



Fort Myers Beach Local Planning Agency

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Agenda

Tuesday, December 6, 2022

10:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF MINUTES**
 - A.**
- V. PUBLIC HEARINGS**
 - A. Text Amendment to LDC Ch. 30 Signs**
Recommend approval or recommend changes to the proposed amendments to LDC Ch. 30 Signs
 - B. Article IV Flood Regulations Text Amendments**
Floodplain Management Ordinance - Amend Article IV Floodplain Regulations to update various sections to comply with state and federal law; provide for higher standards within a Coastal A Zone; and to implement local flood regulations.
 - C. Discussion Item: Corner lot setback changes**
Provide feedback to staff and recommend approval of amended corner lot regulations.
- VI. ADMINISTRATIVE AGENDA**
- VII. LPA MEMBERS ITEMS/REPORTS**
- VIII. LPA ATTORNEY ITEMS/REPORTS**
- IX. COMMUNITY DEVELOPMENT ITEMS/REPORTS**
- X. ITEMS FOR NEXT MONTHS AGENDA**
- XI. PUBLIC COMMENT**

XII. ADJOURNMENT

NOTE: THIS MEETING IS TELEVISED LIVE ON COMCAST CHANNEL 98.

IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSONS MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.

	For special accommodations, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202		Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the Town Clerk's Office.
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In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2022-841**

1. **Requested Motion:**

Draft 9-13-2022 minutes

Meeting Date: December 6, 2022

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

APPROVAL OF MINUTES

3. **Requirement/Purpose:**

5. **Background:**

Attachments:

1. Draft minutes 9-13-2022

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

Date: November 30, 2022

Amy Baker, Town Clerk



Fort Myers Beach Local Planning Agency

Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931

Minutes

Tuesday, September 13,
2022

9:00 AM

ORDER OF BUSINESS

I. CALL TO ORDER

Members present: Chair Jane Plummer, Anita Cereceda, Forrest Critser (late), Doug Eckmann, Scott Safford, Patrick Vanasse and Karen Woodson.

II. INVOCATION

LPA Member Cereceda.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF MINUTES

A. Draft minutes August 9, 2022

LPA Member Cereceda moved to approve the minutes; second by LPA Member Safford.

Motion passed 6-0 with LPA Member Critser absent.

V. PUBLIC HEARINGS

A. VAR 20220076 Variance to side yard setbacks for pool equipment

Approve/Approve with Conditions/Deny VAR20220076, 745 Matanzas Ct. The applicant is seeking a variance from LDC Sec. 34-638(d)(1)(g), current setbacks are 9-feet, applicant is requesting a variance of 5-feet to place pool equipment/ pad approximately 4-feet from the side property line.

Ex parte communications: LPA Member Vanasse - drive by; LPA Member Cereceda - drive by, looked at property on Zillow and LEEPA, spoke to the owners and neighbors; LPA Member Woodson - drive by, talked to the owners and walked around the property; Chair Plummer - walked around the

property and spoke to the owners; LPA Member Safford - drive by; and LPA Member Eckmann - none. Town Attorney Herin, Jr. swore in those providing testimony.

Planning and Zoning Senior Planner Jason Smalley noted the front dimension of the lot was half on their most recent variance of what the initial staff report was based on. The required setback for the pool equipment was 7.5 feet, not 9 feet. The requested minimum setback necessary was 3.5 feet. He explained that the applicants requested to leave the pool equipment where it was on the side. The equipment was 4.24 feet, according to the most recent survey. Senior Planner Smalley explained that the applicant submitted a proposed plan showing the pool equipment next to the air conditioner, but that plan was approved by building services without a review of setbacks. Chair Plummer questioned why the gas line was not allowed under the stairs. Senior Planner Smalley replied that he was not sure and a building supervisor was not available.

LPA Member Cereceda noted that this was a variance request after the fact. Senior Planner Smalley explained that the north location was approved based on setbacks, but it was determined after the fact that the equipment was installed on the south side. Community Development Director Jason Green indicated that both sides made a mistake.

LPA Member Eckmann questioned whether the Hole Montes survey was the existing condition. Director Green replied affirmatively. Town Attorney Heirn, Jr. described the site plan review process. Senior Planner Smalley noted the pool was still under construction and a neighbor alerted the town of the location of the pool equipment. LPA Member Eckmann brought up installing a sound barrier to protect the neighbors.

Applicant Jeff Spiro and property owner Donna Payne presented their case. Mr. Spiro stated that the approved building plan they worked from showed the equipment on the right side of the house. He noted that the stairwell was the only ingress and egress of the house, so the mechanical equipment could not be located there in case of a fire. He added that he did not change the location of the equipment after the fact. Ms. Payne stated that the work was inspected and passed multiple times along the way.

Town Attorney Herin, Jr. requested a 10-minute break to investigate why the site plan approval and the building permit approval did not appear to match up.

Town Attorney Herin, Jr. stated that the town's building official Mr. Stone noted that the pool equipment could be located under the stairway, but the power source could not. Town Attorney Herin, Jr. indicated that one egress was a code violation.

LPA Member Vanasse questioned when the power source decision was made and Mr. Spiro replied that the power source was picked during the selection process. Ms. Payne stated that the pool was complete when they were notified of the problem. She revealed that all seven of her units had only one entrance and exit. She added that the stairs were not there when she purchased the house.

Town Attorney Herin, Jr. explained that whoever was in charge of the project needed to ensure the site and building plans were consistent. Discussion was held regarding why the inspectors did not catch the equipment error during construction.

Public comment:

Doug Young, the adjourning neighbor and engineer, objected to the variance. He noted the site plan was in compliance with the setbacks, but the as-built was not. He stated that besides the noise, there was heat and noxious fumes from the gas heater. He indicated several possible configurations would meet the setback requirements. He emailed the owner on June 2 regarding the equipment's location and forwarded it to the town. At some point, the town issued a stop work order for five days. Mr. Young stated that the pool pad location impeded the drainage and now he had a pond in his side yard. He noted that the applicant could have chosen gas equipment with proper venting; it could have been installed on the north side closer to the pool or the equipment could be installed in a utility room or an alcove on the ground floor. He summarized that the planned installation was legal, but the actual installation was not and the owner and contractor should have known that the implemented configuration would violate the setbacks.

Public comment closed.

Town Attorney Herin, Jr. commented that the stormwater plan would have to be modified to comply with the code. Chair Plummer questioned at what stage of the project the stormwater plan was submitted. Director Green replied that it depended on the contractor and property owner, but it had to be done before completion. LPA Member Cereceda questioned when the stop work order was issued, whether the equipment was in place, and whether the property owner was allowed to continue under the order. Senior Planner Smalley noted the stop work order was for the equipment and they were allowed to continue filling the pool shell to keep it in the ground. The pad, piping and electrical were already complete at the time the stop work order was issued.

LPA Member Vanasse questioned whether the equipment could have been placed somewhere else. Mr. Spiro replied negatively. Director Green indicated there was room for the equipment in the rear yard. LPA Member Cereceda questioned D. in the Findings and Conclusions regarding trees remaining around the stormwater retention area. Senior Planner Smalley responded that the applicant would have to redesign the stormwater design if the variance was approved. He added that the existing coconut palm trees would have to be retained or replaced outside of the stormwater area. LPA Member Cereceda pointed out that there was no room and Senior Planner Smalley noted that other buffers could be implemented.

Mr. Spiro stated that the stormwater plan was revised, they started work at the rear of the property and his engineer would ultimately adjust their plan as needed.

LPA Member Vanasse could not get beyond the fact that the contractor knew that he needed a variance to encroach into the setback. LPA Member

Cereceda agreed and added that the stormwater issue had a big impact. She reviewed the Findings and Conclusions and determined that most of them were not met. LPA Member Critser discussed the impact on the neighbor and he would deny the request. LPA Member Woodson initially thought the equipment could be addressed but that was before she was aware of the stormwater drainage issue.

LPA Member Cereceda moved to deny the variance request VAR20220076; second by LPA Member Vanasse.
Motion passed 7-0.

VI. ADMINISTRATIVE AGENDA

Chair Plummer welcomed new member Doug Eckmann. LPA Member Eckmann introduced himself and reviewed his experience. Chair Plummer requested to reorganize, but Director Green noted that reorganization typically took place in October. However, since there was no Vice Chair, the LPA could nominate one today.

Chair Plummer nominated LPA Member Cereceda as Vice Chair; second by LPA Member Vanasse.

Motion passed 7-0.

LPA Member Safford will give the HPAC (Historic Preservation Advisory Committee) documentation to Director Green. The HPAC will meet soon to organize.

VII. LPA MEMBERS ITEMS/REPORTS

LPA Member Vanasse addressed the lack of detail in the budget at the last Council meeting and questioned whether the LPA needed to be on every Town Council agenda. It was determined that the LPA could report under Advisory Committee Reports. He questioned when the LPA would review the comp plan amendments. Director Green responded that several would come forward by the end of the year.

LPA Member Cereceda noted that she would not be in town from October 10-13 and questioned rescheduling. LPA Member Safford indicated he would not be in town from October 4-11. Director Green will check availability on October 18 or 19.

LPA Member Woodson questioned the vendor fee increases and Town Attorney Herin, Jr. responded that the fee schedule could be amended at any time.

No items from other members.

VIII. LPA ATTORNEY ITEMS/REPORTS

Town Attorney Herin, Jr. discussed his legal responsibility to the LPA.

IX. COMMUNITY DEVELOPMENT ITEMS/REPORTS

Director Green stated that the request for 5155 Williams was withdrawn.

X. ITEMS FOR NEXT MONTHS AGENDA

The sign and vendor items, plus two complicated cases, will be on the agenda.

XI. PUBLIC COMMENT

No public comment.

XII. ADJOURNMENT

LPA Member Cereceda moved to adjourn; second by LPA Member Critser.
Motion passed 7-0.

The meeting was adjourned at 11:00 a.m.

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2022-843**

1. Requested Motion:

Meeting Date: December 6, 2022

Recommend approval or recommend changes to the proposed amendments to LDC Ch. 30 Signs

Why the action is necessary:

The sign ordinance no longer meets the legal requirements for content neutrality. The sign ordinance must be approved by Town Council with the LPA as the recommending body.

What the action accomplishes:

The LPA recommendation will be part of the Town Council's consideration of the sign ordinance.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

The sign ordinance is part of the land development code and limits size, location and design of signage within the Town of Fort Myers Beach.

5. Background:

The existing sign ordinance no longer meets the legal requirement for content neutrality. The proposed language maintains the majority of the existing size and design requirements, with a few modifications. Several changes have been made, including shortening the list of exempt signs, allowing banners as a temporary sign, allowing small residential signs and removing all content specific language. The new ordinance divides the requirement into zoning classifications with no reference to the purpose of the signs. Commercial, Residential, and Civic zoning districts are permitted specific sign sizes and locations. Commercial and Civic districts may apply for temporary signs or banners which may be displayed for a certain period of time.

Attachments:

1. Staff Memo
2. Exhibit A-Proposed Sign Ordinance Language
3. Exhibit B-Existing Sign Ord

Financial Impact:

N/A

6. Alternative Action

Recommend approval of the proposed sign ordinance or recommend approval with suggested modifications.

7. Staff Recommendations:

Recommend approval of the proposed sign ordinance or recommend approval with modifications to the proposed language.

8. Recommended Approval:

Date: November 30, 2022

Daphnie Bercher, Community Services Administrator

Date: November 30, 2022

Jason Green, Community Development Services

Date: December 01, 2022

John R Herin Jr, Town Attorney

Date: December 02, 2022

Amy Baker, Town Clerk



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Town of Fort Myers Beach Local Planning Agency
From: Sarah Propst, Community Development
Date: December 6, 2022
Re: Sign Ordinance

Background

Staff was directed to update the Town's Sign Ordinance to ensure that it meets all current legal requirements. In the past several years signs have been the topic of several court decisions and it appears more court decisions may be on the horizon. The most notable issue is that of ensuring content neutral code language, meaning that the information on the sign must not be tied to the approval of the sign. In addition to resolving some potential legal issues with the code, this new ordinance is reorganized to make it more user friendly, it clarifies some unclear language, and it also corrects code references which are outdated.

Proposed Solution

Due to the many changes that were undertaken in this code the old language will be completely struck through and new language will completely replace it. Some of the previous language will be included and many of the existing code size limitations and setbacks have been incorporated into the new language.

The new ordinance divides the requirements into zoning classifications with no reference to the purpose of the signs. The new classifications are:

Commercial: this classification includes land that is within the Downtown, Santini, Commercial Office, Commercial Marina, Commercial Resort, Santos, or Commercial Boulevard zoning districts.

Residential: this classification includes land that is within the Residential Single-Family, Residential Conservation, Residential Multifamily, Bay Beach, or Village zoning districts.

Civic: this classification includes land that is within the Community Facilities or Institutional zoning districts.



These classifications are allowed a certain number, size and type of signs, in addition to any exempt signs that are allowed without a permit.

Exempt signs are retained but have been reduced to eliminate some content specific language and overlap. Sandwich boards and portable signs are considered exempt and are allowed, up to a certain size and meeting other requirements. The new exempt section also includes direction on what should occur if a sign appears to be out of compliance with the regulations that allow the exemption.

This code allows all residentially zoned properties to have a single, exempt, non-illuminated, four (4) square foot ground or wall sign. In previous hearings, the Council was not in favor of allowing residential signage because there were no time limits on how long the signs could be up. The other option available would be to allow temporary signs, with a permit. The temporary signs could be limited to a certain number of days, however restricting the number of days could be problematic for real estate signs. To stay content neutral, the code cannot differentiate between sign types by excluding time limits on real estate signs. The current code allows commercial and civic zoning classifications a temporary sign; temporary signs require an application to be permitted and may include banners, which were previously prohibited. Temporary signs are allowed for a certain number of days per year and if a temporary sign is associated with an event, the sign is to be removed within seven days of the event.

A new section included in this ordinance is a requirement for liability insurance for any signs that encroach over a public right of way. This will protect the Town in an instance where a sign fails and causes any impacts to the right of way.

Attachments

Exhibit A – Proposed Sign Ordinance Language

Exhibit B – Existing Sign Ordinance Language

Proposed New Language

Chapter 30 - Signs

Sec. 30.1. Purpose, intent and application.

The town council finds and declares the following intent for this chapter:

- (1) An excess of signs causes a visual blight on the appearance of the town by detracting from views of structures and open space. This visual blight adversely affects the aesthetic quality of life and traffic safety on Fort Myers Beach for residents, businesses, pedestrians, and persons in vehicles. In order to promote the appearance of the town, while protecting the rights of sign owners to expression and identification, the regulation of existing and proposed signs is necessary to protect the public health, safety and general welfare.
- (2) The purpose of this chapter is to encourage signs which are integrated with and harmonious to the building and sites which they occupy, to eliminate excessive and confusing sign displays, to preserve and improve the appearance of the town as a place in which to live and work and as an attraction to nonresidents who come to visit or trade, and to restrict signs which increase the probability of accidents by distracting attention or obstructing vision.
- (3) This chapter provides minimum standards to safeguard life, safety, property, and public welfare by regulating size, construction location, electrification, operation and maintenance of all signs and sign structures exposed to public view within the town. These standards are content-neutral and regulate based on the form, and not the content, of signs. The visual appearance and traffic safety of the town cannot be achieved by measures less restrictive than the procedures and standards of this chapter.
- (4) It is the intent of the town council that protection of First Amendment rights shall be afforded by these sign regulations. The regulations in this Section are not intended to regulate or censor speech based on its content or viewpoint, but rather to regulate the secondary effects of speech that may adversely affect the Town's substantial and compelling governmental interests in preserving scenic beauty and community aesthetics, and in vehicular and pedestrian safety in conformance with the First Amendment. Accordingly, any sign, display or device permitted under these regulations may contain, in lieu of any other copy, any otherwise lawful noncommercial message that complies with all other requirements of this code. The noncommercial message may occupy the entire sign area or any portion thereof and may substitute for or be combined with the commercial message. The sign message may be changed from commercial to noncommercial, or from one noncommercial message to another, as frequently as desired by the sign's owner, provided that the sign is not prohibited and the sign continues to comply with all requirements of this code.

These regulations shall apply to the erection and maintenance of signs visible, from the exterior of a building, while preserving the right of free speech and expression. The regulations

within this chapter shall apply to all construction, relocation, enlargement, alteration and modification of signs within the Town of Fort Myers Beach. Generally, signs are approved by issuance of a sign permit. However, there are some signs that do not require a permit, these signs are listed in Section 30-4. Exempt Signs.

Noncommercial signs are allowed in all districts and may be substituted for any sign expressly allowed under this ordinance, and any sign permitted by this ordinance may display a noncommercial message. Noncommercial signs are subject to the same permit requirements, restrictions on size and type and other conditions and specifications as apply to the sign for which they are being substituted.

Nothing contained in this section shall be construed to permit the display of signs when otherwise prohibited or restricted by private restrictions or covenants not enforced by the Town.

Sec. 30.1. – Generally.

- (1) The following regulations apply generally to all signs and are in addition to the regulations contained elsewhere in this chapter:
 - (a) *Required application and inspection of signs.* No sign, other than signs not requiring a permit, found in Section 30-4. Exempt Signs, shall be erected, constructed, structurally altered or relocated until a permit has been issued by the Town.
 1. Sign work not requiring a permit or inspection includes:
 - a. Change of copy. Changing the face or copy on existing signs.
 - b. Maintenance. Painting, cleaning, or other normal maintenance and repair for a sign not involving structural or electrical changes.
 - c. Window displays. Changes in the content of window displays or window signage, provided all such displays are within the building and any signage does not exceed 25 percent of the window.
 - d. This chapter shall not apply to any sign erected by the federal, state, county, or Town of Fort Myers Beach government or to the placement of temporary signs not exceeding eight square feet in area within a right-of-way for purposes of business identification or access location, when necessitated by road construction and when authorized by the county or town.
 - (b) *Electrical permit.* All signs which require electricity or are electrically illuminated shall require a separate electrical permit and an inspection.
 - (c) *Construction standards.* In addition to complying with the requirements of this chapter, all signs must meet the structural and other standards regarding sign construction, erection, electrical wiring, etc., set forth in the Florida Building Code. Plans for any or monument sign exceeding 32 square feet in area or eight

feet in height shall be accompanied by foundation drawings signed and sealed by a licensed engineer.

- (d) *Visibility triangle and location standards.* All signs must meet the visibility requirements found in Section. 34-3131 of this land development code. Signs may not be placed within the Town's right of way, any sign which encroaches the right of way must provide liability insurance per Section 30-13 Liability Insurance.

Sec. 30-3. Definitions.

- (1) In case of any difference of meaning or implication between the text of this chapter and any other law or regulation, this chapter shall control.
- (2) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Alteration. Any change in copy, color, size or shape, which changes appearance of a sign, or a change in position, location, construction, or supporting structure of a sign, except that a copy change on a sign specifically designed for the use of replaceable copy, e.g., a reader board with changeable letters, is not an alteration.

Animated sign. Any sign, including electronic, laser, video or digital displays, that uses movement or change of lighting to depict action or create a special effect or scene. Electronic message boards, electronic changing message centers, and any signs with flashing lights are considered to be animated signs.

Awning sign. Any sign consisting of letters which are painted or installed on a lawful awning, but not including a back-lit awning.

Back-lit awning. An awning with a translucent covering material and a source of illumination contained within its framework.

Balloon sign. One or more balloons, with or without messages or illustrations, that are used as a temporary or permanent sign or as a means of directing attention to a business or organization or to a commodity, service or entertainment.

Banner. A temporary sign of flexible plastic, cloth, or other fabric, either enclosed or not enclosed in a rigid frame that is secured or mounted to allow movement caused by the atmosphere, including "streamer" and "pennants" but not including flags.

Bench sign. A sign that is painted on or attached to any part of a bench, seat, or chair placed on or adjacent to a public street, public plaza or beach access.

Building identification or address. The building number assigned by Lee County as the official premises address, painted or affixed to a building, mailbox or similar structure.

Building official. Means the authorized agent or employee of the city whose duty it is to enforce and interpret the construction codes of the city.

Canopy. A permanent roof-like shelter open on four sides, to protect an area from the elements, such as over gasoline pumps.

Canopy sign. Any permanent sign attached to or constructed in, on, or below a canopy.

Civic District. For the purposes of this chapter, civic districts shall mean a property in Community Facilities or Institutional zoning districts.

Commercial District. For the purposes of this chapter, commercial districts shall mean a property in Downtown, Santini, Commercial Office, Commercial Marina, Commercial Resort, Santos or Commercial Boulevard zoning districts.

Development identification sign. A permanent sign, which is either a freestanding sign or a sign located on a subdivision entry feature or perimeter wall, at a main entrance to a subdivision or development, identifying the name of the development or subdivision.

Directional sign. Any sign which serves solely to designate the location of or direction to any place, activity, facility, or area.

Double-faced sign. A single plane with items of information identical on both sides and mounted as a single structure.

Emitting sign. A sign designed to emit visible smoke, vapor, particles, or odor, or a sign which produces noise or sounds capable of being heard, even though the sounds produced may not be understandable.

Flag. Any fabric or bunting used as a symbol (as of a nation, government, political subdivision or other entity) or as a signaling device.

Frontage. The distance measured along a public street right-of-way or a private street easement between the points of intersection of the side lot lines with the right-of-way of the easement line.

Government sign. Any sign erected by or on the order of a public official or court in the performance of a public duty or to give notice of permit or pending action or to maintain order and safety.

Illuminated sign. Any electrically operated sign or sign for which an artificial light source is used to make the sign's message visible, including internally and externally illuminated signs and reflectorized, glowing, or radiating signs.

Incidental sign. A sign, generally informational, that has a purpose that is secondary to the use of the site on which it is located, such as "No Parking," "Entrance," "Exit," "Telephone," "Open," "Beware of Dog," "No Trespassing" "Welcome," and other similar directives.

Inflatable object. An object of any shape that is expanded or capable of expansion by means of air or gas, such as a balloon, windsock, or air tube, and which is used as a means of attracting attention to a site, product or event.

Licensed contractor. A person holding a valid contractor's license issued by the Lee County Construction Board.

Maintain. To preserve from decline, keep in an existing state or retain in possession or control.

Display box. A plaque or display case, located on an exterior building wall, near its entrance for the convenience of potential patrons who arrive on foot.

Monument sign. A freestanding sign supported primarily by an internal structural framework or integrated into landscaping or other solid structural features other than support poles

Parasite sign. Any sign not exempted by this chapter, for which no permit has been issued, and which is hung from, attached to or added onto an existing sign.

Permit board. A sign erected on a construction site for the sole purpose of providing a conspicuous display of and shelter for the permits required for construction activities being performed on such construction site.

Pole sign. A freestanding sign supported by an exposed structure of poles or other supports where the height of the exposed sign supports extends more than 18 inches from the ground to the bottom of the sign. A freestanding sign that meets this chapter's requirement for a monument sign is not considered to be a pole sign.

Portable sign. Any non-illuminated sign that is carried or worn.

Projecting sign. A sign which is attached to a building and projects more than 18 inches above, below, or outward from, and is supported by, a wall, parapet, or ceiling of a building.

Public body. Any government or governmental agency of the United States, the state, the county, or the Town of Fort Myers Beach.

Residential Districts. For the purposes of this section, residential districts shall mean a property in Residential Single-Family, Residential Conservation, Residential Multifamily, Bay Beach or Village zoning districts.

Residential sign. Any non-illuminated sign not otherwise defined or regulated in this chapter, that is located in a residential district.

Roof sign. Any sign erected upon a roof or roof-mounted equipment. Signs placed flat against the steep slope of a mansard roof will not be considered roof signs.

Sandwich-board sign. An easily moveable sign not attached to the ground that is supported by its own frame which generally forms the cross-sectional shape of an A.

Sign. Any name, figure, character, outline, display, announcement, or device, or structure supporting the same, or any other device of similar nature designed to attract attention or

convey a message outdoors, and shall include all parts, portions, units, and materials composing the same, together with the frame, background, and supports or anchoring thereof.

Sign face. An exterior display surface of a sign including nonstructural trim exclusive of the supporting structure.

Snipe sign. A sign of any material, including paper, cardboard, wood, and metal, when tacked, nailed, or attached in any way to trees, telephone poles, or other objects located or situated on a public road right-of-way, or any sign which is installed on property without the permission of the property owner.

Temporary sign. A sign or banner displayed for a fixed, terminable length of time. Temporary signs are intended to be removed after the temporary purpose has been served.

Wall sign. Any sign attached to or painted on the wall of a building or structure and extending no more than 18 inches outward from the wall in a plane approximately parallel to the plane of said wall.

Window sign. Any sign viewable through, affixed to or painted on a window or exterior glass door such that it is viewable from the exterior, including signs located inside a building but visible primarily from the outside of the building.

Sec. 30-4. Exempt Signs

- (1) Signs not requiring a permit. The following signs do not require a sign permit but may require a building permit or electrical permit (if subject to building or electrical codes). Signs listed in this section do not require a sign permit but shall still comply with the standards found in section Sec. 30-7. Construction and Maintenance Standards. All signs not requiring a sign permit shall comply with the associated size, timing and location standards listed in this section (30-4. – Exempt Signs) or shall require a permit, see 30-4(2).
 - (a) *Building identification or address*, as required for public safety, shall be located at all primary building entrances and on the mailbox. Numbers and letters shall be of a size visible from the street, between three and eight inches in height unless required to be larger for visibility by emergency services (buildings more than 50 feet from the road must be between eight and 18 inches in height). Building identification or addresses may be located on awnings.
 - (b) *Directional or instructional signs or symbols*, such as entrance, exit, caution, slow, direction arrows, etc. located on and pertaining to a parcel or development and not to exceed four square feet in area or containing any advertising.
 - (c) *Flags*, that are affixed to a flagpole or building mounted flagpole. Flagpoles may require building permits.

- (d) *Government or public information signs*, any sign erected by or on the order of a public official or court in the performance of a public duty or to give notice of permit or pending action.
- (e) *Incidental Signs or Signs of minimal area*,
 - 1. Signs, on a building or structure, which do not exceed two square foot in area and are not illuminated. Limited to two per parcel or lot.
 - 2. Signs on machines, equipment, fences, gates, walls, gasoline pumps, public telephones or utility cabinets which do not exceed a total of one square foot in area. Limited to two per parcel or lot.
- (f) *Display boards*, display not to exceed four square feet and of a font size that is legible to a pedestrian.
- (g) *Parking space signs*, including those in compliance with the Americans with Disabilities Act and other parking signs including, but not limited to, handicapped parking, reserved parking, compact car spaces, expectant mother parking and parking for pickup orders. Not to exceed three square feet per parking space or meeting ADA requirements. The parking space sign must be posted at the parking space identified for that purpose.
- (h) *Permit board*. A freestanding device erected on a construction site for the sole purpose of providing a conspicuous display of and shelter for the permits required for construction activities being performed on such construction site. A permit board may display a contractor name or logo so long as such display does not exceed one square foot.
- (i) *Portable signs*. Any portable sign, not to exceed six square feet.
- (j) *Posted property signs*. Posted property signs, not to exceed 1½ square feet in area per sign and not exceeding two in number per lot. Such signs shall not be illuminated, and they shall not project over any public right-of-way.
- (k) Sandwich boards,
 - 1. As permitted by subsections 27-51(e)(4) and (5) for PWVL and PAL businesses.
 - 2. Located within commercial zoning districts only. One sandwich board sign, not exceeding 36 inches in height and 24 inches in width, may be located in front of each tenant space. Sandwich boards may not be placed within the right of way and must maintain at least 36 inches of walking space within pedestrian paths.
- (l) *Residential signs*, residentially zoned properties are allowed one non-illuminated ground or wall sign, not to exceed four (4) square feet in area. Freestanding signs may be no more than three (3) feet above grade. Signs may be no closer than 10 feet to a street property line and no closer than 7.5 feet to a side property line. The sign must not violate the visibility requirements of § 34-3131. Signs used for

the purpose of supporting an event shall be removed within seven (7) days after the event has concluded.

- (m) *Tow away zone signs*, erected pursuant to and in compliance with F.S. § 715.07.
 - (n) *Waterway signs*, directional signs along inland waterways.
 - (o) *Window signs or information displayed on a window*, may not exceed 30 percent of the area of a window.
- (2) The owner or tenant of any property containing a sign which appears to be out of compliance with these above regulations may be required to submit an application for the sign in question. If the sign is in compliance with the above regulations for signs not requiring a permit, Section 30-4. Exempt Signs, the sign will be allowed to remain and no permit fee charged. If the sign is found to be out of compliance with Section 3-4. Exempt Signs, it will be reviewed per the appropriate regulations.

Sec. 30-5. Permitted Signs.

- (1) Commercial Districts. For the purposes of this section, commercial districts shall mean a property in Downtown, Santini, Commercial Office, Commercial Marina, Commercial Resort, Santos, or Commercial Boulevard zoning districts. The following signs shall be permitted:
- (a) *Permanent signs* shall comply with the following regulations and limitations:
 - 1. Size.
 - a. For a parcel of land containing one or two business establishments, each separate business establishment shall be allowed a maximum of 32 square feet of sign area.
 - b. For a parcel of land containing three or more business establishments, each establishment shall be allowed a maximum of 16 square feet of sign area. An additional 32 square feet of sign area may be utilized to identify the commercial development.
 - c. The maximum sign area provided herein may be allocated among a combination of allowable sign types.
 - 2. Location and Design.
 - b. Internal lighting. Buildings that are required to meet the commercial design standards in § 34-991-1010, shall not install internally lit box signs (see Figure 30-1). When internally lit signs are permitted for buildings that are not required to meet the commercial design standards, the sign face must be designed so that illumination occurs only on individual letters or symbols. An opaque background panel must be used so that the internal light only passes through the letters or symbols. This requirement also applies to all signs with changeable copy.
 - a. Wall Signs

- i. A wall sign shall not extend above the lowest edge of the building's eaves or above the highest horizontal members of the fence or wall to which it is attached.
 - ii. Wall signs may extend over public sidewalks provided they maintain a minimum clear height above sidewalks of eight feet and do not extend closer than two feet to an existing or planned curb and provide appropriate liability insurance in compliance with Sec. 30-13.
- d. Monument signs
 - i. The sign must be on private property and no portion extending beyond the property line.
 - ii. The sign may be no closer than three feet to any side property line.
 - iii. Height. The total height may not exceed five feet above finished grade, not measured from berms or raised landscaping beds.
 - iv. Must be set back at least three feet from any public right-of-way or roadway easement; provided, however, that monument signs may be located in a lawfully developed landscaped median strip that is within a public or private right-of-way or easement where the holder(s) of the right-of-way or easement have consented to the location of the monument sign in such right-of-way or easement. Monument signs located in such median strips must be set back a minimum of two feet from the edge of the pavement and must not violate the visibility requirements of § 34-3131.
- e. Projecting Signs
 - i. A projecting sign shall not extend more than three feet above the lowest edge of the building's eaves.
 - ii. A projecting sign may extend over public sidewalks provided they maintain a minimum clear height above sidewalks of eight feet and do not extend closer than two feet to an existing or planned curb.
- (b) *Temporary signs*, a sign or banner, not exceeding 30 square feet, may be permitted on any property with an approved special event or as allowed by temporary sign permit.
 - 1. Temporary signs must meet the same setback requirements as a monument sign, if freestanding, or a wall signs, if attached to a building, and must not violate the visibility requirements of § 34-3131.

2. Temporary signs are permitted for no more than 60 days annually.
 - (c) *Exempt signs*, as described in Section 30-4 in this sign ordinance.
- (2) Residential Districts. For the purposes of this section, residential districts shall mean a property in Residential Single-Family, Residential Conservation, Residential Multifamily, Bay Beach or Village zoning districts. The following signs shall be permitted:
- (a) *Permanent signs*. Each entrance to a development or subdivision may be permitted a single monument sign or up to two single-faced signs, one on each side of the entrance. The sign(s) shall be in compliance with the size and location requirements as well as all limitation.
 1. *Size and Location*.
 - a. The face of each permitted main entrance sign shall not exceed 25 square feet and shall not exceed five feet above finished grade, not measured from berms or raised landscaping beds.
 - b. A monument sign.
 - i. If located in the median strip of the entrance. The sign must be set back a minimum of 15 feet from the right-of-way of the public access road and a minimum of five feet from the edge of the pavement of the entrance and exit lanes.
 - c. One or two single-faced signs, equal in size, and located on one or both sides of the entranceway.
 - i. Must be set back a minimum of 5 feet from any property lines and the edge of pavement.
 2. *Limitations and Design*.
 - a. The condominium, subdivision or development shall have a property owners' association or similar entity which will be responsible for the maintenance of the sign.
 - d. The sign should be incorporated into entrance features such as art, a wall or landscaping.
 - (c) *Exempt signs*, as described in Section 30-4 in this sign ordinance.
- (3) Civic Districts. For the purposes of this section, civic districts shall mean a property in Institutional or Community Facility zoning districts. The following signs shall be permitted:
- (a) *Permanent signs* shall comply with the following regulations and limitations:
 1. *Size and Limitations*.
 - a. For a parcel of land containing a single civic use the maximum allowable sign area shall be 25 square feet.

- b. Each additional civic use: baseball field, recreation center, swimming pool, annex, etc. may be allowed up to 16 additional square feet of signage.
- c. Maximum height of any monument sign shall not exceed five feet above finished grade, not measured from berms or raised landscaping beds.
- d. The maximum sign area provided herein may be allocated among a combination of allowable sign types.

2. *Location.*

- a. Any sign shall be set back 5 feet from any property line.
- (b) *Temporary signs*, a sign or banner, not exceeding 30 square feet, may be permitted on any property with an approved special event or as allowed by a temporary sign permit.
 - 1. Temporary signs may be no closer than 5 feet to any property line. The sign must not violate the visibility requirements of § 34-3131.
 - 2. Temporary signs are permitted for no more than 60 days annually, provided, however, temporary signs used for the purpose of supporting an event shall be removed within seven (7) days after the event has concluded.
- (c) *Exempt signs*, as described in Section 30-4 in this sign ordinance.

Sec. 30-6. Measuring Signs.

- (1) Measuring sign area. Sign area shall be calculated in the following way:
 - (a) Sign within a framework or background shall be calculated as the area within that framework or background of the sign. The support for the sign, whether it be columns, a pylon, or a building or part thereof, shall not be included in a sign area.
 - (b) For wall signs, canopy signs or any other type of sign without a frame, the sign area shall be the area within a regular geometric shape that includes all letters, figures, graphics or other elements of the sign.
 - (c) For double-face or sandwich board signs, the area of the sign shall be calculated based on one sign face.
- (2) Measuring sign height. The height of a freestanding sign shall be calculated in the following way:
 - (a) The vertical height of a freestanding sign shall be the vertical distance measured from whichever is higher, the crown of the adjacent street or highest adjacent grade, not including berms or raised landscaping beds, to the highest point of the sign face or its supporting structural elements.

Sec. 30-7. Construction and Maintenance Standards.

- (1) *Generally.* All signs shall comply with the appropriate detailed provisions of the Florida Building Code relating to design, structural members, illumination and connections. All electrical work shall be Underwriters' Laboratories approved or be certified by an electrician licensed in accordance with article II of ch. 6 of this code. Signs shall also comply with the additional standards set forth in this section.
- (2) *Structural design.*
 - (a) The town manager or designee may require wind load calculations for signs prior to issuance of a permit.
 - (b) A wall must be designed for and have sufficient strength to support any sign that is attached thereto.
- (3) *Materials for monument signs.*
 - (a) All monument signs shall be self-supporting structures erected on and permanently attached to the ground.
 - (b) All wood permitted to be used, whether for new permanent signs, for replacement of existing permanent signs, or for any part thereof, shall be rot and termite-resistant through open-cell preservation methods as specified by the American Wood Preservation Association, or by any other open-cell preservation treatment approved by the Florida Building Code.
- (4) *Lighting.* Signs may be illuminated in compliance with the following:
 - (a) All electric signs shall be certified by a licensed electrical contractor that the sign meets the standards established by the Florida Building Code. All electric signs shall be erected and installed by a licensed sign contractor. The electrical connection to a power source shall be performed by a licensed electrical contractor.
 - (b) Externally illuminated signs may not cause glare to passing motorists, pedestrians or adjacent properties. Bulbs, lenses, or globes shall not be visible from outside of the property where the sign is located or from any right-of-way. See ch. 14 of this code for sea turtle lighting restrictions.
 - (c) Sign lighting shall be in compliance with the lighting regulations found in section 34-1833(3)e.
- (5) *Supports and braces.* Metal supports or braces shall be adequate for wind loading. All metal wire cable supports and braces and all bolts used to attach signs to brackets or brackets and signs to the supporting building or structure shall be made of galvanized steel or of an equivalent corrosive-resistant material. All such sign supports shall be an integral part of the sign.
- (6) *Anchoring.* No sign shall be suspended by chains or other devices that will allow the sign to swing due to wind action. Signs shall be anchored to prevent any lateral movement that would cause wear on supporting members or connections.

- (7) *Maximum angle for double-faced signs.* Double-faced signs with opposing faces having an interior angle greater than 30 degrees shall not be permitted.
- (8) *Maintenance.* All visible portions of a sign and its supporting structure shall be maintained in a safe condition and neat appearance. If the sign is a lighted sign, all lights shall be maintained in working order and functioning in a safe manner. If the sign is a painted sign, the paint shall be kept in good condition. All signs will be kept in such manner as to constitute a complete sign at all times. The area immediately surrounding ground signs shall be kept clear of all unsightly vegetation or debris.

Sec. 30-8. - Prohibited signs.

The following signs are prohibited:

- (1) Any signs which are not designed, located, constructed or maintained in accordance with the provisions of this chapter, or which do not meet the requirements of all applicable Town of Fort Myers Beach, state and federal codes.
- (2) Signs that resemble any traffic control device, official traffic control signs or emergency vehicle markings.
- (3) Signs located at the intersection of any street right-of-way in such a manner as to obstruct free and clear vision, or at any location where, by reason of the position, shape or color, the sign may interfere with or obstruct the view of any authorized traffic sign, signal or device; or which make use of the word "stop," "look," "drive-in," "danger," or any other word, phrase, symbol, or character in such a manner as to interfere with, mislead, or confuse vehicular traffic.
- (4) Animated signs except those displaying only cycling time or temperature.
- (5) Back-lit awnings. However, any business with an existing back-lit awning as of December 31, 2004, may continue to use that awning and may place or replace signage on that awning provided it otherwise conforms to this code. This right shall end if the business is discontinued or moved to a different location, or if the building is rebuilt or substantially improved.
- (6) Balloons or balloon signs.
- (7) Flying paraphernalia.
- (8) Canopy signs.
- (9) Bench signs.
- (10) Emitting signs.
- (11) Inflatable objects.
- (13) Motion picture signs.
- (14) Obscene signs.
- (15) Parasite signs.
- (16) Pole signs.

- (17) Roof signs.
- (18) Signs with any lighting or control mechanism which causes radio, television or other communication interference.
- (19) Signs erected, constructed or maintained so as to obstruct or be attached to any firefighting equipment or any window, door or opening used as a means of ingress or egress or for firefighting purposes, or placed so as to interfere with any opening required for proper light and ventilation.
- (20) Signs which are placed on any curb, sidewalk, post, pole, hydrant, bridge, tree, or other surface located on public property or over or across any street or public street except as may otherwise expressly be authorized by this chapter.
- (21) Snipe signs.
- (22) Window signs which cover more than 30 percent of the window glass surface area.

Sec. 30-9. - Violation of chapter; penalty.

The town manager or designee is authorized to pursue any one or combination of the enforcement mechanisms provided in this code or by law for any violation of this chapter. Penalties may be assessed against any owner, agent, lessee, tenant, contractor, or any other person using the land, building or premises where such violation has been committed or shall exist; any person who knowingly commits, takes part in or assists in such violation; and any person who maintains any sign or sign structure in violation of this chapter or in a dangerous or defective condition.

Sec. 30-10. - Permits and Approvals.

- (1) *Permits.*
 - (a) It shall be the duty of the town manager or designee, upon receipt of a completed sign permit application and appropriate fee, to examine such plans and specifications and other data and, if the proposed structure is in compliance with the requirements of this section and all other applicable provisions of this chapter, to issue a permit for the requested structure. Issuance of the permit shall in no way prevent the town manager or designee from later declaring the sign to be illegal if, upon further review of the information submitted with the application or of newly acquired information, the sign is found not to comply with the requirements of this chapter.
 - (b) No sign permit or certificate of compliance shall be issued except in compliance with this chapter and any other applicable ordinances and laws or court decisions.
- (2) *Lapse.* A sign permit shall lapse automatically if the business license for the premises lapses, is revoked, or is not renewed. A sign permit shall also lapse if the business activity on the premises is discontinued for a period of 30 days and is not renewed within 30 days from the date written notice is sent from the town to the last permittee that the sign permit will lapse if such activity is not resumed. A sign permit shall also lapse if the sign for which it is issued either is not erected and/or placed within 180

days following the issuance of the sign permit or is removed for a period of 60 days. Once a sign permit has lapsed, it shall be considered void and a new application and review process shall be necessary in order to have the sign permit re-issued.

- (3) *Variances.* Requests for variances or deviations from the terms of this chapter shall be administered and decided in conformance with the requirements for variances and deviations which are set forth in ch. 34 of this LDC.
- (4) *Expiration of sign permit.* A sign permit shall expire and become null and void six months from the date of issuance, except that it may be extended for good cause by the town manager or designee.
- (5) *Inspections.* All signs for which a permit is required by this chapter must be inspected by the town to ensure compliance with this chapter and all other applicable regulations. Failure to obtain a final satisfactory inspection within the permit period or any renewal shall render the permit invalid, and the applicant shall be required to reapply for a permit or remove the sign or structure.

Sec. 30-11. - Nonconforming signs.

- (1) *Nonconforming sign compliance.* All signs that do not conform to the requirements of this chapter shall be considered nonconforming signs. All nonconforming signs shall be either removed or brought into conformity with this chapter no later than December 31, 2023. The owner of the real property on which such nonconforming signs exist shall be responsible for ensuring that such signs are removed or brought into conformity.
- (2) *Nonconforming sign permits.* Sign permits will not be issued for the alteration, replacement or repair of a nonconforming sign unless the requested modification brings the nonconforming sign into compliance.
- (3) *Exception.* Signs that have been designated as historically significant pursuant to section 30-12 - Designation of historically significant signs, shall not be considered to be nonconforming signs. Such signs shall be governed by the provisions of section 30-12.

Sec. 30-12. - Designation of historically significant signs.

Any existing sign may be nominated for designation as historically significant as provided herein.

- (1) Nomination of a sign for designation as historically significant shall be made on an application provided by the director. The application should document the historical background of the sign.
- (2) The historic preservation board will hold a public hearing on the nomination and will use the historic preservation element of the town's comprehensive plan as a guideline to consider the nomination. The following criteria will be considered where applicable:
 - (a) Whether the sign is associated with historic person(s), event(s), or location(s);

- (b) Whether the sign provides significant evidence of the history of the product, business or service represented;
 - (c) Whether the sign is characteristic of a specific historic period;
 - (d) Whether the sign is an outstanding example of the art of sign-making, through its craftsmanship, use of materials, and/or design; and
 - (e) Whether the sign is a local landmark that is popularly recognized as a focal point in the community.
- (3) The historic preservation board will, after hearing public comment, vote to recommend that the town council either approve or deny historically significant status to the nominated sign.
 - (4) Following the historic preservation board public hearing, the town council will hold a public hearing to consider the nomination. In order to approve the designation of a sign as historically significant, the town council must find that the sign meets one or more of the criteria in § 30-12(2) and is consistent with the town comprehensive plan historic preservation element.
 - (5) A sign that has been designated historically significant may remain as a legal nonconforming sign notwithstanding the provisions of Sec. 30-11 Nonconforming signs. If a sign that has been designated as historically significant is damaged or destroyed, it may be reconstructed, but such reconstruction must duplicate in all respects the sign that was damaged or destroyed.

Sec. 30-13. Liability Insurance.

- (1) Liability insurance required. No permitted sign located on or projecting over a public right-of-way shall be erected unless an insurance policy shall have been filed for public liability with a limit determined by the Town of Fort Myers Beach.
 - (a) Such policy shall be issued by an insurance company authorized to do business in the State of Florida and acceptable to the Town Manager.
 - (b) The policy shall name the Town of Fort Myers Beach as a co-insured and shall require 30 days' written notice to the Town before modification or cancellation.
 - (c) Such policy shall protect and hold the Town harmless from any and all claims or demands for damages by reason of any negligence of the sign hanger, contractor, property owner or occupants or their respective agents; or by reason of defects in the construction, or damages resulting from the collapse, failure or combustion of the sign or parts thereof.
 - (d) The policy shall be maintained so long as the sign in question remains erected.

Sec. 30-14. - Severability.

- (1) *Generally.* If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this chapter is declared unconstitutional by a final and valid judgment or decree of any court of competent jurisdiction, this declaration of

unconstitutionality or invalidity shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this chapter.

- (2) *Severability where less speech results.* This subsection shall not be interpreted to limit the effect of subsection (a) above, or any other applicable severability provisions in the code or any adopting ordinance. The town council specifically intends that severability shall be applied to these sign regulations even if the result would be to allow less speech in the town, whether by subjecting currently exempt signs to permitting or by some other means.
- (3) *Severability provisions pertaining to prohibited signs.* This subsection shall not be interpreted to limit the effect of subsection (a) above, or any other applicable severability provisions in the code or any adopting ordinance. The town council specifically intends that severability shall be applied to section 30-5, "Prohibited signs," so that each of the prohibited sign types listed in that section shall continue to be prohibited irrespective of whether another sign prohibition is declared unconstitutional or invalid.
- (4) *Severability of prohibition on off-premises signs and commercial advertising signs.* This subsection shall not be interpreted to limit the effect of subsection (a) above, or any other applicable severability provisions in the code or any adopting ordinance. If any or all of chapter 30 "Signs," or any other provision of the Town's Code is declared unconstitutional or invalid by the final and valid judgment of any court of competent jurisdiction.

Chapter 30 - SIGNS

Sec. 30-1. - Purpose and intent of chapter.

The town council finds and declares:

- (1) An excess of signs causes a visual blight on the appearance of the town by detracting from views of structures and open space. This visual blight adversely affects the aesthetic quality of life and traffic safety on Fort Myers Beach for residents, businesses, pedestrians, and persons in vehicles. In order to promote the appearance of the town, while protecting the rights of sign owners to expression and identification, the regulation of existing and proposed signs is necessary to protect the public health, safety and general welfare.
- (2) The purpose of this chapter is to encourage signs which are integrated with and harmonious to the building and sites which they occupy, to eliminate excessive and confusing sign displays, to preserve and improve the appearance of the town as a place in which to live and work and as an attraction to nonresidents who come to visit or trade, and to restrict signs which increase the probability of accidents by distracting attention or obstructing vision.
- (3) This chapter provides minimum standards to safeguard life, safety, property, and public welfare by regulating size, construction location, electrification, operation and maintenance of all signs and sign structures exposed to public view within the town. These standards are content-neutral and regulate based on the form, and not the content, of signs. The visual appearance and traffic safety of the town cannot be achieved by measures less restrictive than the procedures and standards of this chapter.
- (4) It is the intent of the town council that protection of First Amendment rights shall be afforded by these sign regulations. Accordingly, any sign, display or device permitted under these regulations may contain, in lieu of any other copy, any otherwise lawful noncommercial message that complies with all other requirements of this code. The noncommercial message may occupy the entire sign area or any portion thereof, and may substitute for or be combined with the commercial message. The sign message may be changed from commercial to noncommercial, or from one noncommercial message to another, as frequently as desired by the sign's owner, provided that the sign is not prohibited and the sign continues to comply with all requirements of this code.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-2. - Definitions and rules of construction.

- (a) In case of any difference of meaning or implication between the text of this chapter and any other law or regulation, this chapter shall control.
- (b) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Alteration. Any change in copy, color, size or shape, which changes appearance of a sign, or a change in position, location, construction, or supporting structure of a sign, except that a copy change on a sign specifically designed for the use of replaceable copy, e.g., a reader board with changeable letters, is not an alteration.

Animated sign. Any sign, including electronic, laser, video or digital displays, that uses movement or change of lighting to depict action or create a special effect or scene. Electronic message boards, electronic changing message centers, and any signs with flashing lights are considered to be animated signs.

Awning sign. Any sign consisting of letters which are painted or installed on a lawful awning, but not including a back-lit awning.

Back-lit awning. An awning with a translucent covering material and a source of illumination contained within its framework.

Balloon sign. One or more balloons, with or without messages or illustrations, that are used as a temporary or permanent sign or as a means of directing attention to a business or organization or to a commodity, service or entertainment.

Banner. A temporary sign of flexible plastic, cloth, or any other fabric, either enclosed or not enclosed in a rigid frame that is secured or mounted to allow movement caused by the atmosphere, including "streamer" and "pennants" but not including flags.

Bench sign. A sign that is painted on or attached to any part of a bench, seat, or chair placed on or adjacent to a public street, public plaza or beach access.

Building numbers. The building number assigned by Lee County as the official premises address, painted or affixed to a building, mailbox or similar structure.

Building official. The same officer as appointed by the town manager through § 6-44.

Business information sign. Any sign containing the name or address of a building and may include hours of operation, information to customers such as business hours and telephone number, "open" and "closed," "shirts and shoes required," "no soliciting," "no loitering," emergency information, professional and trade association information and credit card information.

Canopy. A permanent roof-like shelter open on four sides, to protect an area from the elements, such as over gasoline pumps.

Canopy sign. Any permanent sign attached to or constructed in, on, or below a canopy.

Commercial message. Any sign, wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service, or other commercial activity. For purposes of this chapter, terms such as sale, special, clearance, or other words which relate to commercial activity shall be deemed to be commercial messages. The identification by name of an apartment or condominium development on a residential sign at the apartment or condominium development site shall not be considered to be a commercial message.

Construction sign. A temporary sign identifying a construction project and the persons, firms, or businesses participating in the construction project.

Development identification sign. A permanent sign, which is either a freestanding sign or a sign located on a subdivision entry feature or perimeter wall, at a main entrance to a subdivision or development, identifying the name of the development or subdivision.

Directional sign. Any sign which serves solely to designate the location of or direction to any place, activity, facility, or area and contains no commercial message.

Double-faced sign. A single plane with items of information identical on both sides and mounted as a single structure.

Election sign. A sign temporarily installed in the ground or attached to a building relating to the election of a person to a public office or relating to a matter to be voted upon at a federal, state or local election.

Emitting sign. A sign designed to emit visible smoke, vapor, particles, or odor, or a sign which produces noise or sounds capable of being heard, even though the sounds produced may not be understandable.

Face of sign. The entire area of a sign on which copy could be placed.

Flag. Any fabric or bunting used as a symbol (as of a nation, government, political subdivision or other entity) or as a signaling device.

Freestanding sign. Any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building, wall, fence, vehicle, or object other than the sign structure for support.

Frontage. The distance measured along a public street right-of-way or a private street easement between the points of intersection of the side lot lines with the right-of-way of the easement line.

Government sign. Any sign erected and maintained pursuant to and in discharge of any governmental function, or required by law, ordinance or other governmental regulation.

Illuminated sign. Any electrically operated sign or any sign for which an artificial source is used in order to make readable the sign's message, including internally and externally lighted signs and reflectorized, glowing, or radiating signs.

Incidental sign. A sign, generally informational, that has a purpose that is secondary to the use of the site on which it is located, such as "No Parking," "Entrance," "Exit," "Telephone," "Open," "Beware of Dog," "No Trespassing" "Welcome," and other similar directives. The term incidental sign shall not include a sign designed to be transported by means of wheels, a sandwich-board sign, or a skid-mounted sign, regardless of the nature of the information that such sign may contain.

Inflatable object. An object of any shape that is expanded or capable of expansion by means of air or gas, such as a balloon, wind sock, or air tube, and which is used as a means of attracting attention to a site, product or event.

Licensed contractor. A person holding a valid contractor's license issued by the Lee County Construction Board.

Maintain. To preserve from decline, keep in an existing state or retain in possession or control.

Menu display box. A small plaque or display case, not exceeding four square feet in area and four inches in depth, located on an exterior building wall that displays a restaurant's menu near its entrance for the convenience of potential patrons who arrive on foot.

Monument sign. A freestanding sign with internal structural supports, where the height from the ground to the highest point on the sign is less than the sign's greatest horizontal dimension.

Motion picture sign. A sign capable of displaying moving pictures or images in conjunction with an outdoor advertising structure, accessory sign, or advertising statuary visible from any public street or sidewalk.

Nameplate sign. A non-illuminated identification sign indicating only the name, address, and/or occupation of an occupant or group of occupants of a building.

Noncommercial sign. A sign which contains no commercial message.

Open house sign. A sign identifying property for sale, rent or lease and temporarily open for inspection.

Off-premises sign. Any sign normally used for promoting a business, individual, products, or service available somewhere other than the premises where the sign is located. A sign containing a noncommercial message shall not be considered to be an off-premises sign.

Parasite sign. Any sign not exempted by this chapter, for which no permit has been issued, and which is hung from, attached to or added onto an existing sign.

Permit board. A freestanding device erected on a construction site for the sole purpose of providing a conspicuous display of and shelter for the permits required for construction activities being performed on such construction site. A permit board may display a contractor name or logo so long as such display does not exceed one square foot.

Pole sign. A freestanding sign supported by an exposed structure of poles or other supports where the height of the exposed sign supports extends more than 18 inches from the ground to the bottom of the sign. A freestanding sign that meets this chapter's requirement for a monument sign is not considered to be a pole sign.

Portable sign. Any movable sign not permanently attached to the ground or a building.

Projecting sign. A sign which is attached to a building and projects more than 18 inches above, below, or outward from, and is supported by, a wall, parapet, or ceiling of a building.

Public body. Any government or governmental agency of the United States, the state, the county, or the Town of Fort Myers Beach.

Real estate sign. A temporary sign which advertises the sale, exchange, lease, rental, or availability of the parcel, improved or unimproved, upon which it is located.

Residential sign. Any sign, not otherwise defined or regulated in this chapter as an allowed sign in a residential zoning district, that is located in a district zoned for residential uses and does not contain any commercial message.

Roof sign. Any sign erected upon a roof or roof-mounted equipment. Signs placed flat against the steep slope of a mansard roof will not be considered roof signs.

Sandwich-board sign. An easily moveable sign not attached to the ground that is supported by its own frame which generally forms the cross-sectional shape of an A. For purposes of this code, sandwich signs are not considered portable signs.

Sign. Any name, figure, character, outline, display, announcement, or device, or structure supporting the same, or any other device of similar nature designed to attract attention or convey a message outdoors, and shall include all parts, portions, units, and materials composing the same, together with the frame, background, and supports or anchoring thereof.

Sign face. An exterior display surface of a sign including nonstructural trim exclusive of the supporting structure.

Snipe sign. A sign of any material, including paper, cardboard, wood, and metal, when tacked, nailed, or attached in any way to trees, telephone poles, or other objects located or situated on a public road right-of-way, or any sign which is installed on property without the permission of the property owner.

Special event sign. A temporary sign announcing a social function, promotional, or fundraising event, sponsored by a private, not-for-profit, or governmental entity which is open to the public, and which is distinct from the usual and customary business day functions of the organization.

Temporary sign. A sign displayed for a fixed, terminable length of time. Temporary signs are intended to be removed after the temporary purpose has been served. Included are for sale, lease or rent signs, political signs, service signs, special event signs, construction signs, directional signs to special or temporary events and signs of a similar nature.

Vehicle sign. Any sign permanently or temporarily attached to or placed on a vehicle, including a motor vehicle, boat, trailer, or bicycle or human-powered vehicle, where the vehicle is parked so as to be visible from the public right-of-way or parked on public property so as to clearly provide a

commercial message close to the public right-of-way, unless said vehicle is used by a proprietor or employee of the business for the purpose of commuting between the business location and home or is used in the usual course or operation of a business. Factors to be considered in determining whether a vehicle is used in the usual course or operation of a business shall include, but not be limited to, whether the vehicle is inoperable, whether the vehicle has a current registration in the State of Florida, the role the vehicle plays in the business, the frequency with which the vehicle is used in the operation of the business, and whether the size of the sign makes it impractical or dangerous to operate the vehicle. Any sign bearing a commercial message that is attached to or painted on a vehicle that is routinely parked or otherwise located on a site or sites other than the site where the business is located, or a sign whose size makes it impractical or dangerous to operate the vehicle shall be presumed to be a prohibited vehicle sign.

Wall sign. Any sign attached to or painted on the wall of a building or structure and extending no more than 18 inches outward from the wall in a plane approximately parallel to the plane of said wall.

Window sign. Any sign viewable through and/or affixed in any manner to a window or exterior glass door such that it is viewable from the exterior, including signs located inside a building but visible primarily from the outside of the building.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Cross reference— Definitions and rules of construction generally, app. A, § 1-2.

Sec. 30-3. - Reserved.

Sec. 30-4. - Applicability of chapter.

- (a) *Generally.* Except as otherwise provided in this chapter, it shall be unlawful for any person to erect, construct, enlarge, move, or convert any sign in the Town of Fort Myers Beach, or cause such work to be done, without first obtaining a sign permit for each such sign as required by this chapter.
- (b) *Exceptions.*
 - (1) This chapter shall not apply to any sign erected by the federal, state, county, or Town of Fort Myers Beach government or to the placement of temporary signs not exceeding eight square feet in area within a right-of-way for purposes of business identification or access location, when necessitated by road construction and when authorized by the county or town.
 - (2) The following activities shall not be considered the creation of a sign:
 - a. *Change of copy.* Changing the copy on existing signs.
 - b. *Maintenance.* Painting, repainting, cleaning, or other normal maintenance and repair of a sign not involving change of copy, structural or electrical changes.
 - c. *Window displays.* Changes in the content of show window displays, provided all such displays are within the building.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-5. - Prohibited signs.

The following signs are prohibited:

- (1) Any signs which are not designed, located, constructed or maintained in accordance with the provisions of this chapter, or which do not meet the requirements of all applicable Town of Fort Myers Beach, state and federal codes.

Exhibit B – Existing Sign Ordinance

- (2) Signs that resemble any traffic control device, official traffic control signs or emergency vehicle markings.
- (3) Signs located at the intersection of any street right-of-way in such a manner as to obstruct free and clear vision, or at any location where, by reason of the position, shape or color, the sign may interfere with or obstruct the view of any authorized traffic sign, signal or device; or which make use of the word "stop," "look," "drive-in," "danger," or any other word, phrase, symbol, or character in such a manner as to interfere with, mislead, or confuse vehicular traffic.
- (4) Animated signs except those displaying only cycling time or temperature.
- (5) Back-lit awnings. However, any business with an existing back-lit awning as of December 31, 2004, may continue to use that awning and may place or replace signage on that awning provided it otherwise conforms to this code. This right shall end if the business is discontinued or moved to a different location, or if the building is rebuilt or substantially improved.
- (6) Balloons or balloon signs.
- (7) Banners, pennants, or other flying paraphernalia, except as permitted in section 30-141 (Temporary signs).
- (8) Canopy signs.
- (9) Bench signs.
- (10) Emitting signs.
- (11) Inflatable objects.
- (13) Motion picture signs.
- (14) Obscene signs.
- (15) Off-premises signs.
- (16) Parasite signs.
- (17) Pole signs.
- (18) Portable signs.
- (19) Roof signs.
- (20) Sandwich-board signs. Except as permitted by subsections 27-51(c)(4) and (5) for PWVL and PAL businesses.
- (21) Signs with any lighting or control mechanism which causes radio, television or other communication interference.
- (22) Signs erected, constructed or maintained so as to obstruct or be attached to any firefighting equipment or any window, door or opening used as a means of ingress or egress or for firefighting purposes, or placed so as to interfere with any opening required for proper light and ventilation.
- (23) Signs which are placed on any curb, sidewalk, post, pole, hydrant, bridge, tree, or other surface located on public property or over or across any street or public street except as may otherwise expressly be authorized by this chapter.
- (24) Snipe signs.
- (23) Vehicle signs.
- (24) Window signs which cover more than 30 percent of the window glass surface area.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-6. - Exempt signs.

The following signs are exempt from the permitting requirements of this chapter:

- (1) *Awning signs.* Awning signs consisting of one line of letters or building or address numbers on the hanging border, or an identification emblem, insignia, initial, or other feature not exceeding an area of eight square feet painted or installed elsewhere on an awning.
- (2) *Building numbers.* Posted building numbers must be between three and eight inches high for detached dwellings and for individual businesses, institutional, and multifamily buildings. Numbers on buildings that are set back more than 50 feet from the street must be between eight and 18 inches high. If the building number is prominently displayed on an identification sign for a multiple occupancy complex, the number need not be repeated for individual businesses within that complex.
- (3) *Business information signs.* Business information signs, provided that such signs are posted on the entrance doors or within a window.
- (4) Flags that contain no commercial message.
- (5) *Garage sale signs.* Garage sale signs, provided they are erected not more than 24 hours prior to the sale and are removed within 72 hours of the time they were erected.
- (6) *Government and public safety signs.* Governmental signs for control of traffic and other regulatory purposes, street signs, danger signs, signs of public service companies indicating danger, "no parking" signs, and aids to service or safety which are erected by or on the order of a public official in the performance of his public duty.
- (7) Incidental signs not exceeding two square feet in area per sign and limited to two signs per parcel or lot. Additional incidental signs shall require a permit for each such additional sign.
- (8) Instructional signs or symbols located on and pertaining to a parcel of private property, not to exceed four square feet in area per sign.
- (9) *Interior signs.* Signs located within the interior of any building, or within the inner or outer lobby, court, or entrance of any theater. This does not, however, exempt such signs from the structural, electrical, or material specifications as set out in this code and the Florida Building Code.
- (10) *Legal notices.* Legal notices and official instruments.
- (11) *Memorial signs or tablets.* Memorial signs or tablets, names of buildings, and date of erection when cut into any masonry surface or when constructed of bronze or other incombustible materials.
- (12) *Nameplates.* Any sign not exceeding 1½ square feet in area per sign and not exceeding two in number per lot. Such signs shall not be illuminated, and they shall not project over any public right-of-way.
- (13) *Posted property signs.* Posted property signs, not to exceed 1½ square feet in area per sign and not exceeding two in number per lot. Such signs shall not be illuminated, and they shall not project over any public right-of-way.
- (14) *Public information signs.* Any sign used for public information or direction erected either by or at the direction of a public body.
- (15) Real estate, open house, and model signs.
- (16) Sandwich-board signs, but only as permitted by subsections 27-51(c)(4) and (5) for PWVL and PAL businesses.
- (17) *Signs incorporated on machinery or equipment.* Signs incorporated on machinery or equipment at the manufacturer's or distributor's level, which identify or advertise only the product or service dispensed by the machine or equipment, such as signs customarily affixed to vending machines, newspaper racks, telephone booths, and gasoline pumps.
- (18) Special event signs.

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- (19) Symbols or insignia of religious orders, historical agencies, or identification emblems of religious orders or historical agencies, provided that no such symbol, plaque or identification emblem shall exceed 16 square feet in area.
- (20) *Temporary signs.* Temporary election signs, special event signs, and real estate signs as provided in § 30-141.
- (21) Tow away zone signs erected pursuant to and in compliance with F.S. § 715.07.
- (22) *Warning signs.* Signs warning the public or the existence of danger, to be removed upon subsidence of danger.
- (23) *Waterway signs.* Directional signs along inland waterways.
- (24) *Window signs.* Interior window signs which identify or advertise activities, services, goods, or products available within the building.
- (25) In single-family residential zoning districts, no more than one residential sign, in addition to any directional signs, flags, incidental signs and temporary signs that may be otherwise allowed, shall be erected or located on the site and shall not exceed four square feet in sign area and, if freestanding, five feet in height.
- (26) In multifamily zoning districts, one residential sign per street frontage of the site, in addition to any directional signs, flags, incidental signs and temporary signs that are otherwise allowed, shall be located on the site; provided, however, that in no event shall the total number of such signs exceed two per site. The maximum sign area for each residential sign shall be 16 square feet and, if freestanding, the maximum height shall not exceed eight feet.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-7. - Reserved.

Editor's note— Ord. No. 11-01, § 2(Exh. A), adopted Apr. 18, 2011, deleted § 30-7 entitled "Parking of advertising vehicles."

Secs. 30-8—30-50. - Reserved.

Sec. 30-51. - Violation of chapter; penalty.

The town manager or designee is authorized to pursue any one or combination of the enforcement mechanisms provided in this code or by law for any violation of this chapter. Penalties may be assessed against any owner, agent, lessee, tenant, contractor, or any other person using the land, building or premises where such violation has been committed or shall exist; any person who knowingly commits, takes part in or assists in such violation; and any person who maintains any sign or sign structure in violation of this chapter or in a dangerous or defective condition.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-52. - Reserved.

Sec. 30-53. - Powers and duties of town manager.

- (a) *Generally.* The town manager is hereby authorized and directed to administer and enforce the regulations and procedures and to delegate the duties and powers granted to and imposed upon him under this chapter.

(b) *Specific powers and duties.*

(1) *Issuance or denial of permits and certificates.*

- a. It shall be the duty of the town manager or designee, upon receipt of a completed application for a sign permit, to examine such plans and specifications and other data and, if the proposed structure is in compliance with the requirements of this section and all other applicable provisions of this chapter, to issue to the applicant a written permit evidencing the applicant's compliance therewith. Permits shall be issued within 15 days of receipt of a complete application. Issuance of the permit shall in no way prevent the town manager or designee from later declaring the sign to be illegal if, upon further review of the information submitted with the application or of newly acquired information, the sign is found not to comply with the requirements of this chapter.
- b. No sign permit or certificate of compliance shall be issued except in compliance with this chapter and any other applicable ordinances and laws or court decisions.

(2) *Lapse.* A sign permit shall lapse automatically if the business license for the premises lapses, is revoked, or is not renewed. A sign permit shall also lapse if the business activity on the premises is discontinued for a period of 30 days and is not renewed within 30 days from the date written notice is sent from the town to the last permittee that the sign permit will lapse if such activity is not resumed. A sign permit shall also lapse if the sign for which it is issued either is not erected and/or placed within 180 days following the issuance of the sign permit or is removed for a period of 60 days. Once a sign permit has lapsed, it shall be considered void and a new application and review process shall be necessary in order to have the sign permit re-issued.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-54. - Variances.

Requests for variances or deviations from the terms of this chapter shall be administered and decided in conformance with the requirements for variances and deviations which are set forth in ch. 34 of this LDC.

Sec. 30-55. - Permits; inspections.

(a) *Sign permit required; modifications.*

- (1) Except as otherwise provided for in this chapter, no sign shall be located, placed, erected, constructed, altered, replaced, enlarged, moved or converted in the Town of Fort Myers Beach, without first obtaining a sign permit.
- (2) In the event a sign is located, installed or maintained upon real property in the Town of Fort Myers Beach without any required permits, after the expiration or lapse of a sign permit, or otherwise in violation of the requirements of this chapter, the owner of the real property where the sign is located shall be responsible for the prompt removal of such sign and shall be responsible for and subject to all fines or penalties resulting from such violation.

(b) *Application for sign permit.* In order to obtain a permit to erect, alter or relocate any sign under the provisions of this chapter, an applicant therefore shall submit to the town a sign permit application, which shall include:

(1) *A completed application form that includes the following:*

- a. The name, address and telephone number of the applicant.
- b. The name, address and telephone number of the person constructing the sign, as well as the name, address and telephone number of the owner of the sign.

- c. Information as to the type of sign to be erected, e.g., monument, projecting or wall sign; illuminated or non-illuminated; temporary or permanent.
 - d. The approximate value of the sign to be installed, including the installation cost, and information concerning the design of the sign and the copy that will appear on the sign.
- (2) *A site location plan that includes the following:*
- a. Location by street address and legal description (tract, block and lot) of the building, structure, or lot where the sign is to be erected or installed.
 - b. A fully dimensioned plot plan, to scale, indicating the location of the sign relative to property lines, rights-of-way, streets, easements, sidewalks, and other buildings or structures on the premises, as well as the location, size and type of any other existing signs whose construction requires a sign permit.
 - c. A sea turtle lighting plan for all lighted signs that are visible from the beach, including signs that are within buildings.
 - d. A landscape plan for sign installations that will include landscaping.
- (3) *Application fee.* Applications for a permit to erect, construct, alter or extend a sign or sign structure shall be accompanied by a fee in the amount established by the town council.
- (4) A drawing to scale showing the design of the sign, including dimensions, sign size, method of attachment, and source of illumination, and showing the relationship to any building or structure to which it is or is proposed to be installed or affixed.
- (5) Plans indicating the scope and structural detail of the work to be done, including details of all connections, supports, footings and materials to be used.
- (6) Where determined to be necessary, a copy of stress sheets and calculations indicating that the sign is properly designed for dead load and wind pressure in any direction.
- (7) Where determined to be necessary, a listing of all materials to be utilized in the construction of the sign, or, in the alternative, a statement that all materials are in compliance with the Florida Building Code.
- (8) If applicable, an application, and required information for such application, for an electric permit for all signs that include electrical components. Electrical components must be UL-approved and installed in conformance with the listing.
- (9) All signs, except exempt signs and certain temporary signs, are required to be installed or erected only by a licensed sign contractor or licensed electrical sign contractor. All persons engaged in the business of installing or maintaining signs involving, in whole or part, the erection, alteration, relocation or maintenance of a sign or other sign work in or over or immediately adjacent to a public right-of-way or public property if used or encroached upon by the sign installer shall agree to hold harmless and indemnify the Town of Fort Myers Beach and its officers, agents and employees from any and all claims of negligence resulting from the erection, alteration, relocation or maintenance of a sign or other sign work.
- (10) *Expiration of sign permit.* A sign permit shall expire and become null and void six months from the date of issuance, except that it may be extended for good cause by the town manager or designee.
- (11) *Inspections.* All signs for which a permit is required by this chapter must be inspected by the town to ensure compliance with this chapter and all other applicable regulations. Failure to obtain a final satisfactory inspection within the permit period or any renewal shall render the permit invalid, and the applicant shall be required to reapply for a permit or remove the sign or sign or structure.

- (12) *Identification number.* All signs that were issued a permit after September 13, 1999 must have the sign permit number affixed to the upper right corner of the sign. The town will maintain digital photographs of all signs in the town in Town Hall.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-56. - Nonconforming signs.

- (a) *Nonconforming sign compliance.* All signs that do not conform to the requirements of this chapter shall be considered to be nonconforming signs. All nonconforming signs shall be either removed or brought into conformity with this chapter no later than December 31, 2011. The owner of the real property on which such nonconforming signs exist shall be responsible for ensuring that such signs are removed or brought into conformity.
- (b) *Nonconforming sign permits.* Sign permits will not be issued for the alteration, replacement or repair of any nonconforming signs.
- (c) *Exception.* Signs that have been designated as historically significant pursuant to section 30-57 below, shall not be considered to be nonconforming signs. Such signs shall be governed by the provisions of section 30-57.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-57. - Designation of historically significant signs.

Any existing sign may be nominated for designation as historically significant as provided herein.

- (1) Nomination of a sign for designation as historically significant shall be made on an application provided by the director. The application should document the historical background of the sign.
- (2) The historic preservation board will hold a public hearing on the nomination and will use the historic preservation element of the town's comprehensive plan as a guideline to consider the nomination. The following criteria will be considered where applicable:
- a. Whether the sign is associated with historic person(s), event(s), or location(s);
 - b. Whether the sign provides significant evidence of the history of the product, business or service represented;
 - c. Whether the sign is characteristic of a specific historic period;
 - d. Whether the sign is an outstanding example of the art of sign-making, through its craftsmanship, use of materials, and/or design; and
 - e. Whether the sign is a local landmark that is popularly recognized as a focal point in the community.
- (3) The historic preservation board will, after hearing public comment, vote to recommend that the town council either approve or deny historically significant status to the nominated sign.
- (4) Following the historic preservation board public hearing, the town council will hold a public hearing to consider the nomination. In order to approve the designation of a sign as historically significant, the town council must find that the sign meets one or more of the criteria in § 30-57(2) and is consistent with the town comprehensive plan historic preservation element.
- (5) A sign that has been designated historically significant may remain as a legal nonconforming sign notwithstanding the provisions of § 30-56 (Nonconforming signs). If a sign that has been designated as historically significant is damaged or destroyed, it may be reconstructed, but such reconstruction must duplicate in all respects the sign that was damaged or destroyed.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Secs. 30-58—30-90. - Reserved.

Sec. 30-91. - Computation of sign area.

- (a) The area of a sign shall include all lettering, wording and accompanying designs and symbols together with the background, whether open or enclosed, on which they are displayed, but not including any supporting framework and bracing which are incidental to the display. The sign area shall be measured from the outside edges of the sign or the sign frame, whichever is greater, excluding the area of any supporting structures that are not part of the display.
- (b) When a single sign structure is used to support two or more signs, or unconnected elements of a single sign other than individual letters or symbols, sign area shall be computed on each sign face in the same manner as the sign area of a single sign. If the faces of a multi-faced sign are separated at any point by more than 18 inches, then each sign face shall constitute a separate sign.
- (c) The area of a double-faced sign shall be computed on only one side; provided, however, that where both sides are unequal in size, the area for the larger side shall be used.
- (d) Where a sign consists of individual letters or symbols attached to or painted on a surface, building wall or window, the area shall consist of the single smallest rectangle or other regular geometric shape which encompasses all of the letters and symbols, including the sign background.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-92. - Measurement of sign height.

The vertical height of a freestanding sign shall be the vertical distance measured from the highest adjacent grade or the crown of the adjacent street, whichever is higher, to the highest point of the sign face or its supporting structural elements.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-93. - Location.

- (a) *Visibility triangle.* No sign shall be erected that would impair visibility at a street intersection or driveway entrance as described in § 34-3131 of this code.
- (b) *Street setbacks.* No sign or portion of a sign shall be erected closer than three feet to any sidewalk or bike path or to any street right-of-way unless at least eight feet of vertical clearance is maintained.
- (c) *Signs near the beach.* Other portions of this code may affect the location or lighting of signs. For example:
 - (1) Signs are permitted in the EC zoning district only if approved through the special exception process or as a deviation in the planned development zoning process (see § 6-366(b)), or where explicitly permitted by §§ 14-5 or 27-51. Where signs are permitted by § 27-51, equivalent signs containing noncommercial messages may be substituted.
 - (2) A sea turtle lighting plan is required for new signs with artificial light sources that are visible from the beach, including signs that are within buildings. Guidelines for ensuring that sea turtle nesting habitat will not be directly or indirectly illuminated are found in § 14-79.
- (d) *Clearance from power lines.* Signs shall be located no closer than ten feet from all overhead electrical lines and conductors and no closer than three feet from all secondary voltage service drops.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-94. - Construction standards.

- (a) *Generally.* All signs shall comply with the appropriate detailed provisions of the Florida Building Code relating to design, structural members, illumination and connections. All electrical work shall be Underwriters' Laboratories approved or be certified by an electrician licensed in accordance with article II of ch. 6 of this code. Signs shall also comply with the additional standards set forth in this section.
- (b) *Structural design.*
 - (1) The town manager or designee may require wind load calculations for signs prior to issuance of a permit.
 - (2) A wall must be designed for and have sufficient strength to support any sign that is attached thereto.
- (c) *Materials for monument signs.*
 - (1) All monument signs shall be self-supporting structures erected on and permanently attached to the ground.
 - (2) All wood permitted to be used, whether for new permanent signs, for replacement of existing permanent signs, or for any part thereof, shall be rot and termite-resistant through open-cell preservation methods as specified by the American Wood Preservation Association, or by any other open-cell preservation treatment approved by the Florida Building Code.
- (d) *Electric signs.*
 - (1) All electric signs shall be certified by a licensed electrical contractor that the sign meets the standards established by the Florida Building Code. All electric signs shall be erected and installed by a licensed sign contractor. The electrical connection to a power source shall be performed by a licensed electrical contractor.
 - (2) Artificial light used to illuminate any sign from outside the boundaries of the sign shall be screened in a manner which prevents the light source from being visible from any abutting right-of-way or adjacent property. See ch. 14 of this code for sea turtle lighting restrictions.
 - (3) All externally illuminated signs must also comply with the technical standards for lighting found in § 34-1833.
- (e) *Supports and braces.* Metal supports or braces shall be adequate for wind loading. All metal wire cable supports and braces and all bolts used to attach signs to brackets or brackets and signs to the supporting building or structure shall be made of galvanized steel or of an equivalent corrosive-resistant material. All such sign supports shall be an integral part of the sign.
- (f) *Anchoring.* No sign shall be suspended by chains or other devices that will allow the sign to swing due to wind action. Signs shall be anchored to prevent any lateral movement that would cause wear on supporting members or connections.
- (g) *Maximum angle for double-faced signs.* Double-faced signs with opposing faces having an interior angle greater than 30 degrees shall not be permitted.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-95. - Sign identification and marking.

Unless specifically exempted from permit requirements of this chapter, all signs shall be photographed and filed with permit numbers in Town Hall.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-96. - Maintenance.

- (a) All signs, including their supports, braces, guys, and anchors, shall be maintained so as to present a neat, clean appearance. Painted areas and sign surfaces shall be kept in good condition, and illumination, if provided, shall be maintained in safe and good working order.
- (b) Weeds and grass shall be kept cut in front of, behind, underneath, and around the base of monument signs for a distance of ten feet, and no rubbish or debris that would constitute a fire or health hazard shall be permitted under or near such signs.

Secs. 30-97—30-150. - Reserved.

Sec. 30-151. - Temporary signs.

The following temporary signs are permitted in all zoning districts subject to the following regulations. It shall be unlawful to erect, cause to be erected, maintain, or cause to be maintained any temporary sign which fails to comply with the following regulations:

- (1) *Temporary business announcement signs* not exceeding 16 square feet in area and eight feet in height are permitted for a new business, or an existing business that has moved to a new location where there are no permanent signs for such business. Such signs are permitted for a period of not more than 60 days or until installation of permanent sign(s), whichever occurs first. No temporary announcement sign shall be permitted that exceeds either the number or size of permanent signs otherwise permitted by this chapter for the occupancy or location.

Sign permits are required for temporary business announcement signs.

- (2) *Construction signs.*

- a. One construction sign shall be permitted per construction project on each street frontage. The sign shall be erected no earlier than five days prior to the commencement of construction, shall be confined to the construction site, and shall be removed prior to issuance of a certificate of occupancy.
- b. Construction signs may only denote the name of the architect, engineer, contractor, subcontractor, owner, future tenant, financing agency, or other persons performing services or labor or supplying materials for the project.
- c. Maximum size limitations for construction signs shall be as follows:
 - 1. For all residential and nonresidential developments, one non-illuminated sign not exceeding 16 square feet in area and eight feet in height, may be erected on each street frontage.
 - 2. All construction signs must be located within the construction site.
 - 3. Sign permits are required for construction signs.

- (3) *Development signs.*

- a. A development sign may be permitted in any residential development wherein more than 20 percent of the total number of lots, homes, or living units remain unsold, subject to the following regulations:
 - 1. One non-illuminated development sign not exceeding 16 square feet in area and eight feet in height may be permitted at each street entrance into the subdivision or development.
 - 2. The sign shall be located within the subdivision or development site.

3. Permits for development signs shall be valid for no more than one year and may be renewed annually provided more than 20 percent of lots, homes or dwelling units remain unsold.
- b. One non-illuminated development sign per street frontage may be permitted in any commercial zoning district to promote the sale or rental or lease of lots or units within the development. The maximum sign area shall be 16 square feet and the maximum height shall be ten feet.
- c. Sign permits are required for all development signs.
- (4) *Election signs.* Election signs are permitted as follows:
 - a. *Sign area and height.* Election signs shall have a maximum area of four square feet and, if freestanding, a maximum height of three feet.
 - b. *Number.* In residential zoning districts, the number of election signs shall be limited to one per ten linear feet of street frontage. In commercial zoning districts, the number of election signs shall be limited to one per 20 feet of street frontage.
 - c. *Timing and removal.* Election signs may be erected no earlier than 30 days prior to the primary or general election to which they relate and shall be removed no later than ten days after the election; provided, however, that an election sign erected prior to a primary election may remain posted continuously until ten days after the general election when the candidate referenced in the sign advances from the primary to the general election. In the event an election sign is displayed on a site outside of the time period allowed herein, or in the event the number of election signs located on a property exceed the number permitted herein, such sign(s) remaining outside the allowed period or the excess number of such signs shall no longer be deemed election signs, but instead, based on the zoning district, shall be treated as and subject to all conditions and regulations applicable to residential signs or noncommercial signs for the site at which the sign is located. If the one "residential sign" or "noncommercial sign" allowed as exempt under § 30-6 is already located on the site where the election sign is located, then any such election sign displayed on a site either beyond the permitted time period for election signs or in excess of the number of allowed signs per site, such sign(s) shall no longer be deemed to be an exempt sign, but instead shall be treated as and subject to all conditions and regulations applicable to a non-exempt sign located on the site.
- (5) *Permit boards.*
- (6) *Special event signs.* For special events where a special event permit is required, no signs relating to the event shall be erected until a special events permit has been obtained from the town. The following regulations shall also apply:
 - a. Special event signs may be erected no earlier than 14 days prior to a proposed event and must be removed within two days after the event.
 - b. Special event signs shall not exceed 16 square feet in area and eight feet in height.
 - c. Banners may be strung for special events if approved as part of a special events permit and shall be subject to the same duration limitations as other special event signs.
 - d. The persons(s) or organization(s) sponsoring the special event shall post with the town a cash bond of \$200.00. The cash bond shall be refunded upon removal of the sign(s) by the sponsoring person(s) or organization(s) and verification of their removal by the town. The cash bond shall be forfeited to the town in the event one or more of the special event signs are not removed within two days after the conclusion of the special event.
- (7) *Real estate signs.* Real estate signs shall be permitted on properties where the owner is actively attempting to sell, rent or lease such property, either personally or through an agent, as follows:

- a. All properties listed for sale may have one non-illuminated sign, perpendicular to the roadway, that is not more than four square feet in area and five feet in height. Not more than one sign for each street frontage shall be permitted. Waterfront (canal, bay, lagoon or beach) properties may also have one monument sign which is no more than 12 inches in height and 24 inches in width and is located on the water frontage side of the property so that such sign is visible from the water.
 - b. The sign face may have the name of the licensed real estate professional, the real estate company or other licensed entity, any required professional indicia, and a phone number and/or address. The sign face may additionally state, "For Rent" or "For Lease" or both, but such statement must be included within the sign face.
 - c. No riders (such as name of agent, "sold," "sale pending," "pool," "price reduced," etc.) shall be attached to the sign.
 - d. If a property is both for sale and for rent, only one sign is allowed.
 - e. No signs may be fastened to trees.
 - f. No "goal post" supports are allowed.
 - g. "Open house" signs. "Open house" signs are allowed as follows:
 1. One "open house" sign per property per street and waterbody frontage.
 2. The area of any "open house" sign must not exceed four square feet in area and three feet in height, and the sign(s) may be placed only upon the property to be sold or leased.
 3. The sign(s) shall be displayed only when the premises are actually available for an inspection by a prospective buyer or tenant.
- (8) *Temporary directional signs.* For temporary events with a duration of one day or less, temporary directional signs may be placed in the right-of-way along Estero Boulevard and at each intersection on the most direct route between Estero Boulevard and the property where the temporary event is taking place. Such signs may be placed on the day of the event only and must be removed within 24 hours after the termination of the event. Such signs shall be no more than four square feet in area and may only contain a brief description of the event, the address for the event and a directional arrow.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-152. - Development identification signs.

Development identification signs shall be subject to the following:

- (1) *Residential development identifications signs.*
 - a. *Entrance signs.* Permanent wall or monument signs, for identification purposes only, giving only the name of the condominium, subdivision or development, may be permitted at each main entrance into such subdivision or development. Subdivision or development entrances which contain a median strip separating the entrance and exit lanes, may be permitted:
 1. A single monument sign located in the median strip of the entrance, provided that it is set back a minimum of 15 feet from the right-of-way of the public access road and a minimum of five feet from the edge of the pavement of the entrance and exit lanes; or
 2. Two single-faced signs equal in size and located on each side of the entranceway.
 - b. *Limitations.*
 1. The condominium, subdivision or development shall have a property owners' association or similar entity which will be responsible for the maintenance of the sign.

2. The face of each permitted main entrance identification sign shall not exceed 25 square feet and five feet in height.
 3. The sign may be illuminated with a steady light so shielded as to not allow the light to interfere with vehicular traffic. See ch. 14 of this code for sea turtle lighting restrictions.
 4. The sign should be incorporated into accessory entrance structural features such as a wall or landscaping.
- (2) *Schools, churches, day care centers, parks, recreational facilities and libraries.* A school, church, day care center, park, recreational facility or library shall be permitted one monument or wall-mounted identification sign and one directory sign within the property line, with maximum sign area of 24 square feet and a maximum height of five feet.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-153. - Maximum sign area.

- (a) *Single- and multifamily residential uses in residential zoning districts.* Except for those signs identified as exempt signs in § 30-6 and temporary signs in § 30-141, no signs are allowed on sites containing residential uses in residential zoning districts. Any such exempt or temporary sign(s) located on a residential site in a residential zoning district shall comply with the regulations for exempt sign(s) contained in § 30-6 and the regulations for temporary signs contained in § 30-141.
- (b) *Commercial uses in commercial zoning districts.* All signs located in commercial zoning districts, except for those signs identified as exempt signs in § 30-6 and temporary signs in § 30-141, shall comply with the following sign area limitations:
 - (1) For a parcel of land containing one or two business establishments, each separate business establishment shall be allowed a maximum of 32 square feet of sign area.
 - (2) For a parcel of land containing three or more business establishments, each establishment shall be allowed a maximum of 16 square feet of sign area. An additional 32 square feet of sign area may be utilized to identify the commercial development.
 - (3) The maximum sign area provided herein may be allocated among a combination of one or more monument signs, projecting signs, and/or wall signs.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-154. - Standards for monument signs, projecting signs and wall signs in commercial zoning districts.

Except as may be otherwise provided herein, all monument signs, projecting signs and wall signs located in commercial zoning districts shall comply with the following regulations:

- (1) Buildings that are required to meet the commercial design standards in § 34-991-1010, cannot install internally lit box signs (see Figure 30-1). When internally lit signs are permitted for buildings that are not required to meet the commercial design standards, the sign face must be designed so that illumination occurs only on individual letters or symbols. An opaque background panel must be used so that the internal light only passes through the letters or symbols. This requirement also applies to all signs with changeable copy. See Figure 30-2 for an example of illuminated letters on an internally lit sign face.

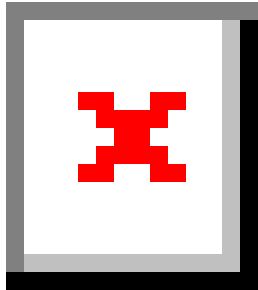


Figure 30-1 Figure 30-1

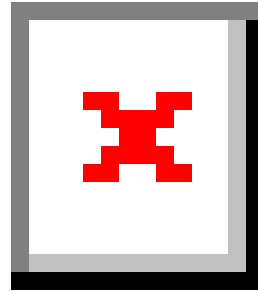
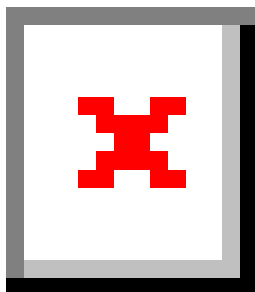


Figure 30-2 Figure 30-2



Desirable

- Signs are coordinated in size and placement with the building and storefront



Undesirable

- Building sign conceals the cornice
- Over-varied sign shapes create visual confusion
- Awning sign covers the masonry piers
- Sale sign too large for storefront and poorly placed in display window

Figure 30-3

- (2) *Location.* Monument signs must be set back at least three feet from any public right-of-way or roadway easement; provided, however, that monument signs may be located in a lawfully developed landscaped median strip that is within a public or private right-of-way or easement where the holder(s) of the right-of-way or easement have consented to the location of the monument sign in such right-of-way or easement. Monument signs located in such median strips must be set back a minimum of two feet from the edge of the pavement and must not violate the visibility requirements of § 34-3131. Wall signs and projecting signs may extend over public sidewalks provided they maintain a minimum clear height above sidewalks of eight feet and do not extend closer than two feet to an existing or planned curb.

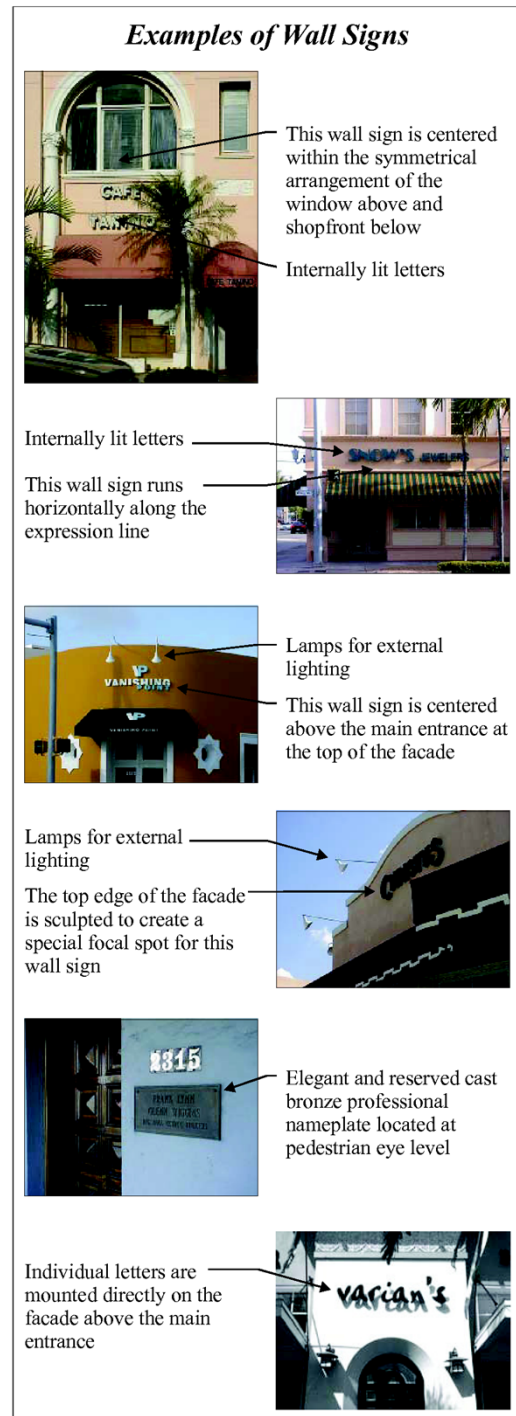
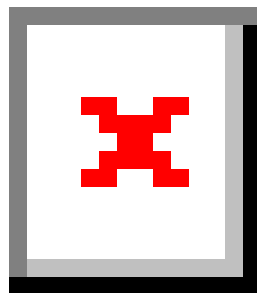


Figure 30-4

- (3) A wall sign must not extend above the lowest edge of the building's eaves or above the highest horizontal members of the fence or wall to which it is attached.

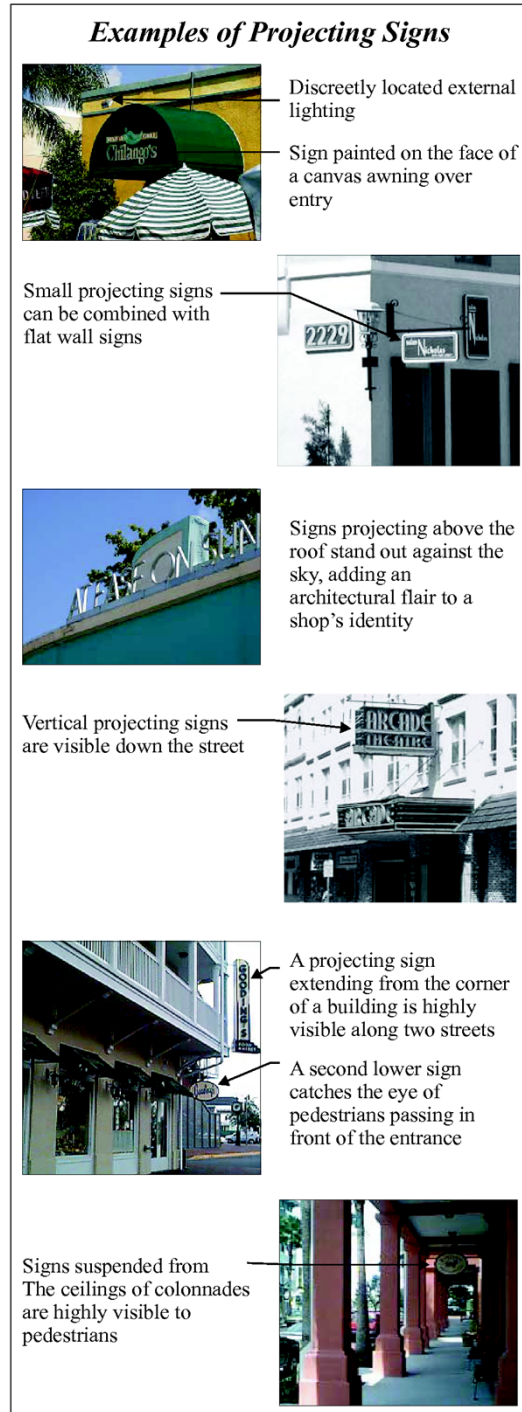
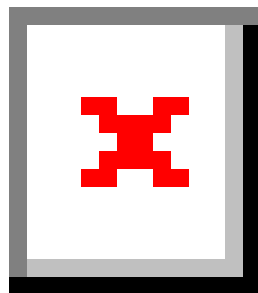


Figure 30-5

- (4) A projecting sign must not extend more than three feet above the lowest edge of the building's eaves.

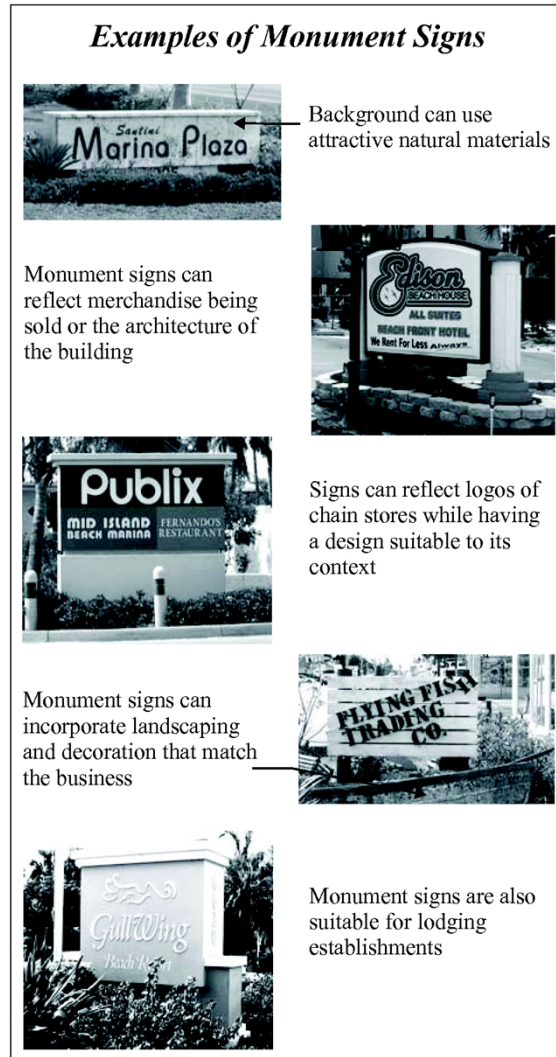
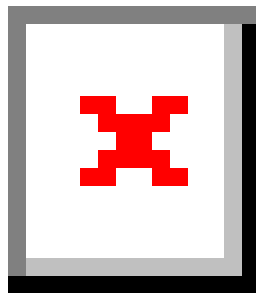


Figure 30-6

- (5) Monument signs may be elevated provided that the bottom of the sign is no more than 18 inches above the highest adjacent grade. The maximum height of a monument sign is five feet.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

Sec. 30-155. - Severability.

- (a) **Generally.** If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this chapter is declared unconstitutional by a final and valid judgment or decree of any court of competent jurisdiction, this declaration of unconstitutionality or invalidity shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term or word of this chapter.
- (b) **Severability where less speech results.** This subsection shall not be interpreted to limit the effect of subsection (a) above, or any other applicable severability provisions in the code or any adopting ordinance. The town council specifically intends that severability shall be applied to these sign regulations even if the result would be to allow less speech in the town, whether by subjecting currently exempt signs to permitting or by some other means.

- (c) *Severability provisions pertaining to prohibited signs.* This subsection shall not be interpreted to limit the effect of subsection (a) above, or any other applicable severability provisions in the code or any adopting ordinance. The town council specifically intends that severability shall be applied to section 30-5, "Prohibited signs," so that each of the prohibited sign types listed in that section shall continue to be prohibited irrespective of whether another sign prohibition is declared unconstitutional or invalid.
- (d) *Severability of prohibition on off-premises signs and commercial advertising signs.* This subsection shall not be interpreted to limit the effect of subsection (a) above, or any other applicable severability provisions in the code or any adopting ordinance. If any or all of chapter 30 "Signs," or any other provision of the Town's Code is declared unconstitutional or invalid by the final and valid judgment of any court of competent jurisdiction, the town council specifically intends that that declaration shall not affect the prohibition on off-premises signs contained in section 30-5.

(Ord. No. 11-01, § 2(Exh. A), 4-18-2011)

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2022-850**

1. Requested Motion:

Meeting Date: December 6, 2022

Floodplain Management Ordinance - Amend Article IV Floodplain Regulations to update various sections to comply with state and federal law; provide for higher standards within a Coastal A Zone; and to implement local flood regulations.

Why the action is necessary:

Updates to the Flood Regulations, Article IV of the Code of Ordinances, are typically updated when new Flood Insurance Rate Maps (FIRM) are adopted. These amendments will provide compliance with state and federal regulations and update local regulations to be more consistent with recent storm events.

What the action accomplishes:

Revises the local Flood Regulations

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance

5. Background:

The Town of Fort Myers Beach Flood Insurance Rate Maps (FIRM) became affective on November 17, 2022. Town staff has been working with the State Floodplain Management office to update and amend portions of the Town's Floodplain Management Ordinance, more specifically known as Article IV of the Code of Ordinances. The proposed amends offer a variety of updates including removing outdated references, updating regulations to be consistent with state and federal laws and regulations, and to provide higher standards in light of the recent hurricane activity and damage from Ian.

The proposed amendments and recommendations by the LPA will be forwarded ot the Town Council in January 2023.

Attachments:

1. Fort Myers Beach_LDC Chapter_6_Arts II-III-IV

Financial Impact:

6. Alternative Action

7. Staff Recommendations:

8. Recommended Approval:

Daphnie Bercher, Community Services Administrator

Date: November 30, 2022

Jason Green, Community Development Services

Date: December 01, 2022

Date: December 01, 2022

John R Herin Jr, Town Attorney

Date: December 02, 2022

Amy Baker, Town Clerk

ORDINANCE NO. 22-xx

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE II AND ARTICLE IV OF CHAPTER 6 OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH TO XX SPECIFY ELEVATION OF MANUFACTURED HOMES IN FLOOD HAZARD AREAS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town of Fort Myers Beach participates in the National Flood Insurance Program and participates in the NFIP's Community Rating System, a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum program requirements; and,

WHEREAS, the Town of Fort Myers Beach achieved a CRS rating of Class 5, making citizens who purchase NFIP flood insurance policies eligible for premium discounts; and

WHEREAS, in 2020, the NFIP Community Rating System established certain minimum prerequisites for communities to qualify for or maintain class ratings of Class 8 or better; and

WHEREAS, to satisfy the prerequisite and for the Town of Fort Myers Beach to maintain the current CRS rating, all manufactured homes installed or replaced in special flood hazard areas must be elevated at or above at least the base flood elevation plus 1 foot, which necessitates modification of the existing requirements; and

WHEREAS, the Federal Emergency Management Agency delineated a limit of moderate wave action on the Flood Insurance Rate Maps and the Town Council has determined it appropriate to apply coastal high hazard area (Zone V) requirements in areas designated Coastal A Zones to increase resiliency; and

WHEREAS, Chapter 553, Florida Statutes, allows for local administrative and technical amendments to the *Florida Building Code* that provide for more stringent requirements than those specified in the Code and allows adoption of local administrative and local technical amendments to the Florida Building Code to implement the National Flood Insurance Program and incentives; and

WHEREAS, the Town Council is adopting a requirement to apply coastal high hazard area requirements to one- and two-family dwellings in Coastal A Zones, for the purpose of participating in the National Flood Insurance Program's Community Rating System and, pursuant to section 553.73(5), F.S., is formatting that requirement to coordinate with the *Florida Building Code*; and

WHEREAS, the Town Council has determined that it is in the public interest to adopt the proposed local technical amendments to the *Florida Building Code*, and the proposed amendments are not more stringent than necessary to address the need identified, do not discriminate against materials, products or construction techniques of demonstrated capabilities, are in compliance with section 553.73(4), Florida Statutes; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on _____, 2022, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted _____, to recommend approval of the requested ordinance amending Article IV of Chapter 6 of the Land Development Code; and

WHEREAS, on _____, 2022, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the proposed ordinance to amend Article IV of Chapter 6 of the Land Development Code, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, on _____, 2022, the Town Council held a second reading of the proposed Ordinance; and

WHEREAS, the Town Council determined in a _____ vote that it is in the public interest to amend the floodplain management regulations to better protect owners and occupants of manufactured homes and to continue participating in the Community Rating System at the current class rating.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:¹

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. Article II of Chapter 6 of the Land Development Code of the Town of Fort Myers Beach entitled "Building Codes" is hereby amended as shown in Exhibit A.

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

Section 3. Article IV of Chapter 6 of the Land Development Code of the Town of Fort Myers Beach entitled “Floodplain Regulations” is hereby amended as shown in Exhibit B.

Section 4. In terms of design, plan application review, construction and inspection of buildings and structures, the cost impact as an overall average is negligible in regard to the local technical amendments because all development has been subject to the requirements of the local floodplain management ordinance adopted for participation in the National Flood Insurance Program. Therefore, in terms of lower potential for flood damage, there will be continued savings and benefits to consumers.

Section 5. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Land Development Code, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 7. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 8. This Ordinance shall become effective upon adoption by the Town Council.

The forgoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John King, Council Member	_____
Karen Woodson, Council Member	_____
Bill Veach, Council Member	_____

ADOPTED this ____ day of _____, 2022 by the Town Council of the Town of Fort Myers Beach, Florida

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND
RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2022

EXHIBIT A

ARTICLE II. - BUILDING CODES

DIVISION 1. - GENERALLY

Sec. 6-41. - Applicability of article.

This article applies to the incorporated area of the Town of Fort Myers Beach.

Sec. 6-42. - Penalty for violation of article; additional remedies.

Any person, or any agent or representative thereof, who violates any provision of this article shall, upon conviction, be subject to the following penalties:

- (1) *Criminal penalties.* Such person shall be subject to punishment as provided in § 1-5 of this LDC.
- (2) *Civil penalties.* The town council may institute in any court, or before any administrative board of competent jurisdiction, action to prevent, restrain, correct or abate any violation of this article or of any order or regulations made in connection with its administration or enforcement, and the court or administrative board shall adjudge such relief by way of injunction, or any other remedy allowed by law, or otherwise, to include mandatory injunction as may be proper under all the facts and circumstances of the case in order to fully effectuate the regulations adopted under this article, or any amendment thereto, and any orders and rulings made pursuant thereto.

Sec. 6-43. - Conflicting provisions.

Whenever the requirements or provisions of this article are in conflict with the requirements or provisions of any other lawfully adopted ordinance, code or regulation, the provisions providing the greater degree of life safety will apply. Any conflict between the building code and applicable fire safety codes will be resolved by agreement between the building official and the fire official in favor of the requirement of the code which offers the greatest degree of life safety or alternative which would provide an equivalent degree of life safety and an equivalent method of construction.

Sec. 6-44. - Enforcing officers.

Designated officials such as the building official referenced by the codes adopted in this chapter shall be appointed by the town manager. The designated officials shall carry out the duties enumerated in these codes and shall be deemed the responsible officials with respect to enforcement of the provisions of these codes.

Sec. 6-45. - Permit fees.

The town council has the power to determine and set reasonable permit fees. Unless a different fee schedule is set, permits fees shall be as referenced in Lee County Administrative Code 3-10, Appendix C (External Fees and Charges Manual).

Secs. 6-46—6-70. - Reserved.

DIVISION 2. - LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS

Sec. 6-71. - Applicability of division.

This division shall include, but not be limited to, any contractor, owner, agent, manufacturer or supplier providing construction services or materials regulated by standard codes enforced by the Town of Fort Myers Beach.

Sec. 6-72. - Intent of division.

The town has adopted various standard codes relating to building, plumbing, mechanical, gas, electrical, unsafe buildings, housing and fire. This division is intended to be construed in conjunction with these codes.

Sec. 6-73. - Boards established; jurisdiction.

Lee County has established a construction board of adjustment and appeals known as the Lee County Board of Adjustment and Appeals through chapter 6, article 2, division 2 of the Lee County Land Development Code. The purpose of that board is to hear and decide appeals from the decision of the county's building official and fire official or their designees on any of the various standard codes regulated and enforced by the county except the plumbing code and mechanical code. Lee County has also established separate boards of adjustment and appeals to arbitrate matters involving the plumbing code and mechanical code.

Sec. 6-74. - Delegation of authority to Lee County's Boards of Adjustment and Appeals.

- (a) The Town of Fort Myers Beach hereby delegates to each of the three Lee County Boards of Adjustment and Appeals the authority to make decisions on appeals that may be filed in accordance with § 6-80 of this division.
- (b) The town attorney will provide legal advice to each of the three Lee County Boards of Adjustment and Appeals when warranted.

Secs. 6-75—6-79. - Reserved.

Sec. 6-80. - Right of appeal; notice of appeal.

- (a) Whenever the building official or fire official or their designees shall reject or refuse to approve the mode or manner of construction to be followed or materials to be used, or when it is claimed that the provisions of a code do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, or when it is claimed that the true intent and meaning of a code or any of the regulations thereunder have been misconstrued or wrongly interpreted, the owner of such building or structure, or his duly authorized agent, may appeal from the decision of the building official or fire official or their designees to Lee County's appropriate Board of Adjustment and Appeals. Notice of appeal shall be in writing and filed within 30 days after the decision is rendered by the building official or fire official or their designees. All requests for appeal shall be on forms provided by the building official with payment of the appropriate fee.
- (b) In the case of a building or structure which in the opinion of the building official is unsafe or dangerous, the building official may, in his order, limit the time for such appeal to a shorter period.

Sec. 6-81. - Variations and modifications.

- (a) Lee County's Boards of Adjustment and Appeals, pursuant to an appeal from a decision of the building official or fire official or their designees, may vary the application of a code to any particular case when, in its opinion and based upon sufficient evidence, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of a code

or public interest, or when, in its opinion and based upon sufficient evidence to the contrary, the interpretation of the building official or fire official or their designees should be modified or reversed.

- (b) Any decision of Lee County Boards of Adjustment and Appeals to vary the application of any provision of a code or to modify an order of the building official or fire official or their designees shall specify the variation or modification made, the conditions upon which it is made, and the reasons therefor.
- (c) Variances to the floodplain regulations must meet the additional criteria in article IV of this chapter.

Sec. 6-82. - Decisions.

- (a) Every decision of Lee County's Boards of Adjustment and Appeals shall be final; subject, however, to any remedy an aggrieved party might have at law or in equity. Every decision shall be in writing and shall indicate the vote upon the decision. Every decision of Lee County's Boards of Adjustment and Appeals shall be signed and attested to by the chairman of the board.
- (b) Lee County's Boards of Adjustment and Appeals shall, in every case, reach a decision without unreasonable or unnecessary delay.
- (c) If a decision of any of Lee County's Boards of Adjustment and Appeals reverses or modifies a refusal, order or disallowance of the building official or fire official or their designees, or varies the application of any provision of a code, the appropriate official shall immediately take action in accordance with such decision.
- (d) Any aggrieved person may obtain judicial review of the decision of Lee County's Boards of Adjustment and Appeals by filing a petition for writ of certiorari in the circuit court. Such petition must be filed within 30 calendar days after the board of adjustment and appeals' decision, but not thereafter, pursuant to the Florida Rules of Civil Procedure. The original petition for writ of certiorari must be filed with the clerk of the circuit court. Copies of the petition shall be filed with the building official for forwarding to the town attorney.

Secs. 6-83—6-110. - Reserved.

DIVISION 3. - BUILDING CODE

Sec. 6-111. - Adoption; amendments.

The Florida Building Code is hereby adopted by reference and made a part of this article, including all revisions and amendments approved in accordance with state law, with the exceptions set forth as follows:

Chapter 1, Administration.

Sections 103.1 through 103.6 relating to powers and duties of the building official are added as follows:

103.1 General. The building official is hereby authorized and directed to enforce the provisions of this code. The building official has the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures must be in compliance with the intent and purpose of this code, and may not have the effect of waiving requirements specifically provided for in this code.

103.2 Right of entry.

103.2.1 Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the building official has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building, structure, premises, electrical, gas, mechanical, or plumbing systems unsafe, dangerous, or hazardous, the building official may enter such building, structure, or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this code. If such building or premises are occupied, he must first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he must first make a reasonable effort to locate the owner or other persons having charge or control of such and request entry. If entry is refused, the building official has recourse to every remedy provided by law to secure entry.

103.2.2 When the building official has obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care, or control of any building, structure, or premises may fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the building official for the purpose of inspection and examination pursuant to this code.

103.3 Stop work orders. Upon notice from the building official, work on any building, structure, electrical, gas, mechanical, or plumbing system that is being done contrary to the provisions of this code, or in a dangerous or unsafe manner, must immediately cease. Such notice must be in writing and posted on the permit board, stating the reasons for the order. Work may only resume after lifting of the stop work order by the building official.

103.4 Revocation of permits. The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate, or incomplete information, or in violation of any ordinance or regulation or any provision of this code.

103.4.1 Misrepresentation of application. The building official may revoke a permit or approval issued under the provisions of this code if there has been any false statement or misrepresentation as to a material fact in the application or plans on which the permit or approval was based.

103.4.2 Violation of code provisions. The building official may revoke a permit upon determination by the building official that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the building, structure, electrical, gas, mechanical, or plumbing systems for which the permit was issued is in violation of, or not in conformity with, the provisions of this code.

103.5 Unsafe buildings or systems. All buildings, structures, electrical, gas, mechanical, or plumbing systems which are unsafe, unsanitary, or do not provide adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health, are considered unsafe buildings or service systems. All such unsafe buildings, structures or service systems are hereby declared illegal and must be abated by repair and rehabilitation or by demolition in accordance with the provisions of the Unsafe Building Abatement Code (see article I of this chapter).

103.6 Requirements not covered by code. Any requirements necessary for the strength, stability, or proper operation of an existing or proposed building, structure, electrical, gas, mechanical, or plumbing system, or for the public safety, health, and general welfare, not specifically covered by this or the other technical codes, will be determined by the building official.

Section 104.1.4 is amended to read as follows:

104.1.4. Minor repairs.

Ordinary minor repairs, routine maintenance, or incidental work of a nonstructural nature may be made without a permit, provided that such repair shall not violate any of the provisions of the technical codes. For purposes of this section, "ordinary minor repairs" include the replacement of damaged or worn materials by similar new materials and any other repairs defined as such by the building official. Ordinary minor repairs under this section may not involve the cutting of any structural beam or supporting member or include any alterations that would increase habitable floor area, change the use of any portion of the building, remove or change any required means of egress or exit access, or affect the structural integrity or fire rating of the building.

Section 104.1.6, relating to time limitations, is amended to add the following:

104.1.6.1 A permit issued shall be construed to be a license to proceed with the work but shall not be construed as authority to violate, cancel, alter or set aside any of the provisions of this code, nor shall such issuance of a permit prevent the building official from thereafter requiring a correction of errors in plans or in construction or of violations of this code. Although a permit issued to an owner is transferable to another owner, actual notice of the transfer of permit shall be given to the building official prior to the transfer. Building permits shall be issued following the approval of site and construction plans. Building permits on multifamily projects shall be issued on each individual building or structure. Multitenant occupancies, including but not limited to shopping malls, may be permitted on an individual building or structure (shell); however, individual permits shall be used separately for tenant spaces.

104.1.6.2 The first inspection required by the permit must be successfully completed within a six-month period of issuance or the permit shall be deemed invalid. All subsequent inspections shall be made within a six-month period of the most recent inspection until completion of work or the permit shall become invalid. For purposes of this section, the foundation inspection will be considered the first inspection.

104.1.6.3 The entire foundation must be completed within the first six months from the issuance of the permit. Partial inspections due to complexity of the foundation may be made with building inspector's approval, and job site plans shall be initialed by the inspector only on that portion of the plans that is inspected, and these inspections are for compliance to plans and specifications and are in no way to be construed as the first inspection. Subsequent inspections may be made until the entire foundation is completed. At that time, the foundation will be signed off as the first inspection. One or more extensions of the building permit for good cause may be granted by the building official on a project for a period not exceeding 90 days each. The request shall be made by written notice to the building official at least 30 days prior to expiration of the building permit. The building official may require compliance with any revised building code, mechanical code, plumbing code, electrical code, gas code, swimming pool code or fire code requirements in effect at the time of granting any extension to the building permit. Any extension request denied may be

appealed to the town council by the applicant on a form provided by the building official. The council shall grant or deny the extension upon a finding of good cause or lack thereof. If granted, the extension or extensions shall not exceed a period of 90 days each.

Section 106.1.4 relating to new or changed land uses is added as follows:

106.1.4 New or changed land use. A certificate of occupancy will only be granted for a new or changed use of land if that use is allowable under ch. 34 of this code.

~~107.6.1 Building permits issued on the basis of an affidavit. Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), the authority granted to the Building Official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to 105.14 and Section 107.6, shall not extend to the flood load and flood resistance construction requirements of the Florida Building Code.~~

~~117 VARIANCES IN FLOOD HAZARD AREAS~~

~~117.1 Flood hazard areas. Pursuant to F.S. § 553.73(5), the variance procedures adopted in the local floodplain management ordinance shall apply to requests submitted to the Building Official for variances to the provisions of Section 1612.4 of the Florida Building Code, Building or, as applicable, the provisions of R322 of the Florida Building Code, Residential. This section shall not apply to Section 3109 of the Florida Building Code, Building.~~

~~Florida Building Code, Building, Section 1612.2.~~

~~SUBSTANTIAL DAMAGE. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. The term also includes flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the costs of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.~~

~~SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:~~

- ~~1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.~~
- ~~2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.~~

~~Florida Building Code, Building, Section 1612.~~

1612.4.3 Modification of ASCE 24 (Coastal A Zone). Stem walls shall not be permitted in Coastal A Zones.

~~Florida Building Code, Existing Building, Chapter 2.~~

~~SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:~~

- ~~1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.~~
- ~~2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.~~

Florida Building Code, Residential, Section R322.

R322.1.12 ~~R322.1.11~~ *Enclosed areas below design flood elevation.* Enclosed areas, including crawl spaces, that are below the design flood elevation shall:

1. Be permitted to enclose up to 100 percent of the area below an elevated building and shall not extend beyond the perimeter of the building.
2. Have the interior portion of any enclosed area:
 - a. Partitioned only to separate parking areas from building access or storage areas;
 - b. The minimum number of interior doors necessary for access to the stairway or elevator to the elevated buildings from areas used for parking or storage;
 - c. Not temperature-controlled.
3. Have access to enclosed areas intended for building access or storage by no more than one standard 36-inch exterior door, or one windowless 72-inch double exterior door, in any exterior wall.
4. Have access to enclosed areas intended for parking of vehicles by no more than one standard two-car garage door.
5. Have construction documents include an agreement, signed by the owner, acknowledging the limitations on allowable uses of the enclosed areas and the conditions of the building permit, using a form provided by the Floodplain Administrator. This agreement shall be recorded in the official record books in the office of the clerk of the circuit court to provide additional notice of these limitations to future purchasers.

~~R322.1.12 Accessory structures. Accessory structures used for parking and storage shall be permitted below the base flood if designed and constructed in compliance with Section R322 and the total cost of an accessory structure does not exceed 10% of the market value of the building or \$17,500 per dwelling unit, whichever is greater. The dollar amount specified may be increased each year beginning in 2014 by the percentage increase of the Consumer Price Index—All Urban Consumers (CUP-U), All Items, U.S. City Average maintained by the federal Bureau of Labor Statistics.~~

R322.3.3 Foundations. Buildings and structures erected in coastal high-hazard areas and Coastal A Zones shall be supported on pilings or columns and shall be adequately anchored to such pilings or columns. The space below the elevated building shall be either free of obstruction or, if enclosed with walls, the walls shall meet the requirements of

Section R322.3.5. Pilings shall have adequate soil penetrations to resist the combined wave and wind loads (lateral and uplift). Water-loading values used shall be those associated with the design flood. Wind-loading values shall be those required by this code. Pile embedment shall include consideration of decreased resistance capacity caused by scour of soil strata surrounding the piling. Pile systems design and installation shall be certified in accordance with Section R322.3.9. Spread footing, mat, raft or other foundations that support columns shall not be permitted where soil investigations that are required in accordance with Section R401.4 indicate that soil material under the spread footing, mat, raft or other foundation is subject to scour or erosion from wave-velocity flow conditions. If permitted, spread footing, mat, raft or other foundations that support columns shall be designed in accordance with ASCE 24.

~~Exception: Reserved. In Coastal A Zones, stem wall foundations supporting a floor system above and backfilled with soil or gravel to the underside of the floor system shall be permitted provided the foundations are designed to account for wave action, debris impact, erosion and local scour. Where soils are susceptible to erosion and local scour, stem wall foundations shall have deep footings to account for the loss of soil.~~

Chapter 33, Site Work, Demolition and Construction.

Section 3311.5 is added, to read as follows:

3311.5 Trash containers.

It shall be unlawful to bury construction debris on the construction site or on any other public or private property not specifically approved for such use. A suitable trash container and adequate collection service shall be provided for each construction site. For purposes of this requirement, a suitable container is any structure, device, receptacle, designated location or combination thereof which holds construction debris on the construction site in a central location long enough for it to be removed from the site by means of whatever collection service the contractor chooses to use or may be required to use pursuant to other applicable laws before such debris is: (1) washed or blown off-site, (2) contaminates subsurface elements, (3) becomes volatile or malodorous, (4) makes an attractive nuisance, or (5) otherwise becomes a threat to the public health, safety and welfare.

Chapter 34, Existing Buildings.

~~Section 3401.1, relating to scope, is modified to read as follows:~~

~~3401.1 Scope. Provisions of this chapter and of division 4 of this article shall govern the application of this code to existing buildings. In interpreting this code, the building official may be guided by the Nationally Applicable Recommended Rehabilitation Provisions, published in 1997 by the U.S. Department of Housing and Urban Development.~~

~~Exception: Buildings and structures located within the High Velocity Hurricane Zone shall comply with the provisions of sections 3401.5, 3401.8, and 3401.2.2.1.~~

~~Section 3401.2.2.1, relating to change of occupancy, is deleted, and replaced with a new section 3401.2.2.1, to read as follows:~~

~~3401.2.2.1 If the occupancy classification or any occupancy subclassifications of any existing building or structure is changed to a more hazardous occupancy, the building,~~

~~electrical, gas, mechanical, and plumbing systems shall be made to conform to the intent of the technical codes as required by the building official.~~

~~Section 3401.5, relating to special historic buildings, is deleted, and replaced with a new section 3401.5, to read as follows:~~

~~*3401.5 Special historic buildings.*~~

~~3401.5.1 The provisions of the technical codes relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of buildings or structures shall not be mandatory for an existing building or structure identified and classified by the federal, state, county, or town government as a historic structure, or as a contributing structure in a historic district, when such building or structure is judged by the building official to be safe and in the public interest of health, safety, and welfare regarding any proposed construction, alteration, repair, enlargement, restoration, relocation or moving.~~

~~3401.5.2 If it is proposed that a historic building that is undergoing repair, renovation, alternation, reconstruction, or change of occupancy not comply literally with certain technical standards of this code, the building official may require the building to be investigated and evaluated by a registered design professional. Such evaluation shall identify each required feature of the building not in technical compliance and shall demonstrate how the intent of these provisions is to be complied with in providing an equivalent level of safety.~~

(Ord. No. 13-06, § 3, 9-3-2013; Ord. No. 17-09, § 2, 6-19-2017)

Sec. 6-112. - Wind-borne debris region and basic wind speed map.

~~The entire incorporated area of the Town of Fort Myers Beach lies within the wind borne debris region and the 130 mph basic wind speed zone as established by section 1606.1.6 and figure 1606 of the Florida Building Code. Shall be consistent with the Florida Building Code.~~

Sec. 6-113. - Compliance with outdoor lighting standards.

All building permits must comply with the outdoor lighting standards in §§ 34-1831—34-1860 of this code.

Sec. 6-114. - Compliance with NPDES erosion control standards.

Stormwater runoff from construction sites must be managed in compliance with §§ 10-606—10-607 of this land development code.

Secs. 6-115—6-120. - Reserved.

DIVISION 4. – RESERVED ~~EXISTING BUILDINGS CODE~~

~~Sec. 6-121. – Purpose.~~

~~The purpose of this code is to encourage the continued use or reuse of existing buildings. This code is designed to supplement the other codes adopted in this article. In interpreting this code, the building official may be guided by the Nationally Applicable Recommended Rehabilitation Provisions, published in 1997 by the U.S. Department of Housing and Urban Development.~~

~~Sec. 6-122. Adoption; amendments.~~

~~The following chapters and sections of the 1997 Standard Existing Buildings Code, as published by the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama, 35213-1206, are hereby adopted by reference and made a part of this article, with the exceptions set forth as follows:~~

~~Chapter 1, Administration.~~

~~Section 101.7.1, relating to a change of occupancy, is deleted, and replaced with a new section 101.7.1 to read as follows:~~

~~If the occupancy classification or any occupancy subclassifications of any existing building is changed to a more hazardous occupancy, the building shall be made to conform to the intent of the Florida Building Code for new construction as required by the building official.~~

~~Section 105, relating to the board of adjustment and appeals, is deleted, and replaced by the procedures set forth for the delegation of authority to Lee County's construction board of adjustment and appeals found in division 2 of this chapter and article.~~

~~Chapter 2, Definitions and Abbreviations.~~

~~Chapter 3, Historic Structures,~~ is hereby amended to read as follows:

~~The provisions of this code relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of buildings or structures shall not be mandatory for an existing building or structure identified and classified by the federal, state, county, or town government as a historic structure, or as a contributing structure in a historic district, when such building or structure is judged by the building official to be safe and in the public interest of health, safety, and welfare regarding any proposed construction, alteration, repair, enlargement, restoration, relocation or moving.~~

~~If it is proposed that a historic building that is undergoing repair, renovation, alternation, reconstruction, or change of occupancy not comply literally with certain technical standards, the building official may require the building to be investigated and evaluated by a registered design professional. Such evaluation shall identify each required feature of the building not in technical compliance and shall demonstrate how the intent of these provisions is to be complied with in providing an equivalent level of safety.~~

~~Chapter 4, Means of Egress.~~

~~Chapter 5, Fire Protection.~~

~~Chapter 6, Light, Ventilation and Sanitation.~~

~~Chapter 7, Building Services.~~

~~Chapter 8, Maintenance.~~

~~Appendix A, Rehabilitation Guidelines.~~

~~Secs. 6-123—6-230. Reserved.~~

DIVISION 5. - CONTRACTOR LICENSING

Sec. 6-231. - Contractor licenses required.

Lee County authorizes the issuance of contractor licenses, as authorized by F.S. ch. 489 and Lee County Ordinance No. 96-20, granting the privilege of engaging in the contracting business within the jurisdiction of Lee County. The Town of Fort Myers Beach desires to restrict those engaging in the contracting business to those holding the same categories of licensure as required by Lee County:

- (1) State-certified contractors holding an active state certificate of competency;
- (2) State-registered contractors holding an active state registration and Lee County certificate of competency. A Lee County certificate of competency alone is not sufficient if state statute requires that the contractor also hold a state certificate or registration;
- (3) Locally licensed contractors holding an active Lee County certificate of competency; or
- (4) Restricted specialty contractors holding an active Lee County restricted certificate of competency.

Sec. 6-232. - Contractors required to be state-certified.

In accordance with F.S. ch. 489, the following types of contractors must hold a valid state certification in order to contract in the Town of Fort Myers Beach:

- (1) General contractor;
- (2) Building contractor;
- (3) Residential contractor;
- (4) Class A air conditioning contractor;
- (5) Class B air conditioning contractor;
- (6) Commercial pool/spa contractor;
- (7) Residential pool/spa contractor;
- (8) Swimming pool servicing contractor;
- (9) Sheet metal contractor;
- (10) Mechanical contractor;
- (11) Plumbing contractor;
- (12) Residential solar water heating contractor;
- (13) Underground utilities and excavation contractor;
- (14) Asbestos abatement contractor;
- (15) Roofing contractor;
- (16) Pollutant storage system contractor.

Sec. 6-233. - Contractor categories licensed by Lee County.

(a) The Town of Fort Myers Beach accepts Lee County certificates of competency in the following specialty categories:

- (1) Alarm system contractor I;
- (2) Alarm system contractor II;
- (3) Aluminum specialty structures contractor;

- (4) Aluminum (without concrete) contractor;
- (5) Aluminum (nonstructural) contractor;
- (6) Asphalt sealing and coating contractor;
- (7) Awning contractor;
- (8) Cabinet and millwork contractor;
- (9) Carpentry contractor;
- (10) Concrete coatings contractor;
- (11) Concrete forming and placing contractor;
- (12) Concrete placing and finishing (flatwork) contractor;
- (13) Court (outdoor) contractor;
- (14) Demolition contractor;
- (15) Dredging contractor;
- (16) Drywall contractor;
- (17) Excavation contractor;
- (18) Fence erection contractor;
- (19) Finish carpentry contractor;
- (20) Garage door contractor;
- (21) Glass and glazing contractor;
- (22) Guniting contractor;
- (23) Gutter and downspout contractor;
- (24) Insulation (building) contractor;
- (25) Insulation (all types) contractor;
- (26) Irrigation sprinkler contractor;
- (27) Journeyman air conditioning;
- (28) Journeyman electrician;
- (29) Journeyman mechanical;
- (30) Journeyman plumber;
- (31) Marbling contractor;
- (32) Marine contractor;
- (33) Masonry contractor;
- (34) Master electrical contractor;
- (35) Painting contractor;
- (36) Paver block contractor;
- (37) Paving contractor;
- (38) Pile driving contractor;

- (39) Plastering/stucco contractor;
 - (40) Reinforcing steel contractor;
 - (41) River rock contractor;
 - (42) Sandblasting contractor;
 - (43) Sign contractor - limited;
 - (44) Sign contractor - restricted;
 - (45) Structural steel erection contractor;
 - (46) Terrazo contractor;
 - (47) Tile and marble contractor.
- (b) The Town of Fort Myers Beach also accepts certain older Lee County certificates of competency that the county has determined to be vested with respect to the scope of work allowed under the certificate category. These certificates may be in the following categories:
- (1) Air conditioning contractor - Class A;
 - (2) Air conditioning contractor - Class B;
 - (3) Air conditioning contractor - Class C;
 - (4) Alteration and repair (nonstructural) contractor;
 - (5) Building contractor;
 - (6) Cement, concrete and masonry contractor;
 - (7) Cement finishing contractor;
 - (8) Demolition contractor;
 - (9) Dredging and landfilling contractor;
 - (10) Exposed aggregate contractor;
 - (11) Flooring contractor;
 - (12) General contractor;
 - (13) Glazing and window installation contractor;
 - (14) Mechanical contractor;
 - (15) Mobile home alteration and repair (including aluminum work) contractor;
 - (16) Paint and roof painting contractor;
 - (17) Paving and sealing contractor;
 - (18) Plastering, lathing, stucco, and drywall contractor;
 - (19) Plumbing contractor;
 - (20) Pool contractor - Class A;
 - (21) Pool contractor - Class C;
 - (22) Remodeling contractor;
 - (23) Residential contractor;

- (24) Roofing contractor;
- (25) Roof painting contractor;
- (26) Roof spraying contractor;
- (27) Seawall and dock contractor;
- (28) Sign contractor - electrical;
- (29) Sign contractor - non-electrical;
- (30) Solar water heating contractor;
- (31) Tile contractor;
- (32) Tile, terrazo, river rock, and marble contractor;
- (33) Waterproofing contractor;
- (34) Underground utility contractor.

Sec. 6-234. - Delegation of authority to the Lee County Construction Licensing Board.

- (a) The Town of Fort Myers Beach hereby delegates to Lee County and the Lee County Construction Licensing Board the authority to make decisions regarding:
 - (1) The categories of certificates of competency that Lee County may require or issue;
 - (2) The requirements for obtaining and retaining Lee County certificates of competency;
 - (3) The issuance, revocation, and cancellation of Lee County certificates of competency;
 - (4) Disciplinary actions concerning activities within the town by holders of a Lee County certificate of competency or by state-certified or registered contractors; and
 - (5) Any other matter within the authority of the Lee County Construction Licensing Board.
- (b) The policies, procedures and safeguards applicable to the Lee County Construction Licensing Board according to Lee County Ordinance No. 96-20, are hereby adopted by the Town of Fort Myers Beach for all actions of the board regarding violations alleged to have occurred within the town.
- (c) The town attorney will provide legal advice to the Lee County Construction Licensing Board when warranted.

Sec. 6-235. - Owner-builder exemption.

- (a) Owners of property may act as their own contractor and provide direct on-site supervision themselves of all work not performed by licensed contractors when building or improving:
 - (1) One-family or two-family residences on the owner's property for the occupancy or use of the owners and not offered for sale or lease; and
 - (2) Commercial buildings on the owner's property at a cost not to exceed \$25,000.00 for the occupancy or use of the owners and not offered for sale or lease.
- (b) If, within one year of completion, an owner-builder sells, leases, or offers for sale or lease any building constructed or improved under an owner-builder exemption, the town can presume the construction or improvement was undertaken for the purposes of sale or lease.
- (c) This section does not exempt any person the owner-builder employs, or has a contract with, to act in the capacity of a contractor. The owner cannot delegate the owner's responsibility

to directly supervise all work to any other person unless that person is duly licensed in accordance with this ordinance and the work performed is within the scope of that contractor's license.

- (d) To qualify for exemption under this section, an owner must personally appear and sign the building permit application. The owner must also execute a disclosure statement prepared by the building official acknowledging compliance with all applicable regulations.

Sec. 6-236. - Other exemptions.

The licensing provisions of this article do not apply to:

- (1) Any employee of a duly licensed contractor who is acting within the scope of the employer's license or with the employer's knowledge and permission. However, if the employer is not licensed to perform the type of services the employee is contracting to perform, then the employee is not exempt if the employee:
- a. Holds himself or his employer out to be licensed or qualified by a licensee to perform services outside the scope of the employer's license;
 - b. Leads the consumer to believe that the employee has an ownership or management interest in the company; or
 - c. Performs any of the acts which constitute contracting for services outside the scope of the employer's license.

The intent of this subsection is to place equal responsibility on the unlicensed business and its employees for the protection of the consumers in contracting transactions.

- (2) An authorized employee of the United States, the state, the county, the town, or any political subdivision of the state, if the employee does not hold himself out for hire or otherwise engage in contracting except in accordance with his employment.
- (3) Contractors and employees working on bridges, roads, streets, highways, or railroads, including services incidental thereto, that are under the responsible charge of a professional engineer, duly licensed general contractor, the county, or the state.
- (4) A registered professional engineer or architect acting within the scope of his practice or any person exempted by the law regulating engineers and architects, including a person doing design work as specified in F.S. § 481.229(1)(b). However, an engineer or architect cannot act as a contractor unless properly licensed in accordance with this article.
- (5) An architect or landscape architect licensed under F.S. ch. 481 or a professional engineer licensed under F.S. ch. 471 who offers or renders design-build services. However, a state-certified general contractor must perform the construction services under the design-build contract.

Sec. 6-237. - Penalties.

Penalties for violations of this article shall be as authorized by Lee County through its Ordinance No. 96-20, as may be amended from time to time.

Secs. 6-238—6-330. - Reserved.

ARTICLE III. - COASTAL CONSTRUCTION CODE

DIVISION 1. - GENERALLY

Sec. 6-331. - Origin.

The Florida legislature adopted a Coastal Zone Protection Act in 1985 (F.S. § 161.52 et seq.), as later amended by Laws of Florida 2000-141, with requirements for enforcement by local governments. This article contains relevant requirements of that Act plus other local regulations, which will reduce the harmful consequences of natural disasters on sensitive coastal areas including the entire Town of Fort Myers Beach.

Sec. 6-332. - Intent of article; applicability of article.

The purpose of this article is to provide minimum standards for the design and construction of buildings and structures to reduce the harmful effects of hurricanes and other natural disasters throughout the town. These standards are intended to specifically address design features which affect the structural stability of the beach, dunes, and topography of adjacent properties. In the event of a conflict between this article and other portions of this code, the requirements resulting in the more restrictive design will apply. No provisions in this article will be construed to permit any construction in any area where prohibited by state or federal regulation.

- (1) *Applicability generally.* The requirements of this article will apply to the following types of construction:
 - a. New construction as defined herein;
 - b. Substantial improvements to existing structures as defined in § 6-405 of this code; and
 - c. Any construction which would change or alter the character of the shoreline, e.g., excavation, grading, or paving. This article does not apply to minor work in the nature of normal beach cleaning or debris removal, which is regulated by article I of ch. 14 of this LDC.
- (2) *Construction seaward of mean high-water.* Structures or construction extending seaward of the mean high-water line which are regulated by F.S. § 161.041, e.g., groins, jetties, moles, breakwaters, beach nourishment, inlet dredging, etc., are specifically exempt from the provisions of this article. In addition, this article does not apply to those portions of piers, pipelines, or outfalls which are located seaward of the mean high-water line and are regulated pursuant to the provisions of F.S. § 161.053.
- (3) *Certification of compliance.* All plans for buildings must be signed and sealed by an architect or engineer registered in the state. Upon completion of the building and prior to the issuance of a certificate of occupancy, a statement must be filed with the director signed and sealed by an architect or engineer registered in the state in substantially the following form: "To the best of my knowledge and belief the above-described construction of all structural loadbearing components complies with the permitted documents and plans submitted to the Town of Fort Myers Beach."

Sec. 6-333. - Definitions.

The following words, terms and phrases, when used in this article, will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words or phrases not defined will be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

Beach or shore has the same meaning given the word "beach" in § 14-1 of this LDC.

Coastal construction control lines have been established by the state department of environmental protection in accordance with F.S. § 161.053. The most recent lines at Fort Myers Beach were established in 1991, and a copy of the aerials depicting these coastal construction lines are recorded in the public records at Plat Book 48, Pages 15-34. These and the previous (1978) coastal construction control lines may also be reviewed at Town Hall.

Construction means the carrying out of any building, clearing, filling, excavation. When appropriate to the context, the term "construction" refers to the act of construction or the result of construction. Construction also includes substantial improvements to existing structures as defined in § 6-405 of this code.

Director means the person to whom the town council has delegated authority for enforcing this article.

Dune has the same meaning given it in § 14-1 of this LDC.

Major structure includes, but is not limited to, residential, commercial, institutional, or other public buildings and other construction having the potential for substantial impact on coastal zones (also see definitions of *minor structure* and *minor habitable structure* below).

Mean high-water line means the intersection of the tidal plane of mean high water with the shore. Mean high-water is the average height of high waters over a 19-year period. (See F.S. § 177.27(15).)

Minor structure includes, but is not limited to, pile-supported elevated dune and beach walkover structures; beach access ramps and walkways; stairways; pile-supported elevated viewing platforms, gazebos, and boardwalks; lifeguard support stands; public and private bathhouses; sidewalks, driveways, parking areas, shuffleboard courts, tennis courts, handball courts, racquetball courts and other uncovered paved areas; earth retaining walls; and sand fences, privacy fences, ornamental walls, ornamental garden structures, aviaries, and other ornamental construction. It shall be characteristic of minor structures that they are considered expendable under design wind, wave, and storm forces.

Nonhabitable major structure includes, but is not limited to, swimming pools and public piers.

100-year storm means a shore-incident hurricane or any other storm with accompanying wind, wave and storm surge intensity having a one percent chance of being equaled or exceeded in any given year, during any 100-year interval.

Cross reference— Definitions and rules of construction generally, § 1-2 of this LDC.

Sec. 6-334. - Variances.

Requests for variances from the provisions of this article shall be processed and decided in the same manner as for variances under ch. 34 of this code.

Secs. 6-335—6-360. - Reserved.

DIVISION 2. - COASTAL CONSTRUCTION STANDARDS

Sec. 6-361. - Generally.

The following minimum standards will apply to all construction in the Town of Fort Myers Beach.

Secs. 6-362, 6-363. - Reserved.

Sec. 6-364. - Special requirements near beaches.

- (a) *Major structures.* Nonhabitable major structures must be designed to produce the minimum adverse impact on the beach and dune system.
 - (1) Locational criteria for major structures are found in § 6-366(b) of this LDC.
 - (2) Structural and permitting criteria for major structures are found in ch. 31 of the Florida Building Code and in ch. 62B of the Florida Administrative Code.
 - (3) All sewage treatment and public water supply systems must be floodproofed to prevent infiltration of surface water anticipated from a 100-year storm event.
 - (4) Underground utilities, excluding pad transformers and vaults, must be floodproofed to prevent infiltration of surface water expected from a 100-year storm event, or must otherwise be designed to function when submerged under such storm conditions.
- (b) *Minor structures.* Minor structures must be designed to produce the minimum adverse impact on the beach and dune system and adjacent properties and to reduce the potential for water and wind-blown material.
 - (1) Locational criteria for minor structures are found in § 6-366(b) of this LDC.
 - (2) Construction of a rigid coastal or shore protection structure designed primarily to protect a minor structure is not permitted; see article II of ch. 26 of this LDC for detailed regulations.

Sec. 6-365. - Reserved.

Sec. 6-366. - Location of construction near beaches.

- (a) All construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. In addition to complying with all other provisions of this code, major structures must be built landward of the 1978 Coastal Construction Control Line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 Coastal Construction Control Line is depicted on the future land use map as the seaward edge of land-use categories allowing urban development and as the landward edge of the recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district. A copy of the 1978 Coastal Construction Control Line is recorded at Plat Book 48, Page 15, and available at the Ft. Myers Beach Town Hall.
- (b) When existing major structures that were built partially or fully seaward of the 1978 Coastal Construction Control Line are reconstructed, they shall be rebuilt landward of this line. Exceptions to this rule may be permitted through the planned development zoning process only where it can be scientifically demonstrated that the 1978 Coastal Construction Control Line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. Exceptions must also comply all state laws and regulations regarding coastal construction.
 - (1) Repairs to existing primary structures, in the EC zoning district, are permitted without a special exception only if the repairs do not exceed 25 percent of the value of the

structure. Expansion of existing primary structures, in the EC zoning district, are not permitted without a special exception.

- (2) Repairs to accessory structures in the EC zoning district are not permitted.
- (c) For newly created lots and parcels, a 50-foot separation between structures and dunes is required by § 10-415(b) of this LDC.

([Ord. No. 20-02](#), § 2, 2-18-2020)

Sec. 6-367. - Public access.

Development or construction activity may not interfere with accessways established by the public through private lands to lands seaward of mean high tide line or mean high-water line by prescription, prescriptive easement or any other legal means, unless the developer provides a comparable alternative accessway. The developer has the right to improve, consolidate or relocate such public accessways if the accessways provided are:

- (1) Of substantially similar quality and convenience to the public;
- (2) Approved by the town council;
- (3) Consistent with the Fort Myers Beach Comprehensive Plan; and
- (4) Approved by the Florida Department of Environmental Protection whenever changes are proposed seaward of the 1991 Coastal Construction Control Line.

Secs. 6-368—6-400. - Reserved.

EXHIBIT B

ARTICLE IV. - FLOODPLAIN REGULATIONS

DIVISION 1. - GENERAL

Sec. 6-401. - Title.

These regulations shall be known as the Floodplain Management Ordinance of Fort Myers Beach, hereinafter referred to as "this article."

(Ord. No. 13-06, § 2, 9-3-2013)

Sec. 6-402. - Scope.

The provisions of this article apply to all development that is wholly within or partially within any flood hazard area, including but not limited to, the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the Florida Building Code; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-403. - Intent.

The purposes of this article and the flood load and flood-resistant construction requirements of the Florida Building Code are to establish minimum requirements to safeguard the public health, safety and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:

- (1) Minimize unnecessary disruption of commerce, access and public service during times of flooding;
- (2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
- (3) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development that may increase flood damage or erosion potential;
- (4) Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
- (5) Minimize damage to public and private facilities and utilities;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;
- (7) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and

- (8) Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-404. - Coordination with the Florida Building Code.

This article is intended to be administered and enforced in conjunction with the Florida Building Code. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the Florida Building Code.

(Ord. No. 13-06, § 2, 9-3-2013)

Sec. 6-405. - Warning.

The degree of flood protection required by this article and the Florida Building Code, as amended by this community, is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by manmade or natural causes. This article does not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring the town to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this article.

(Ord. No. 13-06, § 2, 9-3-2013)

Sec. 6-406. - Disclaimer of liability.

This article will not create liability on the part of Town Council of the Town of Fort Myers Beach or by any officer or employee thereof for any flood damage that results from reliance on this article or any administrative decision lawfully made thereunder.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-407—6-410. - Reserved.

DIVISION 2. - APPLICABILITY

Sec. 6-411. - General.

Where there is a conflict between a general requirement and a specific requirement, the specific requirement will be applicable.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-412. - Areas to which this article applies.

This article shall apply to all flood hazard areas within the Town of Fort Myers Beach, as established in section 6-413.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-413. - Basis for establishing flood hazard areas.

The Flood Insurance Study for Lee County Florida and Incorporated Areas, dated ~~November 17, 2022~~ ~~August 28, 2008~~, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this article and serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the Fort Myers Beach Town Hall, ~~2525 Estero Boulevard, Fort Myers Beach, Florida.~~

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-414. - Submission of additional data to establish flood hazard areas.

To establish flood hazard areas and base flood elevations, pursuant to division 5 of this article, the floodplain administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the town indicates that ground elevations:

- (1) Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area will be considered as flood hazard area and subject to the requirements of this article and, as applicable, the requirements of the Florida Building Code.
- (2) Are above the closest applicable base flood elevation, the area will be regulated as special flood hazard area unless the applicant obtains a letter of map change that removes the area from the special flood hazard area.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-415. - Other laws.

The provisions of this article will not be deemed to nullify any provisions of local, state or federal law.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-416. - Abrogation and greater restrictions.

This article supersedes any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances, including but not limited to, land development regulations, zoning ordinances, stormwater management regulations, or the Florida Building Code. In the event of a conflict between this article and any other ordinance, the more restrictive will govern. This article will not impair any deed restriction, covenant or easement, but any land that is subject to such interests will also be governed by this article.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-417. - Interpretation.

In the interpretation and application of this article, all provisions will be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-418—6-420. - Reserved.

DIVISION 3. - DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

Sec. 6-421. - Designation.

The town manager is designated as the floodplain administrator. The floodplain administrator may delegate performance of certain duties to other employees.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-422. - General.

The floodplain administrator is authorized and directed to administer and enforce the provisions of this article. The floodplain administrator will have the authority to render interpretations of this article consistent with the intent and purpose of this article and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures will not have the effect of waiving requirements specifically provided in this article without the granting of a variance pursuant to division 7 of this article.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-423. - Applications and permits.

The floodplain administrator, in coordination with other pertinent offices of the town, will:

- (1) Review applications and plans to determine whether proposed new development will be located in flood hazard areas;
- (2) Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this article;
- (3) Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination will have the opportunity to appeal the interpretation;
- (4) Provide available flood elevation and flood hazard information;
- (5) Determine whether additional flood hazard data will be obtained from other sources or will be developed by an applicant;

- (6) Review applications to determine whether proposed development will be reasonably safe from flooding;
- (7) Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code, when compliance with this article is demonstrated, or disapprove the same in the event of noncompliance; and
- (8) Coordinate with and provide comments to the building official to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this article.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-424. - Substantial improvement and substantial damage determinations.

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the floodplain administrator, in coordination with the building official, will:

- (1) Estimate the market value or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure will be the market value before the damage occurred and before any repairs are made; any appraisal used for the purposes of substantial improvement/substantial damage determinations must be current within one year of work commencing;
- (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and for proposed work to repair damage caused by flooding, the determination requires evaluation of previous permits issued to repair flood-related damage as specified in the definition of "substantial damage;" and
- (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood-resistant construction requirements of the Florida Building Code and this article is required.

(Ord. No. 16-02, § 2, 8-8-2016; Ord. No. 17-09, § 2, 6-19-2017)

Sec. 6-425. - Modifications of the strict application of the requirements of the Florida Building Code.

The floodplain administrator will review requests submitted to the building official that seek approval to modify the strict application of the flood load and flood-resistant construction requirements of the Florida Building Code to determine whether such requests require the granting of a variance pursuant to division 7 of this article.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-426. - Notices and orders.

The floodplain administrator will coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this article.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-427. - Inspections.

The floodplain administrator will make the required inspections as specified in division 6 of this article for development that is not subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. The floodplain administrator will inspect flood hazard areas to determine if development is undertaken without issuance of a permit.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-428. - Other duties of the floodplain administrator.

The floodplain administrator will have other duties, including but not limited to:

- (1) Establish, in coordination with the building official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to section 6-424 of this article;
- (2) Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);
- (3) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions will be made within six months of such data becoming available;
- (4) Review required design certifications and documentation of elevations specified by this article and the Florida Building Code to determine that such certifications and documentations are complete;
- (5) Notify the Federal Emergency Management Agency when the corporate boundaries of the Town of Fort Myers Beach are modified; and
- (6) Advise applicants for new buildings and structures, including substantial improvements, that are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on such construction; areas subject to this limitation are identified on Flood Insurance Rate Maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-429. - Floodplain management records.

Regardless of any limitation on the period required for retention of public records, the floodplain administrator will maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this article and the flood-resistant construction requirements of the Florida Building Code, including Flood Insurance Rate Maps; letters of map change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the Florida Building Code and this article; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood-carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and, records of enforcement actions taken pursuant to this article and the flood-resistant construction requirements of the Florida Building Code. These records are available for public inspection at the Town of Fort Myers Beach Town Hall.

(Ord. No. 16-02, § 2, 8-8-2016)

Secs 6-430—6-440. - Reserved.

DIVISION 4. - PERMITS

Sec. 6-441. - Permits required.

Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this article, including buildings, structures and facilities exempt from the Florida Building Code, which is wholly within or partially within any flood hazard area must first make application to the floodplain administrator, and the building official, if applicable, and must obtain the required permits and approvals. No such permit or approval will be issued until compliance with the requirements of this article and all other applicable codes and regulations has been satisfied.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-442. - Floodplain development permits or approvals.

Floodplain development permits or approvals will be issued pursuant to this article for any development activities not subject to the requirements of the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. Depending on the nature and extent of proposed development that includes a building or structure, the floodplain administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-443. - Buildings, structures and facilities exempt from the Florida Building Code.

Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development permits or approvals will be required for the following buildings, structures and facilities that are exempt

from the Florida Building Code and any further exemptions provided by law, which are subject to the requirements of this article:

- (1) Railroads and ancillary facilities associated with the railroad.
- (2) Nonresidential farm buildings on farms, as provided in F.S. § 604.50.
- (3) Temporary buildings or sheds used exclusively for construction purposes.
- (4) Mobile or modular structures used as temporary offices.
- (5) Those structures or facilities of electric utilities, as defined in F.S. § 366.02, which are directly involved in the generation, transmission or distribution of electricity.
- (6) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
- (7) Family mausoleums not exceeding 250 square feet in area that are prefabricated and assembled on-site or preassembled and delivered on-site and have walls, roofs, and a floor constructed of granite, marble or reinforced concrete.
- (8) Temporary housing provided by the department of corrections to any prisoner in the state correctional system.
- (9) Structures identified in F.S. § 553.73(10)(k), are not exempt from the Florida Building Code if such structures are located in flood hazard areas established on Flood Insurance Rate Maps.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-444. - Application for a permit or approval.

To obtain a floodplain development permit or approval the applicant must first file an application in writing on a form furnished by the town. The information provided must:

- (1) Identify and describe the development to be covered by the permit or approval.
- (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan or construction documents as specified in division 5 of this article.
- (5) State the valuation of the proposed work.
- (6) Be signed by the applicant or the applicant's authorized agent.
- (7) Give such other data and information as required by the floodplain administrator.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-445. - Validity of permit or approval.

The issuance of a floodplain development permit or approval pursuant to this article must not be construed to be a permit for, or approval of, any violation of this article, the Florida Building Codes, or any other ordinance of the town. The issuance of permits based on submitted applications, construction documents, and information will not prevent the floodplain administrator from requiring the correction of errors and omissions.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-446. - Expiration.

A floodplain development permit or approval will become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each must be requested in writing and justifiable cause must be demonstrated.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-447. - Suspension or revocation.

The floodplain administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this article or any other ordinance, regulation or requirement of the town.

(Ord. No. 13-06, § 2, 9-3-2013)

Sec. 6-448. - Other permits required.

Floodplain development permits and building permits must include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:

- (1) The South Florida Water Management District; F.S. § 373.036.
- (2) Florida Department of Health for on-site sewage treatment and disposal systems; F.S. § 381.0065, and Chapter 64E-6, F.A.C.
- (3) Florida Department of Environmental Protection for construction, reconstruction, changes or physical activities for shore protection or other activities seaward of the Coastal Construction Control Line; F.S. § 161.141.
- (4) Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; F.S. § 161.055.
- (5) Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
- (6) Federal permits and approvals.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-449, 6-450. - Reserved.

DIVISION 5. - SITE PLANS AND CONSTRUCTION DOCUMENTS

Sec. 6-451. - Information for development in flood hazard areas.

The site plan or construction documents for any development subject to the requirements of this article must be drawn to scale and must include, as applicable to the proposed development:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zones, base flood elevations, and ground elevations, if necessary for review of the proposed development.
- (2) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas and Coastal A Zones, new buildings must be located landward of the reach of mean high tide or the 1978 Coastal Construction Control Line, whichever is further inland.
- (3) Location, extent, amount, and proposed final grades of any filling, grading or excavation.
- (4) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
- (5) Delineation of the coastal construction control line or notation that the site is seaward of the coastal construction control line, if applicable.
- (6) Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the Florida Department of Environmental Protection.
- (7) Existing and proposed alignment of any proposed alteration of a watercourse.

The floodplain administrator is authorized to waive the submission of site plans, construction documents, and other data required by this article but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this article.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-452. - Additional analyses and certifications.

As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant must have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

- (1) An operation and maintenance plan when dry floodproofing is proposed, to include:
 - a. Identification of party responsible for maintenance and installation of the flood barriers that will protect wall and door openings and where the flood barriers will be stored when not in use.
 - b. Realistic estimate of the manpower, time and equipment required for installation.

- c. Binding requirement for present and future owners to conduct a test installation before May 31 of each year of all flood barriers, with ten days' advance written notice provided to the floodplain administrator to witness this test.
 - d. Binding requirement that upon completion of each annual test, a written report will be submitted by the owners to the floodplain administrator within 30 days to document the results of the test and set forth any corrective measures that may be necessary, including proposed revisions to the operation and maintenance plan as to responsibility for maintenance, installation, and storage of flood barriers.
- (2) For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (Zone V) and Coastal A Zones, an engineering analysis that demonstrates the proposed alteration will not increase the potential for flood damage.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-453. - Submission of additional data.

When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a letter of map change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses must be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees will be the responsibility of the applicant.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-454—6-460. - Reserved.

DIVISION 6. - INSPECTIONS

Sec. 6-461. - General.

Development for which a floodplain development permit or approval is required will be subject to inspection.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-462. - Development other than buildings and structures.

The floodplain administrator will inspect all development to determine compliance with the requirements of this article and the conditions of issued floodplain development permits or approvals.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-463. - Buildings, structures and facilities exempt from the Florida Building Code.

The floodplain administrator will inspect buildings, structures and facilities exempt from the Florida Building Code to determine compliance with the requirements of this division and the conditions of issued floodplain development permits or approvals.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-464. - Buildings, structures and facilities exempt from the Florida Building Code, Lowest Floor Inspection.

Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure or facility exempt from the Florida Building Code, or the owner's authorized agent, must submit to the floodplain administrator the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-465. - Buildings, structures and facilities exempt from the Florida Building Code, Final Inspection.

As part of the final inspection, the owner or owner's authorized agent must submit to the floodplain administrator a final certification of elevation of the lowest floor or final documentation of the height of the lowest floor above the highest adjacent grade; such certifications and documentations must be prepared as specified in section 6-464.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-466. - Manufactured homes.

The floodplain administrator will inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this article and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor must be submitted to the floodplain administrator.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-467—6-470. - Reserved.

DIVISION 7. - VARIANCES AND APPEALS

Sec. 6-471. - General.

The town council will hear and decide on requests for appeals and requests for variances from the strict application of this article. Pursuant to F.S. § 553.73(5), the town council will hear and decide on requests for appeals and requests for variances from the strict application of the flood-resistant construction requirements of the Florida Building Code. This section does not apply to section 3109 of the Florida Building Code, Building.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-472. - Appeals.

The town council will hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the administration and enforcement of this article. Any person aggrieved by the decision may appeal such decision to the circuit court, as provided by Florida Statutes.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-473. - Limitations on authority to grant variances.

The town council will base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in section 6-476, the conditions of issuance set forth in section 6-477, and the comments and recommendations of the floodplain administrator and the building official. The town council has the right to attach such conditions as it deems necessary to further the purposes and objectives of this article.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-474. - Historic buildings.

A variance is authorized to be issued for the repair, improvement or rehabilitation of a historic building that is determined eligible for the exception to the flood-resistant construction requirements of the Florida Building Code, Existing Building, chapter 12 Historic Buildings, upon a determination that the proposed repair, improvement or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance will not be granted and the building and any repair, improvement and rehabilitation will be subject to the requirements of the Florida Building Code.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-475. - Functionally dependent uses.

A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in division 9 of this article, provided the variance meets the requirements of section 6-473, is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-476. - Considerations for issuance of variances.

In reviewing requests for variances, the town council will consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this article, and the following:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
- (2) The danger to life and property due to flooding or erosion damage;

- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
- (4) The importance of the services provided by the proposed development to the town;
- (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
- (6) The compatibility of the proposed development with existing and anticipated development;
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
- (8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-477. - Conditions for issuance of variances.

Variances may be issued only upon:

- (1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this article or the required elevation standards;
- (2) Determination by the town council that:
 - a. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
 - b. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and
 - c. The variance is the minimum necessary, considering the flood hazard, to afford relief.
- (3) Receipt of a signed statement by the applicant that the variance, if granted, must be recorded in the office of the clerk of the court in such a manner that it appears in the chain of title of the affected parcel of land; and
- (4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the floodplain administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to

amounts as high as \$25.00 for \$100.00 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-478—6-480. - Reserved.

DIVISION 8. - VIOLATIONS

Sec. 6-481. - Violations.

Any development that is not within the scope of the Florida Building Code but regulated by this article, which is: (a) performed without an issued permit, (b) in conflict with an issued permit, or (c) does not fully comply with this article, will be deemed a violation of this article. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by this article or the Florida Building Code is presumed to be a violation until such time as that documentation is provided.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-482. - Authority.

For development that is not within the scope of the Florida Building Code, but regulated by this article and determined to be a violation, the floodplain administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-483. - Unlawful continuance.

Any person who continues any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, will be subject to penalties as prescribed by law.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-484—6-490. - Reserved.

DIVISION 9. - DEFINITIONS

Sec. 6-491. - Scope.

Unless otherwise expressly stated, the following words and terms will, for the purposes of this article, have the meanings shown in this division.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-492. - Terms defined in the Florida Building Code.

Where terms are not defined in this division and are defined in the Florida Building Code, such terms have the meanings ascribed to them in that code.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-493. - Terms not defined.

Where terms are not defined in this division or the Florida Building Code, such terms have ordinarily accepted meanings such as the context implies.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-494. - Definitions.

Accessory structure. A structure on the same parcel of property as a principal structure and the use of which is limited to parking and storage incidental to the use of the principal structure.

Alteration of a watercourse. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification that may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal. A request for a review of the floodplain administrator's interpretation of any provision of this article.

ASCE 24. A standard titled Flood-Resistant Design and Construction that is referenced by the Florida Building Code. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

Base flood. A flood having a one-percent chance of being equaled or exceeded in any given year. [Also defined in FBC, B, Section 202.] The base flood is commonly referred to as the "100-year flood" or the "one-percent-annual chance flood."

Base flood elevation. The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in FBC, B, Section 202.]

Basement. The portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in FBC, B, Section 202; see "Basement (for flood loads)".]

Coastal A Zone. Flood hazard areas that have been delineated as subject to wave heights between 1 ½ feet (457 mm) and 3 feet (914 mm). Such areas are seaward of the Limit of Moderate Wave Action shown on the Flood Insurance Rate Map.

Coastal construction control line. The line established by the State of Florida pursuant to F.S. § 161.053, and recorded in the official records of the community, which defines that portion of the beach-dune system subject to severe fluctuations based on a 100-year storm surge, storm waves or other predictable weather conditions.

Coastal high hazard area. A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal high hazard areas are also referred to as "high hazard areas subject to high velocity wave action" or "V Zones" and are designated on Flood Insurance Rate Maps (FIRM) as Zone V1-V30, VE, or V.

Design flood. The flood associated with the greater of the following two areas: [Also defined in FBC, B, Section 202.]

- (1) Area with a floodplain subject to a one-percent or greater chance of flooding in any year; or
- (2) Area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Design flood elevation. The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map. [Also defined in FBC, B, Section 202.]

Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling operations or any other land disturbing activities.

Encroachment. The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

Existing building and existing structure. Any buildings and structures for which the "start of construction" commenced before August 31, 1984. [Also defined in FBC, B, Section 202.]

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

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

Federal Emergency Management Agency (FEMA). The federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program.

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land from: [Also defined in FBC, B, Section 202.]

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

Flood damage-resistant materials. Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in FBC, B, Section 202.]

Flood hazard area. The greater of the following two areas: [Also defined in FBC, B, Section 202.]

- (1) The area within a floodplain subject to a one-percent or greater chance of flooding in any year.
- (2) The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Flood Insurance Rate Map (FIRM). The official map of Fort Myers Beach on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the community. [Also defined in FBC, B, Section 202.]

Flood Insurance Study (FIS). The official report provided by the Federal Emergency Management Agency that contains the Flood Insurance Rate Map, the water surface elevations of the base flood, and supporting technical data. [Also defined in FBC, B, Section 202.]

Floodplain administrator. The office or position designated and charged with the administration and enforcement of this article (may be referred to as the floodplain manager).

Floodplain development permit or approval. An official document or certificate issued by the town, or other evidence of approval or concurrence, which authorizes performance of specific development activities that are located in flood hazard areas and determined to be compliant with this article.

Florida Building Code (FBC). The family of codes adopted by the Florida Building Commission, including: Florida Building Code, Building; Florida Building Code, Residential; Florida Building Code, Existing Building; Florida Building Code, Mechanical; Florida Building Code, Plumbing; Florida Building Code, Fuel Gas.

Functionally dependent use. A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

Historic structure. Any structure that is determined eligible for the exception to the flood hazard area requirements of the Florida Building Code, Existing Building, chapter 12 Historic Buildings.

Letter of map change (LOMC). An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of map change include:

- (1) Letter of map amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (2) Letter of map revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
- (3) Letter of map revision based on fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
- (4) Conditional letter of map revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard

areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a letter of map revision may be issued by FEMA to revise the effective FIRM.

Light-duty truck. As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds gross vehicular weight rating or less that has a vehicular curb weight of 6,000 pounds or less and a basic vehicle frontal area of 45 square feet or less, which is:

- (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or
- (2) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (3) Available with special features enabling off-street or off-highway operation and use.

Limit of Moderate Wave Action. Line shown on FIRMs to indicate the inland limit of the 1 ½-foot (457 mm) breaking wave height during the base flood.

Lowest floor. The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage, provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the Florida Building Code or ASCE 24. [Also defined in FBC, B, Section 202.]

Mangrove stand. An assemblage of mangrove trees, which are mostly low trees noted for copious development of interlacing adventitious roots above the ground, which contains one or more of the following species: black mangrove (*Avicennia germinans*), red mangrove (*Rhizophora mangle*), white mangrove (*Languncularis racemosa*), and buttonwood (*Conocarpus erecta*).

Manufactured home. A structure, transportable in one or more sections, which is eight feet or more in width and greater than 400 square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" or "park trailer." [Also defined in 15C-1.0101, F.A.C.]

Manufactured home park or subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

~~*Market value.* The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this article, the term refers to the market~~ The value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, is the actual cash value (in-kind replacement cost depreciated for age, wear and tear, neglect, and quality of construction) determined by a qualified independent appraiser, or tax assessment value adjusted upward by 20 percent.

Any proposed value submitted via a private appraisal that exceeds the property appraiser's valuation by more than 35 percent may be subject to peer review by a qualified local appraiser or submittal of a new independent appraisal, with the full cost of the review or new appraisal paid by the applicant.

New construction. For the purposes of administration of this article and the flood-resistant construction requirements of the Florida Building Code, structures for which the "start of

construction" commenced on or after August 31, 1984 and includes any subsequent improvements to such structures.

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

Park trailer. A transportable unit that has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. [Defined in F.S. § 320.01.]

Recreational vehicle. A vehicle, including a park trailer, which is: [See F.S. § 320.01.]

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

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

Special flood hazard area. An area in the floodplain subject to a one- percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 202.]

Start of construction. The date of issuance of permits for new construction and substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

Permanent construction does not include land preparation (such as clearing, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in FBC, B Section 202.]

Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. The term also includes flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. [Also defined in FBC, B Section 202.]

Substantial improvement. Any repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the

structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in FBC, B, Section 202.]

- (1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- (2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.

Variance. A grant of relief from the requirements of this article, or the flood-resistant construction requirements of the Florida Building Code, which permits construction in a manner that would not otherwise be permitted by this ordinance or the Florida Building Code.

Watercourse. A river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016; Ord. No. 17-09, § 2, 6-19-2017)

Secs. 6-495—6-500. - Reserved.

DIVISION 10. - FLOOD-RESISTANT DEVELOPMENT

Subdivision I. - Buildings and Structures

Sec. 6-501. - Design and construction of buildings, structures and facilities exempt from the Florida Building Code.

Pursuant to section 6-443, buildings, structures and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, must be designed and constructed in accordance with the flood load and flood-resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings must comply with the requirements of division 10, subdivision VII.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-502. - Buildings and structures seaward of the coastal construction control line.

If extending, in whole or in part, seaward of the coastal construction control line and also located, in whole or in part, in a flood hazard area:

- (1) Buildings and structures must be designed and constructed to comply with the more restrictive applicable requirements of the Florida Building Code, Building, Section 3109 and Section 1612 or Florida Building Code, Residential, Section R322.
- (2) Minor structures and non-habitable major structures as defined in F.S. § 161.54, must be designed and constructed to comply with the intent and applicable provisions of this article and ASCE 24.

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision II. - Subdivisions

Sec. 6-503. - Minimum requirements.

Subdivision proposals, including proposals for manufactured home parks and subdivisions, will be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-504. - Subdivision plats.

Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following will be required:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations, as appropriate, must be shown on preliminary plats; and
- (2) Compliance with the site improvement and utilities requirements of division 10, subdivision III.

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision III. - Site Improvements, Utilities and Limitations

Sec. 6-505. - Minimum requirements.

All proposed new development will be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-506. - Sanitary sewage facilities.

All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems must be designed in accordance with the standards for on-site sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24, Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into floodwaters, and impairment of the facilities and systems.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-507. - Water supply facilities.

All new and replacement water supply facilities must be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24, Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-508. - Limitations on placement of fill.

Subject to the limitations of this article, fill must be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill must comply with the requirements of the Florida Building Code.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-509. - Limitations on sites in coastal high hazard areas (Zone V) and Coastal A Zones.

In coastal high hazard areas and Coastal A Zones, alteration of sand dunes and mangrove stands will be permitted only if such alteration is approved by the Florida Department of Environmental Protection and only if the engineering analysis required by subsection 6-452(1) demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures must comply with subsection 6-529(3).

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision IV. - Manufactured Homes

Sec. 6-510. - General.

All manufactured homes installed in flood hazard areas must be installed by an installer that is licensed pursuant to F.S. § 320.8249, and must comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this article. If located seaward of the coastal construction control line, all manufactured homes must comply with the more restrictive of the applicable requirements.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-511. - Limitations on installations in coastal high hazard areas (Zone V) and Coastal A Zones.

New installations of manufactured homes shall not be permitted in coastal high hazard areas (Zone V) and Coastal A Zones.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-512. - Foundations.

All new manufactured homes and replacement manufactured homes installed in flood hazard areas must be installed on permanent, reinforced foundations that:

- (1) In flood hazard areas (Zone A) other than coastal high hazard areas and Coastal A Zones, are designed in accordance with the foundation requirements of the Florida Building Code, Residential, Section R322.2 and this article. ~~Foundations for manufactured homes subject to section 6-516 are permitted to be reinforced piers or other foundation elements of at least equivalent strength.~~
- (2) In coastal high hazard areas (Zone V) and Coastal A Zones, are designed in accordance with the foundation requirements of the Florida Building Code, Residential, Section R322.3 and this article.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-513. - Anchoring.

All new manufactured homes and replacement manufactured homes must be installed using methods and practices that minimize flood damage and must be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-514. - Elevation.

All manufactured homes that are placed, replaced, or substantially improved in flood hazard areas shall be elevated such that the bottom of the frame is at or above the base flood elevation plus one foot. ~~Manufactured homes that are placed, replaced or substantially improved must comply with sections 6-515 or 6-516, as applicable.~~

(Ord. No. 16-02, § 2, 8-8-2016)

~~Sec. 6-515. —General elevation requirement.~~

~~Unless subject to the requirements of section 6-516, all manufactured homes that are placed, replaced or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; or (b) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, must be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential, Section R322.2 (Zone A) or Section R322.3 (Zone V).~~

(Ord. No. 16-02, § 2, 8-8-2016)

~~Sec. 6-516. —Elevation requirement for certain existing manufactured home parks and subdivisions.~~

~~Manufactured homes that are not subject to section 6-515, including manufactured homes that are placed, replaced or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, must be elevated such that either the:~~

- ~~(1) Bottom of the frame of the manufactured home is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential, Section R322.2 (Zone A) or Section R322.3 (Zone V); or~~
- ~~(2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.~~

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-515. Sec. 6-517. - Enclosures.

Enclosed areas below elevated manufactured homes must comply with the requirements of the Florida Building Code, Residential, Sections R322.2 or R322.3 for such enclosed areas, as applicable to the flood hazard area.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-516. Sec. 6-518. - Utility equipment.

Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing and air conditioning equipment and other service facilities, must comply with the requirements of the Florida Building Code, Residential, Section R322, as applicable to the flood hazard area.

(Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-517—6-518. - Reserved.

Subdivision V. - Recreational Vehicles and Park Trailers

Sec. 6-519. - Temporary placement.

Recreational vehicles and park trailers placed temporarily in flood hazard areas must:

- (1) Be on the site for fewer than 180 consecutive days; or
- (2) Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-520. - Permanent placement.

Recreational vehicles and park trailers that do not meet the limitations in section 6-519 for temporary placement must meet the requirements of division 10, subdivision IV for manufactured homes.

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision VI. - Tanks

Sec. 6-521. - Underground tanks.

Underground tanks in flood hazard areas must be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-522. - Above-ground tanks, not elevated.

Above-ground tanks that do not meet the elevation requirements of section 6-523 must:

- (1) Be permitted in flood hazard areas (Zone A) other than coastal high hazard areas and Coastal A Zones, provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.
- (2) Not be permitted in coastal high hazard areas (Zone V) and Coastal A Zones.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-523. - Above-ground tanks, elevated.

Above-ground tanks in flood hazard areas must be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures must meet the foundation requirements of the applicable flood hazard area.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-524. - Tank inlets and vents.

Tank inlets, fill openings, outlets and vents must be:

- (1) At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
- (2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision VII. - Other Development

Sec. 6-525. - General requirements for other development.

All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this article or the Florida Building Code, must:

- (1) Be located and constructed to minimize flood damage;
- (2) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
- (3) Be constructed of flood damage-resistant materials; and
- (4) Have mechanical, plumbing and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-526. - Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses in coastal high hazard areas (Zone V) and Coastal A Zones.

In coastal high hazard areas and Coastal A Zones, concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses are permitted beneath or adjacent to buildings and structures provided the concrete slabs are designed and constructed to be:

- (1) Structurally independent of the foundation system of the building or structure;
- (2) Frangible and not reinforced, so as to minimize debris during flooding that is capable of causing significant damage to any structure; and
- (3) Have a maximum slab thickness of not more than four inches without turned-down edges, have isolation joints at pilings and columns, and have control or construction joints in both directions spaced no more than four feet apart.

(Ord. No. 16-02, § 2, 8-8-2016; Ord. No. 17-09, § 2, 6-19-2017)

Sec. 6-527. - Decks and patios in coastal high hazard areas (Zone V) and Coastal A Zones.

In addition to the requirements of the Florida Building Code, in coastal high hazard areas and Coastal A Zones decks and patios must be located, designed and constructed in compliance with the following:

- (1) A deck that is structurally attached to a building or structure must have the bottom of the lowest horizontal structural member at or above the design flood elevation and any supporting members that extend below the design flood elevation must comply with the foundation requirements that apply to the building or structure, which must be designed to accommodate any increased loads resulting from the attached deck.

- (2) A deck or patio that is located below the design flood elevation must be structurally independent from buildings or structures and their foundation systems, and must be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.
- (3) A deck or patio that has a vertical thickness of more than 12 inches or that is constructed with more than the minimum amount of fill necessary for site drainage must not be approved unless an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to the building or structure or to adjacent buildings and structures.
- (4) A deck or patio that has a vertical thickness of 12 inches or less and that is at natural grade or on nonstructural fill material that is similar to and compatible with local soils and is the minimum amount necessary for site drainage may be approved without requiring analysis of the impact on diversion of floodwaters or wave runup and wave reflection.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-528. - Other development in coastal high hazard areas (Zone V) and Coastal A Zones.

In coastal high hazard areas and Coastal A Zones, development activities other than buildings and structures may be permitted only if also authorized by the appropriate federal, state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and, if analyses prepared by qualified registered design professionals demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

- (1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
- (2) Solid fences and privacy walls and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters; and
- (3) On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or mound systems.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-529. - Nonstructural fill in coastal high hazard areas (Zone V) and Coastal A Zones.

In coastal high hazard areas and Coastal A Zones:

- (1) Minor grading and the placement of minor quantities of nonstructural fill may be permitted for landscaping and for drainage purposes under and around buildings.
- (2) Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal may be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures.

- (3) Where authorized by the Florida Department of Environmental Protection or applicable local approval, sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection, if the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.

Sec. 6-530. - Non-elevated accessory structures.

Accessory structures are permitted below elevations required by the Florida Building Code provided the accessory structures are used only for parking or storage and:

- (1) If located in special flood hazard areas (Zone A/AE) other than coastal high hazard areas, are one-story and not larger than 600 sq. ft. and have flood openings in accordance with Section R322.2 of the Florida Building Code, Residential.
- (2) If located in coastal high hazard areas (Zone V/VE), are not located below elevated buildings and are not larger than 100 sq. ft.
- (3) Are anchored to resist flotation, collapse or lateral movement resulting from flood loads.
- (4) Have flood damage-resistant materials used below the base flood elevation plus one (1) foot.
- (5) Have mechanical, plumbing and electrical systems, including plumbing fixtures, elevated to or above the base flood elevation plus one (1) foot.

(Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-530—6-600. - Reserved.

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2022-848**

1. Requested Motion:

Meeting Date: December 6, 2022

Provide feedback to staff and recommend approval of amended corner lot regulations.

Why the action is necessary:

The current corner lot setbacks make it difficult to develop smaller corner lots. This new language loosens some of those constraints.

What the action accomplishes:

Providing feedback for the proposed changes will assist staff.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

This code change will require an ordinance.

5. Background:

A large number of the variance requests, submitted to the Town, are to allow development on corner lots. The LDC currently requires corner lots to provide a right of way setback, of 25 feet, from both rights of way, a side setback that is 15% of the width of the lot, and a rear setback, of 20 or 25 feet. Often it is difficult to design a home on a lot with all of those setbacks. Staff was tasked with providing options to amend the code that would make more corner lots buildable without a variance.

Attachments:

1. Dec LPA Memo
2. Exhibit A TC MandP Memo with layouts
3. Exhibit B 22-01, LDC Amendment 34-638 Minimum Setbacks and Table

Financial Impact:

unknown

6. Alternative Action

Provide feedback to staff and recommend changes to move forward to Town Council.

7. Staff Recommendations:

Provide feedback and recommend changes to Council.

8. Recommended Approval:

Daphnie Bercher, Community Services Administrator

Date: November 30, 2022

Jason Green, Community Development Services

Date: November 30, 2022

John R Herin Jr, Town Attorney

Date: December 01, 2022

Date: December 02, 2022



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: LPA
From: Sarah Propst, Community Development
Date: December 6, 2022
Re: Corner Lot Setbacks

BACKGROUND

A large number of the variance requests, submitted to the Town, are to allow development on corner lots. The LDC currently requires corner lots to provide a right of way setback, of 25 feet, from both rights of way, a side setback that is 15% of the width of the lot, and a rear setback, of 20 or 25 feet. Often it is difficult to design a home on a lot with all of those setbacks. Staff was tasked with providing options to amend the code that would alleviate some of the common issues.

At a meeting with the Town Council, in June, three different ways to address corner lots were discussed. The option of Front and Side Street Setbacks, Two Fronts and Two Sides, and Minimum Buildable Width. The Council voiced support for providing a combination of Front and Side Street Setbacks with some of the Minimum Buildable Width language included. This option would provide a typical 25' setback along the front street and a lesser "side street" setback but would also allow a decrease in that "side street" setback to allow for a minimum house width. The original memo is attached as Exhibit A for background.

Additionally, it is important to point out that concerns have been raised regarding the modifications that were made to the code regarding side and front setbacks. The application of this ordinance to corner lots, has been noted as a point of concern. The next section includes some options to address this concern. The adopted setback ordinance is attached as Exhibit B for your reference.



PROPOSED SOLUTION

The proposed ordinance changes which would apply to residentially zoned corner lots. All corner lots would have a front and a side street. This front and side could be determined by the owner/developer of the lot. Lots less than 60 feet wide or 60 feet deep would be allowed to decrease the side street setback in order to allow a minimum width 30-foot-wide house. This side street setback could be decreased to no less than 15 feet. Lots that are 60 feet wide up to 75 feet wide would be allowed to decrease the side street setback to 20 feet. Any lots greater than 75 feet in width would have the same front street and side street setback of 25 feet. Below is a table showing the lot width in 5-foot increments, with the associated side street setback, side setback and the resulting width of the buildable area.

Lot Width	40	45	50	55	60	65	70	75	80	85
Side Street	15	15	15	16.5	20	20	20	20	25	25
Side Setback	7.5	7.5	7.5	8.5	9	10	10.5	11.5	12	13
Buildable Width	17.5	22.5	27.5	30	31	35	39.5	43.5	43	47

The smallest lots would still have narrow buildable areas but would be more likely to be able to build without requesting a variance. Any property owner would still be able to request a variance.

Staff notes that if this decreased side street setback is adopted, that Sec. 34-638(d)(2)b (in attached Exhibit B), which allows porches and balconies to extend into the street setback. Would allow porches and balconies as close as 10 feet to the right of way.

Another optional change to the ordinance would amend street setback regulations that are included in Sec. 34-638(d)(5) for corner lots only. One option would be to decrease the additional street setback requirement for building facades greater than 65 feet in length, from 12 feet to 6 feet. That additional setback could be decreased further for homes under 30 feet in width.

Summary

Proposed ordinance changes would amend the application of Side Street setbacks for corner lots 75 feet in width or less.

- Lots less than 60 feet in width would be allowed a decreased Side Street setback, as narrow as 15 feet to allow a minimum building width of 30 feet.
- Lots from 60 feet wide to 75 feet wide would be allowed a 20-foot Side Street setback.
- Lots greater than 75 feet wide, would have the 25-foot Side Street setback that is currently applied to all lots.



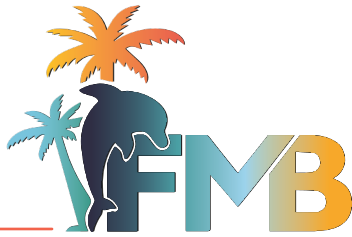
Optional additional ordinance changes would amend the application of the additional street setbacks for houses longer than 65 feet, found in Sec. 34-638(d)(5), on lots 75 feet wide, or less.

- Lots less than 60 feet in width would be allowed a decreased additional street setback of 3 feet.
- Lots from 60 feet wide to 75 feet wide would be allowed a decreased additional street setback of 6 feet.
- Lots greater than 75 feet wide, would have the additional street setback of 12 feet that is currently applied to all houses greater than 65 feet in length.

ATTACHMENTS

Exhibit A – Original Memorandum to Town Council M & P from June 2022

Exhibit B – Adopted Ordinance 22-01 Minimum Setbacks



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Town Council at Management and Planning Meeting
From: Sarah Propst, Community Development
Date: June 1, 2022
Re: Corner Lot Setbacks

BACKGROUND

A large number of the variance requests, submitted to the Town, are to allow development on corner lots. The LDC currently requires corner lots to provide a right of way setback, of 25 feet, from both rights of way, a side setback that is 15% of the width of the lot, and a rear setback, of 20 or 25 feet. Often it is difficult to design a home on a lot with all of those setbacks. Staff was asked to provide the Council with options for code changes that might eliminate some of the need for variance requests on corner lots.

There are many different approaches to setbacks on corner lots. A review of codes in the area revealed three different options that may work for Ft. Myers Beach.

The City of Ft. Myers allows corner lots to have different setbacks depending on which street a home faces. In certain residential districts there is a 25-foot setback from the right of way the home faces and setback of 20 percent of the lot width, not less than 12.5 feet (or greater than 25 feet) on the side street.

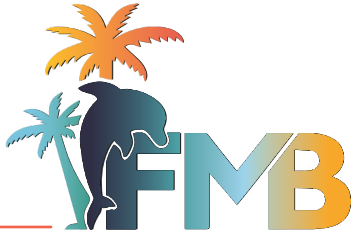
Marco Island, Collier County and Manatee County all require two front setbacks and two side setbacks. This eliminates the large rear setback and it also eliminates the confusion over which side is considered the rear of the property.

The City of Sarasota allows a lesser frontage on the side street and a minimum house width. A front yard of the required depth is provided on one frontage and a front yard of no less than 20 feet is provided on the other street. If a corner zoning lot existed prior to 1974, the structure on that lot is not required to be less than 30 feet wide, even if the allowed building which will encroach into a required front yard. However, any structure built to a width of 30 feet shall meet minimum side yard setback requirements.

Each of these approaches has positive and negative aspects and some may work better than others for Ft. Myers Beach. Below is a brief discussion of some pros and cons of each option.

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | **F.** 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



Front and Side Street Setbacks

Pros: 1) This is a nice approach because the builder/designer can decide which street the house should have the larger setback from or which orientation makes the lot more usable. 2) It is also nice because the side street setback is a percentage of the lot width with a minimum distance, so narrower lots have a narrower setback. 3) Also, the site access is where the larger setback is located, 25 feet is enough space to park a car between the right of way and the house, the smaller setback would not be deep enough for a car to fit.

Cons: 1) A downside to this approach is that often people would prefer a larger setback from a busy street but they would like to access their lot from the less busy street. The way this code reads, in order to have the bigger setback on the busy street, the access to the house would have to be on the busy street. 2) Additionally, once a side is chosen for the narrower and wider setback, the access to the site is set and cannot be changed because a car will not be able to fit on the narrower side street setback.

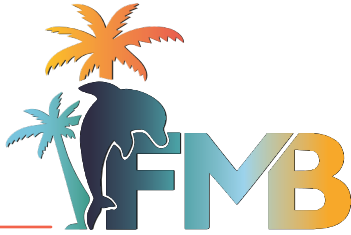
Attached to the staff report you will find two sheets labeled Front and Side Street Setback. These sheets show a 25-foot Primary Access frontage, a 15-foot Non-Access frontage and two 15% side setbacks. The layouts are to scale, in 5-foot increments; the setbacks are rounded to the nearest five feet.

Two Fronts and Two Sides

Pros: 1) This option is simple, because there is no need to determine which side is the front and which is the back and so on. The two fronts are on streets, the two sides are not on streets. 2) This is also a good option because it eliminates the rear setback, which is a large setback (20'-25') and the combination of two fronts and a rear setback create a large amount of unusable area on a lot. 3) This option ensures that the house will be setback in-line with both streets that it fronts on, it will not be closer to the street than other houses on either block. 4) Additionally, because the house is set back 25 feet from each roadway, there is room for a driveway from either right of way.

Cons: 1) One issue associated with this approach is that there is no rear yard, so no larger setback from any of the neighbors. 2) Another problem with this approach is, if the original builder of the home did not want a pool or a shed, there is no additional space for a pool or a shed. The homes are typically built all the way to the side setbacks and a pool or shed will never fit on the property without a variance.

Attached to the staff report you will find two sheets labeled Two Fronts and Two Sides. These sheets show two 25-foot front setbacks, and two side setbacks that are 15% of the lot width. The layouts are to scale, in 5-foot increments; the setbacks are rounded to the nearest five feet.



Minimum Buildable Width

Pros: 1) This option is especially interesting because it ensures that every lot will be buildable without a variance. 2) It also ensures that the side of the property that abuts another house will be set back the standard amount and not cause a negative impact on the neighbor.

Cons: 1) A downside to this option is that on particularly narrow lots, the house will be very close to a road. This could impact views on side streets and it can also make side streets look irregular since the first house on the block could be much closer to the right of way than the other homes. 2) There may need to be a minimum width in order to ensure that houses are not dangerously close to rights of way.

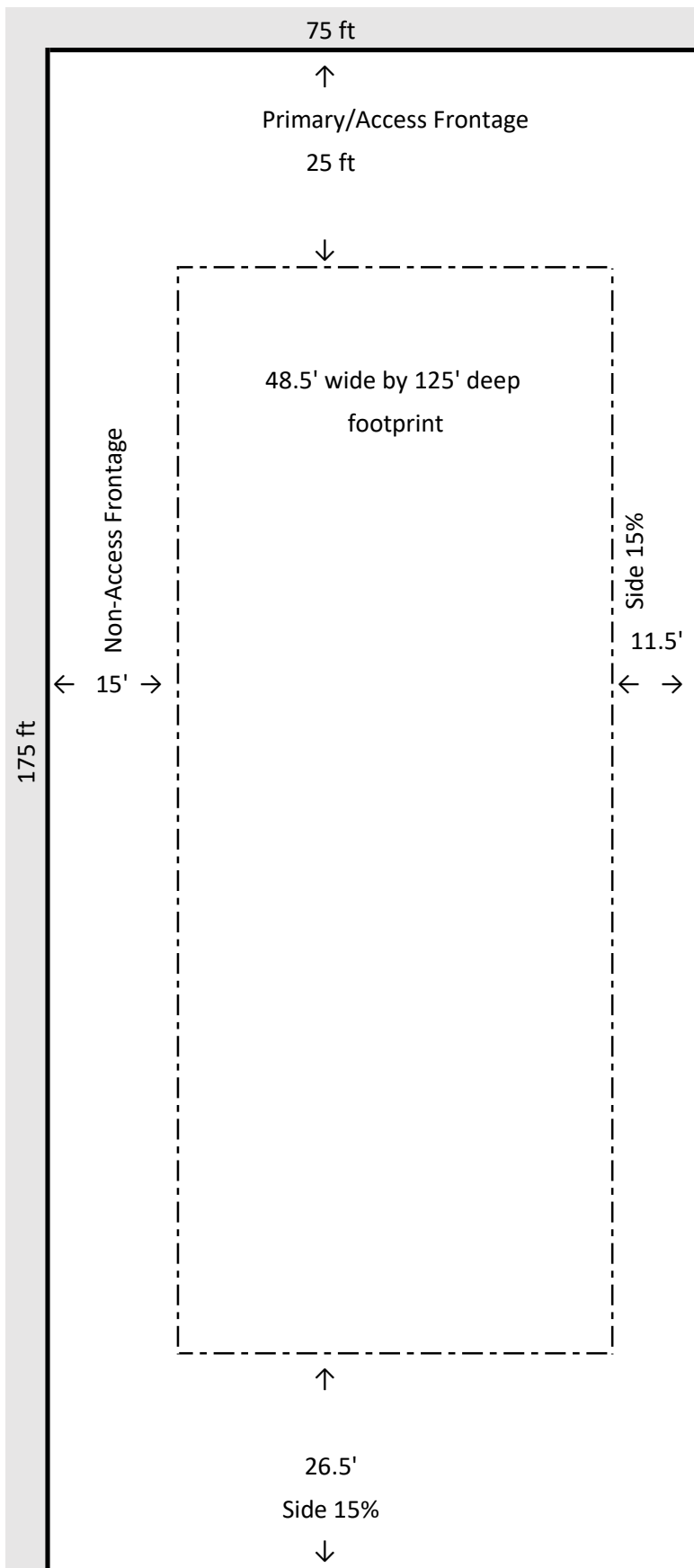
Attached to the staff report you will find two sheets labeled Minimum Buildable Width. These sheets show one 25-foot front setbacks, and two side setbacks that are 15% of the lot width, and the remaining front setback that allows a 30 foot wide house footprint. The layouts are to scale, in 5-foot increments; the setbacks are rounded to the nearest five feet.

Conclusion

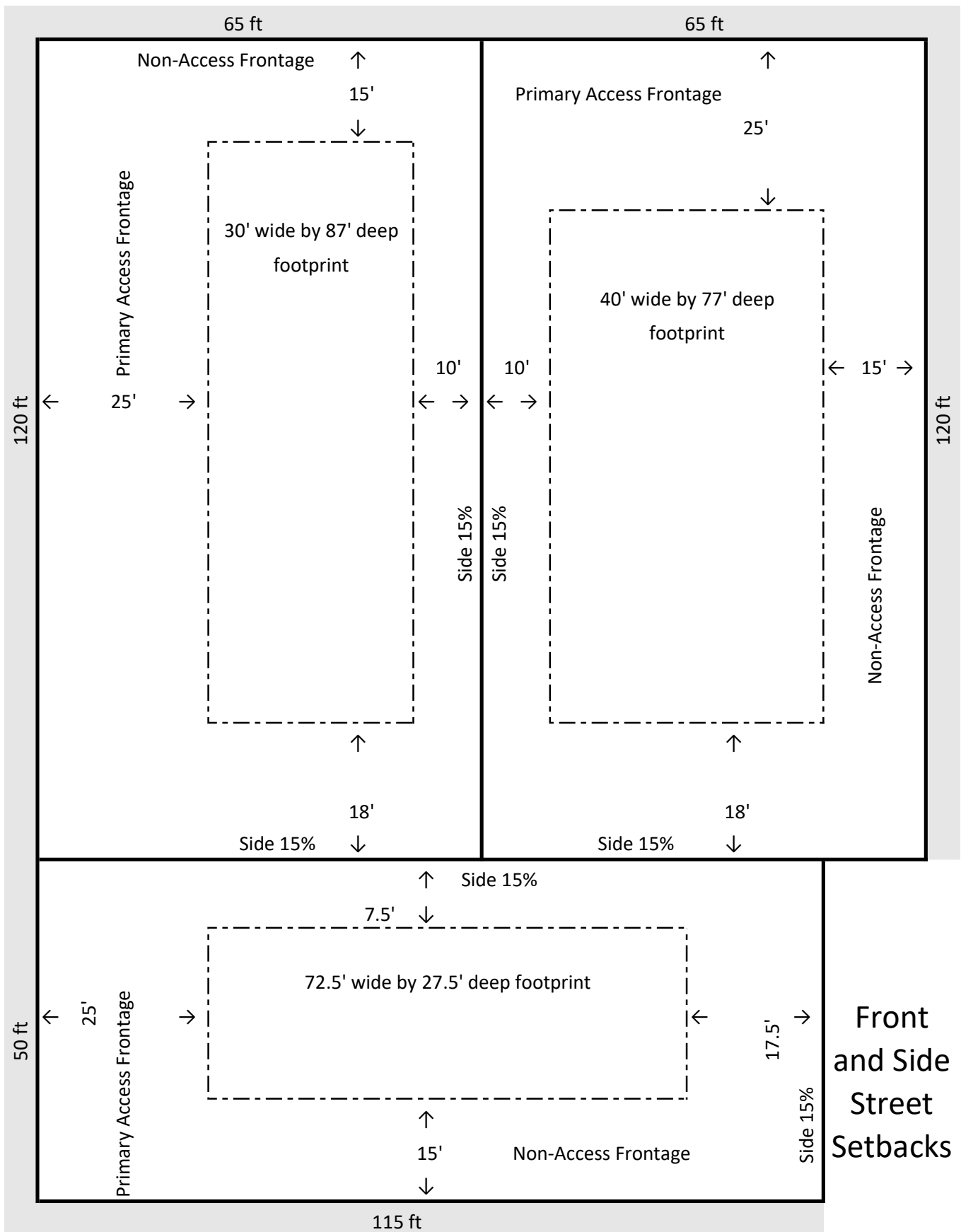
There are multiple ways that corner lots can be viewed through a zoning lens and each one has advantages and disadvantages. It is important to decide which issues matter the most to the community. There have been many discussions regarding view corridors to water but that applies mainly to the beach side of Estero Blvd.

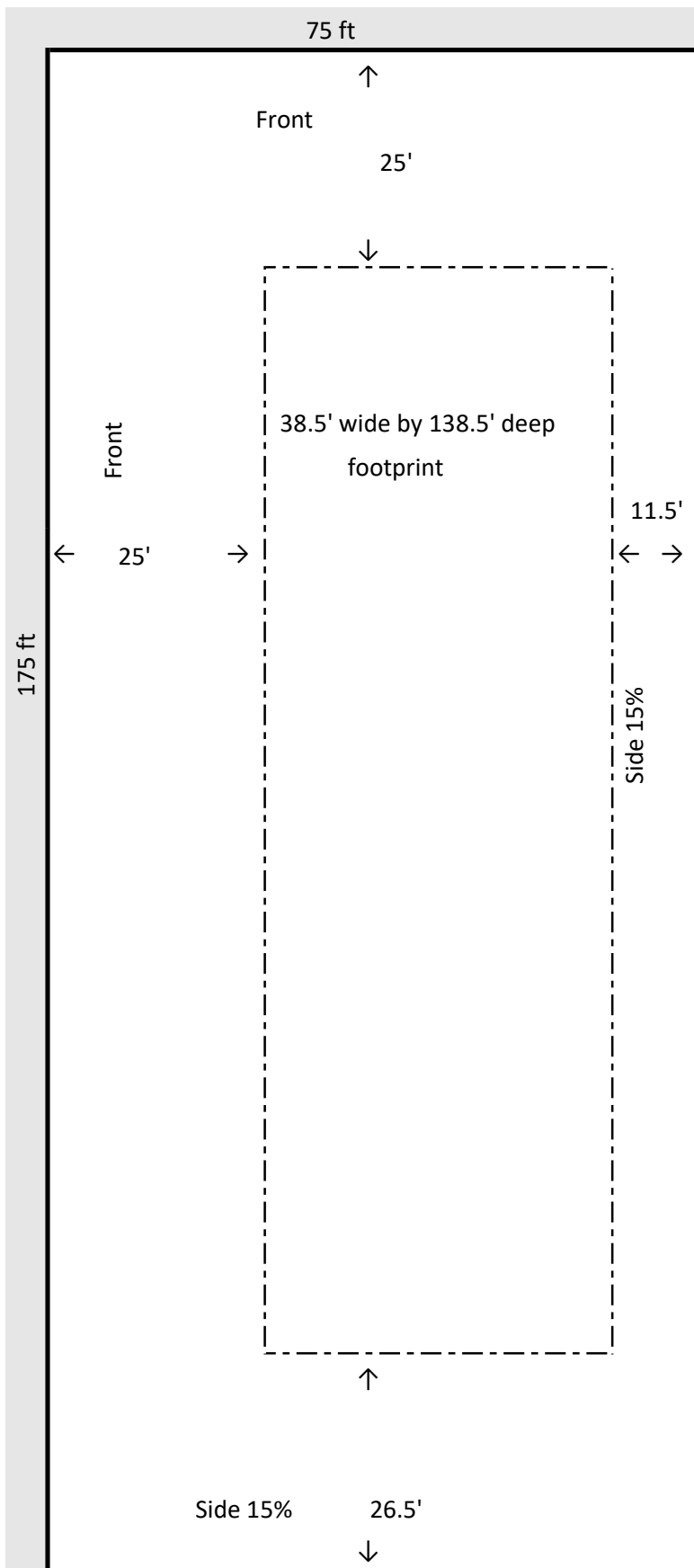
Please consider the following:

- 1) Would it make sense for the Council to consider one approach to the bay side (northeast side) of Estero Blvd and another approach to the beach side (southwest side) of Estero Blvd?
- 2) Should there be different regulations when a property is located directly adjacent to water so that there is a rear setback?
- 3) Is it important that all lots are buildable without a variance?
- 4) Do blocks need to look uniform regarding setbacks?
- 5) Should every parcel have a backyard?

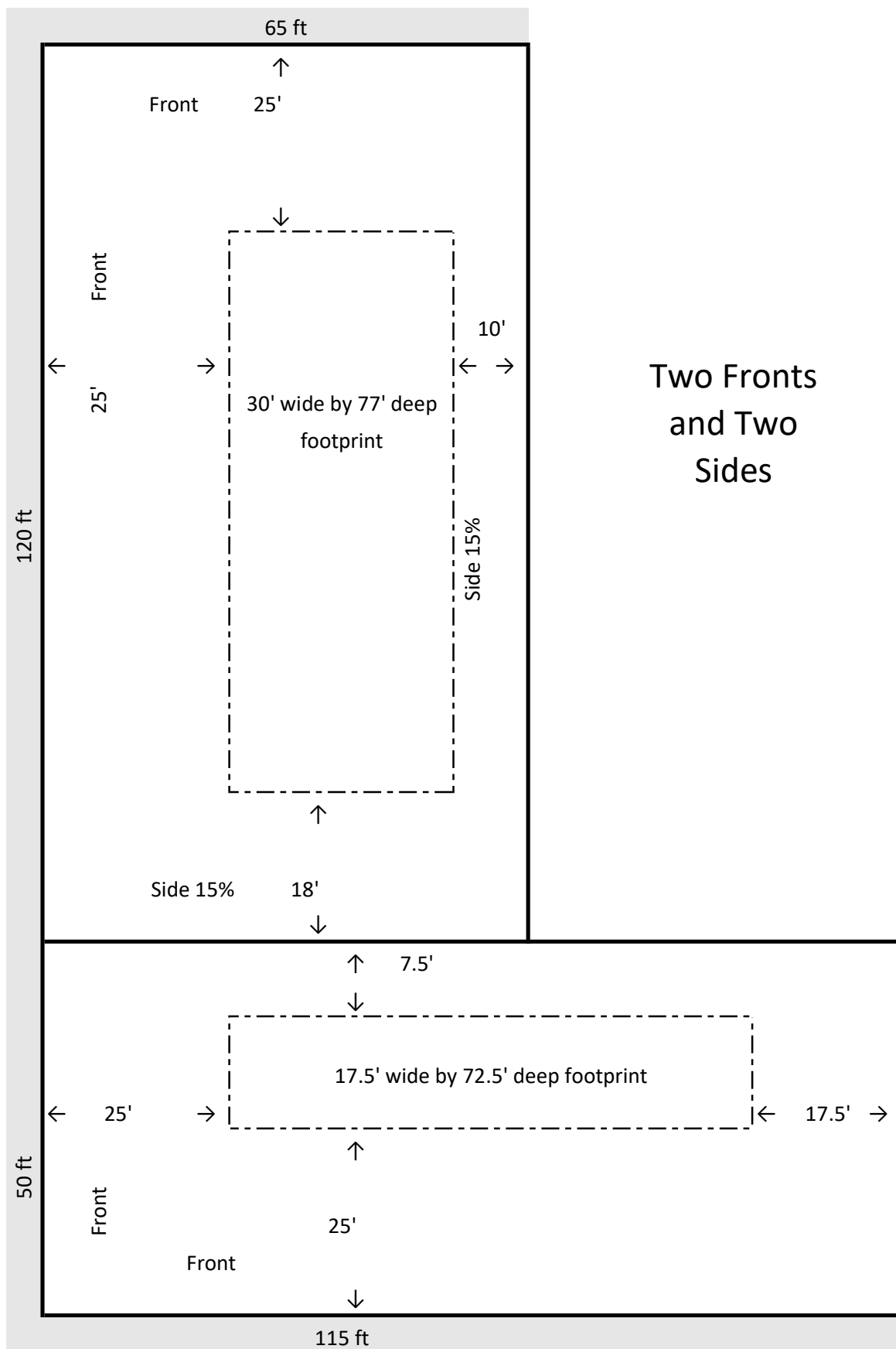


Front and Side Street Setbacks

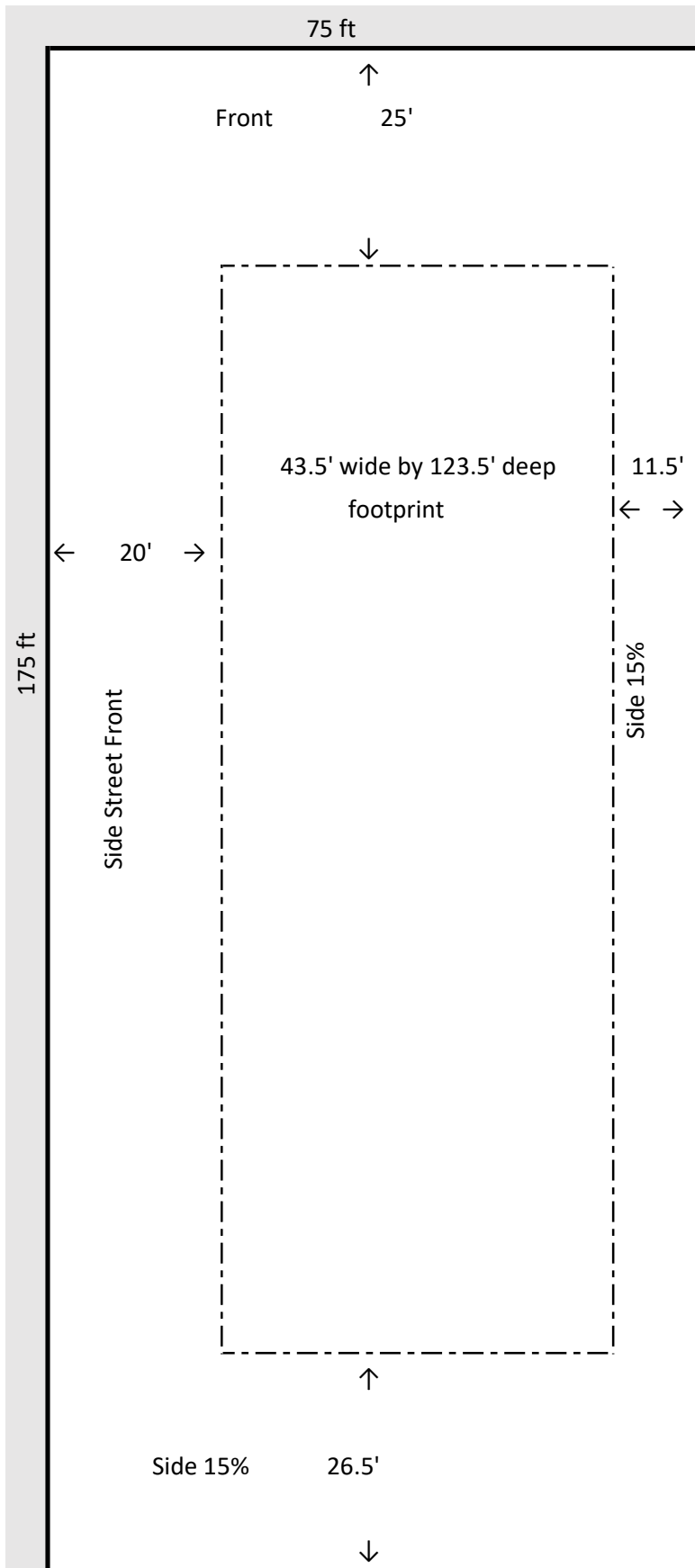




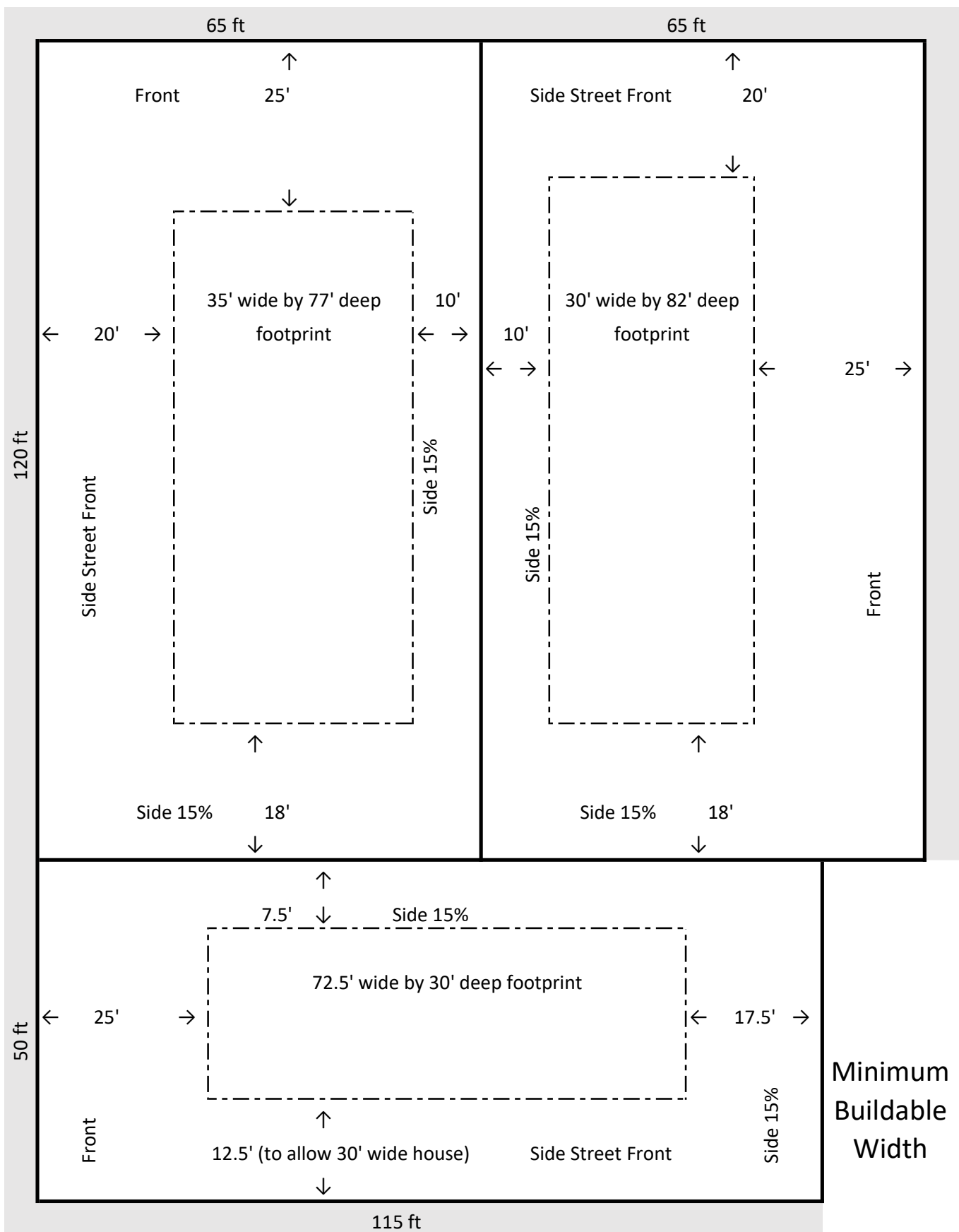
Two Fronts
and Two
Sides



Two Fronts
and Two
Sides



Minimum
Buildable
Width



ORDINANCE 22-01

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AMENDMENT TO TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, ARTICLE III., DIVISION 3, SECTIONS 34-638 MINIMUM SETBACKS AND TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS; PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town Council desires update the Fort Myers Beach Land Development Code to clarify, improve, and create consistency among sections; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on November 17, 2021, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 5-0, with one member absent, to recommend approval of the requested amendment to Sec. 34-638 and Table 34-3 with additional language discussed during the meeting, and

WHEREAS, on January 10, 2022, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the proposed edits to the Land Development Code, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, the Town Council set a second reading of the proposed Ordinance and a public hearing on this matter to be legally advertised and held before the Town Council on February 7, 2022; at which time the Town Council gave full and complete consideration to the request, the recommendation of the LPA, the recommendation of staff, consistency with the Comprehensive Plan and Land Development Code, the documents in the record, and the testimony of all interested persons; and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:

Section 1. The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

Section 2. Article III, Division 3, Section 34-638 and Table 34-3 of the Fort Myers Beach Land Development Code is hereby amended to read as follows:

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 waterbody.
 - (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 of this LDC.
 - 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 of this LDC).
 - 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 of this chapter.
 - (4) Certain exceptions to minimum setbacks are provided in subsection (d) below.
- (b) *Where to find minimum setback dimensions.* Minimum setback dimensions are specified as follows:
 - (1) *For principal buildings:*
 - a. For all conventional zoning districts, see Table 34-3.
 - b. For redevelopment zoning districts, as described for the individual districts in division 5 of this article.
 - c. For RPD districts, see § 34-943 of this chapter.
 - d. For CPD districts, see § 34-953 of this chapter.
 - (2) *For accessory buildings,* see §§ 34-1174—34-1176 of this chapter.
- (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 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 setbacks and 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—34-1010 of this chapter.

(1) *Exceptions to all setbacks.*

- a. *Administrative setback variances.* Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268 of this chapter.
- b. *Overhangs.* An overhang which is part of a building may be permitted to encroach into any setback as long as the overhang does not extend more than three feet into the setback and does not permit any balcony, porch, or living space located above the overhang to extend into the setback.
- c. *Shutters.* A shutter which is attached to a building may be permitted to encroach one foot into the setbacks.
- d. *Awnings and canopies.*
 1. Awnings and canopies which are attached to a building may be permitted to encroach three feet into the setbacks, as long as their location does not interfere with traffic, ingress and egress, or life safety equipment.
 2. For purposes of this section, awnings and canopies may be attached to a nonconforming building and shall not be considered an extension or enlargement of a nonconformity, as long as the building is properly zoned for its use and the conditions as set forth in this section are met.
- e. *Essential services.* Essential services and essential service equipment shall not be required to meet the minimum setbacks for the district wherein located (see § 34-1617 of this chapter).
- 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 one-hour fire resistance.
- g. *Mechanical equipment.* Mechanical equipment such as air conditioners may encroach up to three feet into rear and waterbody 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.

1. On lots where the side setbacks are not equal on both sides, mechanical equipment may not be placed on the side of the house with the smaller setback unless the smaller setback is 20 feet wide or more.

(2) *Exceptions to street setbacks.* Certain structures are exempt from the street setback requirements as follows. See also § 34-1174 of this chapter.

- a. *Build-to lines.* Some zoning districts do not have any street setback requirements but instead have build-to lines, as described in § 34-662 of this chapter. Awnings, canopies, balconies, bay windows, porches, stoops, arcades, and colonnades may extend forward of the build-to line provided that they comply with the commercial design standards (see § 34-995(e) of this chapter).
- b. *Porches, balconies and stoops.* Porches, balconies and stoops may extend up to ten feet into the street setback zone of residential buildings, provided that:
 1. Any walls, screened areas, or railings in the setback zone extend no higher than 42 inches above the floor of the porch, balcony or stoop; and
 2. No portion of a porch or balcony and no walls or screened areas may be closer than ten feet to the edge of any street right-of-way or street easement.
 3. Porches, balconies and stoops, which extend into the front setback, may not exceed 35 feet in width.
- c. *Mail and newspaper delivery boxes.* Mail and newspaper delivery boxes may be placed in accordance with U.S. Postal Service regulations; however, the support for a mail or newspaper

delivery box must be of a suitable breakaway or yielding design, and any mail or newspaper delivery box placed in an unsafe or hazardous location can be removed by the government agency with jurisdiction over the right-of-way at the property owner's expense.

- d. *Bus shelters, bus stop benches and bicycle racks.* Bus shelters, bus stop benches, and bicycle racks may be located in any district without regard for minimum setbacks, provided the location of the structure is approved by the town manager. No advertising is permitted on bus stop benches.
- e. *Telephone booths.* Telephone booths and pay telephone stations may be located in any zoning district that permits multifamily or commercial uses without regard for minimum setbacks; provided that the location shall be approved by the director.

(3) *Waterbody setbacks.*

- a. *Gulf of Mexico.* Except as provided in this section or elsewhere in this code, no building or structure shall be placed closer to the Gulf of Mexico than set forth in ch. 6, articles III and IV of this LDC, or 50 feet from mean high-water, whichever is the most restrictive. See also special regulations for the EC zoning district in § 34-652 of this chapter and the coastal zone restrictions in § 34-1575 of this chapter.
- b. *Other bodies of water.* Except as provided in this section or elsewhere in this chapter, no building or structure shall be placed closer than 25 feet to a property line adjacent to a canal, bay, or other waterbody. For purposes of measuring setbacks from a canal, bay, or other body of water, the following will also be used:
 - 1. If the body of water is subject to tidal changes, the setback will be measured from the mean high-water line.
 - 2. If the body of water is not subject to tidal changes, the setback will be measured from the control elevation of the body of water if known, or from the ordinary high-water line if unknown.
 - 3. In addition to the property line setback, if the property has a seawall, a minimum setback of five feet will be measured from the seaward side of the seawall, not including the seawall cap.
 - 4. If property lines encroach into the waterbody, then no more than five feet shall be applied to the setback measurement.
 - 5. If plats or legal descriptions of property reference water bodies as boundaries, the mean high-water line shall be utilized, unless otherwise stated in those legal descriptions or survey.
- c. *Exceptions for certain accessory structures.* Certain accessory buildings and structures may be permitted closer to a body of water as follows:
 - 1. *Fences and walls.* See division 17 of this article.
 - 2. *Shoreline structures.* See § 34-1863 and ch. 26 of this LDC.
 - 3. *Nonroofed structures.* Swimming pools, tennis courts, patios, decks, and other nonroofed accessory structures or facilities which are not enclosed, except by fence, or which are enclosed on at least three sides with open-mesh screening from a height of 3½ feet above grade to the top of the enclosure, shall be permitted up to but not closer than:
 - (i) Five feet from a seawalled canal or seawalled natural body of water;
 - (ii) Ten feet from a nonseawalled artificial body of water; or
 - (iii) Twenty-five feet from a nonseawalled natural body of water;whichever is greater. Enclosures with any two or more sides enclosed by opaque material shall be required to comply with the setbacks set forth in subsections (d)(3)a. and (d)(3)b. of this section.
 - 4. *Roofed structures.*

- (i) Accessory structures with roofs intended to be impervious to weather and which are structurally built as part of the principal structure shall be required to comply with the setbacks set forth in subsections (a) and (b) of this section.
- (ii) Accessory structures with roofs intended to be impervious to weather and which are not structurally built as part of the principal structure may be permitted up to but not closer than 25 feet to a natural body of water, and ten feet to an artificial body of water.

(4) *Exceptions for certain nonconforming lots.*

- a. Certain nonconforming residential lots are subject to the modified side and rear setback requirements that are found in § 34-3273 of this chapter.
- b. Certain nonconforming mobile home lots in the village zoning district are subject to the modified side and rear setback requirements that are found in § 34-694 of this chapter.
- c. Certain nonconforming commercial lots are subject to the modified side and rear setback requirements that are found in § 34-3277 of this chapter.

(5) Additional street setbacks for single-family and two-family homes exceeding 65 feet in width in the RS, RC and RM zoning district.

- a. Single-family and two-family homes exceeding 65 feet in width, in RS, RC and RM zoning districts, shall have additional street setback requirements.

- 1. No more than 65 feet of frontage the structure may be constructed between the street setback line (25 feet from right of way property line) and 37 feet from the street property line. Any portion of the structure exceeding 65 feet in width shall be set back an additional 12 feet (37 feet from the right of way property line).
- 2. No more than 80 percent of the portion of the structure between the street setback line (25 feet from right of way property line) and 37 feet from the street property line may be taller than one story above flood elevation. Any portion of the building behind the 37-foot front setback may be built to the maximum buildable height for that zoning district.
- 3. The 65 feet of building between the 25-foot street setback and 37 feet from the street property line, must be constructed as at least two separate projections. The front façade may not be a continuous wall without setback changes. See Figure 34-2.

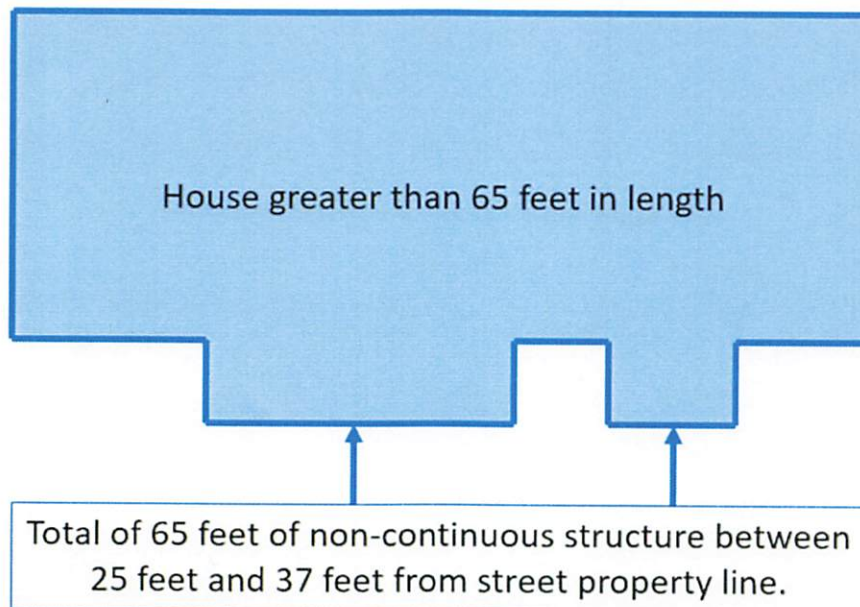


Figure 34-2

b. Exemption from additional setbacks for open ground level. A residential structure greater than 65 feet in width will be exempt from the additional front and side setback requirements found in Sec. 34-638(d)(5) and (6), if the ground-level enclosed or screened area is limited to no more than 650 square feet and 30 feet in width, as viewed from the ROW. The enclosed area may extend the full depth of the house but limited in width to 30 feet.

(6) Additional Side setbacks requirements for single-family and two-family homes on lots greater than 80 feet in width in the RS, RC and RM zoning districts.

a. Single-family and two-family homes on lots 80 feet or more wide in the RS, RC and RM zoning districts must provide side setbacks equal to 15% of the lot width, but not less than 7.5 feet, on each side.

1. Lot width is measured from the property line adjacent to the right of way. Where the property is a corner lot, the front will be the side of the property that is deemed the front based on the setbacks (in relation to where the front setback, rear setback, and side setbacks are applied).

2. The cumulative total of the side setbacks shall be 30% of the parcel width, however, the setbacks do not have to be equal on both sides. No side setback shall be less than 10% of the parcel width or a minimum of 7.5 feet, whichever is greater.

(i) Mechanical equipment may not be located on the side of the house with a smaller setback unless the smaller setback is 20 feet wide or more.

3. The setback measurement shall be rounded to the nearest half-foot.

(Ord. No. 20-08, § 2, 4-6-2020)

Secs. 34-653—34-660. - Reserved.

Table 34-3— Dimensional Regulations in Conventional Zoning Districts

	street	side - waterfront lot	side - non-waterfront	rear	water body (1)	Gulf of Mexico (2)	area	width	depth	ratio	Percentage		feet	stories
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)	
RS Residential Single-family	25 (9)	7.5 15% of lot width (8) (10)	7.5 15% of lot width (8) (10)	20	25	50	7,500	75	100	-	40%	(3), (4)	25-30 (11)	3
RC Residential Conservation	25 (9)	7.5 15% of lot width (10)	7.5 15% of lot width (10)	20	25	50	4,000	45	80	-	40%	(3), (4), (5)	25-30 (11)	3
RM Residential Multifamily	25 (9)	20 (6) (10)	20 (6)	20	25	50	7,500	75	100	1.2	$\frac{1}{2}$	(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	-	-	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	0.6	-	(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	20	25	-	25	20	50	(7)	N/A	N/A	0.1	-	(3), (7)	25	2

Critical

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 side setback of 15% of the lot width, but not less than a 7.5-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.

Note (9): Maximum 65 feet of house may be built to the 25-foot front setback. Any house frontage exceeding 65 feet in length shall be built 37 feet from the front property line. See §34-638(d)(5)a.

Note (10): For parcels exceeding 80 feet in width, each side setbacks will be equal to 15% of the property width. See § 34-638(d)(5)b. Each side setbacks shall be 15% of the lot width, but not less than 7.5 feet.

Note (11): Correcting a scrivener's error, height limit was increased to 30 feet with Ordinance 20-19.

Section 3. Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted LDC or Town Code provision, ordinance or statute, the most restrictive shall apply.

Section 4. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 5. Any typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. This ordinance shall become effective upon adoption by the Town Council.

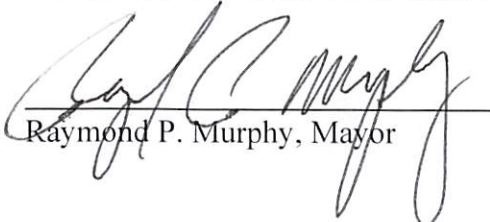
The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Vice Mayor Hosafros and seconded by Council Member Veach, and upon being put to a roll call vote, the result was as follows:

Raymond P. Murphy, Mayor	Aye
Rexann Hosafros, Vice Mayor	Aye
Dan Allers, Council Member	No
Jim Atterholt, Council Member	A y e
Bill Veach, Council Member	Aye

ADOPTED this 7th day of February, 2022 by the Town Council of the Town of Fort Myers Beach, Florida.

ADOPTED this 7th day of February 2022, by the Town Council of the Town of Fort Myers Beach, Florida.

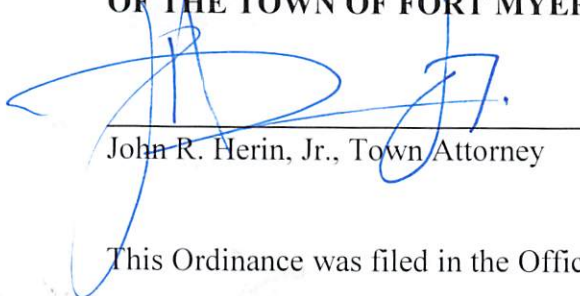
TOWN OF FORT MYERS BEACH


Raymond P. Murphy, Mayor

ATTEST:


Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE
OF THE TOWN OF FORT MYERS BEACH ONLY:**


John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 9 day of February 2022.