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MEMORANDUM

TO: Fort Myers Beach Local Planning Agency
FROM: Bill Spikowski
DATE: February 12, 2002
SUBJECT: **NEW LAND DEVELOPMENT CODE, CHAPTER 34 (ZONING)**

Attached is the backup material for our February 19 workshop on the new land development code. This material contains the latest draft of Articles V and VI of Chapter 34 (the zoning chapter of the code), as revised through February 12, 2002. Please insert these articles into your LDC binder and bring any questions or comments you may have on this material to the February 19 workshop.

- 1. ARTICLE V:** Article V contains the “supplemental regulations” that apply in addition to the specific regulations for each zoning district. The LPA reviewed an earlier draft of much of Article V on June 12, 2001. Major changes from that draft include the following:
 - a. Division 2 on accessory uses (beginning on page 115) has been extensively revised.
 - b. Division 10 on assisted living facilities (beginning on page 131) has been revised to now incorporate all regulations on this subject.
 - c. Division 12 on density (beginning on page 134) has been eliminated, with density regulations now placed with other regulations for individual land uses (primarily in Article IV).
 - d. Division 13 on environmentally sensitive areas (also beginning on page 134) has been extensively revised.
 - e. Division 16 on mobile vendors (beginning on page 137) has been extensively revised.
 - f. Division 17 on fences and walls (beginning on page 139) has been revised.
 - g. Division 19 on hotels, motels, and bed-and-breakfast inns (beginning on page 143) has been revised as a result of LPA discussions in June and September.
 - h. Division 26 on parking lots (beginning on page 147) has been extensively revised.
 - i. Divisions 30 and 34 on property development regulations (pages 161–162) have been eliminated, with these regulations now placed with other regulations for various land uses (primarily in Article IV).
 - j. Division 37-B on tattoo parlors and body-piercing salons (beginning on page 170) now contains three options for future regulations.
 - k. Divisions 38 through 41 are entirely new in this draft (pages 171–173).

- 2. ARTICLE VI:** The attached draft of Article VI on nonconformities contains minor changes to the December 27 draft that you reviewed on January 22. Except where noted otherwise, these changes were to reduce confusion and improve clarity. Changes are as follows:
- a. 34-3204: Reworded the amortization language
 - b. 34-3206: Completely rewrote this section on nonconformities created by eminent domain for clarity, and now expanded to apply to donations of land and easements
 - c. 34-3233(b): Reworded subsection on internal repairs
 - d. 34-3234(b): Reworded portions of subsections (b)(1), (b)(3), and (b)(5)c.
 - e. 34-3236: Reworded subsection (1)
 - f. 34-3237(3): Added accessibility codes to types of codes that must be complied with during the buildback process (this same change also made to 34-3238(1)c. and (2)c.)
 - g. 34-3237(7): Completely rewrote subsection (7) for clarity and to indicate that any increased floor elevations due to new floodplain regulations could be added to building heights (this same change also was made to 34-3238(2)f.)
 - h. 34-3238(2): Added wording to subsections (2)d. and e. to clarify that "...limits for new buildings..." is referring to new buildings that might be built on vacant land
 - i. 34-3238(2)e.1.: Rewrote subsection to now allow any substandard guest units to be enlarged to minimum standards

At next month's LDC workshop, tentatively scheduled for March 19, we will be discussing the latest drafts of Articles I, II, and III of Chapter 34, which describe all zoning procedures. (The final article, Article IV which contains the new zoning districts and zoning map, is still being prepared.)

ARTICLE V, VII.
SUPPLEMENTARY DISTRICT
SUPPLEMENTAL REGULATIONS²

DIVISION 1. GENERALLY

Sec. 34-1169 ~~1141~~. Purpose and applicability of article.

The purpose of this article is to provide rules and regulations which supplement, modify, or further explain rules and regulations found elsewhere in this chapter, and, unless specifically noted to the contrary, the provisions of this article apply to all zoning districts.

Sec. 34-1170 ~~1142~~. Purpose of supplemental regulations.

(a) Regulations over and above those imposed by other sections of this chapter are necessary for certain uses which, because of their uniqueness or potential for substantial impact on surrounding land uses, warrant minimum standards which cannot properly be addressed in general provisions or property development regulations set forth in specific districts. The purpose of the supplemental regulations set forth in this article is to set forth the detailed regulations, including but not limited to the bulk, layout, yard size, and lot area, that apply to these uses.

~~(b) Some of the uses provided for in this article will exceed the minimum thresholds for developments of county impact (see § 34-203) and will be required to apply for approval through the planned development procedure. The Board of County Commissioners may modify any of the requirements of this article in accordance with the procedures for a planned development application approval.~~

~~(b) (c) The supplemental regulations set out in this article shall apply to the specified use regardless of whether it is a use permitted by right, special permit or special exception, planned development rezoning, development of county impact or~~

² Cross reference(s)--Development design standards, § 10-251 et seq

temporary use permit, as specified in the district use regulations.

~~Secs. 34-1143--34-1170. Reserved.~~

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

Sec. 34-1171. Applicability of division.

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

Sec. 34-1172. Definitions.

For purposes of this division only, certain words or terms shall mean the following:

Accessory use means a use of a structure or premises which is customarily incidental and subordinate to the principal use of the structure or premises.

Open-mesh screen means meshed wire or cloth fabric to prevent insects from entering the facility, including the structural members framing the screening material.

Roofed means any structure or building with a roof which is intended to be impervious to weather.

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

Sec. 34-1173. Development regulations.

~~(a) Permitted structures and uses: Unless specifically indicated to the contrary, accessory uses; and related buildings and structures that are customarily recognized as clearly incidental and subordinate to the principal use of the property are permitted by right when located on the same lot or parcel and in the same zoning category as the principal use, provided that: in conjunction with a permitted principal use, approved special exception or approved special permit subject to the county building code, this chapter, and all other applicable regulations:~~

~~(b) Time of construction:~~

- (1) All uses, buildings, and structures must comply with all applicable development regulations and building codes.
- (2) ~~(1)~~ Accessory buildings or structures may be built concurrently with a principal building or structure but, except as provided in subsection (b)(2) of this section herein, no accessory use, building, or structure shall be commenced, erected, placed, or moved onto a lot or parcel prior to the principal use, building, or structure. (2) Exceptions are as follows:
 - a. ~~Agricultural accessory structures in the AG district.~~
 - a. ~~b.~~ Fences or walls when in compliance with division 17 of this article.
 - b. ~~c.~~ Seawalls or retaining walls (see § 26-43(a) § 34-1863).
 - c. ~~d.~~ Docks accessory to residential uses, personal (see § 26-43(a) § 34-1863). Only permitted if the lot meets the minimum lot size and dimensions required for a principal use.
- ~~(3) Accessory buildings or structures may be built concurrently with a principal building or structure.~~

(c) **Attachment to principal building.** Authorized accessory buildings or structures may be erected as part of the principal building or may be connected to it by a roofed porch, patio, or breezeway, or similar structure, or they may be completely detached, provided that:

- (1) Any accessory building or structure which is structurally a part of the principal building shall comply in all respects with the regulations for a principal building.
- (2) Any accessory building or structure not structurally made a part of the principal building shall comply with the location requirements set forth in § 34-1174.

Sec. 34-1174. Location and setbacks generally.

(a) **Permitted locations.** Except as may be provided elsewhere in this chapter, all accessory uses, buildings, and structures must be located on the same premises and must have the same zoning district or zoning classification as the principal use (see also § 34-616(b)). For purposes of this section, the a zoning classification contains must consist of the following groups of zoning districts:

- ~~(1) Districts described in article VI, division 2, of this chapter (agricultural districts);~~
- (1) ~~(2)~~ Residential districts – RS, RC, and RM – described in §§ 34-642 through 34-644 article VI, division 3, of this chapter; and (residential districts);
- ~~(3) Districts described in article VI, division 4, of this chapter (recreational vehicle park districts);~~
- ~~(4) Districts described in article VI, division 5, of this chapter (community facilities districts);~~
- (2) ~~(5)~~ Commercial districts – CR, CM, and CO – described in §§ 34-645 through 34-647 article VI, division 6, of this chapter. (commercial districts);
- ~~(6) Districts described in article VI, division 7, of this chapter (marine-oriented districts);~~
- ~~(7) Districts described in article VI, division 8, of this chapter (industrial districts);~~

(b) **Setback from streets.** No accessory use, building, or structure shall be located closer to a street right-of-way line or street easement than the principal building, except for fences and wall as provided for in division 17, for garbage enclosures as provided for in division ____, and as provided for in division 30, subdivision III, of this article, or as set forth in this subsection.

- ~~(1) Accessory uses, buildings or structures in the RSC-1, RSC-2, RSA, RS, RM, TFC, TF and AG zoning districts may be closer to the street than the principal building as long as a minimum setback of 100 feet is maintained.~~
- (1) ~~(2)~~ Accessory uses, buildings, and structures may be located on through lots as follows. For purposes of this subsection only, secondary street is defined as the street opposite the street which provides principal vehicular access as determined by the prior development pattern of that block.
 - a. ~~On through lots with no dedicated buffer easement or residential project fence or wall, accessory uses, buildings, and structures may be placed closer to the secondary street than the principal building as long as the minimum setbacks for streets as set forth in division 30, subdivision III, of this article are maintained.~~
 - b. ~~On through lots with a dedicated buffer easement of ten feet or more (located on the property) and immediately adjacent to the secondary street, accessory uses;~~

~~buildings and structures shall not encroach into the easement.~~

~~c. On through lots with an abutting residential project fence or wall accessory use, buildings and structures shall be set back a minimum of five feet from the property line.~~

(2) ~~(3)~~ In the following cases, accessory uses, buildings, and structures may be closer to the street than the principal building, but shall not be closer than the minimum setbacks for streets as set forth in division 30, subdivision III, of this article.

~~a. Accessory uses, buildings, and structures in the RSC-2 zoning district.~~

~~b. Any lot in which the rear lot line abuts a body of water.~~

~~a. c.~~ Swimming pools, tennis courts, shuffleboard courts, and other similar recreational facilities accessory to a multiple-family ~~or townhouse~~ development, ~~or~~ a hotel/motel, ~~or a mobile home or recreational vehicle development,~~ provided that: ~~1.~~ they are part of a planned development or a site plan approved in accordance with ch. 10, ~~and~~

~~2.~~ They are aesthetically landscaped with ~~berming or buffering which is adequate to screen the use from the street so as to prevent it from being a traffic distraction.~~

~~d. Garages or carports for residential, commercial or industrial uses.~~

~~b. e.~~ Outdoor display of merchandise, where permitted, subject to the provisions of division 36 of this article, and ch. 30, pertaining to signs.

(c) **Setback from bodies of water.** No building or structure (except marine structures, docks and seawalls, which are subject to the setback requirements as set forth in ch. 26, article II) may be located closer to a bay, canal, or other body of water than the minimum setbacks required in § 34-2194 § 34-634(c)(3).

(d) **Setbacks from side and rear property lines.** Unless the side or rear property line abuts a body of water (see § 34-634(c) 2194), the following setbacks shall apply:

~~(1) Agricultural accessory buildings and structures. [deleted in its entirety]~~

(1) ~~(2)~~ **Residential accessory buildings and structures.** Except as provided in §§ 34-1175 and 34-1176, all accessory residential buildings and structures shall be set back a minimum of five feet from any side or rear property line, ~~and shall be no closer to a side property line than the minimum required side setback for the district in which the property is located, or ten feet, whichever is less.~~

(2) ~~(3)~~ **Commercial and industrial accessory buildings and structures.** All accessory buildings and structures for a principal commercial ~~or industrial~~ use shall be set back:

a. A minimum of five ~~ten~~ feet from rear and side lot lines when abutting a commercial ~~or industrial~~ zoning district; and

b. In accordance with the setback requirements for the district in which located or the minimum buffering requirements as set forth in ch. 10, whichever is greater, when abutting any district other than commercial ~~or industrial~~.

(e) Administrative setback variances. Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268.

(f) Prohibited locations. Nothing contained in this chapter shall be construed as permitting placement of any accessory building or structure within a utility or other easement prohibiting such building or structure, or closer to adjacent property than permitted by the minimum buffer requirements set forth in ch. 10, or closer to any other building than permitted by the town county building code.

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

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

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

(1) Dishes shall comply with the minimum maintain a ten-foot setback from all side and rear property lines setbacks for the zoning district in which located; and

- (2) Satellite dishes shall not be placed closer to the street right-of-way than the principal building, and
- ~~(3) The height of the dish shall not extend beyond the height of the principal structure on the same lot.~~

(b) ~~All commercial storage and display of satellite dishes shall meet the requirements of division 36 of this article.~~ **Amateur radio antenna/towers.**

- (1) Amateur radio antenna/towers up to 75 feet in height are permitted in all zoning districts provided that antenna/tower supports and peripheral anchors are located entirely within the boundaries of the property.
- (2) Amateur radio antenna/towers over 75 feet in height may be permitted by special exception in any zoning district.

Sec. 34-1176. Swimming pools, tennis courts, porches, decks and similar recreational facilities.

(a) **Applicability.** The regulations set out in this section apply to all swimming pools, tennis courts, shuffleboard courts, porches, decks, and other similar recreational facilities which are accessory to a permitted use, and which are not specifically regulated elsewhere in this chapter.

(b) **Location and setbacks.**

- (1) *Personal, private, and limited facilities.*
 - a. *Nonroofed facilities.* All swimming pools, tennis courts, decks, and other similar nonroofed accessory facilities shall comply with the following setback requirements:
 1. **Street setbacks as set forth in §§ 34-1174(b) and 34-2192.**
 2. Water setbacks as set forth in ~~§ 34-2194~~ § 34-634(c)(3).
 3. **Rear lot line setback as set forth in § 34-1174(d).**
 4. **Side lot line setbacks as set forth in § 34-1174(d).**
 - b. *Open-mesh screen enclosures.* Swimming pools, patios, decks, and other similar recreational facilities may be enclosed with an open-mesh screen enclosure provided that the enclosure complies with the setback requirements set forth in § 34-1174, and provided further that:

1. At least three sides of the enclosure are open-mesh screening from a height of 3 1/2 feet above grade to the top of the enclosure.
2. Enclosures with any two or more sides enclosed by opaque material shall be required to comply with all setbacks required for a principal building.

It shall be the responsibility of the applicant to increase all required setbacks sufficient to provide maintenance access around the pool whenever the pool is proposed to be enclosed with open-mesh screening or fencing. A minimum increase in setbacks of three feet is recommended.

- c. *Roofed open-mesh enclosures.* Open-mesh screen enclosures may be covered by a solid roof (impervious to weather) provided that:
 1. If structurally part of the principal building, the enclosure shall comply with all setback requirements for the principal building.
 2. Except when in compliance with the setback requirements for principal buildings, a solid roof over a screen enclosure shall be constructed as a flat roof with the pitch no greater than the minimum required for rain runoff.

- (2) *Commercial and public facilities.* All pools, tennis courts, and other similar recreational facilities owned or operated as a commercial or public establishment shall comply with the setback regulations for the zoning district in which located.

(c) **Fencing.**

- (1) *In-ground swimming pools, hot tubs, and spas.* Every swimming pool, hot tub, spa, or similar facility shall be enclosed by a fence, wall, screen enclosure or other structure, not less than four feet in height, constructed or installed so as to prevent unauthorized access to the pool by persons not residing on the property. For purposes of this subsection, the height of the structure shall be measured from the ground level outside of the area so enclosed. The enclosure may be permitted to contain gates, provided they are self-closing and self-latching.
- (2) *Aboveground swimming pools, hot tubs, and spas.* Aboveground pools, hot tubs, spas, and similar facilities shall fulfill either the

enclosure requirements for in-ground pools or shall be so constructed that the lowest entry point (other than a ladder or ramp) is a minimum of four feet above ground level. A ladder or ramp providing access shall be constructed or installed so as to prevent unauthorized use.

- (3) *Exception.* A spa, hot tub, or other similar facility which has a solid cover (not a floating blanket) which prevents access to the facility when not in use shall be permitted in lieu of fencing or enclosure requirements.
- (4) *Tennis courts.* Fences used to enclose tennis courts shall not exceed 12 feet in height above the playing surface.

(d) *Lighting.* Lighting used to illuminate a swimming pool, tennis court, or other recreational facility shall be directed away from adjacent properties and streets, and shall shine only on the subject site.

(e) *Commercial use.* No swimming pool, tennis court, or other recreational facility permitted as a residential accessory use shall be operated as a business.

Sec. 34-1177. Accessory apartments not requiring owner-occupancy on the premises.

~~(a) *Purpose.* The purpose of this section is to facilitate the provision of affordable housing or to strengthen the family unit or to provide increased opportunities for housing the elderly and persons with special needs.~~

(a) ~~(b)~~ *Applicability.* This section sets forth the requirements for accessory apartments, when subordinate to a single-family detached dwelling unit, with no requirement that the property owner live on the premises. If a property owner lives on the premises, an existing accessory apartment that does not meet the requirements of this section may be legal under the provisions of § 34-1178. The requirements of this section apply to accessory apartments whether they are listed as a permitted use or a use by **special exception**.

(b) ~~(c)~~ *Definition.* For purposes of this section, the term “accessory apartment” means a dwelling living unit, with or without cooking facilities, constructed subordinate to a single-family dwelling

unit ~~that could be made~~ and available for rent or lease.

~~(c)~~ ~~(d)~~ *Off-street parking.* In addition to the requirements of § 34-2020(1)a, one additional space shall be required for the accessory apartment, and all required parking must be provided on the site.

~~(d)~~ ~~(e)~~ *Maximum floor area; lot coverage; use.*

- (1) *Attached apartments.* If the accessory apartment is constructed as part of the principal building, the maximum floor area of the accessory apartment shall not exceed 50 percent of the floor area of the main dwelling unit.
- (2) *Detached apartments.* If the accessory apartment is not constructed as part of the main dwelling unit, the maximum floor area shall be 500 square feet or 50 percent of the floor area of the main dwelling unit, whichever is less.
- (3) *Lot coverage.* In no event shall the maximum lot coverage permitted for the zoning district in which the property is located be exceeded.
- (4) *Use.* The accessory apartment shall be limited to one family, as defined in this chapter.

~~(e)~~ ~~(f)~~ *Minimum lot size.* An accessory apartment may be permitted on a lawfully existing lot of record which conforms to the minimum lot size of the district in which it is located. However, in no case shall the lot area be less than 6,000 square feet.

~~(f)~~ ~~(g)~~ *Garage conversions.*

- (1) *Attached garages.* An attached garage may be converted to an accessory apartment.
- (2) *Detached garages.* A detached garage may be converted to an accessory apartment provided that the garage is not closer to the street right-of-way or easement than the principal dwelling unit. In no instance shall the conversion be permitted where the garage encroaches in the front setback.
- (3) *Loss of parking.* The minimum number of parking spaces shall be maintained after the conversion of an attached or detached garage.

~~(g)~~ ~~(h)~~ *Appearance.* The entrance to the accessory apartment, when constructed as part of the principal residence, should be designed in such a manner as to retain the appearance of a single-family residence.

(h) ~~(i)~~ **Density.** ~~(i)~~ An accessory apartment, for the purposes of this section density, is termed a dwelling unit and the resulting density must comply in accordance with the Fort Myers Beach Comprehensive Zoning Plan.

~~(2) For the purposes of establishing eligibility for bonus densities, an accessory apartment shall be considered an affordable unit.~~

Sec. 34-1178. Accessory apartments in owner-occupied homes.

(a) **Purpose.** The purpose of this section is to recognize and legalize certain existing accessory apartments where the immediate presence of a property owner is presumed to mitigate any negative effects that might result from the use or rental of such apartments.

(b) **Applicability.** This section sets forth special requirements for a single accessory apartment in an owner-occupied home. The requirements of this section are applicable in any zoning district that allows residential uses without regard to the zoning district limitations provided in Table 34-694. Nothing in this section authorizes or legalizes any construction that is not allowed by the flood-hazard regulations found in Sec. 6-401 through 6-475 of this code.

(c) **Definition.** For purposes of this section, the term “accessory apartment” means a single **living unit** no larger than 850 square feet, with or without cooking facilities, that is in existence as of December 15, 1997. For such an accessory apartment to remain lawful under this section, the property owner or an immediate family member must be in residence on the premises, or on an immediately adjoining lot, during any period when the apartment is not vacant.

(d) **Density.** An accessory apartment that meets the requirements of this section is not termed a dwelling unit as defined by the Fort Myers Beach Comprehensive Zoning Plan.

Sec. 34-1179. Commercial fishing equipment storage as accessory use to residence in Greater Pine Island area. *[deleted in its entirety]*

Sec. 34-1179. Trucks and commercial vehicles in residentially zoned districts.

Except for daytime deliveries or service calls, the following types of trucks or commercial vehicles may not be parked or stored on any lot in a conventional or redevelopment zoning district. Planned development zoning districts may allow the parking of these trucks if explicitly permitted by its zoning resolution:

- (1) A tractor-trailer or semi-trailer truck; or
- (2) A truck with two or more rear axles; or
- (3) A truck with a gross vehicle weight rating (GVWR) in excess of 12,000 pounds; or
- (4) Any truck and trailer combination resulting in a combined gross vehicle weight rating (GVWR) in excess of 12,000 pounds.

Sec. 34-1180. Additional dwelling unit on lot in agricultural districts. *[deleted in its entirety]*

Secs. 34-1180--34-1200. Reserved.

DIVISION 3. ADULT ENTERTAINMENT, ADULT BOOKSTORES AND MASSAGE PARLORS SEXUALLY-ORIENTED BUSINESSES

Sec. 34-1201. Applicability of division.

This division shall apply to all sexually-oriented businesses (as defined in the Fort Myers Beach Sexually Oriented Businesses Regulation Ordinance, Ord. 96-04), zoning districts wherein bookstores, entertainment or massage parlors would be permitted by right or by special exception.

Sec. 34-1202. Definitions.

Sexually-oriented business means a sexually-oriented business as defined in the Fort Myers Beach Sexually Oriented Businesses Regulation Ordinance, Ord. 96-04.

[previous definitions deleted in their entirety]

Sec. 34-1203. Purpose of division.

The purpose of this division is to provide reasonable regulations to alleviate the adverse effects of sexually-oriented businesses adult bookstores, adult exhibitions and massage parlors on adjacent and nearby uses of land.

Sec. 34-1204. Prohibited locations.

(a) No use of land for purposes governed by this division shall be located closer than 1,000 feet, measured on a straight line, from:

(a) The closest wall of any building containing a similar use; or

(b) ~~No use of land for purposes governed by this division shall be located closer than 1,000 feet, measured on a straight line, from Any district which allows residential uses; or~~

(c) ~~No use of land for purposes governed by this division shall be located closer than 1,000 feet, measured on a straight line, from Any hotel, motel, restaurant, school (noncommercial), day care center (child), park, playground, place of worship, religious facility, public recreation facility, cultural center, rooming house, boarding house or hospital.~~

Secs. 34-1205--34-1230. Reserved.

**DIVISION 4. RESERVED
AIRCRAFT LANDING
FACILITIES, PRIVATE
[deleted in its entirety]**

Secs. 34-1231--34-1260. Reserved.

DIVISION 5. ALCOHOLIC BEVERAGES

Sec. 34-1261. Definitions.

For purposes of this division and when referred to elsewhere in this chapter, certain terms or phrases shall have the following meaning:

Alcoholic beverage means distilled spirits and all beverages, other than medicine, intended for human consumption and containing one-half of one percent or more alcohol by volume.

Beer, wine, and liquor have the same meanings as provided in F.S. chs. 563, 564 and 565, respectively.

Bottle club means a business establishment providing facilities for the consumption of alcoholic beverages by its patrons on the premises but not licensed to sell alcoholic beverages, without regard as to whether the patrons are required to be members of the bottle club. Nonalcoholic mixers or so-called set-ups may be provided by the club. A

bottle club does not include a social, fraternal, or civic association or organization which only occasionally or intermittently provides facilities for on-premises consumption of alcoholic beverages by its members and their guests and is not licensed to sell alcoholic beverages.

Full course meals means items on a menu at a restaurant which include soups and salads, main dishes with side orders, and desserts.

Kitchen, commercial means a facility used for the preparation of food which is sold to the public and that is subject to state and local health department inspections.

Liquor license means a license issued by the state for the retail sale, service, and consumption of liquor.

Noise means sound or vibrations which are defined as either noise or noise disturbance in the town's county noise ordinance, Ordinance No. 96-24, 82-32, as amended by Ordinance No. 83-22, and as subsequently amended.

Package sales means alcoholic beverages that are sold only in containers sealed by the manufacturer and which are sold for consumption off the licensed premises of the business establishment.

Park, only when used in this division, means a park facility which is owned, leased, or operated by a governmental agency. It does not include beach access strips.

Sale of, only when used in this division, includes the term "or service."

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

Sec. 34-1262. Compliance with applicable regulations.

No structure, building, establishment, or premises shall be occupied, used, or maintained for the purpose of the retail sale, service, or consumption of alcoholic beverages except in conformity with all applicable town county regulations, including this chapter, and with the applicable state regulations.

Sec. 34-1263. Sale for off-premises consumption.

(a) Package stores which have only a 1-APS state liquor license are exempt from this section, except for subsection (c) of this section.

(b) The sale of alcoholic beverages for consumption off the premises shall be allowed as a permitted use as follows, provided that the regulations set forth in subsection (c) of this section are met:

- (1) In any zoning district wherein package stores are listed as a permitted use, only when the establishment is licensed only as a package store; and
- (2) In any retail sales establishment wherein the sale of alcoholic beverages for consumption off-site is clearly incidental to other retail sales commodities, such as in a grocery store, supermarket, or drugstore, and limited to PS series liquor licenses.

(c) Only alcoholic beverages in original factory-sealed containers shall be permitted to be sold.

(d) In addition to the requirements of subsections (a) through (c) of this section, any establishment primarily engaged in the sale of alcoholic beverages for consumption off-site shall also be required to comply with all applicable state liquor laws and § 1 of Ordinance No. 76-9 of the county.

(e) No package store or other establishment primarily engaged in the retail sale of liquor for consumption off-site shall be permitted closer than 500 feet to any religious facility, school (noncommercial), day care center (child), park, or dwelling unit, or 500 feet from any other establishment primarily engaged in the sale of alcoholic beverages.

- (1) For purposes of this subsection, the distance shall be measured in a straight line from any public entrance or exit of the establishment to the nearest property line of the religious facility, school (noncommercial), day care center (child), park, or dwelling unit, or any public entrance or exit of any other establishment primarily engaged in the sale of alcoholic beverages.
- (2) Where an establishment for the sale of alcoholic beverages is located in conformity with the provisions of this subsection, and a religious facility, school (noncommercial),

day care center (child), park, or dwelling unit is subsequently established in the proximity of such existing establishment, then the separation requirements shall not apply.

- (3) Notwithstanding subsection (e)(1) of this section, where a package store is located in a shopping center which is 25,000 square feet or greater in size, the separation requirements from any dwelling unit shall not apply.
- (4) In any PD, planned development, where the applicant is contemplating the sale of alcoholic beverages for consumption off the premises in an establishment which cannot meet the distance requirements set forth in subsection (e) of this section, the applicant shall request a deviation from the requirements of subsection (e).

Sec. 34-1264. Sale or service for on-premises consumption.

(a) *Approval required.* The sale or service of alcoholic beverages for consumption on the premises shall not be permitted until such location has been approved by the town ~~county~~ as follows:

- (1) *Administrative approval.* The director ~~of the department of community development~~ may ~~shall~~ administratively approve the sale or service of alcoholic beverages for consumption on the premises when in conjunction with the following uses if the proposed use satisfies the requirements ~~otherwise~~ set forth in this division. When circumstances so warrant the director may ~~shall~~ determine that administrative approval is not the appropriate action and that the applicant must instead apply for approval as a special exception ~~permit~~. Such circumstances may include the previous denial ~~by the director or by a hearing board~~ of a similar use at that location, the record of public opposition to a similar use at that location, and similar circumstances. When the director has approved a request for consumption on the premises at a location where the actual building has not been constructed, the director shall not, ~~within one year's time,~~ approve another request for consumption on the premises ~~within one year's time,~~ which could potentially violate the distance requirements. If the first building is completed within less than ~~the~~ one year timeframe, and it can be shown ~~is~~ physically

~~demonstrable that~~ the second use would not violate the prescribed distance requirements, ~~then~~ the director may approve the second location subject to all other requirements contained in this division.

- ~~a. County-owned airports, including liquor, beer, malt liquor and wine in restaurants, bars, lounges, concessions, concession stands and package stores at county-owned airports;~~
- a. ~~b. Bars, or cocktail lounges, or night clubs~~ located in commercial ~~and industrial zoning districts which permit bars, or cocktail lounges, or night clubs,~~ provided the standards set forth in subsections (b)(1) and (3) of this section are met;
- ~~c. Bottle clubs in commercial and industrial zoning districts which permit bars or cocktail lounges, provided the standards set forth in subsections (b)(1) and (3) of this section are met;~~
- b. ~~d. Bowling alleys,~~ provided the standards set forth in subsections (b)(2)a and (b)(3) of this section are met;
- c. Charter, party fishing boat, or cruise ship, provided the standards of section (b)(3) are met. The COP approval is specific to the charter, party fishing boat, or cruise ship operating from a specific location and does not run with the land nor is it transferable.
- d. ~~e. Clubs and fraternal or membership organizations located in commercial and industrial zoning districts, where permitted, provided the standards set forth in subsections (b)(2)f and (b)(3) of this section are met;~~
- e. ~~f. Cocktail lounges in golf course, tennis clubs, or indoor racquetball clubs, provided the standards set forth in subsections (b)(2)d and e and (b)(3) of this section are met;~~
- f. ~~g. Hotels/motels, provided the standards set forth in subsections (b)(2)c and (b)(3) of this section are met; and~~
- g. ~~h. Restaurants groups II, III and IV, and restaurants with brew pub license requirements, provided the standards set forth in subsections (b)(2)b and (b)(3) of this section are met.~~

(2) *Special exception permit.*

- a. A special exception permit for consumption on the premises shall be required for:
 - 1. Any establishment not covered by subsection (a)(1) of this section; or
 - 2. Any establishment which provides outdoor seating areas for its patrons consuming alcoholic beverages; except that a **group II, III, or IV restaurant** may have outdoor seating approved administratively provided the outdoor seating area is not within 500 feet of a religious facility, school (noncommercial), day care center (child), park, or dwelling unit under separate ownership.
 - b. The burden of proof that the granting of the special exception permit will not have any adverse effect on surrounding properties ~~shall lie~~ with the applicant.
 - c. A single special exception permit for consumption on the premises for a shopping center in a conventional zoning district shall be sufficient to permit consumption on the premises in every restaurant which exists or may be established within the shopping center.
- (3) *Planned developments ~~and planned unit developments~~.*
- a. No administrative approval is necessary where an individual establishment or other facility proposing consumption on the premises is explicitly designated on the master concept plan and is included on the schedule of uses.
 - b. If consumption on the premises is shown as a permitted use on the approved schedule of uses for a shopping center, no administrative approval for consumption on the premises shall be required for restaurants within the shopping center.
 - c. Consumption on the premises ~~shall not be permitted~~ for other uses within planned developments ~~and planned unit developments~~ require without an administrative approval or a special exception permit.

(b) **Location; parking.**

(1) **Prohibited locations.**

a. Except as may be exempted in subsections (a)(1) of this section or as exempted in subsection (b)(2) of this section, no establishment for the sale or service of alcoholic beverages for consumption on the premises shall be located within 500 feet of:

1. ~~Five hundred feet of any~~ A religious facility, school (noncommercial), day care center (child), or park;
2. ~~Five hundred feet of A~~ dwelling unit under separate ownership, except when approved as part of a planned development; or
3. ~~Five hundred feet of any~~ Another establishment primarily engaged in the sale of alcoholic beverages for consumption on the premises, excluding those uses listed under subsection (b)(2) of this section.

Distance shall be measured from any public entrance or exit of the establishment in a straight line to the nearest property line of the religious facility, school (noncommercial), day care center (child), dwelling unit, or park, or to the closest public entrance or exit of any other establishment primarily engaged in the sale of alcoholic beverages.

b. Where an establishment for the sale of alcoholic beverages is located in conformity with the provisions of this subsection, and a religious facility, school (noncommercial), day care center (child), park or dwelling unit is subsequently established in the proximity of such existing establishment, then the separation requirements shall not apply.

(2) **Exceptions to location standards.** Exceptions to location standards are as follows:

~~a. *Bowling alleys* [deleted in its entirety]~~

~~a. *Restaurants groups II, III and IV,*~~ provided that:

1. The restaurant is in full compliance with state requirements;
2. The restaurant serves cooked, full-course meals, prepared daily on the premises; and
3. Only a service bar is used and the sale or service of alcoholic beverages is

only to patrons ordering being served meals, or, if the restaurant contains a cocktail lounge for patrons waiting to be seated at dining tables, the lounge shall be ~~so~~ located so that there is no indication from the outside of the structure that the cocktail lounge is within the building.

4. The other requirements of § 34-1264(k) shall be met.

~~b. *Hotels/motels (4-COP-S license only);* ; provided that nightclubs, cabarets, cocktail lounges or bars shall be located within the hotel or motel and under the same roof, which contains at least 100 guestrooms under the same roof, and provided further that the exterior of any such building shall not have storefronts or give the appearance of commercial or mercantile activity as viewed from the highways.~~

1. The hotel/motel contains at least 100 guest rooms under the same roof and that nightclubs, cocktail lounges, or bars are located within the hotel or motel and under the same roof; and

2. The exterior of the building must not have storefronts or give the appearance of commercial or mercantile activity visible from the street.

If the use contains windows visible which ~~may be seen~~ from the street highway, the windows shall be of fixed, obscure glass. Access to the ~~Such~~ nightclub, cocktail lounge, or bar must ~~or cabaret shall be entered only through the lobby, and no~~ Additional entrances are not ~~shall be~~ permitted unless the. ~~An~~ additional entrance or door ~~shall be permitted when the entrance or door opens into an~~ enclosed courtyard or patio (away from the street side) which is enclosed and which is not ~~The additional entrance may not be visible from the street.~~ A fire door or exit shall be permitted, provided that the door or exit is equipped with panic type hardware ~~and locks~~ and is maintained in a locked position except in an emergency.

~~c. *Golf course clubhouses (11-C (golf club) license only),*~~ provided that:

1. The golf course consists of at least nine holes; with a clubhouse, locker

- rooms, and attendant golf facilities, and comprises in all at least 35 acres of land.
2. Failure of such club to maintain the golf course, clubhouse, and golf facilities shall automatically terminate the privilege of the cocktail lounge and sale of beer from the refreshment stands.
- ~~e. Tennis clubs and indoor racquetball clubs [deleted in its entirety]~~
- d. f. Clubs and fraternal or membership organizations (H-C license only), provided that:
1. such club or organization conforms to all the requirements of a ~~private club as stated in~~ F.S. ch. 561 and other applicable state laws, and
 2. ~~providing that~~ there are no signs of ~~any type exhibited or displayed or other indications visible that can be seen~~ from the exterior of the clubhouse, building, or structure that alcoholic beverages are served.
- ~~Before a certificate of use and occupancy to serve alcoholic beverages will be issued, the applicant must submit necessary data to prove that it is eligible for the use and complies with F.S. ch. 561 or other applicable state laws; provided, anything to the contrary notwithstanding. These requirements must be complied with, even though the club intends to serve only beer or wine.~~
- (3) **Parking.** Restaurants providing alcoholic beverages for consumption on the premises must comply with the parking requirements set forth in § 34-2020(2)l. Any bar or cocktail lounge must provide parking in accordance with § 34-2020(2)e. All other uses must meet the parking requirements of the principal use.
- (c) **Procedure for approval.**
- (1) **Administrative approval.**
- a. *Application.* An applicant for a consumption on the premises permit shall submit, ~~on a form provided by the county,~~ the following information on a form provided by the town:
 1. The name, address, and telephone number of the applicant.
 2. The name, address, and telephone number of the owner of the premises, if not the applicant.
 3. A notarized authorization from the property owner to apply for the permit.
 4. Location by STRAP and street address.
 5. Type of state liquor license being requested.
 6. A site plan, drawn to scale, showing:
 - i. The property in question, including all buildings on the property and adjacent property;
 - ii. Entrances to and exits from the building to be used by the public;
 - iii. A parking plan, including entrances and exits;
 - iv. The floor area of the building and proposed seating capacity. If a restaurant is proposing a bar or lounge for patrons waiting to be seated in the restaurant, the floor area and seating area of the lounge shall be shown in addition to the restaurant seating area.
 7. A town county map marked to indicate all of the property within 500 feet of the building to be used for consumption on the premises.
 8. An notarized affidavit executed by the applicant indicating that no religious facilities, day care centers (child), noncommercial schools, dwelling units or parks are located within 500 feet of the building to be used.
 - b. ~~Additional requirements for bottle clubs: Any owner, lessee or tenant seeking approval for consumption on the premises for a bottle club must include the information listed in this subsection in addition to the information listed in subsection (c)(1)a of this section. If the applicant is a corporation, partnership or association, all officers, partners or principals shall supply such information:~~
 - ~~1. Characterization of the type of ownership of the business, i.e., whether individual, partnership, corporation or otherwise, and the names and addresses of any and all co-owners.~~

~~2. An affidavit stating the full history of any criminal convictions of the applicant.~~

e. *Findings by director.* Prior to approving a permit approval, the director shall ~~conclude~~ ascertain that all applicable standards have been met. In addition, the director shall make the following findings of fact:

1. There will be no apparent deleterious effect ~~of such use~~ upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises.
2. The premises are suitable in regard to their location, site characteristics, and intended purpose. Lighting ~~on the permitted premises shall~~ must be shuttered and shielded from surrounding properties.

(2) ***Special exception permit***

- a. Applications for special exceptions permits shall be submitted on forms supplied by the town county and shall contain the same information as required for administrative approval.
- b. Advertisements and public hearings shall be conducted in accordance with the requirements set forth in article II of this chapter.

(d) ***Temporary one-day permit.***

- (1) *Intent; applicability.* It is the intent of this subsection to require that nonprofit and for-profit organizations and establishments in the unincorporated area of the town county obtain a one-day temporary alcoholic beverage permit for the sale of alcoholic beverages at the specific location where an event is held. This subsection will pertain to but not necessarily be limited to the following uses:
- a. Grand openings or open houses at residential; ~~or commercial or industrial~~ developments;
 - b. Special outdoor holiday or celebration events at bars and restaurants ~~which are or are not already special permitted~~;
 - c. Weddings and other special occasions at clubhouses;
 - d. Political rallies or events;

- e. Block parties; and
- f. Carnivals.

Only twelve temporary alcoholic beverage permits may be issued per year to a specific location. If more than twelve permits are sought per year for a specific location, then the location must obtain a permanent alcoholic beverage special exception permit. If the event for which the temporary alcoholic beverage permit is sought continues for longer than one day, the applicant may petition the director for an extended permit. A temporary alcoholic beverage permit may not be issued for more than three days.

(2) ***Procedure for approval.***

- a. Any owner, lessee, or tenant seeking approval for consumption on the premises for a temporary alcoholic beverage permit, must submit a written request to the director department of community development. The written request must include:
 1. The name and address of the applicant;
 2. A general description of the exact site where alcoholic beverages are to be sold and consumed;
 3. The type of alcoholic beverages to be sold and consumed; and
 4. ~~The payment of~~ A fee in accordance with the adopted fee schedule.
- b. The director will make a final decision within ten working days. The decision will be in the form of approval, approval with conditions or denial. The director may forward the request to other appropriate agencies for comment.
- c. The town council Board of County Commissioners will review all requests for temporary alcoholic beverage permits where an event will run longer than three days. Under no circumstances will a temporary alcoholic beverage permit be issued for more than ten days.

(e) ***Expiration of approval.*** After the following time periods, the administrative or special exception permit approval of a location for the sale and consumption of alcoholic beverages for consumption on the premises granted in accordance with pursuant to this section shall expire after the following periods of time, and shall thereafter become null and void:

- (1) In the case of an existing structure, the approval shall expire six months from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. For purposes of this subsection, the term “operation” shall be defined as the sale of alcoholic beverages in the normal course of business.
- (2) In the case of a new structure, the approval shall expire one year from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. ~~However, if substantial construction is completed,~~ The director may grant one extension of up to six months if construction is substantially complete.

(f) **Transfer of permit.** Alcoholic beverage permits, ~~as noted in subsection 34-1264(i) excluding permits for bottle clubs,~~ issued by virtue of this section ~~are shall be deemed to be~~ a privilege running with the land. ~~The Sale of the real property which has been granted an alcoholic beverage permit shall automatically vest the purchaser thereof with all rights and obligations originally granted to or imposed on the applicant. Such privilege may not be separated from the fee simple interest in the realty.~~

(g) **Expansion of area designated for permit.** The area designated for an alcoholic beverage permit cannot be expanded without filing a new application for an alcoholic beverage permit in accordance with the requirements contained in this chapter. The new application must cover both the existing designated area as well as the proposed expanded area. All areas approved must be under the same alcoholic beverage permit and subject to uniform rules and regulations.

(h) **Nonconforming establishments.**

- (1) **Expansion.** A legally existing establishment engaged in the sale or service of alcoholic beverages which is made nonconforming by reason of new ~~the~~ regulations contained in this chapter ~~section~~ shall not be expanded without a special exception ~~permit~~. The term “expansion,” as used in this subsection, shall include the enlargement of space for such use and uses incidental thereto, the expansion of a beer and wine bar to include intoxicating liquor, as that term is defined by the Florida Statutes, and the expansion of a bar use to a

nightclub use. Nothing in this subsection; ~~however, shall be deemed~~ may be construed as an attempt to modify any prohibition or ~~diminish~~ make less restrictive any requirement of the laws of the state.

- (2) **Abandonment.** An establishment engaged in the sale or service of alcoholic beverages ~~Any uses, created and established in a legal manner, which~~ may thereafter become a nonconforming; use due to a change in regulations, as provided in § 34-3242. Nonconforming uses may continue until there is an abandonment of the permitted location for a continuous nine- ~~six-~~ month period. For purposes of this subsection, the term “abandonment” shall mean failure to use the location for consumption on the premises purposes as authorized by the special exception, permit or administrative approval, or other approval. Once a nonconforming use is abandoned, it cannot be reestablished unless it ~~can~~ conforms to the requirements of this chapter; and ~~such use may be reestablished only after issuance of new permits are issued.~~

(i) **Revocation of permit or approval.**

- (1) The town council ~~Board of County Commissioners~~ has the authority to revoke an alcoholic beverage special exception, permit or administrative approval, or other approval upon any of the following grounds:
 - a. A determination that an application for special exception permit or administrative approval contains knowingly false or misleading information.
 - b. Violation by the permit holder of any provision of this chapter, or violation of any state statute which results in the revocation of the permit holder’s state alcoholic beverage license by the state alcoholic beverage license board or any successor regulatory authority.
 - c. Repeated violation of any town county ordinance at the location within the 12-month period preceding the revocation hearing.
 - d. Failure to renew a state liquor license, or written declaration of abandonment by the tenant and owner of the premises if under lease, or by the owner himself if not under lease.

- e. Abandonment of the premises. An establishment which continually maintains (renews) its state liquor license, even though it has suspended active business with the public, shall not be deemed to have been abandoned for purposes of this subsection.
 - f. Violation by the permit holder of any condition imposed upon the issuance of the special exception or administrative approval permit.
 - g. Violation of any of the minimum standards of the special exception permit.
- (2) Prior to revoking an administrative approval, ~~or special exception, or other approval permit~~ for alcoholic beverages, the town council ~~Board of County Commissioners~~ shall conduct a public hearing at which the permit holder may appear and present evidence and testimony concerning the proposed revocation. At the hearing, the town council ~~board~~ may revoke the permit if a violation described in this subsection is established by a preponderance of the evidence. The permit holder shall be notified of the grounds upon which revocation is sought prior to any hearing, and shall be given notice of the time and place of the hearing in the same manner as set forth in article II of this chapter.
- (3) When an alcoholic beverage permit is revoked in accordance with ~~pursuant to~~ the terms of this subsection, ~~no the town may not consider~~ a petition requesting an alcoholic beverage permit ~~shall be considered by the county for~~ on the property for a period of 12 months from the date of final action on the revocation.
- (4) Upon written demand of the town council, any owner or operator of an establishment with a COP license ~~shall, upon written demand of the Board of County Commissioners, must make,~~ under oath, a statement itemizing the ~~what~~ percentage of his gross receipts that are from the sale of alcoholic beverages. Failure to comply with such demand within 60 days of the date of demand shall be grounds for revocation of the special exception, administrative approval, or other approval permit.
- (j) **Appeals.** All appeals of decisions by the director shall be in accordance with ~~pursuant to~~

procedures set forth in article II or article IV of this chapter for appeals of administrative decisions.

(k) **Alcoholic beverages in restaurants.** The sale of alcoholic beverages for on-premises consumption in restaurants (see § 34-1264(b)(2)) must conform to the following regulations:

- (1) The sale of alcoholic beverages must be incidental to the sale of food, and restaurants permitted to serve alcohol shall provide that food service facilities will remain open serving appropriate food items on the menu at all times coincident with the sale of alcoholic beverages.
- (2) The sale of alcoholic beverages shall be permitted only when it accounts for no more than 49% of the combined gross sales attributable to the sale of food and all beverages during any continuous twelve-month period.
- (3) Restaurants selling alcoholic beverages shall keep separate books and records reflecting the gross sales of food and nonalcoholic beverages and the gross sales of alcoholic beverages for each month. The failure to keep the books and records required herein shall be a violation of this code.
- (4) The Town Manager or designee may, during normal working hours, request to inspect and audit the books and records of the business from which alcoholic beverages sales are made wholly for the purpose of verifying that the gross sales of alcoholic beverages are no more than 49% of the gross sales of food and all beverages during any continuous twelve-month period. Refusal of an owner or operator of such business to allow said inspection shall be a violation of this code. Should the audit reveal that this requirement is not being met, the Town Manager shall initiate enforcement proceedings for a violation of this code.
- (5) For any restaurant which has been selling alcoholic beverages for less than twelve months, the provisions of this section shall be interpreted and applied with respect to said lesser period of time.
- (6) These regulations may be enforced through the normal code enforcement procedures in § 1-5 of this code. In addition to these procedures, violations of these regulations may be restricted by injunction initiated by the Town of Fort Myers Beach, by any

citizen thereof, or by any person affected by the violation of such regulations.

Secs. 34-1265--34-1290. Reserved.

DIVISION 6. ANIMALS

Sec. 34-1291. Keeping of animals. ~~Applicability of division:~~

The keeping, raising, or breeding of ~~horses and other~~ any livestock, including poultry, ~~of all kinds~~ usually and customarily considered as farm animals, and the keeping, raising, or breeding of reptiles, marine life, or animals not indigenous to the state, shall not be permitted ~~only as set forth in this division~~. This shall not be interpreted as applying to pet stores or hobbyists keeping aquariums or domestic tropical birds in their own homes.

~~**Sec. 34-1292. Horses and other equines.** [deleted in its entirety]~~

~~**Sec. 34-1293. Goats, sheep and swine.** [deleted in its entirety]~~

~~**Sec. 34-1294. Noncommercial poultry raising.** [deleted in its entirety]~~

~~**Sec. 34-1295. Dairy barns; commercial poultry raising.** [deleted in its entirety]~~

~~**Sec. 34-1296. Other setbacks; exceptions to setback requirements.** [deleted in its entirety]~~

~~**Sec. 34-1297. Activities requiring special approval.** [deleted in its entirety]~~

Secs. 34-1298--34-1320. Reserved.

DIVISION 7. ANIMAL CLINICS AND FACILITIES

Sec. 34-1321. Permitted activities.

Kennels, animal clinics, and boarding facilities are limited to the raising, breeding, treating, boarding, training, grooming, and sale of domestic animals.

Sec. 34-1322. Enclosure of facilities.

~~(a) Except as specifically provided in this division,~~ All animal clinics, animal kennels, and boarding facilities shall be completely enclosed within an air conditioned, soundproof building and shall have no outdoor cages, pens, runs, or exercise facilities.

~~(b) (1) *Completely enclosed facilities.*~~ Any animal clinic, kennel, or boarding facility permitted by right or by **special exception**, as specified in the zoning district regulations, shall be required to meet the minimum lot size and setback requirements for the zoning district in which located.

~~(2) *Facilities not completely enclosed.* [deleted in its entirety]~~

Secs. 34-1323--34-1350. Reserved.

DIVISION 8. AUTOMOTIVE BUSINESSES; DISPLAY, RENTAL, REPAIR, OR STORAGE OF VEHICLES OR EQUIPMENT

Sec. 34-1351. Automotive repair and service.

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

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

Sec. 34-1352. Display, sale, rental, or storage facilities for motor vehicles, boats, or recreational vehicles, trailers, mobile homes ~~or equipment.~~

(a) *Applicability.* This section applies to all establishments engaged in the outdoor display, sale, rental, or storage of motor vehicles, boats, or recreational vehicles, trailers, mobile homes, construction or farm equipment, or other similar items; **except water-oriented rental establishments outdoors, regulated by § 34-3151.**

~~(b) *Prohibited uses.*~~

~~(1) Except as provided in this section,~~ No units shall be used as sales offices or storage space.

Any sales office or storage space, other than for the units, shall be in a conventional building.

~~(2) A mobile home may be used as an office for sales of mobile home lots or units which are located within the mobile home development only.~~

(c) *Setbacks.*

- (1) All buildings and structures shall comply with the setback requirements for the zoning district in which the use is located.
- (2) All items covered by this section which are displayed or offered for sale or rent shall be set back a minimum of ten feet from any property line, unless ch. 10 sets forth a different setback, in which case the greater setback will apply.

(d) *Display and parking areas.*

- (1) No parking space or loading zone required by the parking regulations set forth in this chapter shall be used for the display of merchandise or parking of rental vehicles.
- (2) Areas used for display may be grass or other surface, provided it is maintained in a sightly, dustfree manner.

(e) *Storage areas.* Areas used for the commercial storage of motor vehicles, boats, trailers, or recreational vehicles, mobile homes and construction or farm equipment which is not being displayed for sale or rent shall be enclosed (see division 36 of this article).

(f) *Lighting.* Artificial lighting used to illuminate the premises shall be directed away from adjacent properties and streets, shining only on the subject site.

Secs. 34-1353--34-1380. Reserved.

DIVISION 9. BUS DEPOTS, STATIONS AND TRANSIT TERMINALS*

~~*Cross-reference(s)--Design standards for public transit, § 10-441 et seq.~~

Sec. 34-1381. Purpose of division.

The purpose of this division is to set forth standards and criteria for the safe and efficient development of transit bus stations/depots and bus terminals whereby they may be permitted by right or special exception. A central transit terminal is encouraged by the Fort Myers Beach Comprehensive Plan to connect local trolleys and taxis with an airport shuttle service.

Sec. 34-1382. Site plan.

All applications for a ~~special exception or change of use for a bus station/depot or bus~~ transit terminal shall include a site plan, drawn to scale, indicating but not limited to following:

- (1) The location of the bus stalls.
- (2) Commuter parking, if provided.
- (3) Taxi waiting stalls.
- (4) Circulation pattern of the buses including within and through the parking lot.
- ~~(5) Bus ingress and egress points to or from the parking lot.~~
- ~~(5) (6) The location of the~~ any building housing the bus station/depot or bus terminal and the area designated for a waiting area, to include the storage and handling of luggage and parcels.

Sec. 34-1383. Access.

~~(a) The site plan shall be designed so that the location of ingress and egress points and turning radii are adequate for the anticipated vehicles, and the turning radii for buses are in accordance with the design standards as depicted in the latest edition of the publication of the American Association of State Highway and Transportation Officials (AASHTO), A Policy on Geometric Design of Highways and Streets, in order to provide safe and efficient maneuverability.~~

~~(b) All buses exiting a parking lot must enter the street right-of-way in a forward motion.~~

(c) The site plan shall ensure safe and adequate access to collector or arterial streets.

Sec. 34-1384. Parking generally.

(a) ~~Off-street Parking.~~ The parking for a bus station/depot or bus transit terminal where the loading and unloading of passengers, luggage, or parcels may occur shall meet the following minimum requirements:

- ~~(1) One parking space, excluding parking space for buses, shall be required per 100 square feet of total floor area dedicated to passenger waiting area, and one space shall be required per 1,000 square feet of total floor area dedicated to ticket sales or baggage or parcel handling areas.~~
- ~~(1) (2) Parking spaces shall be required for all buses using the site. A minimum of one bus parking space shall be required for each bus carrier using the facility. If arrival and departure times run concurrently, then additional parking must be provided to ensure that each bus has a separate parking space.~~
- ~~(2) (3) The parking spaces for each bus stall shall be designated by signage and pavement markings and:~~
- ~~(4) Each bus parking stall shall be a minimum of 12 feet by 50 feet in size for parallel or diagonal parking.~~
- ~~(5) All required parking shall have a paved, dustfree, all-weather surface.~~
- ~~(3) (6) For every 12 daily scheduled bus arrivals and departures, or a portion thereof, at locations where passengers may disembark, one parking space for taxicabs and one parking space for commuters shall be required.~~

(b) *On-street parking.* In some instances, it may be appropriate for a bus station/depot to have the buses parked within an adjacent road right-of-way. In all such instances, the location of the bus turnout, proximity to the bus station/depot and how the bus will enter and exit the turnout must be shown on the site plan.

Sec. 34-1385. Parking for bus terminals. *[deleted in its entirety]*

Sec. 34-1386. Modification of parking requirements. *[deleted in its entirety]*

Sec. 34-1387. Expansion of existing bus station/depot. *[deleted in its entirety]*

Secs. 34-1385--34-1410. Reserved.

**DIVISION 10.
CARE AND ASSISTED LIVING FACILITIES
AND CENTERS**

Sec. 34-1411. Adult congregate living facilities Assisted living facilities.

(a) *Location.* Adult congregate Assisted living facilities (ACLF's), having 49 beds or less, may be located in zoning districts by right or by special exception, as specified in the district use regulations, but provided that they are shall be subject to the maximum density ranges for the land use category applicable to the subject property, with density shall be calculated in accordance with §§ 34-1415, 91 through 1495 division 12, subdivision H, of this article. Facilities with 50 or more beds are permissible in RPD or CPD districts when approved as part of the master concept plan.

(b) *Design.*

- ~~(1) An adult congregate assisted living facility permitted in a zoning district which permits only single-family residences shall must be designed so as to appear as, and be compatible with, adjacent residential buildings. a single-family residence.~~
- ~~(2) An adult congregate living facility permitted in a zoning district which permits only single-family, two-family attached or duplex dwelling units shall be designed so as to be compatible with such dwelling units.~~
- ~~(3) An adult congregate living facility permitted in a multiple-family zoning district shall be designed so as to be compatible with surrounding multiple-family buildings.~~
- ~~(4) An adult congregate living facility permitted in a CF district shall be designed so as to be compatible with the type of dwelling units which are adjacent thereto.~~

(c) *Lot dimensions and setbacks.* Adult congregate Assisted living facilities shall be subject to the property development regulations applicable to the zoning district within which they are located.

(d) **Parking.** For parking requirements, see § 34-2011 et seq. *[remainder of subsection deleted]*

Secs. 34-1412, 34-1413. Reserved.

Sec. 34-1414. Continuing care facilities.

(a) **Generally.** Continuing care facilities (CCF's) may only be located in a CFPD or RPD district, if as enumerated on the master concept plan, provided that:

- (1) Continuing care facilities shall be subject to the maximum density ranges for the land use category applicable to the subject property, with density shall be calculated in accordance with § 34-1415, subsection (c) of this section.
- (2) A continuing care facility must contain one or more **health care facilities group I or II**, for on-site patient care.

(b) **Design; required facilities.**

- (1) A continuing care facility shall provide housing for older persons pursuant to title VII USC.
- (2) A continuing care facility must provide full common dining facilities on the site. Individual units may be equipped with kitchens, but an average of at least one meal a day must be provided by the continuing care facility for all residents.
- (3) A continuing care facility must incorporate one or more resident services on the site, such as banking facilities, barbershops, or beauty shops, pharmacies, and laundry or dry cleaning.
- (4) A continuing care facility must provide a shuttle bus service or similar transportation service for residents.

(c) ~~(d)~~ **Lot dimensions and setbacks.** Continuing care facilities shall be subject to the property development regulations applicable in the zoning CFPD district.

(d) ~~(e)~~ **Parking.** For parking requirements, see § 34-2011 et seq. division 26 of this article.

Sec. 34-1415. Density equivalents.
[content moved from § 34-1494]

(a) Where health care, social service, assisted living facilities (ALF), continuing care facilities (CCF), or other “group quarters” are provided in

living units, each of which has its own cooking facilities, density equivalents will be calculated on a 1:1 ratio.

(b) Except as may be specifically set forth elsewhere in this chapter, where health care, social service, assisted living facilities, continuing care facilities, or other “group quarters” are provided in living units or other facilities wherein each unit does not have individual cooking facilities and where meals are served at a central dining facility or are brought to the occupants from a central kitchen, density equivalents will be calculated at the ratio of four people being equivalent to one dwelling unit.

(c) Independent living units within a licensed continuing care facility will be calculated on the basis of two independent living units being equivalent to one residential dwelling unit.

Secs. 34-1416--34-1440. Reserved.

DIVISION 11. COMMERCIAL ANTENNAS AND COMMUNICATION TOWERS

~~**Sec. 34-1441. Required approvals.** *[deleted in its entirety]*~~

~~**Sec. 34-1442. Location generally; compliance with airport hazard regulations.** *[deleted in its entirety]*~~

~~**Sec. 34-1443. Protection of adjacent property.** *[deleted in its entirety]*~~

~~**Sec. 34-1444. Setbacks for accessory buildings.** *[deleted in its entirety]*~~

~~**Sec. 34-1445. Fencing.** *[deleted in its entirety]*~~

~~**Sec. 34-1446. Warning signs for high-voltage facilities.** *[deleted in its entirety]*~~

Sec. 34-1441. Purpose and intent.

(a) The purpose of this division is to regulate commercial antennas, the structures on which they are located, and communication towers.

(b) Cellular telephones and other personal communications services rely on a network of antennas. Due to its location, Fort Myers Beach can

be served partially by nearby antennas on the mainland and partially by antennas placed on tall buildings within the town. Only rarely, if ever, will a free-standing communications tower be needed to support any type of commercial antenna. These regulations are designed to facilitate the location of commercial antennas on tall buildings and also to provide a procedure for approving a new communication tower where it can be demonstrated conclusively that one is required.

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

Sec. 34-1442. Definitions

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

Alternative support structure means any man-made structure, except communication towers, including, but not limited to, buildings, power poles, light poles, clock towers, bell towers, steeples, water towers, and other similar structures suitable for the attachment of commercial antennas.

Commercial antenna means an exterior apparatus used for transmitting and/or receiving radio-frequency signals for the convenience of users not employed or residing on the premises.

Communication tower means a tower structure that is designed and constructed primarily to elevate one or more commercial antennas for communications purposes, whether such tower is mounted on the ground or on another structure.

Old tower means a communication tower that existed or was granted a special exception prior to *[insert effective date of this ordinance]*.

New tower means a communication tower that requires approval under this section.

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

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

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

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

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

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

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

(a) *Required zoning approvals.* New communication towers suitable for commercial antennas may be approved by special exception, as designated in the zoning district use regulations, subject to the requirements of this division. Special exception requests for communication towers must be accompanied by the same documentation required by Lee County through its land development code.

(b) *Required sharing of communication towers.* The owner/operator of any proposed new communication tower must enter into an agreement (shared-use plan agreement) with the town or

county requiring the owner/operator of the proposed tower to honor all reasonably and technically feasible requests for shared use of the tower for additional commercial antennas.

- (1) No new tower may be designed to accommodate only the tower owner's proposed antennas when, without additional unreasonable expense, antenna space for other operators can be made available on the tower.
- (2) Once a shared-use plan for a tower is approved, additional antennas may be added to that tower in accordance with the approved shared-use plan without additional special exception approval.

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

Secs. 34-14465--34-1470. Reserved.

DIVISION 12. RESERVED DENSITY

Subdivision I. In-General
[deleted in its entirety]

Subdivision II. Residential Development

Sec. 34-1491. Applicability of subdivision:
[deleted in its entirety]

Sec. 34-1492. Definitions:
[deleted in its entirety]

Sec. 34-1493. Calculation of total permissible housing units:

The Lee Plan establishes a standard and maximum residential density range permissible for each residential land use category. The procedure set forth in this section shall be used to determine the standard residential density as well as the total number of housing units which may be permitted within a development.

- (1) *Proposed developments:* *[deleted in its entirety, content moved to § 34-632]*

- (2) *Existing developments and lots:* *[deleted in its entirety, content moved to § 34-3273]*

Sec. 34-1494. Density equivalents:
[subject moved to 34-1415]

Sec. 34-1495. Density limitations for specific areas: *[deleted in its entirety]*

***Subdivision III:
Housing Density Bonus for
Provision of Low- and
Moderate-Income Housing***
[deleted in its entirety]

Subdivision IV. Captiva Island
[deleted in its entirety]

Secs. 34-14916--34-15710. Reserved.

DIVISION 13. ENVIRONMENTALLY SENSITIVE AREAS*

Sec. 34-1571. Purpose of division; areas of concern.

Several of the goals, objectives, and policies set forth in the Fort Myers Beach Comprehensive Lee Plan address development as it relates to the preservation, protection, enhancement, and restoration of the coastal and inland natural resources of the town county.

- (1) Coastal resources including: The coastal zone is of special concern. The coastal zone includes but is not limited to the following natural systems:
 - a. Marine: Gulf of Mexico.
 - b. Estuarine: Coastal bays, coastal lagoons, coastal tributaries, forested saltwater wetlands, nonforested saltwater wetlands and sea grass beds.
 - c. Terrestrial: Beaches, dunes, coastal ridge, overwash plain, and zones of archaeological sensitivity (see ch. 22).
- (2) Other natural resources including: areas of concern which may require special regulations are:
 - a. Wetlands as defined in this code. Resource protection areas, as defined ch. 14, article IV, pertaining to wetlands protection.

- b. Areas which provide critical habitat of rare and endangered plant and animal species listed in the publication Official Lists of Endangered and Potentially Endangered Fauna and Flora in Florida, of the **state game and fresh water fish commission**, as periodically updated.
- ~~c. Areas which have significant impact upon the quality of groundwater and receiving waters.~~
- ~~d. Transition zones, which are lands that may be seasonally inundated for periods of from one to three months as indicated by water marks, and do not have depressional soils and are characterized by a mixture of plant species typical of uplands and wetlands.~~
- c. ~~e.~~ Significant Areas of rare and unique upland habitats (RU) as indicated in the Lee County's 1988 coastal study, including but not limited to the following:
 1. Sand scrub (320).
 2. Coastal scrub (322).
 3. Those pine flatwoods (411) which can be categorized as mature due to the absence of severe impacts caused by logging, drainage, and exotic infestation.
 4. Slash pine/midstory oak (412).
 5. Tropical hardwood (426).
 6. Live oak hammock (427).
 7. Cabbage palm hammock (428).
 The numbered references are to the Florida Land Use Cover and Forms Classification System (FLUCFCS), level III (FDOT, 1985).

Sec. 34-1572. Applicability of division.

All areas proposed for development or rezoning which are designated as Wetlands resource protection or transition zone areas on the future land use plan map, or which come under the criteria set forth in § 34-1571, shall be subject to the general as well as the specific regulations set forth in this division.

Sec. 34-1573. Environmental assessment report.

When environmentally sensitive ecosystems occur, as identified by the town county, the U.S. Army Corps of Engineers, the state department of environmental protection, the South Florida Water

Management District or other applicable regulatory agency, the developer or applicant shall prepare an environmental assessment that examines the existing conditions, addresses the environmental impacts, and proposes means and mechanisms to protect, conserve, or preserve the environmental and natural resources of these ecosystems.

Sec. 34-1574. Compliance with applicable regulations; new roads, development, or expansion of existing facilities.

(a) Any use permitted or permissible in environmentally sensitive areas shall be subject to all applicable state and federal regulations as well as applicable town county regulations.

(b) Except in instances of overriding public interest, new roads, private land development, or the expansion of existing facilities within Wetlands or on the sandy beaches that are designated in the Recreation category in the Fort Myers Beach Comprehensive Plan resource protection and transitional zones shall be prohibited.

Sec. 34-1575. Coastal zones.

(a) Development, other than minor structures, is prohibited shall not be allowed seaward of the coastal construction control line as established by the state department of environmental protection, as such line existed in 1988. This line has been incorporated into the future land use map of the Fort Myers Beach Comprehensive Plan as the landward boundary of the beachfront Recreation category.

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

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

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

~~(b) Development within the coastal zone must be compatible with protection of natural systems and in accordance with applicable coastal construction codes.~~

~~(d) (c)~~ No vehicular or foot traffic from developments or access strips to crossovers will be allowed to cross over directly on dune ridges or beach escarpments. Access to the beach must be via elevated dune walkovers.

- ~~(e) (d)~~ No development will be permitted which:
 - ~~(1) Could restrict, impede, impound or otherwise interfere with tidal flow or drainage in coastal zone waters; or~~
 - ~~(2) alters the dune system, except for excavations for the installation of pilings necessary for the construction of elevated structures as permitted by the state department of environmental protection.~~

~~Sec. 34-1576. Islands. [deleted in its entirety]~~

Sec. 34-1577. Wetlands.

(a) Any development in or around wetlands shall be designed to protect the values and functions of the wetlands as set forth in ch. 14, article IV.

(b) No wetland shall be drained, filled, or excavated unless and except as part of an approved restoration or mitigation program.

~~Sec. 34-1578. Floodplains. [deleted in its entirety]~~

~~Secs. 34-15789--34-1610. Reserved.~~

DIVISION 14. ESSENTIAL SERVICES AND FACILITIES*

*Cross reference(s)--Design standards for utilities, § 10-351 et seq.

Sec. 34-1611. Purpose of division.

The purpose of this division is to set forth the development regulations for uses defined as essential services or classified as ~~and~~ essential service facilities group I (§ 34-622(c)(13)).

Sec. 34-1612. Permitted uses.

All buildings or structures defined ~~classified~~ as essential services or classified as essential service facilities group I (§ 34-622(c)(13)), are permitted by right in all zoning districts when necessary for the day-to-day operation of the service, subject to the requirements set forth in this division.

Sec. 34-1613. Setbacks.

(a) Structures regulated by this division which are three feet or less in height and which individually or collectively on the same parcel are 80 cubic feet or less in volume shall be exempt from all setback requirements.

(b) Buildings or structures which are over three feet but less than six feet in height, and which individually or collectively on the same parcel are 300 cubic feet or less in ~~cubic~~ volume, shall be set back a minimum of five feet from any street right-of-way or street easement and shall comply with the visibility requirements set forth in § 34-1614.

(c) Buildings or structures which exceed six feet in height and which individually or collectively on the same parcel exceed ~~or~~ 300 cubic feet in volume but are less than 600 cubic feet in volume shall not be located closer than 30 feet to any street right-of-way or street easement, or closer than 25 feet to any body of water.

(d) Buildings or structures that individually or collectively on the same parcel ~~exceeding~~ 600 cubic feet in volume shall comply with all setback requirements for the district in which located.

Sec. 34-1614. Height of structures in visibility triangle.

No portion of any building or structure regulated by this division which exceeds two ~~three~~ feet in height shall be permitted within the visibility triangle set forth in § 34-3131, pertaining to vehicle visibility.

Sec. 34-1615. Maximum number of structures per residential block.

Not more than one structure or group of structures which collectively ~~regulated by this division~~ exceeding 150 cubic feet in volume shall be

permitted on the same side of a street within any residential block, unless a minimum separation of four lot widths is observed between the structures.

Sec. 34-1616. Safety requirements. Screening and buffering.

All facilities regulated by this division shall comply with the safety requirements of the National Electrical Safety Code:

(a) Structures or equipment (excluding transmission poles) exceeding 3 feet in height, or which individually or collectively on the same parcel exceed 27 cubic feet in volume, must be of neutral, non-glare color or finish so as to make them as visually unobtrusive as possible.

(b) Structures or equipment (excluding transmission poles) exceeding 3 feet in height, or which individually or collectively on the same parcel exceed 80 cubic feet in volume, must be of neutral, non-glare color or finish and be shielded on all sides by shrubs at least 3 feet high at time of planting consistent with the requirements of § 10-420.

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

Facilities defined classified as essential services or classified as essential service facilities group I shall be exempt from the property development regulations which set forth minimum lot size, area, and dimensions.

Secs. 34-1618--34-1650. Reserved.

DIVISION 15. EXCAVATION ACTIVITIES*

Subdivision I. Generally

Sec. 34-1651. Required approvals.

(a) *Excavation for mining purposes.* [deleted in its entirety]

(b) *Excavations for purpose of water retention.*

(+) No manmade water detention or retention bodies shall be commenced prior to receiving approval in accordance with the provisions of ch. 10. A certificate to dig shall be obtained

prior to receiving the granting of approval to excavate for all properties located within Level 1 or Level 2 zones of archaeological sensitivity pursuant to ch. 22.

(2) This subsection shall not apply to water retention excavations one acre or less in area for bona fide agricultural purposes, or for maintenance and cleaning of existing manmade water bodies:

(c) *Excavations for purpose of oil or gas exploration.* [deleted in its entirety]

Secs. 34-1652--34-1710 1670. Reserved.

Subdivision II. Mining
[deleted in its entirety]

DIVISION 16. FARM PRODUCE STANDS, U-PICK OPERATIONS, ROADSIDE STANDS AND PORTABLE KIOSKS, FARMERS' MARKETS AND MOBILE VENDORS

~~Sec. 34-1711. Applicability of division.~~ [deleted in its entirety]

~~Sec. 34-1712. Definitions.~~ [deleted in its entirety]

~~Sec. 34-1713. Produce stands.~~ [deleted in its entirety]

~~Sec. 34-1714. Roadside stands.~~ [deleted in its entirety]

~~Sec. 34-1715. U-pick operations.~~ [deleted in its entirety]

Sec. 34-1716. Portable kiosks.

(a) Portable kiosks (df) maintained completely inside a commercial building and engaged in the sale or display of products permitted by the district use regulations are not subject to these regulations.

(b) Portable kiosks located outdoors are permitted only within a commercial planned development and are subject to the following regulations:

- (1) Portable kiosks carts may not be located within 25 feet of any public right-of-way.
- (2) Portable kiosks may not be located within any required parking space, loading space,

- fire lane, or in such a manner as to impede the flow of pedestrian or vehicular traffic.
- (3) Portable kiosks must be operated under the auspices of and with the permission of the owner or manager of the retail center.
 - (4) Portable kiosks may be permitted for periods of up to one year and may be renewed annually, by the director division of codes and building services. Applicants for a permit for a portable kiosk outside of a commercial building must submit a letter from the property owner or manager, authorizing the use of the portable kiosk on the premises.
 - (5) Portable kiosks may only be permitted in conjunction with developed CPD's and are prohibited prior to occupancy of the principal building(s).
 - (6) The number of portable kiosks which may be permitted within a CPD will be based on 20,000 square feet of total floor area for the first portable kiosk and 10,000 square feet for each additional portable kiosk. No more than three portable kiosks may be permitted within any commercial planned development.
 - (7) Only goods and products consistent with permitted uses may be displayed or sold from the portable kiosks.
 - (8) All items displayed or stored must be located on the portable kiosks and may not be placed in any manner off the kiosk.
 - (9) Signs used in conjunction with the kiosk must be located on the kiosk and may not be higher than two feet above the kiosk.
 - (10) Portable kiosks may not utilize speakers or similar electronic devices to advertise or publicize their products.
 - (11) All vendors must have an occupational license.
 - ~~(12) This provision shall sunset one year from June 1, 1995.~~

Sec. 34-17127. Mobile vendors and outdoor sales prohibited.

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

(b) Outdoor sales includes all sales or display of merchandise, food, and beverages between retail

stores and public rights-of-way, but does not include merchandise visible through windows or sold to customers using pass-through windows.

(c) This code allow outdoor display and sales of merchandise only in the following areas:

- (1) In the Downtown zoning district (see § 34-677(d)(1)).
- (2) Along both sides of Old San Carlos Boulevard and in Times Square (see § 34-677(d)(2)).
- (3) In farmers' markets or other special events authorized by the town; and
- (4) In portable kiosks as provided in § 34-1711.

(d) The outdoor display and sales of merchandise, food, and beverages is prohibited within the town limits, except in accordance with this section.

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

Secs. 34-17137--34-1740. Reserved.

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

Sec. 34-1741. Applicability of division.

This division shall apply to all fences, walls, gatehouses; and entrance gates which are not specifically exempted in this division. This division shall not apply to seawalls (see ch. 26 § 34-1863 for regulations on seawalls).

Sec. 34-1742. Design and construction of fences and walls. Building permit.

(a) **Building permits required.** Except as provided in subsection (b) of this section or as may be specifically provided elsewhere in this chapter, All fences and walls that are over 25 inches in height shall comply with established building permit procedures.

(b) Exceptions are as follows:

- (1) Fences or walls less than 25 inches in height.
- (2) Fences used for bona fide agricultural purposes.

(b) **Design.** All fences and walls on each property must have reasonably uniform or complementary materials and design. Figure 13 shows several recommended designs for fences and walls.

(c) **Materials.** Fences and walls must be constructed of traditional building materials including brick, stone, stucco over concrete block, finished concrete, metal, vinyl, wood (natural, stained, or painted), and composite products manufactured specifically for fences and walls. Non-traditional fence materials such as tires, mufflers, hubcaps are prohibited. Chain link and other wire fences are not permitted in front yards (the area between a street right-of-way or easement and the minimum required street setback or build-to line).

(d) **Finished sides.** Fences and walls must be constructed to present a finished side to adjoining lots and any abutting rights-of-way. Where there is an existing fence, wall, or continuous landscape hedge on the adjoining parcel, the director may waive this provision administratively.

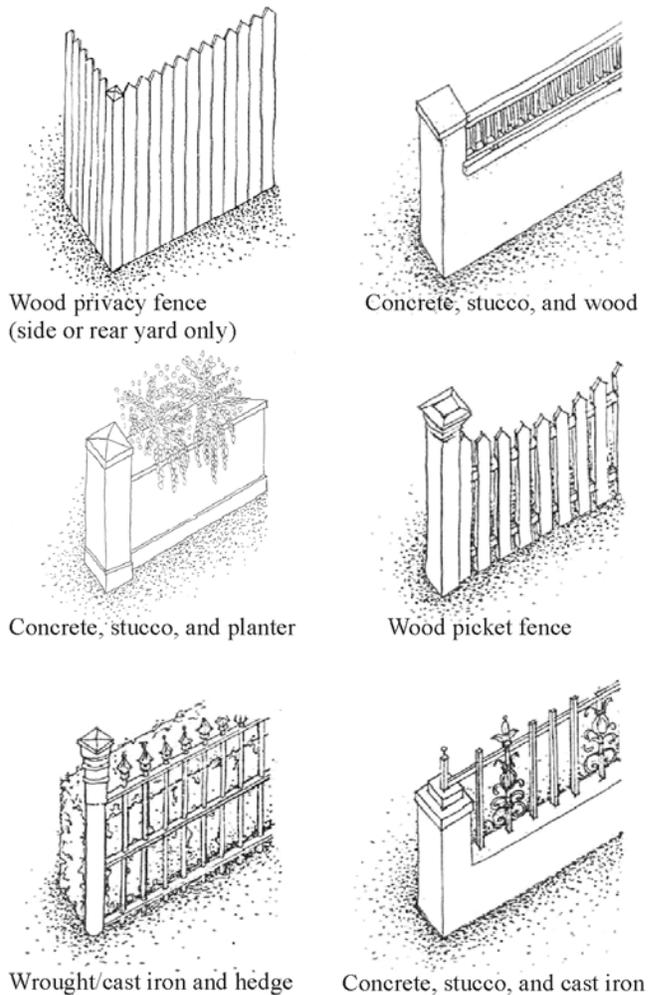


Figure 13

(e) **Maintenance.** After construction, fences and walls must be maintained with all original components and they must remain substantially vertical to serve their functions and aesthetic purposes. Structural integrity must not be compromised to the point that the fence would present a danger of flight or destruction during high winds.

Sec. 34-1743. Construction of fences:

(a) All fences shall be of sound construction and not detract from the surrounding area:

(f) **Dangerous fences.** (b) No barbed wire, spire tips, sharp objects, or electrically charged fences shall be erected except that a fence 72 inches high with three strands of barbed wire on top of the fence with six-inch spacing between the strands of barbed wire may be required or approved by the director around structures or equipment of potential hazard

to residents or passersby not otherwise protected. However, chain link and other non-decorative wire fences may not be used in front yards (the area between a street right-of-way or easement and the minimum required street setback or build-to line) on a parcel which is located in or within 100 feet of any residential area or residential zoning district under separate ownership, provided that the parcel is not already separated from the residential area or residential zoning district by a commercial or industrial zoned property or by an intervening street right-of-way or easement over 25 feet in width. This shall not be interpreted to mean that bona fide agricultural uses cannot use barbed wire or electrically charged fences to control livestock when located in districts permitting the raising, keeping or breeding of livestock. Also, this subsection shall not prohibit the use of barbed wire for temporary security fences around construction materials or equipment in conjunction with an active construction project.

Sec. 34-1743. Reserved.

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

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

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

(b) **Height.** The maximum height for fences and walls, measured from the existing elevation of the abutting property, is illustrated in Figure 14 and described as follows: Except as may be specifically provided for elsewhere in this chapter, fences and walls may be erected, placed and maintained along any property line or on any residentially zoned property provided:

- (1) **Front yards.** In residential areas, Any fence or wall located in a front yard (between a street right-of-way or easement and the

minimum required street setback or build-to line) shall not exceed 42 inches three feet in height, except where a lesser height is

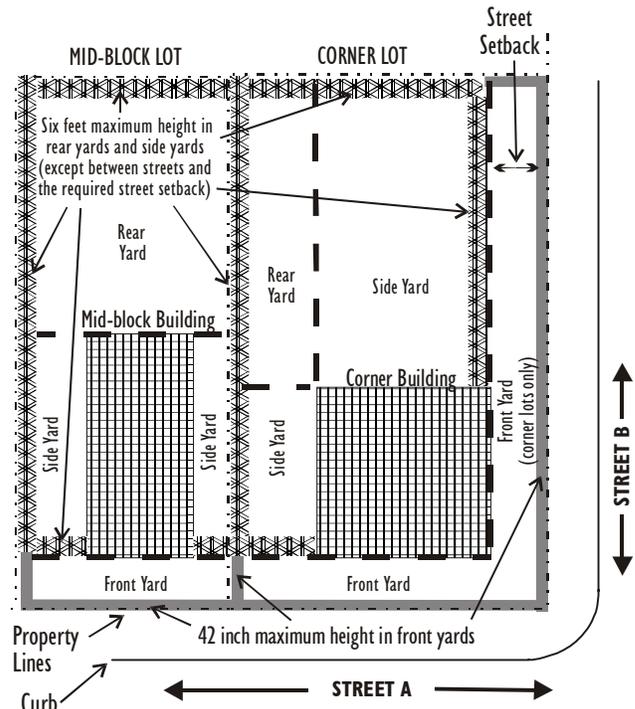


Figure 14

required to meet that fences may be increased to a maximum height of four feet provided that such fence is of open mesh screening and does not interfere with vehicle visibility requirements (see § 34-662(b)(4)3131) at traffic access points.

- (2) A residential project fence or wall may be increased to a maximum height of eight feet around the perimeter of the project upon a finding by the county engineer that there is no interference with vehicle visibility requirements (see § 34-3131) at traffic access points:

(2) **Side and rear yards.** (3) Except for a residential project fence, Any fence or wall located in a side or rear yard shall not exceed shall be limited to a maximum height of six feet in height, in the rear and side yards of residential areas. A fence within 25 feet of a body of water shall be of open mesh screening above a height of 3 1/2 feet.

a. For purposes of this requirement, the side yard does not include any shall be considered as that portion of the lot between a street and extending from the

minimum required street setback or build-to line to the rear lot line.

- b. Where a side or rear yard slopes downward from the street, a fence may be up to seven feet above the elevation of the abutting property to avoid unnecessary variations in the height of a fence.
- (3) **Near water bodies.** Within 25 feet of a body of water, those portions of a fence that exceed 42 inches in height cannot be more than 25% opaque (as viewed from perpendicular to the fence).
- (4) **Exceptions:**
 - a. **Architectural features.** Fences and walls for residential project fences may include occasional architectural features such as columns, posts, gates, and arbors ; cupolas, fountains, parapets, etc., at a height not exceeding 84 inches twice the fence or wall height. All such features must be visually compatible with the fence or wall design. project and abutting properties.
 - b. **High-voltage transformers.** See § 34-1748.

(c) **Determination of grade.** For residential fences, other than residential project fences, grade shall be determined as the existing elevation of the lot. However, any fill placed on the lot which exceeds the average grade of the street shall be included in determining the maximum fence height.

Sec. 34-1745. Buffer for commercial and industrial uses.

All Some commercial and multifamily industrial uses are required to shall provide a perimeter buffers in accordance with § 10-416, as required in ch.10.

Sec. 34-1746. Reserved. Visibility at entrances and exits. *[deleted in its entirety]*

Sec. 34-1747. Construction in easements.

Nothing in this division shall be construed so as to permit the construction or placing of any construction within a public or private easement which prohibits such construction or placement.

Sec. 34-1748. Enclosure of high-voltage transformers and other utility equipment.

(a) All substation high-voltage transformers and any other utility structures or equipment of potential hazard to residents or passersby not otherwise protected shall be completely enclosed by a chainlink fence not less than eight feet in height. On top of the fence shall be three strands of barbed wire with a six-inch spacing in between each strand. However, chain link and other non-decorative wire fences may not be used in front yards (the area between a street right-of-way or easement and the minimum required street setback or build-to line).

(b) Distribution transformers shall comply with National Electrical Safety Code requirements.

Sec. 34-1749. Entrance gates and gatehouses.

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

(b) Entrance gates may be placed on private property to control access to a parking lot that lawfully rents parking spaces to the general public. Adequate stacking space must be provided in front of the gate to avoid interference with traffic flow on adjoining streets. The following regulations apply to any entrance gate or gatehouse which controls access to three or more dwelling units or recreational vehicles, or any commercial, industrial or recreational facility:

- (1) An entrance gate or gatehouse not approved as part of a planned development is permitted by right provided it is not located on a publicly dedicated street or right-of-way, and:
 - a. The gate or gatehouse is located a minimum of 100 feet back from any public street right-of-way or easement; or
 - b. The gate or gatehouse is designed in such a manner that a minimum of five vehicles or one vehicle per dwelling unit, whichever is less, can pull safely off the public street while waiting to enter; or
 - c. The development provides a deceleration-turning lane adjacent to the existing pavement for a distance of 300 feet leading into the access drive or road

~~unless otherwise required by the department of transportation and engineering services.~~

~~(c) (2) Access for emergency vehicles must be provided to any existing entrance gates on private streets.~~

~~(1) a:~~ Any security gate or similar device that is not manned 24 hours per day must be equipped with an override mechanism acceptable to the local emergency services agencies or an override switch installed in a glass-covered box for the use of emergency vehicles.

~~(2) b:~~ If an emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle if applicable, will be the responsibility of the owner or operator of the gate.

~~(3) Extension of fences or walls to an entrance gate or gatehouse.~~

~~a. A fence or wall may be extended into the required setback where it abuts an entrance gate or gatehouse, provided vehicle visibility requirements (see § 34-3131) are met.~~

~~Sec. 34-1750. Walls and fences along limited access or controlled access streets. [deleted in its entirety]~~

~~Secs. 34-1750f--34-1770. Reserved.~~

DIVISION 18. HOME OCCUPATIONS

ADD HERE – DISCUSSION OF AA APPROVAL FOR OUTSIDE HELP (per table of permitted uses, see Office-Restricted)

Sec. 34-1771. Intent of division.

It is the intent of this division to allow the operation of home occupations by right in all districts permitting dwelling units, but to regulate them so that the average neighbor, under normal circumstances, will not be disturbed or inconvenienced by them.

Sec. 34-1772. Permitted uses; operation.

(a) Any use of a residence for a home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants.

(b) Such use shall be conducted entirely within the dwelling unit or customary accessory building.

(c) No employees other than members of the immediate family residing in the dwelling shall be permitted to work at the residence, but may be employed to work elsewhere provided that the employees do not come to the residence for equipment, vehicles, or supplies employed in the home occupation. Under special conditions, such as a handicapped person or retiree needing clerical assistance, the director may allow one employee who is not a resident of the home to work at the residence.

(d) There shall be no exterior indication that the dwelling is being used for any purpose other than a residence, except that one nonilluminated nameplate, not exceeding one square foot (144 square inches) in area, may be attached to the building on or next to the entrance.

(e) No commodities, stores, or display of products on the premises shall be visible from the street or surrounding residential area, and no outdoor display or storage of materials, goods, supplies or equipment used in the home occupation shall be permitted on the premises. Vehicles and trailers for use by the business may not be parked or stored on the premises unless completely enclosed within a building.

(f) No equipment shall be used which creates noise, vibration, glare, fumes, odors, or electrical interference objectionable to the normal senses. No equipment or process shall be used which creates visual or audible interference in any radio or television receiver off the premises or causes fluctuations in line voltage off the premises.

(g) No use permitted by this division shall generate greater volumes of traffic than would otherwise be expected by normal residential uses.

(h) No use that attracts customers to the dwelling unit may be permitted under this section.

~~Secs. 34-1773--34-1800. Reserved.~~

**DIVISION 19. HOTELS, AND MOTELS,
AND BED-AND-BREAKFAST INNS**

Sec. 34-1801. Definitions.

(a) Bed-and-breakfast inn means a public lodging establishment with nine or fewer guest units that serves breakfast to overnight guests. A bed-and-breakfast inn may be located in a single building or in a cluster of separate buildings.

(b) Guest unit means a room or group of rooms in a hotel/motel or bed-and-breakfast inn that are designed to be used as temporary accommodations for one or more people traveling together. All guest units provide for sleeping and sanitation, although sanitation may be provided through shared bathrooms.

(c) For the purposes of this division, a Hotel/motel is defined as means a building, or group of buildings on the same premises and under single control, consisting of ten or more guest units sleeping rooms which are kept, used, maintained, or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests or tenants. Hotels/motels are further categorized as efficiency or business.

(d) Lock-off accommodations means a single guest unit or living unit designed in such a manner that at least one room and a bathroom can be physically locked off from the main unit and occupied as a separate unit. Each portion may have a separate outside entry or share a common foyer with separate lockable interior doors, or may share a lockable door or doors separating the two units.

(e) Hotels/motels and bed-and-breakfast inns must be registered accordingly with the Florida department of business and professional regulation revenue as a bona fide hotel/motel operation and will be are required to pay the levied tourist development tax as promulgated by the county. Hotels/motels and bed-and-breakfast inns which are not registered with the department of revenue or hotels/motels do not paying the tourist tax will be subject to the density limitations and property development regulations for multiple family buildings.

- (1) ~~Efficiency hotel [deleted in its entirety]~~
- (2) ~~Business hotel [deleted in its entirety]~~
- (3) ~~Kitchen facilities [deleted in its entirety]~~

Sec. 34-1802. Size of guest units.

(a) Method of measurement. For purposes of this division, the size of a guest unit is the actual square footage within each guest unit including balconies and private patios, but not including common facilities such as corridors, stairways, shared bathrooms, or other common spaces including utility areas or parking spaces.

(b) Hotels/motels. Individual guest units in a hotel/motel must be at least 180 square feet in size.

(5) Minimum floor area per unit	120 sq. ft.	120 sq. ft.
(6) Maximum floor area per unit	350 sq. ft.	550 sq. ft.

(c) Bed-and-breakfast inns. Individual guest units in a bed-and-breakfast inn must be at least 120 square feet in size.

Sec. 34-18032. Allowable intensity. Property development regulations:

Property development regulations for uses subject to this division are as follows:

	Business Efficiency	
(1) Minimum lot dimensions:		
a: Area	2 acres	20,000 s.f.
b: Lot width	150 feet	100 feet
c: Lot depth	200 feet	100 feet
(2) Setbacks:		
a: Street	In accordance with section 34-2192	
b: Water body	In accordance with section 34-2194	
c: Side and rear yards	20 feet	
(4) Rental units permitted		
a: Density multiplier for hotel/motel rental units (compared to dwelling units allowed under the Lee Plan future land use map)	1.0 units equal one unit	1.0 units equal one dwelling unit
b: Any proposed hotel/motel or expansion which will result in more than 50 rental units will be permitted only as a planned development.		
c: A hotel/motel development submitted for approval as a planned development may exceed the equivalency factors in (4)a., if approved through the deviation process, provided all other aspects of the development (height, traffic, intensity of use, etc.) are found to be compatible with the surrounding area.		
d: Where a development proposes to have both types of rental units, the number of units will be prorated.		

(a) Hotels/motels. When a hotel/motel is permitted on a property, guest units can be substituted for the dwelling units that would be allowed on that property (see § 34-632 regarding density). The maximum number of guest units can be computed by multiplying the maximum number of dwelling units by the appropriate equivalency factors:

(d) Food service is limited to breakfast and/or snacks and may be served only to overnight guests.

(e) A single non-illuminated identification sign up to four square feet in area may be mounted onto each building.

Sec. 34-1806. Replacing a nonconforming hotel/motel.

A nonconforming hotel/motel can be replaced in one of the following manners:

- (1) In full conformance with all current provisions of this code as they apply to a new hotel/motel on vacant land; or
- (2) In the same manner as provided for enlargements to the various types of nonconforming buildings as provided in § 34-3234; or
- (3) As provided in the pre-disaster buildback regulations found in § 34-3237 or the post-disaster buildback regulations found in § 34-3238.

Sec. 34-1807.3. Conversions.

Any hotel or motel proposing to convert to timeshare or dwelling units, or any residential building proposing to convert to timeshare or motel/hotel units, will be required to comply with density limitations of the Fort Myers Beach Comprehensive Use Plan, all applicable parking regulations, and all other regulations of this code including equivalency factors that affect chapter affecting the proposed use.

Sec. 34-1804. Subordinate uses.

For regulations pertaining to subordinate uses, refer to § 34-3021.

Sec. 34-1805. Density limitation for Captiva Island. *[deleted in its entirety]*

Secs. 34-18086--34-1830. Reserved.

**DIVISION 20. RESERVED
JUNK, SCRAP OR SALVAGE YARDS;
DUMPS AND SANITARY LANDFILLS**
[deleted in its entirety]

Secs. 34-18317--34-1860. Reserved.

**DIVISION 21. MARINE FACILITIES,
STRUCTURES AND EQUIPMENT***

**Cross reference(s)--Marina design, § 10-257; marine facilities and structures generally, ch. 26; marine sanitation, § 26-111 et seq.; marine-oriented districts, § 34-871 et seq.*

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

(a) No boat, floating structure, or other floating equipment shall be moored to mangroves except for emergency purposes.

(b) No person shall discharge or permit or control or command to discharge any raw sewage, garbage, trash, or other waste materials into the waters of the town county.

(c) No boats, floating structures, or other floating equipment designed to accommodate one or more living units, or designed or used for retail sales, shall be permitted to anchor, moor, tie up, or otherwise be attached to any wharf, pier, or other structure emanating from real property or to real property itself within the unincorporated areas of the town county except in conformity with the regulations contained in this chapter and all other applicable town county ordinances.

(d) Except as provided in this subsection, no person shall live aboard any vessel under his command or control, which is moored to real property or to any dock, pier, seawall, or other structure attached to real property in the unincorporated area of the town county, except at a marina (see § 34-1862) which is properly zoned for such use under the provisions of this chapter. The provisions of this subsection shall not apply to:

- (1) Live-aboard vessels equipped with an approved discharge device and occupied by a licensed captain and his immediate family;
- (2) Commercial vessels, such as commercial fishing boats, tugs, barges, salvage vessels, passenger vessels, or cargo vessels, when used in commerce and navigation; or
- (3) The mooring of any vessel necessitated by an emergency.

The exceptions granted by subsections (d)(1) and (2) of this section are not intended to apply to

personal fishing boats used for recreation or to fishermen with marine products licenses.

Sec. 34-1862. ~~Reserved. Marinas, fish houses, and docking facilities.~~ *[deleted in its entirety]*

Sec. 34-1863. Construction and maintenance of docks, seawalls, and other structures designed for use on or adjacent to waterways.

Construction, placement, erection, and maintenance of docks, mooring piles, seawalls, watercraft landing facilities, and other structures designed for use on or adjacent to waterways shall be in compliance with established building permit procedures and with ch. 26, article II. See also division 2 of this article regarding accessory uses, buildings, and structures.

Secs. 34-1864--34-1890. Reserved.

**DIVISION 22. RESERVED
FARM LABOR HOUSING**
[deleted in its entirety]

Secs. 34-1891--34-1920. Reserved.

**DIVISION 23. RESERVED
MOBILE HOMES**
[deleted in its entirety]

Secs. 34-1921--34-1950. Reserved.

**DIVISION 24. RESERVED
MODEL HOMES, UNITS
AND DISPLAY CENTERS**
[deleted in its entirety]

Secs. 34-1951--34-1980. Reserved.

**DIVISION 25.
OFF-STREET LOADING AREAS**

Sec. 34-1981. Applicability of division.

(a) The off-street loading requirements of this division shall apply to commercial, ~~industrial~~, and other nonresidential uses.

(b) *[moved here from § 34-1145(f)(2)]*
Establishments are encouraged to schedule deliveries before or after their normal business

hours. Deliveries that are made during normal hours may not obstruct parking aisles or parking entrances.

Sec. 34-1982. Access.

(a) Street access to off-street loading areas shall observe the same provisions as set forth for ~~off-street~~ parking in § 34-2013.

(b) Except as provided in § 34-1987, off-street loading areas shall be spatially or physically separated from ~~off-street~~ parking areas and pedestrian walkways.

(c) Service roads shall be a minimum of 12 feet wide for one-way usage and 24 feet for two-way operations.

Sec. 34-1983. Lighting, maintenance, and drainage.

Site lighting, maintenance, and drainage required for off-street loading areas shall comply with the provision of §§ 34-2015 and 34-2017.

Sec. 34-1984. Other use of loading areas.

Except as provided in § 34-2019, off-street loading areas shall not be utilized for the sale, repair, dismantling, or servicing of any vehicles or equipment, except on an emergency or temporary basis.

Sec. 34-1985. Screening.

When any off-street loading area is located adjacent to a residential use or zoning district, and is not otherwise entirely visually screened from it at ground level, there shall be provided a continuous visual screen along the lot line abutting the residential use in accordance with division 17 of this article or ch. 10, whichever is the most restrictive.

Sec. 34-1986. Loading area required; loading plan; location of loading area.

(a) All commercial, ~~industrial~~, and other nonresidential uses on sites larger than 1 acre shall be provided with an off-street loading area for receiving and shipment of commodities.

(b) A plan for off-street loading areas shall be provided as part of the site plan submitted in accordance with the regulations and procedures set forth in ch. 10, or, if the development is exempt from ch. 10, then a plan shall be submitted at time of application for a building permit and be reviewed by the director zoning and development review division for consistency with this division and this chapter.

(c) The location of all off-street loading areas shall embody the following provisions:

- (1) The required loading area shall be provided on the same lot or parcel it serves or within 300 feet of that parcel.
- (2) The surfaced portions of all loading areas, excluding driveways, shall observe a 20-foot setback from all right-of-way lines and a ten-foot setback from all property under separate ownership or control.
- (3) Loading spaces shall be so located as not to obstruct or otherwise hinder or endanger the movement of vehicles and pedestrians.
- (4) [moved here from 34-1145(f)(1)] Off-street loading areas shall not be placed between the principal building and the street right-of-way line. A separate loading area is not required; but when provided, the surfaced portions of loading areas are not required to be set back from side or rear lot lines.

Sec. 34-1987. Number of spaces.

(a) Establishments which normally receive or ship commodities via small panel trucks or vans shall not be required to provide off-street loading areas and may utilize the parking area, provided:

- (1) Deliveries normally are received before or after normal hours open to the public.
- (2) No delivery truck remains in the parking lot for more than four hours.
- (3) Deliveries do not interfere with normal pedestrian or vehicle movements.

(b) Establishments which receive or ship goods via large semitrailer or full trailer trucks shall provide a minimum of one loading space for the first 10,000 square feet of floor area, plus one space for each additional 20,000 square feet of floor area or major fraction thereof.

Secs. 34-1988--34-2010. Reserved.

DIVISION 26. ~~OFF-STREET~~ PARKING

Sec. 34-2011. Types of parking facilities.

Parking facilities in the Town of Fort Myers Beach take a variety of forms, generally classified as follows.

(a) **Single-purpose parking lots.** Single-purpose parking lots are designed to serve individual businesses, condominiums, or shopping centers. Single-purpose parking lots are usually located on the same site as the use they serve and may include parking spaces under a building or in a parking garage.

- (1) Most single-purpose parking lots are considered by this code to be accessory uses of land (§ 34-1171) and thus can be built to serve any permitted principal use on the same parcel of land.
- (2) Some single-purpose parking lots serve two or more non-contiguous parcels, as provided in § 34-2018 for joint-use parking lots.
- (3) Surplus spaces in some single-purpose parking lots may be rented to the general public during peak periods, as provided in subsection 34-2019(a).

(b) **Shared parking lots.** Shared parking lots are open to the public, generally for a fee, regardless of the destination of the person parking there. Shared parking lots may be operated as a private business or by a governmental entity, and may include a surface parking lot and/or a parking garage.

- (1) Seasonal shared parking lots may be approved administratively for up to three-year periods as provided in § 34-2022 of this code.
- (2) Permanent shared parking lots and parking garages are considered a principal use of a parcel of land, and may be allowable by virtue of being:
 - a. a permitted use in certain zoning districts;
 - or
 - b. a special exception in other zoning districts; or
 - c. approved as part of a planned development zoning district.

(c) **On-street parking.** Governmental entities sometimes provide on-street parking spaces, usually with parking meters, that are available for use by the public regardless of their destination. On-street

parking is closely related to the functioning of the adjoining street and is provided as a public works project rather than being regulated as a land development activity by this code.

Sec. 34-2011. Applicability of division. [*moved to 34-2020(a-b)*]

Sec. 34-2012. Definitions.

For purpose of this division only, certain words or phrases are defined as follows:

Drive-up. The terms “drive-up” and “drive-through” are synonymous.

Employees means the regular working staff, ~~whether~~ paid, volunteer, or otherwise, at maximum strength and in full-time equivalent numbers, necessary to operate, maintain, or service ~~any~~ given facility or use under normal levels of service.

High turnover applies to parking lots wherein ~~numerous~~ vehicles are parked for relatively short periods of time ranging from a few minutes to several hours. Customer parking for retail stores, restaurants, bars, offices, commercial or similar establishments is considered to be high turnover.

Low turnover applies to parking wherein vehicles are parked for relatively long periods of time, such as employee parking during the day, or uses such as beach parking, marina parking, charter or cruise ship parking, etc. wherein customers leave their cars for periods of four or more hours while attending special events, or overnight parking in residential developments.

Parking aisle means an accessway within a parking lot which provides direct access to individual parking spaces.

Parking lot means an area of land designed, used, or intended for ~~the~~ parking of five or more vehicles.

Parking lot entrance means the accessway which provides ingress or egress from a street right-of-way or easement to a parking lot.

Parking space means an area of land designed or intended for ~~the~~ parking of one vehicle. Some parking spaces are designated as disabled

~~handicapped spaces or standard spaces, depending on the purpose of the space.~~

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

Sec. 34-2013. Access.

(a) All parking lots shall be designed so as to permit vehicles exiting the parking lot to enter the street right-of-way or easement in a forward motion.

(a) ~~(b)~~ Each parking lot shall have a distinct parking lot entrance. Such entrance shall meet the requirements of ch. 10, as well as the following:

- (1) Minimum width at the property line street for one-way entrances is 10 ~~15~~ feet.
- (2) Minimum width at the property line street for two-way entrances is 20 ~~25~~ feet.
- (3) Maximum width at the property line street is 25 ~~35~~ feet.

The director ~~department of transportation and engineering~~ may determine that high traffic volumes, truck traffic, or other special circumstances warrant other requirements.

(b) ~~(c)~~ Parking lot entrances shall not exceed a six percent grade for 20 feet into any lot or parcel, nor shall a parking lot entrance enter a street right-of-way or easement at an angle of less than 90 degrees unless a lesser angle is approved by the director ~~of transportation and engineering services~~.

Sec. 34-2014. Parking plan.

A parking plan shall be required for all uses, except single-family residence, ~~duplex, and~~ two-family ~~attached and single-family mobile home~~ dwelling units, and shall be submitted for review and approval in accordance with ch. 10. Developments which are not required to be approved in accordance with ~~exempt from~~ chapter 10 shall submit plans to the director zoning and development review division ~~prior to issuance of a building permit~~. The plan shall accurately designate the required parking spaces, parking aisles, and parking lot entrance, as well as the relation of any ~~the~~ off-street parking facilities to the uses or structures such facilities are designed to serve.

Sec. 34-2015. Location and design generally.

The location and design of all parking lots shall embody the following provisions:

- (1) **Location of single-purpose parking lots.** Except for parking lots specifically zoned CP or as provided for in § 34-2018, All required Parking spaces that are required to support specific land uses (see § 34-2020) shall be provided on the same premises and within the same or similar type zoning district as the use which they serve, except in the Downtown zoning district as provided in § 34-676(a). Joint-use parking lots are regulated by § 34-2018.
- (2) **Location of shared parking lots.** Shared parking spaces may be constructed wherever permitted by the zoning district regulations:
 - a. Commercial parking lots and public parking garages are listed as permitted uses in certain zoning districts; are allowed by special exception in other zoning districts; and may be approved as part of a planned development zoning district.
 - b. The location and certain design features of seasonal parking lots are regulated by § 34-2022 of this code.
- (3) **Design.** a. All parking lots shall be designed in accordance with the setback, buffer, landscaping, and drainage requirements set forth in ch. 10.
- (4) **Lighting.** If the parking lot is to be used at night, adequate lighting shall be provided for the driveways, ingress, and egress points, and parking areas of all commercial and industrial uses. Such lighting shall be so arranged and directed as to eliminate glare on any other use, and must comply with applicable sea turtle lighting restrictions in ch. 14.
- (5) **Stacking.** All individual parking spaces shall be accessible at all times from a parking aisle intended to provide access to the space. Stacking of vehicles (one behind the other) shall be permitted only where each dwelling unit has a specific garage or driveway appurtenant to it and in valet parking facilities wherein parking is performed only by employees of the facility.
- (6) **Exiting.** All parking lot spaces shall be provided with sufficient maneuvering room so as to allow an exiting vehicle to leave the parking lot in a forward motion, except where approved by the director under the following conditions:
 - a. The right-of-way is a local street and:
 - (1) there is insufficient room on the parcel for vehicles to turn and exit in a forward direction, and
 - (2) the number of parking spaces backing out are no more than the minimum required by this division; or
 - b. The parking spaces are in the “Pedestrian Commercial” category of the comprehensive plan and do not unduly interfere with critical congested road segments or the normal usage of existing or proposed sidewalks.

- (1) there is insufficient room on the parcel for vehicles to turn and exit in a forward direction, and
- (2) the number of parking spaces backing out are no more than the minimum required by this division; or
- b. The parking spaces are in the “Pedestrian Commercial” category of the comprehensive plan and do not unduly interfere with critical congested road segments or the normal usage of existing or proposed sidewalks.
- (6) **End spaces.** Parking lots utilizing 90° parking with dead-end aisles shall provide a turning bay for those spaces at the end of the aisle.
- (7) **Pedestrian system.** In any parking lot where more than one tier of parking spaces is to be developed, walkways a pedestrian system shall be provided which accommodates safe and convenient pedestrian movement from vehicles to building entrances and other walking destinations. If these walkways cross major parking aisles, the walkway shall be clearly differentiated from the surface of the aisle.

Sec. 34-2016. Dimensional requirements; delineation of parking spaces.

In addition to satisfying all other provisions of this division, the arrangement and spacing of off-street parking lots shall conform to the following requirements:

(1) **Minimum dimensions at requirements.**

Minimum aisle widths. Minimum aisle widths and parking space dimensions shall be as follows:

<u>Angle of Parking</u>	<u>AISLE WIDTHS</u>		<u>PARKING SPACES</u>	
	<u>One-Way (feet)</u>	<u>Two-Way (feet)</u>	<u>Width (feet)</u>	<u>Length (feet)</u>
<u>Parallel</u>	<u>10 +2</u>	<u>20</u>	<u>7</u>	<u>20</u>
<u>30°</u>	<u>+2</u>	<u>22</u>		
<u>45° - 50°</u>	<u>11 +2</u>	<u>20 22</u>	<u>8.5</u>	
<u>55° - 60°</u>	<u>14 +8</u>	<u>22 24</u>	<u>8.5</u>	
<u>70° - 75°</u>	<u>17</u>	<u>22</u>	<u>8.5</u>	
<u>90°</u>	<u>20 22</u>	<u>22 24</u>	<u>8.5</u>	<u>18</u>

- (2) **Effect of minimum dimensions on size of parking lots.** The following table illustrates the effect of the minimum aisle and parking space dimensions on the size of parking lots.

keyed to the dimensions indicated in Figure 15.

<u>DIMENSION (in feet):</u>		<u>45°</u>	<u>60°</u>	<u>75°</u>	<u>90°</u>
<u>Stall width</u>	<u>A</u>	<u>8.5</u>	<u>8.5</u>	<u>8.5</u>	<u>8.5</u>
<u>Stall width (parallel to aisle)</u>	<u>B</u>	<u>12.0</u>	<u>9.8</u>	<u>8.8</u>	<u>8.5</u>
<u>Aisle width (one-way travel)</u>	<u>C</u>	<u>11.0</u>	<u>14.0</u>	<u>17.0</u>	<u>20.0</u>
<u>Stall depth (interlock)</u>	<u>D</u>	<u>15.3</u>	<u>17.5</u>	<u>18.6</u>	<u>18.0</u>
<u>Stall depth (to wall)</u>	<u>E</u>	<u>17.5</u>	<u>19.1</u>	<u>19.4</u>	<u>18.0</u>
<u>Module (interlocking)</u>	<u>F</u>	<u>41.6</u>	<u>49.0</u>	<u>54.2</u>	<u>56.0</u>
<u>Module (wall to interlock)</u>	<u>G</u>	<u>43.9</u>	<u>50.6</u>	<u>55.0</u>	<u>56.0</u>
<u>Module (wall to wall)</u>		<u>46.0</u>	<u>52.2</u>	<u>55.8</u>	<u>56.0</u>

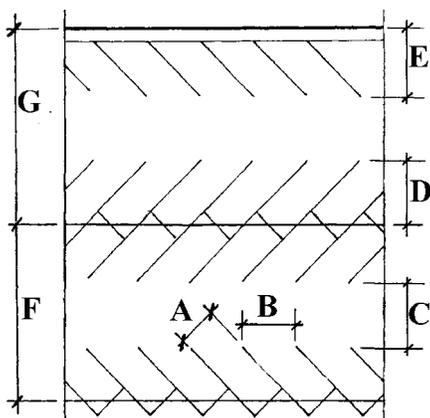


Figure 15

(3 +) Disabled Parking space dimensions.

Individual disabled parking space dimensions shall be as follows: a. Handicapped parking (all): 12 feet by 18 feet. Parking access aisles must be no less than 5 feet wide and must be part of an accessible route to the building or facility entrance. These However, the individual parking space dimensions do not preclude guarantee compliance with the Americans with Disabilities Act (ADA) of 1990.

- b. High and low turnover parking lots:
1. 90° parking: 9 feet by 18 feet.
 2. 30°, 45° or 60° parking: 8 1/2 feet by 18 feet.
 3. Parallel parking: 7 feet by 22 feet.

(4 2) Delineation of spaces.

- a. Paved parking lots.
1. Parking spaces shall be delineated by all-weather painted lines, not less than four inches in width, centered on the dividing line between spaces.
 2. Parking spaces which do not abut a curb, fence, wall, or other structure shall be provided with a parking block

set two feet from the end of the parking space. Parking spaces for the disabled must be prominently outlined with blue paint, and must be repainted when necessary to be clearly distinguishable as a parking space designated for persons who have disabilities. Signs erected after October 1, 1996 must indicate the penalty for illegal use of the space

- b. Unpaved parking lots.
1. Perimeter parking spaces in unpaved parking lots shall be delineated by placing a parking block three two feet from the end of the parking space and centered between the sides of the space.
 2. Where the If a perimeter space abuts a structure, the space may be indicated on the structure, in which case parking blocks shall not be required.
- c. Temporary parking lots. (See § 34-2022.)
Where temporary parking lots are permitted, the Individual spaces do not need to be delineated provided the end of each space and all aisles are clearly delineated with temporary posts and ropes. [moved to § 34-2022(b)(5)]

Sec. 34-2017. Parking lot surfaces.

(a) High turnover parking lots. (+) Parking aisles. Except as provided in subsections (d) and (e) of this section, all high turnover parking lot aisles and parking spaces shall be provided with a paved; dustfree, all-weather surface, except for the open space beyond parking blocks. (2) Parking spaces. All parking spaces, except those seaward of the coastal construction control line, shall have a paved, dustfree, all-weather surface from the aisle to the parking block or curb. All handicapped parking spaces, including handicapped parking spaces seaward of the coastal construction control line, shall be paved with asphalt or concrete to provide a smooth surface without gaps or holes which would create a danger to the user. For all other parking spaces, The term “paved” shall be interpreted to mean and include asphalt, concrete, brick, paving blocks, porous (pervious) asphalt or concrete, paving block and other similar types of treatments. Clean (washed) angular gravel (such as FDOT #57 stone) may also be used if stabilized as provided in subsection (b)(1).

(1) Any parking spaces that may be permitted, excluding handicapped parking spaces, located seaward of the 1978 coastal construction control line shall be stabilized with best management practices treatments approved by the director, county administrator or his designee.

(2) All disabled parking spaces, including disabled parking spaces seaward of the coastal construction control line, shall be provided without gaps or holes that would create a danger to the user.

(b) **Low turnover parking lots.** (†) Due to the low volume of vehicle turnover in this type lot, alternative unpaved surfaces may also be permitted provided that the areas are adequately drained and continuously maintained in a dustfree manner.

(1) Alternative surfaces may include stabilized surfaces of grass or clean (washed) angular gravel over a well-drained base, crushed shell or other similar porous materials. Stabilization may be accomplished by turfblocks (concrete or plastic) or proprietary cellular or modular porous paving systems installed in accordance with manufacturers' specifications.

(2) Crushed limerock that has not been washed or otherwise processed to remove fine particles will be permitted as a surface material only when designed, placed, and maintained in a manner that will:
a. prevent the flow of sediment-laden runoff from the lot, and
b. keep the surface dust-free at all times.

(3) Parking on grass or other The use of unimproved surfaces such as sand or dirt as approved parking shall be prohibited.

(4) Handicapped Disabled spaces must be paved with asphalt or concrete to provided with a smooth surface without gaps or holes which would create a danger to the user.

(c) **Temporary parking lots.** Temporary parking lots do not need to be surfaced, and may be maintained as a grass area or in a dustfree manner. [subject moved to 34-2022(b)(6)]

(c) **Reduced surfacing standards Director discretion.**

(1) The zoning director is authorized to permit portions of high turnover parking lots (including parking lot aisles), to meet the

surfacing standards for low turnover parking lots (§ 34-2017(b), above) when the reduced surfacing standard will be used in those portions of the parking lot expected to receive the lightest usage, such as overflow or employee parking areas, under the following circumstances:

a. The property is not located in the intensive development or central urban land use categories;

b. The proposed parking lot will contain no more than 25 spaces;

c. The proposed alternative surface will be adequately drained; and

d. The proposed alternative surface is consistent with the uses and the parking lot surfaces in the surrounding neighborhood.

(2) This subsection may not be construed inconsistently with the Americans with Disability Act (ADA) of 1990.

(3) ~~The director's decision is discretionary in nature and may not be appealed pursuant to § 34-145(a) of this chapter.~~

(d) **Reservation of spaces for future use.** When a use or activity is required by this chapter to provide more than ten high turnover parking spaces, the zoning director may approve leaving up to 25 percent of the required spaces as landscaped areas reserved for future use, provided that:

(1) ~~The applicant clearly shows on the site plan the reserved parking spaces on the site plan;~~

(2) ~~The reserved parking areas shall not be counted towards meeting the minimum open space or landscaping or buffering requirements of this chapter or chapter 10;~~

(3) ~~All drainage facilities shall be calculated and built as though the reserved parking areas were impervious surfaces; and~~

(4) ~~The reserved parking areas shall not be used for any purpose other than landscaped open space or temporary overflow parking during special holiday seasons or sales.~~

Should the property owner decide to pave the reserved area for parking, he shall submit the original site plan or development order approval to the zoning director, who is hereby authorized to approve the paving provided that such paving does not include any new entrances onto a public street. If the parking areas does involve new entrances, then a small project limited review development order is required.

Sec. 34-2018. Joint use of off-street parking lots.

(a) A single-purpose parking lot can provide some or all of the required parking spaces for two or more unrelated businesses, provided that such joint-use parking lot:

- (1) is built on a site where a commercial parking lot is permitted, and
- (2) is placed on the site so as not to violate any applicable build-to lines or block visibility of vehicles (see § 34-662), and
- (3) is built to the same standards as a single-purpose parking lot, and
- (4) (a) Except where specifically approved as part of a planned development district, joint use of off-street parking lots shall be permitted only after application for and approval of a special permit (see § 34-203(e)(7));
(b) Such shared parking lots shall be is located within 750 300 feet of, and contiguous to, each use and shall not be separated by a street right-of-way or easement which exceeds 25 feet in width.

(b) (c) No part of a parking lot used, designed or intended to satisfy required off-street parking for any use, shall be used to offset the parking requirements for another use unless The peak parking demands of the different uses clearly must occur at different times. The director may require an applicant to provide a technical analysis of the timing and magnitude of the proposed parking demands.

(c) Applications for joint-use parking lots must include: (5) Joint parking. a. The following shall be submitted with the application:

- (1) A notarized statement from all property owners involved indicating the use of each property and forecasting that the peak level of activities of each separate building or use which create a demand for parking will shall occur at different times.
- (2) Written agreements, covenants, contracts and the like, acceptable to the county, which ensure that the parking area is to be used jointly and establish the responsibility for maintenance. A draft joint-use parking agreement, acceptable to the town attorney, that:
 - a. specifically identifies the designated spaces that are subject to the agreement;

b. includes a statement indicating that the parties understand that these designated spaces cannot be counted to support any use other than those identified in the agreement;

c. identifies the current property uses, property owners, and the entity responsible for maintenance of the parking area.

d. (3) includes a backup plan to provide sufficient parking if the joint agreement is violated by either party.

(3) Upon approval of the agreement by the town attorney, the agreement(s) must be recorded in the Lee County public records at the applicant's expense.

b. Violation of the agreement for joint use of off-street parking is sufficient grounds for revocation of the special permit.

[relocated from § 34-203(g)(5)]

Sec. 34-2019. Other use of off-street parking lots.

(a) Parking spaces that are not in daily use and are located in parking lots having ten or more parking spaces and meeting the other requirements of this division may be rented to the general public during peak periods.

(b) (2) The following structures and uses may be approved in parking lots by the director provided that a site plan is submitted showing that the structure will not reduce the parking spaces required for the principal use, or create a traffic or pedestrian hazard:

- (1) a) Charitable or other similar dropoff collection stations.
- (2) b) Aluminum can or other similar receiving machines or facilities.
- (3) c) Photo pickup stations.
- (4) d) Telephone booths.
- (5) e) Automatic teller machines (ATM's).
- (6) f) Other similar uses which do not unreasonably interfere with the normal functioning of the parking lot.

(c) Except as provided in this section and for ancillary temporary uses as provided in § 34-3048, required off-street parking areas shall in not instance be utilized for the sale, display, or storage of merchandise, or for repair, dismantling, or servicing of any vehicles or equipment. (1) This shall not be interpreted to prohibit a residential property owner

from the occasional servicing of his own noncommercial vehicle or conducting normal residential accessory uses.

Sec. 34-2020. Required parking spaces.

All uses permitted under this chapter shall be subject to the following minimum requirements:

Sec. 34-2011. Applicability of division:

(a) *New developments.* All New residential and nonresidential uses are shall be required to provide off-street parking spaces in single-purpose parking lots in accordance with the standards regulations specified in this section, division as modified by certain reductions as provided in the Downtown and zoning districts (see 34-_____).

(b) *Existing developments.* ~~(1)~~ Existing buildings and uses ~~which have existing off-street parking spaces~~ may be modernized, altered, or repaired without providing additional parking spaces, provided there is no increase in total floor area or capacity. ~~Buildings which have been damaged in excess of 50 percent shall be required to comply with all applicable regulations:~~

~~(1 2)~~ Existing buildings or uses ~~which are~~ enlarged in terms of floor area shall provide additional parking spaces; ~~for the enlarged floor area in accordance with the standards specified in this section this division, for the total floor area.~~

~~(2 3)~~ When the use of a building is changed to a different use which is required to have more parking than exists, the additional parking shall be provided in accordance with the standards specified in this section.

~~(c) Developments on islands without direct vehicular access to mainland. [deleted in its entirety]~~

(c) **Minimum parking standards.**

(1) **RESIDENTIAL USES. Dwelling, housing and living units.** For all common parking lots, in addition to the spaces required in this subsection, additional parking spaces equal to ten percent of the total required shall be provided to accommodate guest parking.

a. **Dwelling units with individual driveways:** *Single-family, duplex, two-family attached, and mobile home units.* The

minimum requirement is 2.0 spaces for each dwelling unit. Stacking of vehicles in the driveway is permitted.

b. *Townhouses.* Minimum requirements are as follows:

1. ~~For townhouses with individual parking driveways, 2.0 spaces per dwelling unit. Stacking is permitted.~~
2. ~~For townhouses sharing a common parking lot, 2.0 spaces per dwelling unit. Stacking is not permitted.~~

e. b. **Dwelling units with common parking lots: Multiple-family buildings.** Minimum requirements are as follows:

1. Studio or efficiency: 1.0 +.25 spaces per unit.
2. One bedroom: 1.25 +.5 spaces per unit.
3. Two bedrooms: 1.25 +.75 spaces per unit.
4. Three or more bedrooms: 1.5 2.0 spaces per unit.

Stacking of vehicles is not permitted except as provided in § 34-2015(5).

c. **Timeshare units:** Parking requirements are the same as for multiple-family buildings. If lock-off accommodations are provided, parking for the lock-off units will be calculated as follows:

1. Studio units: 0.1 spaces per unit.
2. One bedroom units: 0.15 spaces per unit
3. Two bedroom units: 0.25 spaces per unit
4. Three or more bedrooms: 0.5 spaces per unit.

d. **Living units without kitchens:** Living units that do not contain customary cooking facilities within the individual units but instead have a central kitchen for food preparation and where meals are served in a central dining area or individual rooms must calculate parking requirements as follows: one parking space per four residents or four beds (whichever is greater), plus ten percent.

d. *Adult congregate living facilities.* See § 34-1411.

e. **Group quarters, excluding living units subjects to § 34-2020(1)c. adult congregate living facilities.** The minimum requirement is one parking space per

bedroom or one space per two beds, whichever is greater.

- f. ~~Hotels and motels.~~ See division 19 of this article.
 - g. ~~Health care facilities groups I and II; social services groups III and IV.~~ The minimum requirement is one space per four beds.
 - h. ~~Continuing care facilities.~~ The minimum requirement is 0.75 space per one-bedroom living unit and 0.875 space per two-bedroom living unit. Requirements for adult congregate living facility units and health care facilities shall be calculated as provided in subsections (1) d and g of this section.
- (2) **COMMERCIAL USES.**
- a. ~~Animal clinics.~~ The minimum requirement is five spaces per veterinarian plus one space per employee.
 - b. ~~Animal kennels.~~ The minimum requirement is five spaces.
 - a. c. Automotive repair and service (excluding "drive-in oil change establishments"); automotive service stations. The minimum requirement is three four spaces per service bay staff plus one space per employee. Drive-in oil change establishments must provide 1.5 parking spaces per service bay. In addition to the parking spaces, there must be two stacking spaces per service bay or five stacking spaces per site, whichever is greater. Each service bay may count as one stacking space.
 - d. ~~Banks and financial establishments.~~ The minimum requirement is one space per 300 square feet of total floor area. See also subsection (2)h of this section pertaining to drive-up facilities.
 - b. e. Bars, nightclubs, and cocktail lounges. The minimum requirement is 21 spaces per 1,000 square feet of total floor area. If outdoor seating is provided, an additional one space per four outdoor seats or 50 square feet of outdoor seating area (whichever is greater) must be provided. See also subsection (2)h † of this section, pertaining to restaurants, and subsection (4 5) of this section.
 - c. f. Barbershops, beauty shops, massage establishments, nail salons, etc. The

minimum requirement is two three spaces per operator (chair) or one space per 100 square feet of gross floor area, whichever is greater, ~~with a minimum of five spaces.~~

- d. Bed-and-breakfast inns. The minimum requirement is 1 parking spaces for each guest room plus 1 space for the owners' quarters.
- e. g. Car washes. The minimum requirement is two spaces per car wash stall or space, plus drive-up facilities (see subsection (2)e h of this section). Each individual car wash stall or space may count as one of the required two parking spaces per stall.
- f. h. Drive-up facilities. Any commercial establishment providing drive-up service windows or stalls shall provide separate vehicle stacking for those uses. For the purpose of this section, a stacking unit is defined as 18 feet in length and nine feet in width. The total number of stacking units required is to be based on the type of business, as follows:
 1. Banks and financial establishments: Stacking lanes to accommodate three five cars per window.
 2. Car washes: Stacking to accommodate one car per service stall or three cars, whichever is greater.
 3. ~~2. Restaurants:~~ New drive-up facilities are not permitted for restaurants. For existing drive-up facilities that are being lawfully reconfigured, stacking lanes to accommodate six ten cars per service lane, with a minimum of four five spaces preceding the menu board.
 4. ~~3. Other:~~
 - i. Photo dropoff, laundry dropoff or other similar type dropoff facilities: Stacking for two three cars.
 - ii. All other: Stacking to accommodate three five cars per service lane.
- g. Hotels and motels. The minimum requirement is 1.2 parking spaces for each guest unit up to 450 square feet and 1.5 spaces for each larger guest unit.
- i. ~~Funeral homes. [deleted in its entirety]~~
- h. j. Offices, excluding medical. This category includes offices of all types not specifically listed elsewhere, including

banks, medical facilities, and veterinary clinics but not limited to business services group I, contractors and builders, insurance companies, nonstore retailers, personal services group IV, social services group I, and other similar offices. The minimum requirement is one space per 400 300 square feet of total floor area. See also subsection (2)e of this section pertaining to drive-up facilities.

- k. Offices, medical and health care facilities group III. The minimum requirement is one space per 200 square feet of total floor area.
- i. t. Restaurants. With the exceptions noted below, the minimum parking requirements for restaurants is 14 spaces per 1,000 square feet of total floor area plus any outdoor seating area.
 - 1. Restaurants Delicatessen/bakeries.

When a store such as a delicatessen or bakery provides seating for customers to eat ~~the bakery~~ products made on the premises, the store must provide a ~~minimum of~~ one parking space per ~~table or~~ 100 50 square feet of seating area (whichever is greater) in addition to the parking required for the store bakery.
 - 2. When a restaurant is located within the same building as the principal use, and is clearly provided primarily for the employees and customers of the principal use, no additional parking spaces are required. ~~In all other cases,~~ parking shall be as follows: The minimum requirement is 14 spaces per 1,000 square feet of total floor area, plus 14 spaces per 1,000 square feet of all area used for outdoor seating.
 - 3. Cocktail lounges and bars. If the restaurant contains a cocktail lounge or bar, the minimum requirement is 14 spaces per 1,000 square feet of total floor area plus seven additional spaces per 1,000 square feet of floor area used for the bar or cocktail lounge. If outdoor seating is provided, parking must also be provided for the area used for outdoor seating at these same rates.
 - 4. Restaurants, fast food. The minimum requirement is 16 spaces per

1,000 square feet of total floor area plus any outdoor seating area. ~~one~~ space per four outdoor seats, except as provided for in § 34-2021. See also subsection (2)e ~~h~~ of this section pertaining to drive-up facilities.

- j. m. Retail stores or business establishments, freestanding. This subsection applies to individual retail or business establishments on separate parcels. ~~The~~ minimum number of parking spaces required shall be as specified in this subsection, but in no case shall be less than five spaces. Any retail establishment proposing drive-up facilities shall also meet the requirements of subsection (2)e ~~h~~ of this section.
 - 1. Building materials and sales (retail). The minimum requirement is one space per 300 square feet of indoor sales and office area, plus one space per employee.
Convenience food and beverage stores. The minimum requirement is one space per 250 square feet of total floor area. If more than 20% of the total floor area or 600 square feet, whichever is less, is used for the preparation and/or sale of food or beverages in a ready-to-consume state, parking for this area will be calculated the same as a fast-food restaurant. One parking space per four pumps will be credited against the required parking.
 - 2. Other retail or business establishments. Small products or commodities. This category includes stores specializing primarily in small (handheld) products, and is intended to include convenience stores; clothing stores; department stores; drugstores; food stores; hardware stores; hobby, toy and game shops; package stores; personal services groups I and II (excluding barbershops, beauty shops; specialty retail shops groups I, II and III; used merchandise stores group I; variety stores; and other similar type stores. The minimum parking requirement is one space for each 300 200 square feet of total floor area. Required parking for areas within the principal building

- which are used only for dead storage and are not available to the public shall be computed at the rate of one space per 600 square feet.
3. ~~Large products or commodities.~~
[deleted in its entirety]
 4. ~~Very large products or commodities.~~
[deleted in its entirety]
- n. ~~Schools and studios, commercial.~~
[deleted in its entirety]
- (3) ~~Commercial/industrial uses.~~
- a. ~~Manufacturing.~~ [deleted in its entirety]
 - b. ~~Processing and warehousing.~~ [deleted in its entirety]
 - c. ~~Services not listed elsewhere.~~ [deleted in its entirety]
 - d. ~~Terminal, freight.~~ [deleted in its entirety]
 - e. ~~Warehousing, private.~~ [deleted in its entirety]
 - f. ~~Warehousing, public.~~ [deleted in its entirety]
- k. ~~Warehousing, (mini-warehouses).~~ The minimum requirement is one space per 25 ~~ten~~ storage units ~~cabines~~, with a minimum of 3 ~~five~~ spaces.
- l. ~~Wholesale establishments.~~ The minimum requirement is one space per company vehicle plus one space per 1,000 square feet of total floor area.
- (4)(3) **MISCELLANEOUS USES.**
- a. ~~Airports.~~ [deleted in its entirety]
 - b. ~~Boatramps.~~ [deleted in its entirety]
 - c. ~~Bowling alleys.~~ [deleted in its entirety]
 - d. ~~Clubs, fraternal or membership organizations.~~ [deleted in its entirety]
 - e. ~~Day care centers.~~ [deleted in its entirety]
- a. ~~Educational institutions, including public, private and parochial.~~
1. ~~Public schools.~~ Parking shall be provided in compliance with state law.
 2. ~~Private or parochial schools and day care centers.~~
 - i. ~~Elementary and middle schools.~~
The minimum requirement is one space per employee plus one space for each 40 students.
 - ii. ~~High schools.~~ [deleted in its entirety]
 - iii. ~~Colleges, universities and trade and vocational institutions.~~
[deleted in its entirety]
- b. ~~Essential service facilities.~~ The minimum requirement is one space per employee on the largest shift
- c. ~~Flea markets.~~ The minimum requirement is one space per 150 ~~100~~ square feet of total floor display area.
- h. ~~Golf courses.~~ [deleted in its entirety]
- i. ~~Hospitals (health care facilities group IV).~~ The minimum requirement is one space per bed, excluding bassinets and gurneys, plus one space per employee on the largest shift.
- d. ~~Marinas and other water-oriented uses.~~ Minimum requirements are as follows:
 1. ~~Boat slips:~~ Two spaces per three slips.
 2. ~~Boat ramps:~~ See subsection (4)b of this section.
 2. ~~Dry storage:~~ One space per four unit stalls.
 3. ~~Charter or party fishing boat services:~~ One space per three people based on maximum passenger capacity of the boats using the dock or loading facility.
 4. ~~Cruise ships:~~ One space per three people based on the maximum passenger and crew capacity of the ship.
 6. ~~Water taxis:~~ Dedicated parking spaces are not required at stopping points for water taxis or water shuttles.
 7. ~~Other uses:~~ Other uses including accessory or ancillary marina uses such as restaurants, bars, or lounges, boat sales, etc. must be calculated separately in compliance with this division. Refer to subsection (5) of this section.
- e. ~~Meeting halls and other places for group assembly not otherwise listed.~~ The minimum requirement is one space per 150 square feet of floor area (for facilities with fixed seats, refer to recreation facilities, indoor).
- k. ~~Miniature golf.~~ [deleted in its entirety]
- f. ~~Museums, art galleries, libraries, and other similar uses not covered elsewhere:~~ The minimum requirement is one parking space for each 500 square feet of total floor area.
- g. ~~Places of worship and religious facilities.~~ Refer to division 27 of this article.

- h. m. **Recreation facilities, indoor, commercial.**
 1. Gymnasiums and similar recreational establishments where large floor areas are required to accommodate team play or special equipment such as gymnastic horses, parallel bars, or trampolines for individual users: The minimum requirement is one parking space for each 250 square feet of total floor area plus one space per three seats if seating is provided (see § 34-2020(7) for bench seating).
 2. All other indoor recreational facilities, including health clubs, not specifically listed: The minimum requirement is There shall be provided at least one parking space for each 150 ~~100~~ square feet of total floor area.
- i. n. **Recreation facilities, outdoor, commercial.** The parking requirement shall be determined by the director if the use is not listed in this section.
- o. ~~Tennis courts, commercial. [deleted in its entirety]~~
- j. p. **Theaters, auditoriums, stadia, arenas and other similar places of public assembly, museums, art galleries, libraries, and other similar uses not covered elsewhere.** For such uses, there shall be provided either one parking space for each 300 square feet of total floor area, or The minimum requirement is one parking space for each four seats plus one space per employee, whichever of the two is greater. (See subsection (7) of this section.)
- k. r. **Carnivals, fairs, and amusement attractions and devices.**
 1. There shall be provided a The minimum requirement is five of ten parking spaces provided for each permanent amusement device.
 2. If such uses are located in an existing parking lot, the parking lot must have enough spaces to comply with the minimum requirements for both the principal use and the carnival, fair or amusement attraction or device. Prior to obtaining a temporary use permit (see division 37 of this article) for the temporary use of a parking lot for a carnival, fair or amusement attraction

or device, the applicant shall submit a site plan showing that there will be no net loss or reduction in the number of parking spaces required for any existing principal use which relies on the parking lot.

- 3. ~~Such uses may not be located in an existing parking lot which is already nonconforming as to the number of spaces needed for the existing uses.~~

(5)(4) **COMBINED USES.** The number of parking spaces required for combined uses shall be the total of the spaces required for each separate use established by this schedule. Exceptions are as follows:

a. Joint use of parking lots except as provided in § 34-2018, and as provided for in this section:

- b. a. **Multiple-occupancy complexes.** This subsection applies to shopping centers and other complexes where five or more individual office or retail establishments are located and which all share a common parking area. Specifically excluded from this subsection are: (i) movie theaters, located outside of shopping centers or in shopping centers smaller than 100,000 square feet, (ii) bowling alleys, and (iii) bars, and cocktail lounges, and restaurants located outside of shopping centers or in shopping centers smaller than 50,000 square feet. Minimum requirements are one parking space for each 400 square feet of total floor area, as follows: *[remainder deleted]*

b. ~~Planned developments. [deleted in its entirety]~~

(6)(5) **USES NOT SPECIFICALLY LISTED.** Requirements of Off-street parking for uses not specifically mentioned in this chapter shall be the same as for the uses most similar to the one sought, it being the intent to require all uses to provide off-street parking.

(7) ~~BENCH AND PEW SEATING. [deleted in its entirety]~~

Sec. 34-2021. Reserved. Exception for fast order food establishments located in multiple use complex. *[deleted in its entirety]*

Sec. 34-2022. Seasonal Temporary parking lots.

(a) No temporary use permits for temporary parking lots shall be issued on Captiva Island or within the Gasparilla Island conservation district.

(a b) In other areas of the county, Temporary use permits (see §§ 34-210 and 34-3041) may be issued for seasonal temporary parking lots, subject to the following: (1) Temporary parking lots shall be allowed, in conjunction with an approved temporary use permit. Approval of seasonal parking lots can be for a single period of up to 8 months long, commencing on November 15 and continuing until July 15 (subsection 34-2022(b)); or for a single period of up to 3 years on a year-around basis (subsection 34-2022(c)). For the purposes of this subsection, temporary permits for seasonal temporary parking lots may also be issued for all or part of such time period and shall not be limited to 30 days as set forth in § 34-3041(d).

(b) A seasonal parking lot approved for a single period of up to 8 months must comply with the following regulations:

- (2 1) A seasonal temporary parking lot shall only be permitted on ~~vacant commercially or industrial zoned property or commercially or industrial zoned property with structures;~~ provided that, on properties with structures, the structures are vacant and remain vacant.
- (3 2) Temporary parking lots shall only be permitted when adjacent to a collector or arterial road or within 660 feet of a collector or arterial road. However, in no instance shall Ingress and egress to seasonal parking the lots shall not be through a residential neighborhood or residentially zoned district.
- (4 3) The applicant must submit to the director a parking plan, drawn to scale, indicating but not limited to the following: the location of access points, ropes, and posts, and the circulation pattern within the parking lot.
- (5 4) Individual spaces in seasonal parking lots do not need to be delineated provided the end of each space and all aisles are clearly delineated with temporary posts and ropes. The delineation of spaces for temporary parking lots shall be in accordance with § 34-2016(2)c.
- (6 5) The temporary Seasonal parking lots do not need to be surfaced, and may surface shall be maintained as a grass area or otherwise in

a dust-free manner, in accordance with § 34-2017(c).

- (7 6) The temporary Seasonal parking lots shall be designed so as to permit vehicles exiting the lot to enter the street right-of-way in a forward motion. The seasonal temporary parking lot, where applicable, shall utilize an existing entrance or exit, except that no additional traffic shall be directed onto residential streets. Where no access exists, a the parking lot plan showing an acceptable temporary access point(s) may be approved shall be reviewed by the director county department of transportation and engineering.
- (8 7) If the temporary seasonal parking lot is to be used at night, adequate lighting shall be provided for the driveway's ingress and egress points. The lighting shall be directed to eliminate glare on any other use.
- (9 8) The temporary seasonal parking lot shall be secured in a manner which will not permit ingress and egress except during the designated hours of operation.
- (10 9) The temporary seasonal parking lot shall not adjoin or be less than ten feet from residential uses or residentially zoned property.
- (11 10) A parking attendant shall be required during the posted hours of operation of the temporary seasonal parking lot.
- (12 11) The temporary seasonal parking lot shall only be used for the parking of operable motor vehicles, with no overnight parking or camping. ~~No other temporary or permanent use of the property shall be allowed during the life of the temporary use permit for parking.~~
- (13) ~~§ 34-3048, pertaining to ancillary uses permitted in off-street parking lots, shall not apply to this section.~~
- (14 12) The maximum hours of operation shall be from 7:00 a.m. until 10:00 p.m., unless extended by the director in writing.
- (15 13) The parking spaces created through the approval of temporary seasonal parking lots shall not be used for calculating off-street parking requirements as set out in § 34-2020.
- (16) ~~Where approval for a temporary parking lot will extend beyond 30 days, the requirements of subsection (b)(17) of this section shall apply.~~

- (14) ~~b.~~ At intersections of parking lot entrances or exits with a street right-of-way or easement, no obstruction shall be planted or erected which materially obstructs the driver's view of approaching traffic or pedestrians (see § 34-662(b)(4)).
- (15) ~~c.~~ Temporary Seasonal parking lot signs must comply with requirements for ~~commercial development special occasion~~ signs in § 30-151, except that the signs may remain in use for the duration of the temporary use permit. These signs must be created and displayed in a professional manner. The Town Manager may require the removal of any signs that do not comply with these standards, or which remain visible after the expiration of the temporary use permit.
- (16) The Town Manager may require visual screening between a seasonal parking lot and any residentially zoned or used property. If additional screening is requested by the Town Manager, it must be installed within 30 days of written notice to the property owner or parking lot operator or the temporary use permit will be null and void.

(c) A seasonal parking lot approved for a single period of up to 3 years must comply with subsection 34-2022(b) and with the following additional regulations:

- (1) Compliance with all applicable regulations must be demonstrated on a paving, grading, and drainage plan acceptable to the director.
- (2) ~~(17) a.~~ Where a temporary seasonal parking lot abuts residentially zoned or used property, that portion of the parking lot shall be buffered by a continuous visual screen with a minimum opacity of ~~50~~ 75 percent and a minimum height of ~~three~~ four feet. This screen may contain a combination of walls, fences, railings, and shrubs. Walls, fences, and railings may not exceed the maximum heights established by this code. The visual screen may be located as close as up to one foot from the right-of-way or street easement line but not closer than five feet from the edge of a travel lane. The Town Manager may require more extensive screening if the height, character, and location of the screen does not or may not adequately protect the abutting property from excessive impacts from the temporary

seasonal parking lot. Additional screening as requested by the Town Manager must be installed within 30 days of written notice to the property owner or parking lot operator, or the temporary use permit will be null and void.

b. *[moved to 34-2022(b)(16)]*

c. *[moved to 34-2022(b)(17)]*

- (3) Where a seasonal parking lot abuts a street, that portion of the parking lot shall be buffered by a continuous visual screen with a minimum opacity of 25 percent and a minimum height of three feet. This screen may contain a combination of walls, fences, railings, and shrubs. The visual screen may be located up to one foot from the right-of-way or street easement line.
- (4) Seasonal parking lot signs must comply with requirements for individual business establishment signs in § 30-153. These signs must be created and displayed in a professional manner. The Town Manager may require the removal of any signs that do not comply with these standards, or which remain visible after the expiration of the temporary use permit.

(d) Parking lots intended to remain in use for longer than three years must be constructed to this divisions's standards for single-purpose parking lots, including landscape buffering, and must comply with all regulations for the property's zoning district.

Secs. 34-2023--34-2030 ~~2050~~. Reserved.

DIVISION 26-A. **PERFORMANCE STANDARDS**

Sec. 34-2031 ~~623~~. Performance standards, environmental quality.

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

- (1) comply with all local, state, and federal air, water and noise, and water pollution standards, and
- (2) not adversely impact water quality.

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

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

- (1) not be injurious or offensive and thereby constitute a nuisance to the owners and occupants of adjacent premises, nearby residents, or to the community, by reason of the emission or creation of noise, vibration, smoke, dust, or other particulate matter, toxic or noxious waste materials, odors, fire or explosive hazard, or glare; and ~~nor shall anything be placed, constructed or maintained that would in any way constitute a nuisance to owners or residents or to the community, or adversely impact water quality and water needs.~~
- (2) not cause light from a point source of light to be directed, reflected, or refracted beyond the boundary of the parcel or lot, onto adjacent or nearby residentially zoned or used property or onto any public right-of-way, and thereby constitute a nuisance to owners or occupants of adjacent premises, nearby residents, or to the community; and
- (3) ensure all point sources of light and all other devices for producing artificial light are shielded, filtered, or directed in such a manner as to not cause light trespass.

Secs. 34-2033--34-2050. Reserved.

DIVISION 27. PLACES OF WORSHIP AND RELIGIOUS FACILITIES

Sec. 34-2051. Property development regulations.

~~(a) Noncommercial or nonindustrial districts.
[deleted in its entirety]~~

~~(b) Commercial and industrial districts. All~~ Places of worship and all religious facilities located in a zone permitting both residential and commercial uses as principal uses shall adhere to the commercial property development regulations of that its zoning district.

Sec. 34-2052. Parking.

(a) *Places of worship.* Parking for places of worship shall be provided at the ratio of one parking space for each three seats within the sanctuary or main assembly hall, whichever is greater. ~~See § 34-2020(7) for computation of parking requirements for pew seats.~~ Where benches, pews or other similar seating arrangements are used, each 24 lineal inches shall be counted as one seat.

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

(c) *Parking on grass.* Up to ~~75~~ 50 percent of the parking spaces required for the sanctuary or main assembly hall of a place of worship may be provided as parking on grass, provided the regulations set forth in the following sections of division 26 of this article, pertaining to ~~off-street~~ parking requirements, are met:

- ~~(1) § 34-2013, concerning parking lot access.~~
- ~~(2) § 34-2014, concerning parking plans.~~
- ~~(3) § 34-2015(1), concerning location.~~
- ~~(4) § 34-2015(2), concerning design, subsections a, c and d.~~
- ~~(5) § 34-2016(1)b, concerning dimensional requirements.~~
- ~~(6) § 34-2016(3), concerning aisle widths.~~

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

Expansion of existing places of worship, lawfully existing as of August 1, 1986, by right or by special exception, is hereby declared a legal use. Additions, renovations, or other expansion of the main place of assembly may be permitted upon application for and approval of a building permit in accordance with all applicable town county regulations, without the requirement of special exception approval. Any expansion which would constitute a religious facility will require a special exception, except in those zoning districts where permitted by right.

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

**DIVISION 28. RESERVED
PLANT NURSERIES**
[deleted in its entirety]

Secs. 34-2081~~2~~--34-2110. Reserved.

**DIVISION 29. PRIVATE CLUBS,
FRATERNAL CLUBS AND MEMBERSHIP
ORGANIZATION CLUBS**

Sec. 34-2111. Applicability of district use regulations.

The limited enumeration of a private, fraternal, or membership organization club use is not meant to limit or abridge the rights of assembly in any way. Such organizations are not prohibited from meeting in various traditional and appropriate places. For example, a service club's weekly meeting at a restaurant in a district not otherwise allowing fraternal, membership organization, or private clubs shall not constitute a zoning violation. However, where such an organization is the principal user of real property for meetings, entertainment, and food and beverage service, such a meeting place, hall, or clubhouse shall be permitted only where this use is explicitly enumerated.

Secs. 34-2112--34-2140. Reserved.

**DIVISION 30. RESERVED
PROPERTY DEVELOPMENT
REGULATIONS**

Subdivision I. In General
*[deleted in its entirety; content
has been moved to § 34-635]*

Subdivision II. Height
*[deleted in its entirety; content
has been moved to § 34-631]*

Subdivision III. Setbacks
[moved to § 34-634]

Subdivision IV. Lots
[deleted in its entirety]

Subdivision V. Gasparilla Island
[deleted in its entirety]

Subdivision VI. McGregor Boulevard
[deleted in its entirety]

Secs. 34-2141--34-2350. Reserved.

**DIVISION 31. RECREATIONAL VEHICLES
AS PERMANENT RESIDENCES***

Sec. 34-2351. Use as permanent residence.

The use of a recreational vehicle type unit by a permanent resident as a permanent residence, as the terms are defined in F.S. ch. 196, is has been expressly prohibited ~~as of~~ since September 16, 1985. Persons who have established permanent residency within a recreational vehicle park as of September 16, 1985, are exempt from the residency provisions of this section, provided that the proof of residency was established by an affidavit filed with the Lee County prior to October 31, 1985.

Secs. 34-2352--34-2380. Reserved.

DIVISION 32. SCHOOLS

Sec. 34-2381. Noncommercial schools.

(a) *Permitted districts.* All noncommercial schools constructed by the district school board on land owned by the district school board are permitted by right in any zoning district. ~~Also permitted by right in any zoning district is Florida Gulf Coast University, located in the Lee Plan University Campus category, including all facilities normally associated with a public university. Development of Florida Gulf Coast University will be in accord with a campus master plan adopted pursuant to F.S. § 240.155.~~ All other noncommercial schools are permitted by right or are required to obtain special exception approval prior to any new construction or expansion of an existing facility, in accordance with the district use regulations.

(b) ~~Access.~~ Access requirements for new schools are as follows:

- (1) ~~Whenever possible, elementary schools will have access to local or collector streets; and~~
- (2) ~~Secondary schools must have access to a collector or arterial street.~~

(b) ~~(c)~~ *Location*. No noncommercial school site will be approved which, in the opinion of the town council hearing examiner, is exposed to physical constraints, hazards or nuisances which are detrimental to the health and safety of students and to the general operation of the school.

Sec. 34-2382. Commercial schools.

Commercial schools are permitted by right or are required to obtain special exception approval prior to any new construction or expansion of an existing facility, in accordance with the district use regulations.

Secs. 34-2383--34-2410. Reserved.

DIVISION 33. SIGNS

Sec. 34-2411. Location and construction.

All on-site and off-site signs shall be located, erected, and constructed in accordance with ch. 30.

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

**DIVISION 34. RESERVED
SPECIAL SETBACK REGULATIONS
FOR SPECIFIC USES**
[deleted in its entirety]

Secs. 34-2441--34-2470. Reserved.

**DIVISION 35. SPORTS/AMUSEMENT PARKS
AND RECREATIONAL FACILITIES**

Sec. 34-2471. Applicability of division.

The regulations set forth in this division for specific sports/amusement parks and facilities are in addition to any other applicable regulations. In the case of conflict, the most restrictive regulations shall apply.

Sec. 34-2472. Required approvals.

(a) *New sports/amusement parks and recreational facilities*. The following types of New sports/amusement parks and recreational facilities; regardless of land area involved; shall only be

permitted when approved as a planned development district:

~~(1) Arenas, stadiums, racetracks and other similar facilities, private or commercial.~~

~~(2) Drive-in theaters.~~

~~(3) Outdoor shooting ranges, and only when in compliance with National Rifle Association safety standards.~~

~~(4) Any commercial sports/amusement park and recreational facility exceeding ten acres in land area.~~

(b) *Existing recreational facilities and parks.*

(1) *Planned developments*. Recreation halls and other sports/amusement parks and recreational facilities within an approved planned development ~~PUD or PD~~ shall be subject to the provisions of the approving resolution ~~or ordinance~~.

(2) *Other developments*. Recreation halls and other sports/amusement parks and recreational facilities that are lawfully existing ~~as of the effective date of the ordinance from which this section is derived~~ shall be permitted to remain, provided that any expansion of land area, buildings, or structures shall comply with the provisions of this section.

Sec. 34-2473. Minimum lot area.

All sports/amusement parks and facilities, whether a principal use or accessory use, shall be located on property meeting the minimum lot size and dimensions of the zoning district in which located as well as any additional area, width, or depth required to permit full compliance with all setbacks, ground cover, open space, buffering, drainage, and parking requirements as set forth in this chapter or ch. 10, whichever is most applicable.

Sec. 34-2474. Setbacks.

(a) Minimum setbacks for uses subject to this division are as follows:

~~(1) Street setbacks shall be as set forth in § 34-2192.~~

~~(2) Water body setbacks shall be as set forth in § 34-2194.~~

~~(3) Side and rear setbacks shall be as set forth in the property development regulations of the zoning district in which located, except as provided in this division.~~

(b) Additional setback requirements for specific uses are as follows:

- (1) *Commercial outdoor sports/amusement parks, amusement devices, and water slides.* Amusement devices, water slides, miniature golf, and other commercial outdoor sports/amusement parks and facilities ~~not specifically regulated~~ shall be located not less than 50 feet or a distance equal to the height of the structure or device, whichever is greater, from any property under separate ownership, provided further that such setback shall be 100 feet from any adjacent property with residential zoning zoned RS, TF, TFC, RM, MH or RPD, or any existing residential use.
- ~~(2) *Arenas, stadiums and racetracks.* [deleted in its entirety]~~
- ~~(3) *Bleachers and other seating facilities.* [deleted in its entirety]~~
- ~~(4) *Drive-in theaters.* [deleted in its entirety]~~
- ~~(5) *Golf driving range not part of an approved golf course.* [deleted in its entirety]~~
- (2) ~~(6) *Recreation halls and private clubs.*~~ Recreation halls and ancillary facilities and private clubs shall be located at least 40 feet from any residential dwelling and situated in a manner so as to encourage pedestrian and bicycle traffic.
- ~~(7) *Outdoor shooting ranges.* [deleted in its entirety]~~
- (3)(8) *Other facilities.* The following facilities are specifically regulated elsewhere in this chapter:
 - a. Marinas, § 34-1862.
 - b. ~~Stables, boarding and commercial;~~ division 6 of this article.
 - e. Swimming pools and tennis courts, division 2 of this article.

Sec. 34-2475. Reserved. Access.

~~Arenas, drive-in theaters, racetracks, stadiums and other similar types of sports/amusement facilities shall provide vehicular access from an arterial or collector street. Such access points shall be located so as to minimize vehicular traffic to and through local streets in nearby residential neighborhoods.~~

Sec. 34-2476. Accessory uses.

(a) Accessory uses, buildings, or structures for sports/amusement parks and recreational facilities which are customarily incidental to the principal use may be permitted. Such uses include but are not limited to restroom facilities, maintenance sheds, refreshment stands (with no alcoholic beverages unless approved in accordance with division 5 of this article), pro shops (where applicable), and administrative offices.

~~(b) During daylight hours, drive-in theater parking areas may be used for a flea market, provided no buildings are erected in connection with such use. Drive-in theaters may also be used to provide off-site parking for arenas, stadiums, etc., in accordance with § 34-2478, if approved by the Board of County Commissioners.~~

(b) ~~(e)~~ **Food and beverage service, limited**, is permitted in any recreation hall; provided, however, no alcoholic beverages shall be distributed or consumed on the premises except in compliance with division 5 of this article.

Sec. 34-2477. Lighting.

Artificial lighting used to illuminate the premises of sports/amusement parks and recreational facilities shall be directed away from adjacent properties and streets.

Sec. 34-2478. Parking.

(a) ~~Parking facilities for sports/amusement parks and recreational facilities shall be provided in accordance with division 26 of this article.~~

~~(b) For occasional use facilities such as arenas and stadiums, the Board of County Commissioners may allow up to 50 percent of the parking requirement to be met off the site, provided that: [deleted in its entirety]~~

(c) ~~Parking facilities for occasional use sports/amusement parks and recreational facilities that are lawfully existing and received a certificate of occupancy or certificate of completion prior to January 1, 1995 will be provided as follows: [deleted in its entirety]~~

Sec. 34-2479. Sound systems.

Sound systems for sports/amusement parks and recreational facilities shall meet the requirements of the town's county noise control ordinance, Ordinance Nos. 96-24 as may be amended from time to time 82-32 and 83-22.

Secs. 34-2480--34-3000. Reserved.

DIVISION 36. STORAGE FACILITIES AND OUTDOOR DISPLAY OF MERCHANDISE

Sec. 34-3001. Applicability of division.

(a) Except as provided in this section, the regulations set forth in this division shall apply to all outdoor display of merchandise which is offered for sale or rent, and to all storage facilities as defined in this division.

(b) The provisions of the division do not apply to the display, sale, or rental of bicycles, motorbikes, and motor vehicles; boats; recreational vehicles; trailers, mobile homes, construction or farm equipment (see § 34-1352); or to junk, scrap or salvage yards (see division 20 of this article); or to refuse, trash dumps and sanitary landfills (see division 20 of this article); or to garage or yard sales by residents of dwelling units on their own property in accordance with this code (see § 34-622(c)(42)); or to the mooring or docking of aircraft or watercraft.

Sec. 34-3002. ~~Reserved. General setback requirements.~~

~~(a) All buildings and structures for uses subject to this division shall comply with the setback requirements for the zoning district in which the use is located. [moved to 34-3004(b)]~~

~~(b) Some zoning districts have specific setback requirements which may apply to storage areas.~~

Sec. 34-3003. Lighting.

Artificial lighting used to illuminate premises subject to this division shall be directed away from adjacent properties and streets, shining only on the subject site.

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

(a) **Outdoor display allowed.** Merchandise for sale or rent on the premises may be displayed outdoors during hours when the business is open; however, all sales and rental arrangements must be made indoors, except where specifically permitted by § 34-677(c)(1).

(b) **Display setbacks.**

(1) No merchandise displayed out-of-doors shall be located within ten feet of any side or rear property line, ~~or within 25 feet of any street right-of-way or street easement. Where chapter 10 requires different setbacks due to landscaping or buffering, the regulation which requires the greatest setback shall control.~~

(2) Any building or structure covering or surrounding merchandise displayed or visible outdoors must comply with the setback requirements for the zoning district in which the use is located.

(c) **Display area.**

(1) No required parking space or aisle, or required loading space, shall be used for display purposes.

(2) Areas used for display purposes do not need to be paved; provided however, that the area is maintained in a sightly, dustfree manner.

(3) No merchandise may be displayed or sold on public sidewalks or on any right-of-way or street easement except as provided in § 34-677(c)(3).

Sec. 34-3005. Storage facilities.

(a) Indoor storage.

(1) Permitted districts. Except for warehouses and miniwarehouses, indoor storage is permitted within any zoning district when accessory to the permitted principal use of the property. Warehouses and miniwarehouses are permitted only in zoning districts for which it is specifically stated that such uses are permitted.

(2) Setbacks. All buildings used for indoor storage which are located on the same lot as the principal building shall comply with the setback requirements for accessory buildings. Buildings used for indoor storage which are

not on the same lot as the principal building, but are on the same premises, shall meet the setbacks set forth in the district regulations for principal buildings.

(b) **Open storage.**

- (1) *Fencing and screening.* All commercial ~~or industrial~~ outdoor storage shall be shielded behind a continuous visual screening at least eight feet in height when visible from a residential use or residential zoning district, and six feet in height when visible from any street right-of-way or street easement. ~~The fence shall be located not less than five feet from the right-of-way or street easement line (see division 17 of this article).~~
- (2) *Storage area.* Storage areas do not need to be paved. Grass or other ground cover may be used provided it is kept in a sightly and dustfree manner.

(c) Use of vehicles, truck trailers, or shipping containers for storage. Vehicles, truck trailers, shipping containers, and other similar structures may not be used to store goods, produce, or other commodities unless approved on a temporary basis in accordance with § 34-3044.

(d) (e) Bulk storage of flammable liquids.

- (1) *Firewalls or dikes required.* Whenever aboveground tanks for storage of gasoline, gas, oil, or other flammable liquids are located on any land where such use is permitted, such tanks shall be surrounded by an unpierced firewall or dike of such height and dimensions as to contain the maximum capacity of the tanks. All storage tanks and adjacent structures shall meet the requirements of the Board of Fire Underwriters.
- (2) *Exceptions.* Storage tanks containing liquified petroleum, commonly known as bottled gas, are specifically excluded from the provisions of this subsection.

Secs. 34-3006--34-3020. Reserved.

DIVISION 37. SUBORDINATE AND TEMPORARY USES

Subdivision I. In General

Sec. 34-3021. Subordinate uses.

(a) **Purpose.** The purpose of this section is to provide for certain commercial uses provided such uses are clearly subordinate to the a permitted principal uses of hotels/motels, multiple-family buildings, social services groups III and IV (§ 34-622(c)(46)), health care facilities groups I, II, and IV (§ 34-622(c)(20)), and cultural facilities (§ 34-622(c)(10)), and are in compliance with the regulations set forth in this section:

[ADD THIS TO TABLE OF PERMITTED USES]

~~(b) Subordinate commercial uses for mobile home or recreational vehicle developments. [deleted in its entirety]~~

(b) Permitted uses; restrictions. ~~(c) Other subordinate commercial uses:~~

- (1) The subsection applies to subordinate commercial uses for ~~hotels/motels, multiple-family buildings, social services groups III and IV (§ 34-622(c)(46)), health care facilities groups I, II, and IV (§ 34-622(c)(20)), cultural facilities groups I and II (§ 34-622(c)(10)), and office complexes containing 50,000 square feet or more of floor area on the same premises.~~ The uses listed in subsection (c)(2) of this section shall be permitted when clearly subordinate to the principal use, subject to the following requirements:
 - a. The retail use shall be totally within the building housing the principal use;
 - b. The retail use shall not occupy more than ten percent of the total floor area of the principal use; and
 - c. Public access to the commercial uses shall not be evident from any abutting street.
- (2) Uses permitted are:
 - a. **Personal services groups I and II (§ 34-622(c)(33)).**
 - b. **Pharmacy.**
 - c. **Specialty retail store groups I and II (§ 34-622(c)(47)).**
 - d. **Restaurant group II (§ 34-622(c)(43)).**
 - e. **Rental or leasing establishment group I (§ 34-622(c)(39)).**

Secs. 34-3022--34-3040. Reserved.

Subdivision II. Temporary Uses

Sec. 34-3041. Generally.

(a) **Purpose.** The purpose of this subdivision is to specify regulations applicable to certain temporary uses which, because of their impact on surrounding land uses, require a temporary use permit.

(b) **Permit required.** No temporary use shall be established until a temporary use permit has been obtained from the director in accordance with the requirements of § 34-210 department.

(c) **Lighting.** No permanent or temporary lighting shall be installed without an electrical permit and inspection.

(d) **Time limit.**

- (1) All uses shall be confined to the dates specified by the director, on the temporary use permit; provided, however, that:
 - a. Except as provided for seasonal parking lots in §§ 34-2022 and for other uses in §§ 34-3043 through 34-3047, the director may not authorize a temporary use for ~~the~~ more than 30 days; and
 - b. If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.
- (2) A temporary use permit may not be renewed or reissued to the same applicant or on the same premises for a similar use for a period of six months from the date of expiration of the previous temporary use permit.

(e) **Hours of operation.** Hours of operation shall be confined to those specified in the permit.

(f) **Cleanup.** The site shall be cleared of all debris at the end of the temporary use and all temporary structures shall be removed within 48 hours after termination of the use. A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 ~~shall be posted~~ or a signed contract with a disposal firm may ~~shall~~ be required as a part of the application for a temporary use permit to ensure that the premises

will be cleared of all debris during and after the event.

(g) **Traffic control.** Traffic control as may be required by the county sheriff's department and the county department of transportation shall be arranged and paid for by the applicant.

(h) **Damage to public right-of-way.** A cash bond of a minimum of \$25.00 and not to exceed \$5,000.00 may ~~shall~~ be required ~~posted with county~~ to ensure the repair of any damage resulting to any public right-of-way as a result of the event. ~~Any bond meeting the standards in subsection (f) of this section shall also be deemed sufficient to meet the requirements of this subsection.~~

Sec. 34-3042. Carnivals, fairs, circuses, and amusement devices.

(a) **Location of amusement devices and other structures.**

- (1) **Setback from street for amusement devices.** No use consisting of amusement devices shall be located closer to a street right-of-way line or street easement than 25 feet, or a distance equal to the height of the amusement device, whichever is greater.
- (2) **Setback from bodies of water for amusement devices.** No amusement device shall be located closer to a bay, canal, or other body of water than 50 feet from the Gulf of Mexico or 25 feet from any other body of water, or a distance equal to the height of the amusement device, whichever is greater.
- (3) **Setbacks from side and rear property lines for amusement devices.** All amusement devices shall be set back from side and rear property lines a minimum distance equal to the greater of:
 - a. The setbacks established for the zoning district in which located;
 - b. The height of the device; or
 - c. A minimum of 100 feet from any residentially zoned property ~~zoned RS, TF, TFC, RM, MH, RPD, or MHPD~~, or any existing residential use.
- (4) **Setbacks from habitable structures for amusement devices.** All amusement devices shall be set back from habitable structures a distance which is at least equal to the height of the device.

(5) *Placement of amusement devices in easement.* Nothing contained in this chapter shall be construed as permitting placement of any amusement device within a utility easement or other easement prohibiting such placement.

(6) *General setback requirements.* Other structures associated with carnivals, fairs, or circuses shall be set back in accordance with the setbacks established for each individual zoning district.

(b) *Off-street parking.* Refer to § 34- 2020(4)r for off-street parking requirements.

(c) *Hours of operation.* The hours of operation shall be limited to 10:00 a.m. to 10:00 p.m., unless otherwise extended by the director in writing.

(d) *Excluded areas.* No temporary use permits under this section shall be issued for Captiva Island or within the Gasparilla Island conservation district.

(d) ~~(e)~~ *Special event permit.* In addition to a temporary use permit, a carnival, fair, circus, or amusement device ~~may~~ shall be subject to the provisions of the ~~town's~~ county's special events ordinance, No. 98-01 as amended, ~~permit, as applicable.~~

Sec. 34-3043. Christmas tree sales.

(a) Christmas tree sales may be permitted in any ~~agricultural, commercial, or industrial~~ district, provided that:

- (1) No parking lot required for another use shall be used for display of trees; and
- (2) Temporary off-street parking for at least five vehicles shall be provided utilizing an existing or approved parking lot entrance or driveway.

(b) The maximum length of time for display and open-lot sales shall be 45 days.

Sec. 34-3044. Temporary contractor's office and equipment storage shed.

A contractor's office or construction equipment shed may be permitted in any district where use is incidental to an ongoing construction project with an active building permit or development order. Such office or shed shall not contain sleeping or

cooking accommodations. The contractor's office and construction shed shall be removed within 30 days of the date of final inspection for the project.

Sec. 34-3045. ~~Reserved. Horse shows and exhibitions.~~ [deleted in its entirety]

Sec. 34-3046. Temporary use of mobile home.

(a) *Rehabilitation or construction of residence following disaster.*

(1) When fire or ~~natural or human-caused~~ disaster has rendered a single-family residence unfit for human habitation, the temporary use of a mobile home, travel trailer, or park-trailer located on the single-family lot during rehabilitation of the original residence or construction of a new residence may be permitted subject to the regulations set out in this section.

(2) The maximum duration ~~length~~ of the use shall be 18 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is 6 months, ~~but~~ The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made at least 15 days prior to expiration of the original permit. ~~Additional extensions may only be allowed by the board of zoning adjustments.~~

(b) *Rehabilitation or construction of damaged business or commercial uses following disaster.*

(1) Business or commercial uses damaged by a major or catastrophic disaster that are necessary for the public health and safety or that will aid in restoring the community's economic base may be permitted to use a mobile home or similar type structure to carry out their activities until the damaged structure(s) is rebuilt or replaced according to applicable development or redevelopment regulations.

(2) The maximum duration of the temporary use is 9 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is 6 months. The director may extend the permit once for a period not to exceed 60 days in the event of

circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.

~~(b) Construction of residence in AG district.
[deleted in its entirety]~~

(c) *Conditions for use.*

- (1) Required water and sanitary facilities must be provided.
- (2) The mobile home, travel trailer, or park-trailer shall be removed from the property within ten days of the issuance of after the certificate of occupancy is issued for the new or rehabilitated residence, business, or commercial use, or upon expiration of the temporary use permit, whichever occurs first.
- ~~(3) Placement or setting of the mobile home, shall adhere to ch. 6, article IV, pertaining to floodplain management.~~

Sec. 34-3047. Temporary telephone distribution equipment.

Telephone distribution equipment may be granted a temporary permit during planning and construction of permanent facilities, provided that:

- (1) The equipment is less than six feet in height and 300 cubic feet in volume; and
- (2) The maximum length of the use shall be six months, but the director may extend the permit once for a period not to exceed six additional months in the event of circumstances beyond the control of the telephone company. Application for an extension shall be made at least 15 days prior to expiration of the original permit. Additional extensions may only be allowed by the board of zoning adjustments.

Sec. 34-3048. Ancillary temporary uses in parking lots.

(a) The following ancillary temporary uses may be permitted in parking lots upon application and issuance of a temporary use permit (see § 34-210):

- (1) Seasonal promotions.
- (2) Sidewalk or parking lot sales.
- (3) Fairs and carnivals (see § 34-3042).
- (4) Tent sales.
- (5) Flea markets by nonprofit organizations.

(b) In approving a temporary permit, the director shall require that the area of the lot to be used is clearly defined and that the use will not obstruct pedestrian and vehicular movements to portions of the lot not so used.

Sec. 34-3049. Seasonal Temporary parking lots.

Seasonal Temporary parking lots may be permitted in commercial ~~and industrial~~ zoning districts, ~~excluding commercial and industrial zoning districts on Captiva Island and within the Gasparilla Island conservation district,~~ provided that they are in compliance with § 34-2022.

Secs. 34-3050--34-3060~~70~~. Reserved.

DIVISION 37-A TALL STRUCTURES

Sec. 34-~~3061~~4008. Permit for tall structures.

(a) It shall be the duty of the director to administer and enforce the requirements prescribed in this subdivision within the territorial limits over which the county has jurisdiction through the permitting process. ~~The director shall implement airspace notification procedures through the use of the county airspace notification map, as developed by the county port authority, to assist the department in determining when a proposed structure or object would require a tall structures permit. This airspace notification map shall be reviewed annually with the county port authority's attorney and executive director, or their designees, to ensure currency. The various surfaces displayed on the county airspace notification map are defined as follows. The penetration of the imaginary surfaces outlined in this section shall require review by the county port authority under the provisions provided in this section.~~

~~(1) Publicly owned, public-use county airports.
[deleted in its entirety]~~

~~(2) Other county airports.
[deleted in its entirety]~~

~~(3) Heliports. Any construction or alteration of a greater height than an imaginary surface extending outward and upward from any point of any public or private state-licensed county heliport at a slope of 25 to 1 (one foot vertically for every 25 feet horizontally) for a distance up to a height of 125 feet above~~

~~mean sea level. [SHOULD WE KEEP THIS ONE??? REFERRED TO IN 34-203]~~

~~(4) Airport surveillance radar notification areas. [deleted in its entirety]~~

~~(5) Other areas. Any construction or alteration of a greater height than 125 feet above mean sea level shall require a tall structures permit. (b) If the director determines, for any proposed construction, including adding height to any existing structures, and for all alterations, repairs or additions that will change the use of the structure, or for erecting, altering or repairing any object of natural growth, that the height of the proposed structure or object exceeds the height limitations outlined on the county airspace notification map as determined by the director, then the An applicant is required to obtain a tall structures permit prior to the issuance of any further development orders or permits.~~

~~(b) (c)~~ Applications for a tall structures permit shall include the height and location of derricks, draglines, cranes, and other boom-equipped machinery, if such machinery is to be used during construction.

- ~~(1) (d)~~ Applicants intending to use derricks, draglines, cranes, and other boom-equipped machinery for such construction, reconstruction, or alteration as is consistent with the provisions of this subdivision shall, when the machine operating height exceeds the height limitations imposed by this subdivision, require a tall structures permit.
- (2) Upon obtaining this permit through the procedures outlined in this section, the applicant shall mark, or mark and light, the machine to reflect conformity with the Federal Aviation Administration's or the county port authority's standards for marking and lighting obstructions, whichever is more restrictive, and shall be required in such cases to inform the county port authority, through this tall structures permit process, of the location, height, and time of operation for such construction equipment use prior to the issuance of any construction permit to the applicant.

~~(c) (e)~~ The permitting procedures for a tall structures permit are outlined as follows. If a tall structures permit application is deemed necessary by

the director, as determined through the use of the county airspace notification map, the following procedures shall apply:

(1) The ~~director~~ department shall give a written notice to the applicant that a tall structures permit is required and that no further permits or development orders can be issued until a tall structures permit is obtained.

(2) The applicant shall then submit a completed tall structures permit application to the Lee County Port Authority, 16000 Chamberlin Parkway, Ft. Myers, Florida 33913. The county port authority shall review the application, and the following procedures will apply:

- a. If the county port authority determines that the proposed construction or alteration represented in the application does not violate the provisions of Federal Aviation Regulations, part 77, or the provisions of this subdivision or any other application of federal or state rules and regulations or does not adversely affect the airspace surrounding any county airport, the port authority shall indicate such determination on the tall structures permit application. The signed tall structures permit application will then be returned to the applicant. The applicant shall present the tall structures permit application to the administrative director in order that a tall structures permit may be issued. If the signed tall structures permit application is accompanied with stipulations of compliance as determined by the county port authority, it is the responsibility of the administrative director to ensure that these stipulations are adequately addressed prior to the issuance of a tall structures permit.
- b. If the county port authority determines that the proposed construction or alteration violates the notification criteria of Federal Aviation Regulations, part 77, or otherwise violates any provisions of this subdivision or any other applicable federal or state rules or regulations, the county port authority will notify the applicant in writing that the proposed construction or alteration may adversely affect the airspace surrounding county airports and require that a notice of proposed construction or alteration be

filed with the Federal Aviation Administration for review through the submittal of Federal Aviation Administration Form 7460-1 as required by Federal Aviation Regulations, part 77. The county port authority shall suspend the tall structures permit application process until Federal Aviation Administration findings of aeronautical effect are received and reviewed.

- c. It is the responsibility of the applicant to forward the Federal Aviation Administration's findings of aeronautical effect, along with a copy of the completed original Federal Aviation Administration Form 7460-1, to the county port authority in order to continue the tall structures permit process.
- d. The tall structures permit application shall not be issued if the proposed construction or alteration is found to violate the provisions of this subdivision or any other applicable federal or state rules or regulations. No tall structures permit will be issued if all Federal Aviation Administration and county port authority comments are not addressed to the satisfaction of the county port authority. The applicant shall be forwarded a written notice if the tall structures permit is denied, from the county port authority. This written notice shall specify the reason for objections and suggestions for compliance under this subdivision and all other applicable federal or state rules and regulations.
- e. After reviewing the Federal Aviation Administration's comments pertaining to the Federal Aviation Administration Form 7460-1, if the county port authority determines that the proposed construction or alteration does not adversely affect any other requirements pertaining to county airports, the port authority shall return to the applicant the signed tall structures permit application. The applicant shall present a copy of the tall structures permit application, along with all port authority comments and stipulations, to the director in order that a tall structures permit may be issued. If the signed tall structures permit application is accompanied with stipulations of compliance, it is the

responsibility of the director to ensure that these stipulations are adequately addressed prior to the issuance of a tall structures permit.

(d) ~~(f)~~ If the director determines that all procedures and application approvals are in compliance with the provisions outlined in this section, then a tall structures permit will be issued to the applicant.

- (1) ~~(g)~~ No tall structures permit shall be issued prior to obtaining a determination of acceptability and compliance from the county port authority.
- (2) ~~(h)~~ Temporary or conditional tall structures permits pending completion of the Federal Aviation Administration's or the county port authority's review shall not be issued.

Secs. 34-3061--34-3065. Reserved.

**DIVISION 37-B TATTOO STUDIOS
AND BODY-PIERCING SALONS**

Sec. 34-3066. Purpose of division.

This division regulates the placement of tattoo studios and body-piercing salons. The purpose is to reduce the permanent effects of impulsive behavior by separating establishments or concentrations of establishments that indelibly mark the human body from bars and restaurants that serve alcoholic beverages.

Sec. 34-3067. Definitions.

Body-piercing means for commercial purposes the act of penetrating the skin to make, generally permanent in nature, a hole, mark, or scar. "Body piercing" does not include the use of a mechanized, presterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both.

Body-piercing salon means any temporary or permanent place, structure, or business that is licensed under the provisions of F.S. 381.0075 to perform body piercing.

Establishment means a body-piercing salon or tattoo studio as defined in this division, but does not include the practice of any state-licensed physician

or osteopath who may attempt to cover up existing tattoos.

Expanded means the enlargement or relocation of an establishment to begin using floor space that was not previously used by the establishment for daily business.

Tattooing means the placement of indelible pigment, inks, or scarification beneath the skin by use of needles for the purpose of adornment or art. “Tattooing” includes the practice of permanent makeup and micropigmentation.

Tattoo studio means any temporary or permanent place, structure, or business used for the practice of tattooing.

Sec. 34-3068. Minimum spacing required for new, expanded, or relocated establishments.

OPTION 1: No new, expanded, or relocated tattoo studio or body-piercing salon shall be placed within 1,000 feet of any bar, night club, or restaurant that serves alcoholic beverages for consumption on the premises. This distance shall be measured from any public entrance or exit of the establishment in a straight line to the nearest property line of the property containing the bar, night club, or restaurant.

OPTION 2: No new, expanded, or relocated tattoo studio or body-piercing salon shall be placed within the outer perimeter of the Downtown zoning district, whether the subject property is currently classified in the Downtown zone or in a Commercial Planned Development zone.

OPTION 3: No new, expanded, or relocated tattoo studio or body-piercing salon shall be placed within 2,000 feet of any lawfully existing establishment. This distance shall be measured from any public entrance or exit of the new, expanded, or relocated establishment in a straight line to the nearest property line of the existing establishment.

Sec. 34-3069. Existing establishments.

Any tattoo studio or body-piercing salon that is lawfully operating on the effective date of this division may continue in operation for a period of three years, but during that period such establishment may not be expanded, relocated, or

transferred to a new owner unless the business’s location conforms with the locational requirements for a new establishment.

[DELETE THIS SECTION IF OPTION 3 IS CHOSEN FOR SECTION 34-3068]

Secs. 34-3070. Reserved.

**DIVISION 38. RESERVED
UNITS OF HIGH-IMPACT**
[deleted in its entirety]

Secs. 34-30715--34-3100. Reserved.

**DIVISION 39. USE, OCCUPANCY, AND
CONSTRUCTION, AND MOVING
REGULATIONS**

Sec. 34-3101. Compliance with applicable regulations.

No building, structure, land, or water shall hereafter be used or occupied, and no building, structure or part thereof shall hereafter be erected, constructed, reconstructed, located, moved, or structurally altered, and no land shall be cleared, graded, excavated, or filled, or otherwise altered, except in conformity with the regulations specified in this chapter for the district in which it is located, the Fort Myers Beach Comprehensive Lee Plan and all other applicable town county ordinances.

Sec. 34-3102. Reserved. Number of principal buildings on lot. *[deleted in its entirety]*

Sec. 34-3103. Permit for moving building.
**ANY CROSS-REFERENCE TO APPLICATIONS?
REFERENCE 101.4.2.3 OF FBC?**

No building or part of any building shall be relocated or moved through or across any sidewalk, street, alley, or highway within the town unincorporated area of the county unless a permit has first been obtained from the director division of codes and building services in accordance with the procedures and application requirements for building relocation as set forth in § 34-223, 34-209, as well as a structure moving permit from the department of transportation and engineering services in accordance with the structures moving ordinance if so adopted. Buildings or structures that have been designated as historic resources pursuant

to ch. 22 shall also obtain a certificate of appropriateness as provided in § 22-105.

Sec. 34-3104. Clearing, grading, or filling of land.
[substance moved to § 34-3101]

Secs. 34-31045--34-3130. Reserved.

DIVISION 40. VISIBILITY

Sec. 34-3131. Vehicle visibility at intersections.

(a) ***Corner lots; driveways on Estero Boulevard.***
 On all corner lots, and on all driveways entering onto Estero Boulevard, no obstruction shall be planted or erected which materially obstructs traffic visibility within the triangular space bounded by the two intersecting right-of-way lines visibility triangle as shown in Figure , and a straight line connecting the two points on the street right-of-way lines 25 feet from their intersection. No structures (except along Old San Carlos Boulevard) or at and plantings masses shall be permitted between two three feet and six ten feet above the average grade of each street within this triangular space.

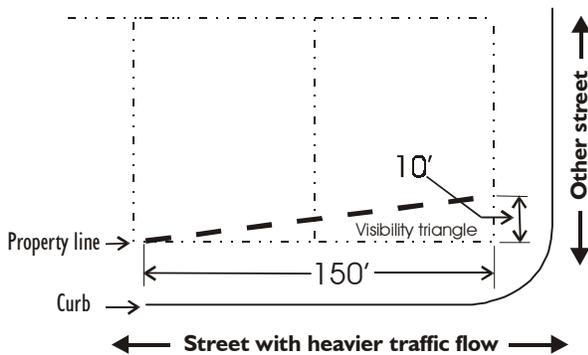


Figure 16

(b) ***All other driveways and parking lot entrances.*** At all other intersections of driveways or parking lot entrances with a street right-of-way or easement, no obstruction shall be planted or erected which materially obstructs the driver's view of approaching traffic or pedestrians within a visibility triangle as shown in Figure on both sides of the driveway. No structures (except along Old San Carlos Boulevard) or plantings shall be permitted between two feet and six feet above the average grade of each street within this triangular space.

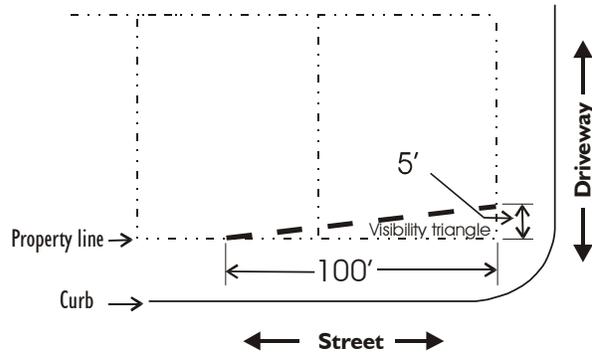


Figure 17

Secs. 34-3132--34-3150. Reserved.

**DIVISION 41.
 WATER-ORIENTED ACTIVITIES**

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

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

(b) ***Permitted districts.*** These activities are permitted only on properties that contain in commercial zoning districts **that permit boat rentals and leasing or rental establishments, group I.** Locations for personal watercraft rental businesses and parasail activities are further restricted by § 27-51(a).

(c) ***Location.*** The activity or activities must be located on development properties, landward of the water body setback line for the Gulf of Mexico; unless approved by special permit, and must be situated so that they are not readily visible from any public street right-of-way or easement. There may not be any indication from any street that these activities are this activity is occurring except as allowed by § 27-51(c)(5).

(d) ***Setbacks.*** The activity must may be located no closer than ten feet to within the side property

lines and may not be permitted seaward of the minimum waterbody setback for the Gulf of Mexico as set forth in ~~§ 34-2194 § 34-634(c)(3)~~. ~~without a special permit.~~ Exceptions are:

- (1) Beach chairs and umbrellas may be displayed or placed anywhere landward of the mean high water line.
- (2) Personal watercraft rental operations and parasail activities that are authorized by this code are permitted seaward of the mean high water line as set forth in ch. 27.

(e) ***Time limitations.*** The rental activity may not occur after sunset or before sunrise, and movement of personal watercraft is further restricted by § 27-49(4). Artificial lighting is prohibited.

(f) ***Storage during sea turtle nesting season.*** No structures or equipment of any kind may be left on the beach before or after regular business hours between the hours of 9:00 PM and 7:00 AM from May 1 until October 31. See also §§ 14-5, 14-78, and 27-49(9). The equipment not being displayed for rent must be stored in an enclosed structure or removed from the property when not in use.

(g) ***Signage.*** The only signage permitted shall be those signs specifically authorized by § 27-51(c). Signage visible from any street right-of-way or street easement is prohibited. Only one on-site identification sign will be permitted. The sign must be located on the beach side of the building, facing the beach and may not exceed 25 square feet.

(h) ***Parking.*** A minimum of five parking spaces will be provided for the outdoor water-oriented rental establishments. Any other use of the property must comply with the off-street parking requirements set forth in article VII, division 26 of this chapter.

Secs. 34-3152--34-3200. Reserved.

ARTICLE VI, VIII: NONCONFORMITIES³

DIVISION 1. GENERALLY

Sec. 34-3201. Purpose of article.

The regulations of this ~~chapter code and various amendments thereto~~ have caused or will cause some ~~lots, structures or buildings, or uses, or lots to no longer conform with one or more provisions of this code. of lots, structures or buildings, to be nonconforming.~~

- (1) It is the purpose of this article to set forth the rules and regulations regarding those nonconforming ~~lots, structures or buildings, and uses, or lots~~ which were created by the adoption of this ~~chapter code or amendments thereto.~~
- (2) Nothing contained in this article is intended to preclude the enforcement of federal, state, and other local regulations that may be applicable.

Sec. 34-3202. Three types of nonconformities nonconforming use defined.

(a) *Three types of nonconformities.* There are three distinct types of nonconformities recognized by this article, with a separate division devoted to each. In situations where there is more than one type of nonconformity, for example a nonconforming use in a nonconforming building, all relevant divisions shall apply.

(b) *Nonconforming building.* For purposes of this article, the term “*nonconforming building*” means a building or structure, or portion thereof, which was lawful prior to the adoption of any ordinance from which this code is derived, or the adoption of any revision or amendment to this code, or the adoption or amendment to the comprehensive plan, but which fails, by reason of such adoption, revision, or amendment, to conform to specific requirements where the building or structure is located due to its size, dimension, location on the

lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations. See division 2 of this article for regulations on nonconforming buildings.

(c) *Nonconforming use.* For purposes of this article, the term “*nonconforming use*” means a use or activity which was lawful prior to the adoption of ~~the any ordinance from which this chapter code is derived, or the adoption of any revision or amendment to of this code, or the adoption or amendment to the comprehensive plan, but which fails, by reason of such adoption, revision, or amendment, to conform to the use requirements of the zoning district in which where the property is located.~~ See division 3 of this article for regulations on nonconforming uses.

(d) *Nonconforming lot.* For purposes of this article, the term “*nonconforming lot*” means a lot of which the area, dimension, or location was “lawful” (see definition in §34-2) prior to the adoption of any ordinance from which this code is derived, or prior to the adoption of any revision or amendment to this code, and which fails by reason of such adoption, revision, amendment, or rezoning to conform to the requirements where the lot is located. However, a lot which no longer conforms due to the adoption or revision of any comprehensive plan can only be developed in accordance with § 34-3274. See division 4 of this article for regulations on nonconforming lots.

Sec. 34-3203. Illegal buildings, uses, and lots.

If a building, use, or lot was not lawful when created and cannot be lawfully modified to comply with this code, it shall not be considered nonconforming but shall be deemed an illegal building, use, or lot and thus not afforded the protection provided by this article to nonconforming buildings, uses, or lots.

- (1) Illegal buildings or uses must be lawfully modified to comply with this code or must be removed in accordance with § 34-1(c).
- (2) Illegal lots must be lawfully combined with adjoining land so as to conform with this code, or must remain vacant but still be maintained in accordance with the property maintenance code in division 1, article I, ch. 6 of this code and other town regulations.

³ *Cross reference(s)–Nonconforming marine structures, § 26-48; nonconforming structures on the beach, § 27-51(c)(6); nonconforming beach rental licenses, § 27-53, § 27-55; nonconforming signs generally, § 30-565; nonconforming signs on Captiva Island, § 30-251 et seq.*

Sec. 34-3204. Amortization.

Notwithstanding the general provisions of this article, other portions of this code may require that specific types of nonconforming buildings and uses must be modified into conformance with this code, or be eliminated, by a specific date. Such dates are established to allow owners a reasonable period to amortize the value of the nonconforming building or use.

Sec. 34-3205. Reserved.

Sec. 34-3203. Enlargement or expansion of nonconforming structure.

[moved to § 34-3234(a)]

Sec. 34-3204. Mobile home and recreational vehicle unit replacements and roof repairs.

Any mobile home or recreational vehicle unit which has been lawfully placed on any rental lot within any rental park, regardless whether the park has been converted to either cooperative or condominium ownership prior to June 25, 1986, may be replaced by a unit of equal or smaller size upon proof that the placement of the unit was lawful. Such proof may consist of copies of official tax records, tag registrations or county permits, or may be by affidavit or any other competent evidence.

[subject relocated to § 34-691–34-700]

Permits shall also be issued for reroofing and roof repairs for any existing mobile home or recreational vehicle located within a mobile home or recreational vehicle park, regardless of lot size.

[moved to § 34-3233(a)(4)]

Sec. 34-3205. Uses approved by special exception or permit.

[moved to § 34-3246]

Sec. 34-3206. Nonconformities created by public acquisition, eminent domain proceedings.

Public acquisition of a portion of a lot might cause the remainder to become nonconforming as to area, width, depth, setbacks, lot coverage, or required parking.

- (1) To minimize the adverse effects of such acquisition, previous lawful buildings, structures, or lots that might be rendered

nonconforming as to compliance with a specific requirement of this code shall be deemed conforming with that requirement rather than nonconforming.

- (2) This applies whether the acquisition occurred by eminent domain, purchase, or a publicly accepted donation of land or easements.

A structure, lot, tract, or parcel of land that has been or will be rendered nonconforming as to area, width, depth, setbacks, lot coverage, or parking because of a taking through eminent domain proceedings or by the voluntary sale of a parcel of land under the threat of eminent domain proceedings by a governmental authority, after October 15, 1992, will be deemed conforming under the terms of this chapter.

Secs. 34-3207--34-3230. Reserved.

**DIVISION 2:
NONCONFORMING USE OF LAND**

Sec. 34-3221. Generally.

[redundant with division 3 of this article]

A nonconforming use of land may be continued subject to the provisions of this division.

Sec. 34-3222. Enlargement or replacement.

[redundant with §§ 34-3242 and 34-3243]

No nonconforming use of land shall be extended or enlarged, or replaced by another use not specifically permitted in the zoning district concerned.

Sec. 34-3223. Discontinuance.

[redundant with § 34-3244]

No land used in whole or in part for a nonconforming use, which use is subsequently discontinued for a continuous period of six calendar months, shall again be used except in conformity with the regulations then in effect. The intent of the owner, lessee, or other user shall not be relevant in determining whether the use has been discontinued.

Sec. 34-3224. Erection of additional structures.

[moved to § 34-3242(b)]

Secs. 34-3225--34-3240. Reserved.

**DIVISION 2, 3:
NONCONFORMING BUILDINGS
AND USE OF BUILDINGS**

Sec. 34-32341. Nonconforming buildings defined. and structures:

For purposes of this division, the term “*nonconforming building or structure*” means a building or structure, or portion thereof, which was lawful prior to the adoption of the any ordinance from which this chapter code is derived, or the adoption of any revision or amendment to of this chapter, code, or the adoption or amendment to the comprehensive plan, but which fails, by reason of such adoption, revision, or amendment, to conform to specific the proper development requirements of the zoning district in which where the building or structure is located due to its size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations. or location on the lot.

Sec. 34-3232. Continued use of a nonconforming building.

The occupancy of a nonconforming building structure may be continued so long as it remains otherwise lawful. However, if the specific use of a nonconforming building is itself nonconforming, then that use is also subject to the provisions of division 3 of this article. , subject to the following provisions:

- (1) Except as provided in § 34-3203, no such building or structure may be enlarged; altered, or repaired in a way which, in the opinion of the department director or his designee, increases its nonconformity, but any structure or building or portion thereof may be altered to decrease its nonconformity. If there is more than one structure on a property with a legally nonconforming use, a limited expansion may be allowed subject to there being a determination that there will be an improvement to neighborhood compatibility. The limited expansion shall be to allow a structure or portion of a structure to be destroyed and the equivalent square footage replaced by expansion of another existing structure if the department director makes a determination that such expansion would not be detrimental to the neighborhood

and such expansion is less than 50 percent of the current assessed value of the structure which will be expanded. Any expansion must also conform to setback requirements and all other requirements for the zoning district in which the property is located.

- (2) Except as provided in this section:

- a. Any nonconforming structure or building, or portion thereof, that is substantially improved (reconstructed, rehabilitated, altered, or demolished) to the extent that the cost of such improvement equals or exceeds a cumulative total of 50 percent of the current assessed value of the structure before the start of construction of the improvement) shall only be reconstructed at, but not to exceed, the lawful density or intensity existing at the time of destruction; provided, however, that the reconstruction of the structure is consistent with federal, state, and local regulations, and all the other provisions of this chapter. Any such alteration, demolition, reconstruction, or rebuilding shall be recorded with the division of codes and building services for the purpose of establishing the value upon which subsequent alterations, demolition, reconstructions, or rehabilitations shall be based:

- b. Structures which have been damaged by fire or other natural forces to the extent that the cost of their reconstruction or repair exceeds 50 percent of the replacement cost of the structure may be reconstructed at, but not to exceed, the legally documented actual use, density, and intensity existing at the time of destruction, thereby allowing such structures to be rebuilt or replaced to the size, style, and type of their original construction, including their original square footage; provided, however, that the affected structure, as rebuilt or replaced, complies with all applicable federal, and state regulations, local building and life safety regulations, and other local regulations which do not preclude reconstruction otherwise intended by the Lee Plan and Ordinance No. 90-61 of the county, as amended from time to time.

- (3) ~~A lawfully existing single-family residence or mobile home damaged by fire or other natural forces may be repaired or replaced, provided the new unit is no larger in area, width, and depth than the size of unit being replaced.~~
- (4) ~~Repairs, reconstruction, or renewal of an existing structure, building, or portion thereof, for the purpose of its maintenance shall be permitted.~~
~~[subject moved to § 34-3233(a)]~~
~~However, repairs, reconstruction, or renewal of structural elements shall be reviewed by the director of the division of codes and building services to determine applicability under this section, or whether such repairs shall be considered under subsection (b)(2)a of this section. For purposes of this section, a change in the roofline from a flat roof to a peaked roof shall constitute an alteration as indicated in subsection (b)(2)a of this section, provided that there is no increase in floor area. [subject moved to § 34-3233(b)]~~

Sec. 34-3233. Repairing a nonconforming building.

(a) Internal repairs, reconstruction, and renewal may be made to nonconforming buildings in accordance with this section.

- (1) A nonconforming building may be altered to decrease its nonconformity.
- (2) Awnings and canopies may be attached to nonconforming buildings as provided in § 34-634(c)(1)c.
- (3) Commercial antennas may be installed on nonconforming buildings in accordance with § 34-1443(d).
- (4) Permits may shall also be issued for reroofing and roof repairs for any existing mobile home or recreational vehicle located within a mobile home or recreational vehicle park, regardless of lot size.
~~[subsection (4) moved from § 34-3204]~~

(b) Internal repairs, reconstruction, and renewal of certain nonconforming buildings are limited in scope because the town desires for these buildings to be reconstructed in compliance with this code.

- (1) The limitations in this subsection apply only to buildings that are nonconforming:
 - a. due to density or intensity (see § 34-3234(b)(3)), or

- b. due to floodplain regulations (see § 34-3234(b)(4)), or
- c. due to building type (see § 34-3234(b)(5)).

- (2) For such nonconforming buildings, the director shall determine whether the repairs, reconstruction, or renewal, alone or in conjunction with other permitted improvements or enlargements, are major enough to be considered a “substantial improvement,” as that term is defined in § 6-405. See § 34-3234(b)(1) for details.

Sec. 34-3234. Enlarging a nonconforming building.

(a) The following types of A nonconforming buildings may be physically enlarged, either laterally or vertically, so long as they it remains otherwise lawful, as follows: and the enlargement is in accordance with the regulations in this subsection:

~~Sec. 34-3203. Enlargement or expansion of nonconforming structure:~~

- (1) (a) structures If nonconforming due to setbacks. A nonconforming building structure which is lawful in all respects with the exception of a setback requirement may be enlarged, provided that:
 - a. (1) The enlargement is otherwise permitted; and
 - b. (2) The enlargement itself, including any enlargement which increases the height or volume of the structure, complies with all the setback requirements.
 - c. Also see § 34-268 regarding certain administrative setback variances that may be available for nonconforming buildings.
- (2) (b) structures If nonconforming due to lot area. A nonconforming building structure which is lawful in all respects with the exception of lot area requirements may be enlarged, provided that:
 - a. (1) The enlargement is otherwise permitted;
 - b. (2) All other property development requirements such as setbacks, height, bulk, lot coverage, floor-area-ratio, density, intensity, parking, and open space are met; and
 - (3) The enlargement does not increase the density or intensity of use.
- (3) (c) structures If nonconforming due to height. A nonconforming building structure

which is lawful in all respects with the exception of height restrictions may be enlarged, provided that:

- a. (+) The enlargement is otherwise permitted; and
 - b. (2) The enlargement itself complies with current height and setback requirements.
- (4) ~~(d)~~ ***structures If nonconforming due to bulk or lot coverage or floor-area-ratio.*** A nonconforming building structure which is lawful in all respects with the exception of ~~bulk or lot coverage or floor-area-ratio~~ shall not be enlarged.

(b) Certain other types of nonconforming buildings have special limitations on the extent to which they may be repaired and physically enlarged because the town desires for these buildings to be reconstructed in compliance with this code.

- (1) The combined cost of enlargements and any repairs to such nonconforming buildings or structures shall be reviewed by the director to determine whether they are major enough to be considered a “substantial improvement,” as that term is defined in § 6-405.
 - a. If the improvements *do not* constitute a “substantial improvement,” their value shall be recorded with the director for the purpose of establishing the extent of allowable future repairs, enlargements, or replacements, using the same methodology as for improvements in the floodplain (article IV of ch. 6).
 - b. If the improvements constitute a “substantial improvement,” they will be approved only if they result in the building fully complying with all regulations for new buildings on vacant land, except as provided in the buildback regulations found in §§ 34-3237 and 34-3238.
- (2) These special limitations on “substantial improvements” apply to the following types of nonconforming buildings, in addition to the specific limitations provided below for each type.
- (3) ***If nonconforming due to density or intensity.*** A building, or a group of buildings or structures, may be nonconforming because there are more residential dwelling units, or more guest units, or a greater floor-area-ratio, than currently permitted by this chapter or by the Fort Myers Beach Comprehensive Plan. Substantial improvements to such buildings

may not physically enlarge them, either laterally or vertically, and they may not be replaced, except under one of the following three circumstances:

- a. If the enlargement or replacement complies entirely with this code and the comprehensive plan as they apply to new buildings on vacant land, including the current density limits on dwelling units and guest units, current height limits, and current caps on floor-area-ratio; or
 - b. If the replacement has been approved by the town council in accordance with the pre-disaster buildback regulations, as described in § 34-3237; or
 - c. If the building is damaged or destroyed by a natural disaster and its replacement meets all requirements of the post-disaster buildback regulations, as described in § 34-3238.
- (4) ***If nonconforming due to floodplain regulations.*** A nonconforming building whose lowest floor does not meet the base flood elevation requirements for new buildings can only be expanded in accordance with the standards in § 6-472.
- (5) ***If nonconforming due to building type.*** Certain buildings are nonconforming due to fundamental design and construction differences between them and new buildings that are permitted in the same zoning district.
- a. ***Building type described.*** Examples include recreational vehicles or mobile homes in zoning districts that do not permit them; automobile service stations or drive-through facilities in pedestrian-oriented commercial districts, and storefront buildings in residential districts. However, buildings that might be considered nonconforming solely due to technical changes in the building codes (which are described in article II of ch. 6) are not classified as nonconforming buildings for the purposes of this article and may be expanded if they are otherwise in conformance with all requirements for their location.
 - b. ***Mobile homes parks.*** In zoning districts that explicitly allow the replacement of existing mobile homes, enlargements of and replacements for existing mobile homes:

1. shall be elevated in accordance with § 6-472(2); and
 2. shall not exceed the width or length of the existing vehicle or vehicle being replaced, including screened rooms and similar appurtenances, except if this code explicitly provide otherwise under certain conditions.
- c. Mobile homes outside mobile home parks. In zoning districts that do not explicitly allow the replacement of existing mobile homes, mobile homes can only be replaced with a conventional home that meets the construction standards of the Florida Building Code and all other requirements of this land development code.
- d. Other nonconforming building types. Other buildings that are nonconforming due to building type cannot be “substantially improved” as described in § 6-405 unless they are altered to eliminate this type of nonconformity.

Sec. 34-3235. Moving a nonconforming building.

(a) (5) Should a nonconforming building structure be moved on-site for any reason, for any distance whatever, it shall not be moved unless the relocation decreases the nonconformity.

(b) A nonconforming building that is being moved off-site shall only be placed on its new site in full conformance with this code.

(c) See §§ 34-223 and 34-3103 regarding permits for moving buildings.

(6) Any portion of a nonconforming structure which becomes physically unsafe or unlawful due to lack of repairs and maintenance, and which is declared unsafe or unlawful by a duly authorized county official, but which the owner wishes to repair, restore, or rebuild, shall be repaired, restored, or rebuilt in conformance with the provisions of this chapter. Excluded from this provision are buildings which have been designated as historic by ch. 22.

Sec. 34-3236. Replacing a nonconforming building.

Nonconforming buildings can be replaced in one of the following manners:

- (1) In full conformance with all current provisions of this code as they apply to new buildings on vacant land; or
- (2) In the same manner as provided for enlargements to the various types of nonconforming buildings as provided in § 34-3234; or
- (3) As provided by the buildback regulations found in §§ 34-3237 and 34-3238.

Sec. 34-3237. Pre-disaster buildback.

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

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

proposal with the Fort Myers Beach comprehensive plan, specifically including the plan's land-use and community design policies, pedestrian orientation, and natural resource criteria.

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

Sec. 34-3238. Post-disaster buildback.

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

- (1) ***Less than 50% damage.*** If the cost to repair the damaged building is less than 50% of the building's value and the repair is thus not a "substantial improvement" as that term is defined in § 6-405, then the following rules shall apply:
- i. The repairs may be made without bringing the building into full compliance with the requirements of this code for building size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations.
 - b. The repairs may not physically enlarge the building either laterally or vertically.
 - c. All repairs must comply with all current building, life safety, and accessibility codes.
- (2) ***More than 50% damage.*** If the cost to repair or rebuild the damaged building is more than 50% of the building's value and is thus a "substantial improvement" as that term is defined in § 6-405, then the following rules shall apply:

- a. The building must meet the floodplain regulations for new buildings, as provided in article IV of ch. 6.
- b. The building must meet the coastal construction requirements, as provided in article III of ch. 6 and in state regulations.
- c. The building must comply with all current building, life safety, and accessibility codes.
- d. ***Residential buildings.*** A rebuilt residential building may exceed the density limits for new buildings on vacant land, but cannot exceed the legally documented number of dwelling units in the building immediately before the natural disaster.
 1. All dwelling units legally existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt dwelling units does not exceed the interior square footage of the previous dwelling units. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air-conditioned space.
 2. At the owner's option, this same square footage can be used for fewer but larger dwelling units.
 3. Also at the owner's option, the size of the new building may instead be determined by this code's current regulations for new buildings on the same site.
- e. ***Hotels/motels.*** A rebuilt hotel/motel may exceed the intensity limits for new hotel/motel buildings on vacant land, but cannot exceed the documented number of lawful guest units in the building immediately before the natural disaster.
 1. All guest units lawfully existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt guest units does not exceed the interior square footage of the previous guest units. However, interior square footage in the new building may be increased by 30 square feet for each bathroom to reflect current code requirements for larger bathrooms, and any lawfully

- existing guest units that are smaller than the minimum sizes required by this code may be enlarged to meet the minimum size requirements. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air-conditioned space.
2. At the owner's option, this same square footage can be used for fewer but larger guest units.
 3. Also at the owner's option, the size of the new building may instead be determined by this code's current regulations for new hotel/motel buildings on the same site.
- f. **All buildings.** The new building must comply with all other zoning and development regulations except where compliance with such regulations would preclude reconstruction otherwise intended by Policy 4-D-1 of the comprehensive plan. Specifically:
1. If the lowest floor of the rebuilt building must be elevated higher than the damaged or destroyed building to comply with current floodplain or coastal regulations, then the total height of the rebuilt building can be increased by the same amount.
 2. If a rebuilt building must be set back further from any property lines due to current requirements of this code, then the volume of the building so reduced can be rebuilt elsewhere on the site, including one or more extra stories on the building if in the opinion of the director there is no other suitable location to replace the volume.
 3. If current open space or buffer regulations cannot be met, those requirements may be waived administratively by the director.

Secs. 34-3239--34-3240. Reserved.

DIVISION 3. NONCONFORMING USES

Sec. 34-3241. Nonconforming uses generally, of buildings.

(a) For purposes of this division, the term "nonconforming use" means a use or activity which was lawful prior to the adoption of any ordinance from which this code is derived, or the adoption of any revision or amendment to this code, or the adoption or amendment to the comprehensive plan, but which fails, by reason of such adoption, revision, or amendment, to conform to the use requirements where the property is located.

(b) A residential use may not conform because it contains one or more dwelling units more than are permitted under current regulations. If the extra dwelling unit(s) were fully lawful at the time they were created, for the purposes of this article they shall be deemed a nonconforming building rather than a nonconforming use. The regulations governing nonconforming buildings are found in division 2 of this article; see especially § 34-3234(b)(3) for restrictions on expanding buildings that are nonconforming due to density or intensity.

(c) A nonconforming use of a building, land, or building and land in combination; may be continued subject to the following provisions: limitations found in this division. If the nonconforming use is located in a nonconforming building, the additional requirements of division 2 of this article shall also apply to the building.

Sec. 34-3242. Enlarging a nonconforming use.

(a) ~~(1) Enlargement or Replacement.~~ No such nonconforming use of a building, or building and land in combination, shall be extended or enlarged;

- (1) by having any buildings or structures replaced or expanded in physical size; or
- (2) by any increase in land or water area devoted to the nonconforming use; or
- (3) by any increase in the size or number or vehicles and boats, or increase in the capacity of services such as parking lots that would expand the operation of the nonconforming use.

(b) ~~Sec. 34-3224. Erection of additional structures.~~ No additional structures which does not

conform to the requirements of this chapter shall be erected in connection with a nonconforming use of land.

(c) Nonconforming establishments that sell, serve, or allow the consumption of alcoholic beverages are further limited by § 34-1264(h).

(d) The installation of a commercial antenna on a building containing a nonconforming use will not be deemed to constitute an expansion of the nonconforming use (see § 34-1443(d)).

Sec. 34-3243. Replacing a nonconforming use.

No nonconforming use shall be or replaced by another building or use not specifically permitted in the use regulations for the zoning district in which the where the nonconforming use building is located.

Sec. 34-3244. Discontinuing a nonconforming use.

(2) Discontinuance: When a nonconforming use of a building, land, or building and land in combination is discontinued or abandoned for nine ~~six~~ consecutive months (except when government action impedes access to the land), the use building, ~~or building and land in combination,~~ shall not thereafter be used ~~carried out or reestablished~~ except in conformance with all current ~~the~~ regulations, of the district in which it is located. This subsection shall not apply to seasonal agricultural uses.

Sec. 34-3245. Repairing a building containing a nonconforming use.

(3) Repair and maintenance. a. Only ordinary repairs and maintenance, including repairs or ~~replacement~~ of roof covering, walls, fixtures, wiring, or plumbing, shall be permitted on any building or structure devoted to a nonconforming use. In no case shall such repairs include structural alterations.

b. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt

~~except in conformity with the regulations for the district in which located.~~

Sec. 34-324605. Nonconforming uses approved by special exception or permit.

Uses approved by special exception or other permits which were issued or granted by the town council or board of county commissioners before the effective date of any the ordinance from which this chapter code is derived, and which are no longer permitted in the zoning district where located, shall be considered to be nonconforming uses and subject to the provisions of this article if the actual use was in operation within two years after its approval by special exception or other permit and has not thereafter been discontinued or abandoned for any nine consecutive months.

Secs. 34-32473--34-3270. Reserved.

DIVISION 4. NONCONFORMING LOTS

Sec. 34-3271. Definitions. Nonconforming lot defined:

(a) Lot means a parcel of land that has been created from a larger parcel and whose precise dimensions and location were identified through public notice (see § 34-3272).

[modified from the previous definition, which was found in § 34-2]

(b) For purposes of this division, the term “Nonconforming or substandard lot” means a lot of which the area, dimension, or location was “lawful” (see definition in § 34-2) prior to the adoption of the any ordinance from which this chapter code is derived, or prior to the adoption of any revision or amendment to of this chapter, code, or prior to being rezoned, and which fails by reason of such adoption, revision, or amendment, or rezoning to conform to the requirements where for the zoning district in which the lot is located. However, a lot which no longer conforms due to the adoption or revision of any comprehensive plan can only be developed in accordance with § 34-3274.

(c) See § 34-3234(a)(2) for the situation where a nonconforming building with a conforming use exists on a lot whose lot area is smaller than required by its zoning district.

Sec. 34-3272. Lot of record defined; general development standards:

For the purposes of this division only, a lot of record is a lot which conformed to the minimum lot size for the use permitted for that lot in its zoning district at such time that the lot was created, but which lot fails to conform to the minimum lot size requirements which are established by this chapter.

Sec. 34-3272. Determining when a lot was created.

(†) For the purpose of this division, a lot is deemed to have been “created” on such date that one of the following conditions occur, provided the configuration of the lot was not later altered:

- (1) ~~a. Individual deed.~~ The date that a deed for the lot containing its full legal description was is lawfully recorded in the official public records books in the office of the clerk of the circuit court of the county;
- (2) ~~b. Subdivision plat.~~ The date that a subdivision plat has been lawfully recorded in the plat books in the office of the clerk of the circuit court public records of the county, if the individual lot is clearly identified as a part of that the subdivision;
- ~~c. The date that a site plan for a development was approved by the board of county commissioners pursuant to resolution, as long as the development subsequently recorded a subdivision plat that has been approved by the board of county commissioners in the public records of the county, if the lot is a part of the subdivision; or~~
- ~~d. In the case of mobile home or recreational vehicle parks; [remainder of subsection deleted; portions applicable to Fort Myers Beach have been relocated to § 34-691–700]~~
- (2) ~~The remaining lot after condemnation shall be deemed a lot of record in accordance with § 34-3206. [moved to § 34-3273(7)]~~

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

(‡) ~~Nonconforming lots of record~~ may be developed subject to the following provisions:

- (1) ~~a. All other regulations of this chapter shall be met, except as modified by this division.~~
- (2) A residential building may be placed on a single nonconforming lot provided the lot has

at least 40 feet in width, 75 feet in depth, and 4,000 square feet in area.

[substance moved from § 34-3273(b)(2)]

- (3) Minimum residential setbacks on nonconforming lots shall be as follows:
 - a. Street setbacks and water body setbacks shall be as set forth in the regulations for the applicable zoning district.
 - b. Side setbacks must be 10 percent of lot width, or 5 feet, whichever is greater.
 - c. Rear setbacks must be one-fourth of the lot depth but do not need to be greater than 20 feet.
- (4) Any development on nonconforming lots must comply with all density restrictions of the Fort Myers Beach Comprehensive Plan.
 - a. Density computations shall be in accordance with § 34-632.
 - b. If density computations do not allow even one dwelling unit on a nonconforming lot, one single-family residence may still be permitted if a minimum-use determination is obtained in accordance with § 34-3274.
- (5) ~~b. No division of any nonconforming lot parcel may be permitted which creates a lot with width, depth, or area below the minimum requirements stated in this chapter, except for combinations and redivisions in accordance with § 34-3275, provided that contiguous lots of record may be combined and redivided to create larger dimension lots as long as such recombination includes all parts of all lots, and existing allowable density is not increased, and all setback requirements are met. [subject of remainder of subsection moved to § 34-3275(a)]~~
 - c. For mobile home or recreational vehicle lots of record, the following shall also apply: [remainder of subsection deleted; portions applicable to Fort Myers Beach have been relocated to § 34-691–700]
- (6) ~~(4) The burden of proof for demonstrating that a the lot is legally a nonconforming lot in accordance with this division, and lawfully existed at the specified date, shall be with the owner.~~
- (7) ~~(2) The remaining lot after condemnation shall be deemed a lot of record treated in accordance with § 34-3206. [moved from § 34-3272(2)]~~

Sec. 34-32743. Minimum use determination. Construction of single-family residence.

(a) A single-family residence may also be constructed on a nonconforming lot of record which *does not* comply with the density requirements of the Fort Myers Beach Comprehensive Lee Plan, provided the owner receives a favorable single-family residence (minimum use) determination in accordance with ~~the Lee Plan~~ ch. 15 of the Fort Myers Beach Comprehensive Plan.

(b) To qualify for this determination, the following additional requirements must be met:

(1) Minimum lot requirements:

- a. Lot area of 4,000 square feet if the lot was created prior to 1962; or
- b. Lot width of 50 feet and lot area of 5,000 square feet if part of a platted subdivision recorded between 1962 and 1984; or
- c. Lot area of 7,500 square feet if not part of a platted subdivision created between 1962 and 1984; or
- d. Lot width, depth, and area were in conformance with the zoning regulations if created after 1984; or
- e. Lot sizes were explicitly approved as part of a planned development rezoning.

(2) Ownership requirements:

- a. Prior to November 21, 2000, the lot shall have been vacant or shall have been improved with one structure located wholly on this lot.
- b. If a structure had been placed on two or more adjoining lots at any time prior to November 21, 2000, the individual lots shall not qualify for this determination.

(c) Lots qualifying for this determination may not place the home, accessory structures, or driveways on any land in the “Wetlands” or “Recreation” category on the future land use map of the comprehensive plan.

(d) The rights granted by this determination run with the lot and are available to any subsequent owner if the lot is transferred in its entirety.

(b) A single-family residence may also be constructed on a lot of record which *does* comply with the density requirements of the Lee Plan, as long as the lot was lawfully created prior to June 1962 and the following conditions are met:

- (1) Lots existing in the AG-2 or AG-3 zoning district require a minimum width of 75 feet, a minimum depth of 100 feet and a lot area not less than 7,500 square feet.
- (2) Lots existing in any other zoning district which permits the construction of a single-family residence require a minimum of 40 feet in width and 75 feet in depth, and a lot area not less than 4,000 square feet.
[substance moved to § 34-3273(2)]
- (3) The use of any single lot of record for any residential use other than a single-family residential use is prohibited where the area of the lot is less than 6,000 square feet. Neither a guest house nor servants’ quarters shall be permitted on a single lot of record having less than 7,500 square feet, or which is occupied by any dwelling unit or units other than one single-family residence.

(c) A single-family residence may also be constructed on a lot which complies with the density requirements of the Lee Plan, as long as the lot is part of a plat approved by the Board of County Commissioners and lawfully recorded in the public records of the county after June 1962.

Sec. 34-3275. Combining nonconforming lots.

(a) Abutting nonconforming lots may be combined and redivided to create larger dimension lots as long as such recombination includes all parts of all lots, allowable density is not increased, and all setback requirements are met. Under these conditions the new lots do not need to meet this code’s dimensional requirements for new lots.
[subject moved from § 34-3272]

(b) If two or more abutting nonconforming lots each qualify for the right to construct a single-family residence, and if the lots or parcels are located in a zoning district that permits two-family dwellings, the property owner may combine the lots to build a single two-family building in lieu of constructing two single-family residences.
[moved from 34-1493(2)b.]

Sec. 34-32764. Placement of Replacing a mobile home or recreational vehicle on a nonconforming lot.

A single-family mobile home or a recreational vehicle may be replaced on a nonconforming lot of

~~record only if allowed by the zoning district regulations and only in accordance with § 34-3234(b)(5), which lot is located within a mobile home or recreational vehicle park, as applicable, provided, however, that the park was properly zoned or approved by special permit for mobile home or recreational vehicle use, and provided further that minimum requirements as set forth in this section were met at the time the lot was created. These requirements are as follows:
[remainder of subsection deleted]~~

Sec. 34-32775. Commercial ~~or industrial~~ use on a nonconforming lot.

~~(a)~~ A commercial ~~or industrial~~ use of land may be commenced on a single nonconforming lot ~~of record~~ lawfully existing ~~on February 4, 1978, on the effective date of the ordinance from which this chapter is derived,~~ subject to the specific limitations and regulations set forth in this section, provided ~~however,~~ that the lot is zoned for such use. However, the lot must be appropriately located and adequate in size and dimension to accommodate the use contemplated and all spatial requirements, i.e., proposed structures, setbacks, parking, access, surface water management facilities, and, where required, buffers; in addition to these specific requirements:

- (1) **Lots created prior to 1962.** If the nonconforming lot was lawfully created prior to June 1962, it must be at least 4,000 square feet in area and have a minimum width of 40 feet and a minimum depth of 75 feet. Minimum setbacks for structures are as follows:
 - a. Street setbacks, build-to lines, and water body setbacks shall be as set forth in the regulations for the applicable zoning district.
 - b. Side setbacks shall be 20 percent of lot width, or 15 feet, whichever is less.
 - c. Rear setbacks shall be one-half of the lot depth less the street setback, or five feet, whichever is greater, but not more than 25 feet.
- (2) **Lots created 1962–1978.** If the nonconforming lot was created between June 1962 and January 5, 1978, and was lawfully existing on February 4, 1978, it must be at least 7,500 square feet in area and have a minimum width of 75 feet and a minimum

depth of 100 feet. Minimum setbacks for structures are as follows:

- a. Street setbacks, build-to lines, and water body setbacks shall be as set forth in the regulations for the applicable zoning district.
- b. Side setbacks shall be 15 feet.
- c. Rear setbacks shall be one-half the lot depth less the street setback, or five feet, whichever is greater, but not more than 25 feet.

~~(b) (3)~~ Nothing in this division ~~section~~ shall be construed to prohibit the rezoning of nonconforming lots ~~of record~~ into commercial ~~or industrial~~ districts where the public interest is served by such a rezoning.