.
- (4) Live-aboard vessels at a marina which is properly zoned for ~~such~~ marina uses (see § 26-116).
- (5) Live-aboard vessels lawfully occupying a berth in a public mooring field managed by the town, provided the vessel is in compliance with all regulations.

The exceptions granted by subsections (d)(1) and (2) of this section are not intended to apply to personal fishing boats used for recreation or to fishermen with marine products licenses.

DIVISION 26. PARKING

Sec. 34-2020. Required parking spaces.

- (a) [this subsection unchanged]
- (b) [this subsection unchanged]
- (c) [this subsection unchanged]
- (d) **Minimum parking standards.**
 - (1) **RESIDENTIAL USES.** [this subsection unchanged]
 - (2) **COMMERCIAL USES.** [this subsection unchanged]
 - (3) **MISCELLANEOUS USES.** [this subsection unchanged]
 - (4) **COMBINED USES.** The number of parking spaces required for combined uses shall be the total of the spaces required for each separate use established by this schedule. Exceptions are as follows:
 - a. **Joint use of parking lots.** As provided in § 34-2018,
 - b. **Multiple-occupancy complexes.** This subsection applies to multiple-occupancy complexes where five or more individual business establishments are located and which all share a common parking area. Specifically excluded from this subsection are theaters and hotels. Minimum requirements are as follows:
 - 1. If the complex contains less than 25% of its gross floor area as restaurants, bars, and cocktail lounges, 2 spaces per 1,000 square feet.
 - 2. If the complex contains 25% to 50% of its gross floor area as restaurants, bars, and cocktail lounges, 4 spaces per 1,000 square feet.
 - 3. If the complex contains 50% to 75% of its gross floor area as restaurants, bars, and cocktail lounges, 6 spaces per 1,000 square feet.
 - 4. If the complex contains over 75% of its gross floor area as restaurants, bars, and cocktail lounges, 8 spaces per 1,000 square feet.

Sec. 34-2022. Seasonal parking lots.

(a) Temporary use permits (see §§ 34-3041, and 34-3050) may be issued for seasonal parking lots. Approval of seasonal parking lots can be for a single period of up to 8 months long, commencing on November 15 and continuing until July 15 (subsection 34-2022(b)); or for a single period of up to 3 years on a year-around basis (subsection 34-2022(c)). For the purposes of this section, temporary use permits for seasonal parking lots may also be issued for all or part of such time period and shall not be limited to 30 days as set forth in § 34-3041(d).

(b) *[this subsection unchanged]*

(d) *[this subsection unchanged]*

**DIVISION 26-A.
PERFORMANCE STANDARDS**

Sec. 34-2032. Performance standards, creation of nuisance.

All uses and activities permitted by right, special exception, or temporary use permit in any zoning district, including planned development districts, shall be constructed, maintained, and operated so as to:

- (1) not be injurious or offensive and thereby constitute a nuisance to the owners and occupants of adjacent premises, nearby residents, or to the community, by reason of the emission or creation of noise, vibration, smoke, dust, or other particulate matter, toxic or noxious waste materials, odors, fire or explosive hazard, light pollution, or glare; and
- (2) not cause light from a point source of light to be directed, reflected, or refracted beyond the boundary of the parcel or lot, onto adjacent or nearby residentially zoned or used property or onto any public right-of-way, and thereby constitute a nuisance to owners or occupants of adjacent premises, nearby residents, or to the community; and
- (3) ensure all point sources of light and all other devices for producing artificial light are shielded, filtered, or directed in such a manner as to not cause light trespass;

minimum standards are provided in division 22 of this article.

DIVISION 27. PLACES OF WORSHIP AND RELIGIOUS FACILITIES

Sec. 34-2051. Property development regulations.

Places of worship and religious facilities shall adhere to the dimensional commercial property development regulations of their its zoning district (see Table 34-3).

Sec. 34-2052. Parking.

(a) *Places of worship.* Parking for places of worship shall be provided at the ratio of one parking space for each three seats within the sanctuary or main assembly hall, whichever is greater. Where benches, pews or other similar seating arrangements are used, each 24 lineal inches shall be counted as one seat.

(b) *Religious facilities.* Parking for religious facilities shall be the same as for places of worship, with additional parking for ancillary facilities as required in division 26 of this article; provided that, where the ancillary facilities will not be used at the same time, parking shall be based upon the peak anticipated attendance at any one time, for all facilities.

(c) *Parking on grass.* Up to 75 percent of the parking spaces required for the sanctuary or main assembly hall of a place of worship may be provided as parking on grass, provided the regulations set forth in the relevant following sections of division 26 of this article; pertaining to parking requirements; are met.

Sec. 34-2053. Expansion of existing place of worship.

Expansion of existing places of worship and religious facilities, lawfully existing as of August 1, 1986, by right or by special exception, is hereby declared a legal use. Additions, renovations, or other expansion of the main place of assembly may be permitted upon application for and approval of a building permit in accordance with all applicable town regulations.

Sec. 34-2054. Living quarters.

Dwelling units and living units that provide living quarters within a religious facility must comply with the density restrictions found in § 34-632.

Secs. 34-2054--34-2080. Reserved.

DIVISION 32-A. SHORT-TERM RENTALS

Sec. 34-2394. Enforcement and penalties.

(a) *[this subsection unchanged]*

(b) *[this subsection unchanged]*

(c) For properties on the registry of pre-existing weekly rentals (see § 34-2392), the following additional requirements shall apply:

- (1) *[this subsection unchanged]*
- (2) Repeated violations of this division on a registered property shall lead to cumulative penalties. These penalties shall accrue as follows whenever a violation results in a fine being imposed on or paid or whenever a finding of violation is made by a judge or code enforcement special master: ~~hearing examiner~~:
 - a. *[remainder of section unchanged]*

DIVISION 33. SIGNS

Sec. 34-2411. Location and construction.

All ~~on-site and off-site~~ signs shall be located, erected, and constructed in accordance with ch. 30, except where this chapter provides more explicit regulations for a specific use.

Secs. 34-2412--34-2440. Reserved.

DIVISION 36. STORAGE FACILITIES AND OUTDOOR DISPLAY OF MERCHANDISE

Sec. 34-3002. Mobile vendors and transient merchants prohibited.

(a) Mobile vendors includes a person who sells food or other product or service to the public from a mobile dispensing vehicle which is self-propelled or otherwise readily moveable from place to place either operated from a base facility or not operated from a base facility.

(b) No mobile vendor shall be permitted to make sales from a vehicle while stopped on the right-of-way or other public property within the limits of the Town of Fort Myers Beach, except in accordance with § 34-3004.

(c) Mobile vendors and transient merchants must comply with all provisions of Ordinance 96-14, the Fort Myers Beach Transient Merchant Regulation Ordinance, and with all subsequent amendments.

Sec. 34-3004. Outdoor display of merchandise for sale or rent.

(a) Outdoor sales includes all sales or display of merchandise, food, and beverages between the outer wall of stores and public rights-of-way or, where permitted, on public rights-of-way, but does not include merchandise visible through windows or sold to customers using pass-through windows. Merchandise sold or displayed outdoors must not be placed closer than 3 feet to any sidewalk or bike path or to any right-of-way.

(b) This code allow outdoor display and sales of merchandise only as follows:

- (1) In farmers' markets or other special events authorized by the town;
- (2) Beach furniture (in accordance with § 14-5);
- (3) Bicycles, motorbikes, and motorcycles (by dealers or rental agencies in zoning districts where they are permitted);
- (4) Boats (by boat dealers in zoning districts where they are permitted);
- (5) Personal watercraft (in accordance with § 27-49);
- (6) Lawn and garden ornaments (by retail stores in zoning districts where they are permitted),

- provided the merchandise collectively does not exceed a height of 4 feet and a width (parallel to the right-of-way) of 8 feet;
- (7) On private property in the DOWNTOWN zoning district (in accordance with § 34-678(e) ~~§ 34-677(c)(1)~~); and
 - (8) On public property in parts of the DOWNTOWN zoning district (in accordance with § 34-678(f) ~~§ 34-677(c)(2)~~).

(c) *[this subsection unchanged]*

(d) *[this subsection unchanged]*

Sec. 34-3005. Storage facilities.

(a) **Indoor storage.** *[this subsection unchanged]*

(b) **Open storage.** *[this subsection unchanged]*

(c) **Use of vehicles, truck trailers, or shipping containers for storage.** Vehicles, truck trailers, shipping containers, and other similar structures may not be used to store goods, produce, or other commodities except in conjunction with an active building permit or development order (see § 34-3044) or unless approved on a temporary basis in accordance with § 34-3041.

(d) **Bulk storage of flammable liquids.** *[this subsection unchanged]*

DIVISION 38-A. TATTOO STUDIOS AND BODY-PIERCING SALONS

Sec. 34-3067. Definitions.

Tattooing means the placement of indelible pigment, inks, or scarification beneath the skin by use of needles for the purpose of adornment or art. For the purposes of this division, “tattooing” does not include the practice of permanent makeup and micropigmentation when such procedures are performed as incidental services in a medical office or in a personal services establishment such as a hair or nail salon.

DIVISION 40. VEHICLE VISIBILITY

Sec. 34-3131. Vehicle visibility at intersections.

(a) **Corner lots; driveways on Estero Boulevard.** On all corner lots as defined in this chapter, and on all driveways entering onto Estero Boulevard, no obstruction shall be planted or erected which materially obstructs traffic visibility within the visibility triangle as shown in Figure 34-30. This requirement also applies to all driveways entering onto Estero Boulevard. No structures (except along Old San Carlos Boulevard) or plantings shall be permitted between two feet and six feet above the average grade of each street within this triangular space.

(b) **All other driveways and parking lot entrances.** *[this subsection unchanged]*

(c) **Trees and shrubs.** Where plantings are restricted between two feet and six feet in height, this restriction shall require the property owner to prune shrubs that extend above two feet and tree limbs that hang below six feet. The restriction on plantings shall not apply to the trunks of trees.

DIVISION 41. WATER-ORIENTED RENTALS

Sec. 34-3151. Water-oriented rental establishments.

(a) **Applicability.** This section addresses those outdoor rental activities that may be permitted on property adjacent to the Gulf of Mexico and are not located fully within a building. This section is supplemented by the specific standards for beach furniture and equipment that are found in ch. 14 and for personal watercraft rental businesses and parasail activities that are found in ch. 27 of this code.

(b) **Permitted districts.** *[this subsection unchanged]*

(c) **Location.** *[this subsection unchanged].*

(d) **Setbacks.** *[this subsection unchanged]*

(e) **Time limitations.** The rental activity may not occur between the hours of 9:00 P.M. and 8:00 A.M. after sunset or before sunrise, and movement of personal watercraft is further restricted by § 27-49(4). Artificial lighting is prohibited.

(f) **Storage during sea turtle nesting season.** No structures or equipment of any kind may be left on the beach before or after regular business hours between the hours of 9:00 P.M. and 8:00 ~~7:00~~ A.M. from May 1 until October 31. See also §§ 14-5, 14-78, and 27-49(9).

(g) **Signage.** *[this subsection unchanged]*

**ARTICLE V.
NONCONFORMITIES**

**DIVISION 2.
NONCONFORMING BUILDINGS**

Sec. 34-3237. Pre-disaster buildback.

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings may seek permission from the town council to voluntarily replace those buildings at up to the existing lawful density or intensity and up to the existing height in accordance with Policy 4-E-1 of the Fort Myers Beach Comprehensive Plan, as follows:

- (1) The replacement building must meet the floodplain regulations for new buildings, as provided in article IV of ch. 6.
- (2) The replacement building must meet the coastal construction requirements that apply to new structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be rebuilt landward of the 1978 coastal construction control line.
- (3) The replacement building must comply with all current building, life safety, and accessibility codes.
- (4) The replacement building cannot exceed the lawful density and intensity of the existing building:
 - a. as measured for residential buildings in § 34-3238(2)d.;
 - b. as measured for hotel/motels in § 34-3238(2)e.; or
 - c. as measured for all other buildings by the gross square footage.
- (5) Each specific pre-disaster buildback proposal must be proposed to the town council through the planned development rezoning process (see division 6 of article III of this chapter), along with any proposed deviations from this code.
- (6) The town council will approve, modify, or deny each such request based on its opinion of the degree of conformance of the specific proposal with the Fort Myers Beach comprehensive plan, specifically including

the plan's land-use and community design policies, pedestrian orientation, and natural resource criteria.

- (7) If the lowest floor of the rebuilt building must be elevated higher than the existing building to comply with current floodplain or coastal regulations, then the total height of the rebuilt building can be increased by the same amount. However, any pre-disaster buildback request for additional height beyond that increment must comply with Policy 4-C-4 of the comprehensive plan in the same manner as that policy would apply to an entirely new building on vacant land.

Sec. 34-3238. Post-disaster buildback.

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings and that are damaged or destroyed by a natural disaster, including fire, tropical storms, and hurricanes, shall be permitted to replace those buildings at up to their existing lawful density, intensity, and/or height in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan.

- (1) **Less than 50% damage.** If the cost to repair the damaged building is *less than 50%* of the building's value and the repair is thus not a "substantial improvement" as that term is defined in § 6-405, then the following rules shall apply:
 - a. The repairs may be made without bringing the building into full compliance with the requirements of this code for building size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations.
 - b. The repairs may not physically enlarge the building either laterally or vertically, with the following potential exception:
 - 1. During the repair process, owners may wish to elevate lawfully existing dwelling units or guest units that do not comply with the floodplain regulations in ch. 6 of this code.
 - 2. To encourage this elevation, the director may administratively modify setbacks, open space, buffer, or height requirements to the minimum extent that would accommodate rebuilding the units in conformance

with ch. 6 up to their existing interior square footage, as computed in accordance with §§ 34-3238(2)d.1 or e.1.

- 3. However, if the combined cost to repair the damage and elevate the units exceeds 50% of the building's value, then all provisions of § 34-3238(2) will apply.
- c. All repairs must comply with all current building, life safety, and accessibility codes.
- (2) **More than 50% damage.** If the cost to repair or rebuild the damaged building is *more than 50%* of the building's value and is thus a "substantial improvement" as that term is defined in § 6-405, then the following rules shall apply:
 - a. The building must meet the floodplain regulations for new buildings, as provided in article IV of ch. 6.
 - b. The building must meet the coastal construction requirements that apply to new structures and portions thereof, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures that are damaged by more than 50% must be rebuilt landward of the 1978 coastal construction control line.
 - c. The building must comply with all current building, life safety, and accessibility codes.
 - d. **Residential buildings.** A rebuilt residential building may exceed the density limits for new buildings on vacant land, but cannot exceed the legally documented number of dwelling units in the building immediately before the natural disaster.
 - 1. All dwelling units legally existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt dwelling units does not exceed the interior square footage of the previous dwelling units. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air-conditioned

- space. ~~These excluded spaces are not limited by the floor area ratios in Table 34-3.~~
2. At the owner's option, this same square footage can be used for fewer but larger dwelling units.
 3. Also at the owner's option, the number of dwelling units and the square footage size of the new building may ~~instead~~ be determined by this code's current regulations for new buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.
- e. **Hotels/motels.** A rebuilt hotel/motel may exceed the intensity limits for new hotel/motel buildings on vacant land, but cannot exceed the documented number of lawful guest units in the building immediately before the natural disaster.
1. All guest units lawfully existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt guest units does not exceed the interior square footage of the previous guest units. However, interior square footage in the new building may be increased by 30 square feet for each bathroom to reflect current code requirements for larger bathrooms, and any lawfully existing guest units that are smaller than the minimum sizes required by this code may be enlarged to meet the minimum size requirements. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air-conditioned space. ~~These excluded spaces are not limited by the floor area ratios in Table 34-3.~~
 2. At the owner's option, this same square footage can be used for fewer but larger guest units.
 3. Also at the owner's option, the number of guest units and the square footage size of the new building may ~~instead~~ be determined by this code's current regulations for new hotel/motel buildings on the same

site instead of using either the pre-disaster or post-disaster buildback regulations.

- f. **All buildings.** The new building must comply with all other zoning and development regulations except where compliance with such regulations would preclude reconstruction otherwise intended by Policy 4-D-1 of the comprehensive plan. Specifically:
 1. If the lowest floor of the rebuilt building must be elevated higher than the damaged or destroyed building to comply with current floodplain or coastal regulations, then the total height of the rebuilt building can be increased by the same amount.
 2. If a rebuilt building must be set back further from any property lines due to current requirements of this code, then the volume of the building so reduced can be rebuilt elsewhere on the site, including one or more extra stories on the building if in the opinion of the director there is no other suitable location to replace the volume.
 3. If current open space or buffer regulations cannot be met, those requirements may be waived administratively by the director.

DIVISION 4. NONCONFORMING LOTS

Sec. 34-3273. General requirements for residential uses on nonconforming lots.

Nonconforming lots may be developed subject to the following provisions:

- (1) *[this subsection unchanged]*
- (2) *[this subsection unchanged]*
- (3) Minimum residential setbacks on nonconforming lots shall be as follows:
 - a. Street and water body setbacks shall be as set forth in the regulations for the applicable zoning district.
 - b. Side setbacks shall be 10% of lot width, or 5 feet, whichever is greater. ~~, rear, and water body setbacks shall be as set forth for lots in the RC zoning district (see Table 34-3).~~

c. Rear setbacks shall be 25% of lot depth, or 20 feet, whichever is smaller.

d. c: Certain nonconforming lots may qualify for an administrative setback variance (see § 34-268).

(4) *[remainder of section unchanged]*