



# SPIKOWSKI PLANNING ASSOCIATES

## MEMORANDUM

**TO:** Fort Myers Beach Local Planning Agency  
**FROM:** Bill Spikowski  
**DATE:** October 2, 2006  
**SUBJECT:** Legislative Workshop, October 10, 2006, at 5:00 PM

Last month the Local Planning Agency requested a legislative workshop concerning the conversion (parcelization) of existing hotels and motels into other forms or ownership, such as timeshare, condominium, fractional ownership, etc. This workshop has been scheduled for October 10, 2006, at 5:00 PM.

This subject has become a serious issue for many resort communities. If existing hotels and motels are converted to residential uses, the economy of tourism-dependent communities could change dramatically.

This issue has arisen due to two recent trends in the development industry:

- The successful construction of “condo hotels,” such as the new buildings at the Pink Shell Resort.
- The successful conversion of apartment complexes to condominium ownership.

These two trends have recently converged, as evidenced by the recently approved conversion of the Neptune Inn to timeshare ownership, and a similar request pending for the Diamondhead Resort.

The desirability of such conversions should be considered from a broader perspective. This analysis is already underway through the Evaluation / Appraisal Report completed by the Local Planning Agency in March 2006 and now awaiting final action by the Town Council.

Because of recent turnover among LPA members, I am forwarding all current member a copy of the August 1 “Proposed Evaluation / Appraisal Report,” which is currently undergoing preliminary review by the state Department of Community Affairs. The completion of that review is imminent; once it is received by the town, the Town Council will hold a public hearing to consider adopting this report. After adoption, the town has 18 months to consider amendments to the Comprehensive Plan to carry out the report’s recommendations.

Prior to the October 10 workshop, please review the portion of Section 3 beginning on page 15 where several related issues concerning the lodging business are discussed.

The *conversion* of existing hotels or motels to other forms of ownership is closely related to the larger lodging questions, but with a complicating factor when the existing buildings don't conform to current floodplain regulations. Nonconforming buildings are presumed to be replaced with elevated buildings as they reach economic or physical obsolescence; conversion of such buildings to timeshare or other more valuable uses makes this replacement far less likely and more difficult to accomplish (especially in the event of serious hurricane damage).

For similar reasons, when the Town Council considered parcelization policy for two-family and multiple-family buildings last year, it decided to allow conversions only for buildings that meet current floodplain regulations. Attached to this memo are the parcelization regulations that were adopted by Ordinance 05-21. This complicating factor will also have to be considered when formulating legislation allowing or disallowing parcelization of existing hotels and motels.

## Property Development Regulations For All Zoning Districts

### Sec. 34-634. Intensity and building coverage.

Another measure of building intensity used in this code is building coverage, which means the horizontal area of all principal and accessory buildings on a site divided by the site's lot area.

- (1) For purposes of this section, horizontal area means the area within the surrounding exterior walls (whether the walls are solid or screened). The term "horizontal area" does not include any area occupied by unroofed structures such as driveways, sidewalks, patios, outside stairways, or open swimming pools, and does not include any area whose roof is screened rather than solid such as swimming pool enclosures.
- (2) For purposes of this section, a site's lot area includes the gross square footage within the site's private property line, minus wetlands, canals, or other water bodies, and minus any land designated "Recreation" on the Comprehensive Plan's future land use map.

### Sec. 34-635. Commercial design standards.

Except where this code specifically provides otherwise, the commercial design standards (see § 34-991–1010) apply to all commercial and mixed-use buildings or portions thereof that are being newly built, and to "substantial improvements" to such buildings as defined in § 6-405, on properties that are zoned in any of the following zoning districts:

- (1) SANTOS (§ 34-648);
- (2) DOWNTOWN (§ 34-671–680);
- (3) SANTINI (§ 34-681–690);
- (4) VILLAGE (§ 34-691–700);
- (5) CB (§ 34-701–710); and
- (6) CPD (commercial planned development) (§ 34-951–960).

### Sec. 34-636. Parcelization or subdivision of existing buildings.

(a) **Two-family building.** When a building owner proposes further parcelization or subdivision of land in the RC zoning district into separate lots and separating two lawfully existing dwelling units into individual parcels, all of the following requirements

must be satisfied before the required limited review development order can be issued:

- (1) The building cannot exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land and the lots resulting from the subdivision must each conform to the dimensional regulations for lot size in the RC zoning district (see Table 34-3).
- (2) The building must comply with all floodplain requirements as provided in ch. 6 of this code.
- (3) The entire building must meet the coastal construction requirements that apply to new structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).
- (4) The individual dwelling units must be separated by walls with not less than 1-hour fire resistance.
- (5) The development must meet all other requirements of this code, including Table 34-2.

(b) **Multiple-family building.** When a building owner proposes further parcelization or subdivision of lawfully existing dwelling units, all of the following requirements must be satisfied before the required development order can be issued:

- (1) The number of dwelling units in the existing building may exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, but may not exceed the number of lawfully permitted units. The burden to demonstrate the lawful nature of the units is on the applicant. If the number of dwelling units exceeds the density limitations of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, the interior square footage of the building, as defined in §34-3238(2)d.1., may not be increased, but may be exchanged on a square-foot for square-foot basis to provide larger but fewer dwelling units within the same interior area.
- (2) Existing buildings must comply with all floodplain requirements as provided in ch. 6

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of this code. Existing buildings that cannot comply with these requirements may seek to replace their building by obtaining approval for pre-disaster buildback in accordance with § 34-3237.

- (3) The entire building must meet the coastal construction requirements that apply to new structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).
- (4) The individual dwelling units must be separated by walls with not less than 1-hour fire resistance.
- (5) The development must meet all other requirements of this code, including Table 34-2.

### Sec. 34-637. Minimum lot sizes.

(a) All lot area, width, and depth dimensions in this code are mandatory minimums for newly created lots.

- (1) Minimum lot areas, width, and depths are specified for various zoning districts.
  - 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 chapter.
  - c. For PD districts, see §§ 34-943 and 34-953.
- (2) Definitions and methods of measuring lot widths and depths are provided in § 34-2.

(b) Where two or more dwelling units or guest units are proposed for a single lot or combination of lots, the lot(s) must also be large enough to comply with the density limitations of the Fort Myers Beach Comprehensive Plan, as computed in accordance with § 34-632.

(c) Division 4 of article V of this chapter defines nonconforming lots, which may be smaller than the minimum lot areas, widths, and/or depths specified in this code.

- (1) Certain nonconforming *residential* lots are subject to the smaller minimum lot areas,

widths, and depths that are found in § 34-3274.

- (2) Certain nonconforming *commercial* lots are subject to the smaller minimum lot areas, widths, and depths that are found in § 34-3277.

(d) Essential services and essential service equipment shall not be required to meet the minimum required lot dimensions for the district wherein located (see § 34-1617).

### Sec. 34-638. Minimum setbacks.

(a) **Generally.** Most zoning districts require minimum setbacks between all buildings and structures and the street, the side lot line, the rear lot line, and any water body.

- (1) Setbacks are minimum horizontal distances between a property line and the nearest point of all structures that ensure a minimum area without buildings. Detailed definitions are provided under “setback” in § 34-2.
  - a. Where an unusual lot configuration or orientation makes it unclear which property lines are street, side, or rear lot lines, the director will establish street,

*[continued on page 65]*