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MEMORANDUM

TO: Fort Myers Beach Town Council
FROM: Bill Spikowski
DATE: March 3, 2003
SUBJECT: SUPPLEMENTAL LANGUAGE for Ordinance Adopting LDC Chapter 34
(Final Public Hearing, March 3, 2003, 6:30 PM)

Final changes to the December 17 draft of this ordinance were contained in my memo to the Town Council dated February 24, 2003.

Since that time I have been asked to draft supplemental language on several subjects that the Town Council may be asked to address at tonight's public hearing. These changes have not had the benefit of thorough consideration and there may be unexpected pitfalls if this language is incorporated into the code at this time. If the Town Council is interested in making any of these changes, it may be advisable to defer them until the next amendment cycle for Chapter 34.

25. CB zoning district (§ 34-701-707): The CB (Commercial Boulevard) zoning district is being applied to existing stores, restaurants, and bars that are not in one of the town's redevelopment areas. This district also allows all residential uses, which had been anticipated to occur as multifamily dwellings in mixed-use buildings. There is no prohibition in the CB zoning district against the *subdivision of land* into homesites; however, there are no explicit standards for subdivisions in the CB district either. The Town Council could apply the dimensional standards of the RC (or alternately, RS) zoning district by modifying the CB district to add the shadowed wording below:

Sec. 34-703. Allowable uses.

(a) In the CB district, allowable uses are defined as any of the following:

- (1) Those uses defined in Table 34-2 for the CB district;
- (2) Continuation of commercial uses that were lawfully existing on [insert effective date of this amendment]; and
- (3) Those additional commercial uses of existing floor space as provided by § 34-702(d)(3).

(b) Any landowner wishing to place other new or expanded commercial uses on property that is zoned CB must rezone the property to Commercial Planned Development.

(c) Any landowner wishing to subdivide land that is zoned CB into residential homesites must comply with all of the setback, lot size, intensity, and density regulations for the RC zoning district as described in Table 34-3. Compliance with these regulations shall substitute for the building placement standards that are found in § 34-704 and for the intensity standard found in § 34-705(c).

26. Appeals of administrative decisions (§ 34-992(d)): This code delegates certain administrative decisions to “the director” or to the town manager. Most of these decisions are fairly routine and must be made in conformance with clearly delineated standards in the code.

An aggrieved person who disagrees with such a decision has the right to appeal to the Town Council; however, as the code is currently written, the Town Council itself cannot initiate a formal hearing to reconsider any administrative decisions.

If the Town Council wishes to create the authority to appeal certain important administrative decisions (such as approvals under the commercial design standards), the following language is a concept that could be added to Chapter 34:

(d) ***Compliance determinations.*** Compliance with these standards shall be determined as follows:

- (1) An applicant may seek conceptual or final approval of a specific building and site design during the commercial planned development rezoning process (see § 34-931). The resolution approving a commercial planned development may include specific site plans and building elevations and shall specify the extent to which these plans and elevations have or have not been determined to meet these commercial design standards and whether any deviations to these standards have been granted.
- (2) Unless final approval has been granted pursuant to subsection (1), the town manager shall make a determination of substantial compliance with these standards before a development order can be issued pursuant to ch. 10 of this code, or before a building permit can be issued if a development order is not applicable.
 - a. Compliance determinations of the town manager are administrative decisions which may be appealed in accordance with article II of this chapter.
 - b. The town manager shall provide written notice of each compliance determination to the town council within five calendar days. The town council, by majority vote at a public meeting within 30 days of the compliance determination, may file an appeal that will be heard by the town council in conformance with the procedures and standards in § 34-86.
 - c. Compliance determinations made by the town manager shall not become effective until the 30-day appeal period has passed without an appeal having been filed.

27. Mobile welcome station (§§ 34-3048): Certain temporary uses are permitted in § 34-3048. The chamber of commerce wishes to operate a mobile welcome station at various sites; this could be permitted as a temporary use through the following wording (in shadowed text). Temporary use permits are limited to 30 days during any six-month period.

(a) The following ancillary temporary uses may be permitted in parking lots upon application and issuance of a temporary use permit (see § 34-3050 ~~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.
- (6) Welcome stations operated by non-profit organizations that provide information without the sale or distribution of any product or service.

28. Tattoo studios and body-piercing salons (§§ 34-3066–3100): Three options are presented in the December 17 draft for regulating tattoo studios and body-piercing salons. The Town Council needs to choose one of the three, or a different option, or delete §§ 34-3066–3100 entirely. Minor changes to Option 3 were presented in my February 24 memo to the Town Council.

Since February 24 it has become apparent there is considerable confusion about the effect of Option 3, particularly due to the use of the term “establishment.” This term is defined in § 34-3067 as meaning another body-piercing salon or tattoo studio; it does not mean a bar, cocktail lounge, or restaurant that serves alcoholic beverages. If Option 3 is chosen, the Town Council may wish to replace the term “establishment” everywhere it appears in Division 38-A with the term “shop” or “enterprise.”