
SPIKOWSKI PLANNING ASSOCIATES

1617 Hendry Street, Suite 416
Fort Myers, Florida 33901-2947

telephone: (239) 334-8866
fax: (239) 334-8878

e-mail: bill@spikowski.com
web site: www.spikowski.com

MEMORANDUM

TO: Fort Myers Beach Town Council
FROM: Bill Spikowski
DATE: April 11, 2005
SUBJECT: **LAND DEVELOPMENT CODE AMENDMENTS
PROPOSED ORDINANCES 05-07 AND 05-08**

This memo supplements the backup material previously provided to you for the April 4 and 18 public hearings on land development code amendments.

PENALTIES AND LIENS – Exhibit B (Chapter 6), Page 4 of 4

Revisions are being proposed to § 2-427 to allow greater penalties if the code enforcement special master finds a violation to be irreparable or irreversible. Few violations are irreparable or irreversible, but clearly a greater penalty would be justified in such cases. The following changes would improve the proposed language for § 2-427 (the original changes are underlined; the additional changes are double underlined):

Sec. 2-427. Penalties and liens.

(b) ***Penalties.***

- (1) A fine imposed under this section cannot exceed \$250.00 per day for the first violation or \$500.00 per day for a repeat violation. However, if the special master finds a violation is irreparable or irreversible in nature, a fine of up to \$5,000 per violation per day can be imposed. Further, the fine may include the cost of all repairs incurred by the town in accordance with subsection (a) hereof as well as the costs of prosecuting the case before the special master. For purposes of this article, prosecution costs of include, but are not limited to, recording costs, inspection costs, appearances by the code inspector at hearings, photography costs, and similar items.
- (2) The following factors will be considered by the special master in determining the fine to be imposed:
 - a. The gravity of the violation;
 - b. Any actions taken by the violator to correct the violation; and
 - c. Any previous violations committed by the violator.
- (3) The special master may mitigate the fine imposed under this section.

NEIGHBORHOOD FLOODING – Exhibit C (Chapter 6), page 2 of 14

The property maintenance code in Chapter 6 contains an entirely new section, § 6-14, for neighborhood flooding, which is often caused when the ground level of previously subdivided lots is later raised by placing fill material. The following changes would clarify the proposed language for § 6-14:

Sec. 6-14. Neighborhood flooding.

(a) ~~Chapter 10~~ of this code requires stormwater management systems for ~~all~~ new development ~~and most redevelopment~~ (see § 10-321). Development that is not subject to those requirements, such as single-family and two-family dwellings on existing lots, can also flood surrounding lots and streets, especially if the lot is raised higher than adjoining properties or if rainfall is concentrated by gutters and downspouts and discharged without an opportunity for ~~infiltration~~ percolation.

(b) To minimize neighborhood flooding from normal daily rainfall, a fill permit must be obtained from the town when fill material is to be placed on lots ~~that have not previously complied with § 10-321.~~ (1) When a lot has been filled that would raise the elevation more than an average of 6 inches above adjoining lots.; The fill permit application must show how normal rainfall will have an opportunity to infiltrate into the ground ~~be contained~~ within the lot using one or more of the following methods or equivalent solution:

- a. Gutters and downspouts that collect rainwater must discharge into exfiltration trenches (french drains), or into a subsurface drainfield that meets the construction standards of F.A.C. 64E-6.014(5) (the percolation, depth, location, and setback standards for drainfields need not be met), or onto substantially flat and porous surfaces such as:
 1. Sodded lawns.
 2. Clean (washed) gravel or sand over a well-drained base.
 3. Porous (pervious) paving.
- b. Roof areas not served by gutters and downspouts must not drain to impervious surfaces, and must not drain to pervious surfaces that are sloped in excess of 5%. Surfaces not meeting these requirements must be designed to detain or deflect rainfall, for instance through the use of earthen ridges, curbs, or retaining walls that prevent average rainfall from running onto adjoining lots or streets.

~~(c)~~ ~~(2)~~ Additions to, renovations of, and replacements for single-family and two-family dwellings that include the installation of gutters and downspouts must also obtain a fill permit showing discharge from the downspouts being directed to the same standards as for filled lots.

LIMITED REVIEW PROCESS – Exhibit D (Chapter 6), pages 2 and 3 of 7

This ordinance proposes some technical changes to the types of development that may be approved through “limited review” development orders. It also would renumber the types that qualify in order to make them consistent with Lee County’s LDC. After reviewing a draft of these latest changes, county staff has asked that we keep our current numbering system because they have already modified their forms and computers to match our current system. Therefore, in place of the proposed changes to § 10-174 in this ordinance, please substitute the following language, with includes all the technical changes but not the renumbering (the changes now proposed are underlined and ~~struck-through~~):

Sec. 10-174. Types of development entitled to limited review.

The following types of development may be processed in accordance with this division:

- (1) A cumulative addition or enlargement of an existing impervious area, provided that the addition or enlargement does not increase the total impervious cover area by more than 2,500 square feet and there is no increase in the rate of runoff from the project site.
- (2) Any out-of-door type recreational facilities, such as swimming pools, tennis courts, tot lots, and other similar facilities, provided the total cumulative additional impervious area does not exceed 8,000 square feet.
- (3) Any one-time subdivision of land into 4 or less lots where zoning district regulations permit such subdivision; provided, however, that:
 - a. Each lot must meet or exceed all requirements of the zoning district in which located;
 - b. Each lot abuts and has access to an existing improved road right-of-way or easement meeting at least the minimum construction standards required by this chapter;
 - c. No significant alteration of existing utility installations is involved;
 - d. No change in drainage will occur which adversely affects the surrounding properties; and
 - e. No new road rights-of-way or road easements or upgrading of road rights-of-way or road easements to minimum standards contained in this chapter is required; and
 - f. ~~No commercial or multifamily development may occur on any of the lots without first obtaining a development order.~~
- (4) Reserved. Any single building of two dwelling units or less and any accessory improvements thereto on a single nonconforming lot, as defined in article V of ch. 34.
- (5) Any improvements for public water access purposes in town-owned or town-maintained rights-of-way.
- (6) Any development for a fenced or screened outdoor ~~enclosed~~ storage yard as defined in ch. 34, provided that the yard consists solely of a stabilized grassed surface, a surface water management system, buffers, and fencing; and provided further that site access complies with the provisions of this chapter and ch. 34.
- (7) The installation of new utility lines in existing right-of-ways or easements.
- (8) Any other improvement to land determined by the director to have insignificant impacts on public facilities in accordance with applicable standards of measurement in this chapter (vehicular trips, amount of impervious surface, gallons per day, etc.).

WELCOME SIGNS – Exhibit F (Chapter 30), pages 8 and 11 of 28

The current sign code explicitly prohibits “off-premises signs,” defined as “any sign normally used for promoting a business, individual, products, or service available on the premises other than the premises where the sign is located.” A community-oriented “Welcome to Fort Myers Beach” sign doesn’t fit within this definition, but also doesn’t fit within any other types of signs as defined by this code. If the Town Council would like to allow “welcome signs” within town limits, it should add the following language to the code (the original changes are underlined and ~~struck through~~; the additional changes are double underlined):

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

Welcome sign. A monument sign erected by or on behalf of a governmental organization welcoming visitors to the Town of Fort Myers Beach (see § 30-6(b)). *[no other changes to this section]*

Sec. 30-6. 5. Permitted Allowable signs.

Permitted Allowable signs are classified into two categories: signs not requiring a sign permit and signs that do require a sign permit.

(a) *Signs not requiring a sign permit:* *[no changes to this subsection]*

(b) *Signs requiring a sign permit.* No sign that meets or exceeds one or more of the following criteria shall be erected prior to issuance of a sign permit in accordance with § 30-55.

- (1) *Business announcement signs*, see § 30-151(a).
- (2) *Construction signs*, see § 30-151(b).
- (3) *Development signs*, see § 30-151(c).
- (4) *Directional signs (on-site only)*, § 30-152(d).
- (5) *Identification signs (residential and commercial), whether wall signs, monument signs, or projecting signs*, see §§ 30-152 and 30-153.
- (6) *Menu display boxes.* One menu display box may be permitted outdoors adjacent to a public entrance of an establishment that serves prepared food to the public. Menu display boxes cannot exceed 4 square feet in area and 4 inches deep, and menu lettering cannot exceed 2 inches in height.
- (7) *Welcome signs.* One welcome sign may be permitted provided it does not exceed 60 square feet in area and it meets the requirements of § 30-153(d)(1), (2), and (4).
- (8) ~~(6)~~ *Any illuminated sign* if the source of the illumination has not been previously approved.
- (9) ~~(7)~~ *Any sign not specifically exempted* from requiring a sign permit as delineated under § 30-~~65~~(a).

SANDWICH SIGNS – Exhibit F (Chapter 30), pages 10 and 11 of 28

The current sign regulations allowing portable sandwich signs will expire on May 31, 2005 if not modified or readopted prior to that date (see § 30-6(18)a.5 and b.2). The current wording of § 30-6(18) should not be left in the code after its expiration or the public may be misled. Unless the Town Council wishes to extend the use of sandwich signs beyond the May 31 expiration, § 30-6(18) should be modified to read:

Sec. 30-6. 5. Permitted Allowable signs.

- (a)(18) *Sandwich signs.* Sandwich signs may not be used after May 31, 2005.
[delete remainder of subsections a. and b.]

L.P.A. COMPOSITION – Exhibit A (Chapter 34), page 3 of 38

The Town Council is considering reducing the number of members on many advisory committees. If the Town Council wishes to reduce the size of the Local Planning Agency's membership, it would have to be done through an amendment § 34-113 of this code, as follows:

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

(a) The local planning agency shall consist of not less than five ~~seven~~ nor more than seven ~~nine~~ members appointed by the town council. No members of the local planning agency shall be salaried officials of the town.

(b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.

(c) In addition to the five ~~seven~~ to seven ~~nine~~ voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).

CONDOMINIUM CONVERSIONS – Exhibit A (Chapter 34), page 13 of 38

New § 34-636 would define when existing buildings could have their dwelling units converted to condominium ownership (or split onto separate lots). In the proposed ordinance, this section would effectively “grandfather” over-density buildings, the same way the town does for buildback. However, buildings that have living space below the minimum flood elevation would not be eligible for conversion or for lot splits because separate ownership would complicate the ultimate reconstruction of these buildings in a manner that conforms to current floodplain regulations.

At the April 4th public hearing, we had extensive discussion on these proposed rules, including the possibility of making them more strict or more lenient. If the council wishes to disallow the conversions of buildings that exceed current density limits, then it could use the wording in ALTERNATIVE A. If the council wishes to eliminate the requirement for floodplain compliance for buildings that pre-dated current floodplain regulations, then it could use the wording in ALTERNATIVE B.

Sec. 34-636. Conversion of existing two-family and multifamily dwelling units.

When an existing building's dwelling units are proposed for subdivision onto separate lots or into condominium ownership, the following requirements apply:

- (1) **ALTERNATIVE A:** The number of dwelling units in the existing building cannot exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land. The number of dwelling units cannot be increased beyond the number lawfully existing at the time of conversion. (2) If the number of dwelling units exceeds the density limitations of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, the interior square footage of the building, as defined in

~~§ 34-3238(2)d.1, may not be increased, but may be exchanged during the conversion on a square-foot for square-foot basis to provide larger but fewer dwelling units within the same interior square footage.~~

- (3) **ALTERNATIVE B:** Existing buildings that obtained building permits after September 19, 1984, must comply with all floodplain requirements as provided in ch. 6 of this code. If building permits were obtained prior to that date, construction pursuant to those permits need not meet the floodplain elevation requirements unless the building was substantially improved or substantially damaged after that date, as those terms are defined in § 6-405. The entire building must comply with the floodplain elevation requirements for new buildings as provided in ch. 6 of this code.
- (4) The entire building must meet the coastal construction requirements that apply to new structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line.
- (5) The individual dwelling units must be separated by walls with not less than 1-hour fire resistance.
- (6) The conversion must meet all other requirements of this code, including the uses permitted by Table 34-2.

OUTDOOR DISPLAY OF MERCHANDISE – Exhibit A (Chapter 34), page 33 of 38

Section 34-3004 regulates outdoor display of merchandise (additional regulations for the DOWNTOWN zoning district are found in § 34-678). The following changes would improve the proposed language for § 34-3004 by making it consistent with other changes being proposed to the code (the original changes are underlined and ~~struck-through~~; the additional changes are double underlined):

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

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

- (b) This code allow outdoor display and sales of merchandise only as follows:
 - (1) In farmers' markets or other special events authorized by the town;
 - (2) Beach furniture (in accordance with § 14-5);
 - (3) Bicycles, motorbikes, and motorcycles (by dealers or rental agencies in zoning districts where they are permitted);
 - (4) Boats (by boat dealers in zoning districts where they are permitted);
 - (5) Personal watercraft (in accordance with § 27-49);
 - (6) Lawn and garden ornaments (by retail stores in zoning districts where they are permitted), provided the merchandise collectively does not exceed a height of 4 feet and a width (parallel to the right-of-way) of 8 feet;
 - (7) On private property in the DOWNTOWN zoning district (in accordance with § 34-678(e) § 34-677(c)(1)); and
 - (8) On public property in parts of the DOWNTOWN zoning district (in accordance with § 34-678(f) § 34-677(c)(2)).
- (c) *[this subsection unchanged]*
- (d) *[this subsection unchanged]*

VEHICLE VISIBILITY AT INTERSECTIONS – Exhibit A (Chapter 34), page 34 of 38

Section 34-3131 regulates obstructions at intersections which would interfere with traffic visibility. Minor changes are being proposed in this ordinance to clarify the meaning of this section. The following changes would further clarify § 34-3131 (the original proposed changes to this section are underlined and ~~struck-through~~; the additional changes are double underlined):

Sec. 34-3131. Vehicle visibility at intersections.

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

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

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