



MEMORANDUM

TO: Mr. Gary Parker, Town Manager
FROM: Bill Spikowski
DATE: October 11, 2007
SUBJECT: Proposed Ordinance 07-04 – Second Public Hearing on October 22, 2007 at 6:30 PM

The first public hearing on proposed Ordinance 07-04 was held on July 9 and completed on August 13. The minutes of the August 13 public hearing are attached.

This ordinance is limited to changes in the Land Development Code about specific lodging issues as recommended in the town's Evaluation/Appraisal Report (see previous memo of July 30 which includes those recommendations).

During the August 13 public hearing, several council members requested alternatives to the ordinance as drafted to address concerns that were expressed that evening. The following alternatives could modify the public hearing draft of Ordinance 07-04 which is dated June 13, 2007:

CONCERN #1 – *The proposed prohibition on parcelizing hotel rooms in buildings with enclosed space below the floodplain may not be the correct public policy.*

ALTERNATIVE 1-A: Eliminate the prohibition by deleting proposed 34-636(c)(2) on page 6. To apply this same policy to parcelization of two-family and multifamily buildings, delete 34-636(a)(2) and 34-636(b)(2).

ALTERNATIVE 1-B: Instead of eliminating proposed 34-636(c)(2), modify it to require that enclosed space below flood elevation cannot be used for hotel rooms.

ALTERNATIVE 1-C: Instead of eliminating proposed 34-636(c)(2), modify it to state that parcelization of hotels with enclosed space below flood elevation will be considered on a case-by-case basis by the Town Council through the special exception or administrative appeal process.

ALTERNATIVE 1-D: Instead of eliminating proposed 34-636(c)(2), eliminate all of proposed 34-636(c) and replace it with a statement that parcelization of existing hotels and motels is permitted by right (subject to proper permitting). To apply this same policy to parcelization of two-family and multifamily buildings, make a similar change to 34-636(a) and 34-636(b).

CONCERN #2 – *The current regulations in 34-1807 may contradict policy established by the Town Council during the Neptune Inn and Cheryl Martin appeals.*

ALTERNATIVE 2-A: Accept the proposed changes to 34-1807 while modifying 34-636 using one of the alternatives suggested in #1 above to reflect the current policy of the Town Council.

ALTERNATIVE 2-B: Modify 34-1807 so that it applies only to new construction and no longer applies to the conversion of existing buildings, while modifying 34-636 using one of the alternatives suggested in #1 above to reflect the current policy of the Town Council.

ALTERNATIVE 2-C: Eliminate 34-1807 entirely while modifying 34-636 using one of the alternatives suggested in #1 above to reflect the current policy of the Town Council.

CONCERN #3 – *The existing (and/or proposed) regulations on hotels and motels are onerous and undesirable.*

ALTERNATIVE 3-A: Sections 34-1801 through 34-1807 are an integral part of Chapter 34's regulations concerning hotels and motels. If the Town Council wishes to soften or eliminate current regulations on the location, size, density, or operating requirements for hotels and motels, a new policy direction should be discussed by the Town Council to provide staff the basis for drafting appropriate revisions to all relevant provisions in Chapter 34.

*Attachments: Minutes of the August 13 public hearing
Memorandum to Gary Parker dated July 30, 2007 (with all attachments including the June 13 public hearing draft of Ordinance 07-04)*

cc: *Community Development Director, Town Attorney*

MINUTES
FORT MYERS BEACH TOWN COUNCIL
Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, FL 33931

August 13, 2007
3:00 PM

Mayor Boback called the meeting to order. Present at the meeting was Mayor Dennis Boback, Vice Mayor Larry Kiker, Councilmember Acken, Councilmember Meador, Councilmember Shenko, Town Manager Gary Parker, Town Attorney Anne Dalton, Town Clerk Michelle Mayher, Community Development Director Jerry Murphy.

All present stood and recited the pledge to the flag.

Opened Public Comment

Public Comment was heard:

Kathleen Smith asked the Council to remove from the table the consideration of the special event permit application for a concert over Labor Day.

Alan Mandel, member of the LPA was present to represent the LPA for the discussion of the 2500 Estero Place.

Closed Public Comment

CONSENT AGENDA: Councilmember Meador pulled item B. from the Consent Agenda. Councilmember Acken moved to pass the balance of the consent agenda. Councilmember Shenko seconded the motion. Motion passed 5-0.

Councilmember Meador moved to approve the minutes from August 1, 2007 with the following change: on page 1 of 2, add the word “dissenting” following the record of the motion on COLA and merit increases in the budget, so as to read: Motion fails 3-2 with Mayor Boback, Councilmember Shenko and Councilmember Meador dissenting. Councilmember Meador further requested that the next sentence be stricken, that being: Councilmember Acken clarified to allow budgeting in the 07-08 budget to allow for COLA and merit increases. Vice Mayor Kiker seconded the motion. Motion passed 4-1 with Councilmember Acken dissenting.

PUBLIC HEARING:

Attorney Dalton read the title of **Ordinance 07-04:**

AN ORDINANCE AMENDNG CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED “ZONING DISTRICTS, DESIGN STRANDARDS, AND

NONCONFORMITTEES”; AMENDING SECTION 34-2 “DEFNITIONS”; AMENDING SECTION 34-621 “ALLOWABLE USES OF LAND”; AMENDING SECTION 34-636 “PARCELIZATION OR SUBDIVISION OF EXISTING BUILDNGS”; AMENDING SECTION 34-1801 “DEFINITIONS AND GENERAL REQUIREMENTS”; AMENDING SECTION 34-1806 “REPLACING A NONCONFORMING HOTEL/MOTEL”; AMENDING SECTION 34-1806 “CONVERSIONS OF EXISTING BUILDINGS”; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

Opened Public Comment:

Public Comment was heard:

Richard Yovanovich asked Council to determine that time shares should be an allowable form of ownership for Fort Myers Beach and that DiamondHead Resort be allowed to go forward.

Closed Public Comment

Councilmember Meador moved to adopt ordinance 07-04, with the term “parcelization” be deleted, and in Article 1, definitions, without the strikethrough, “and a kitchen” in a dwelling unit; striking 34-636 in its entirety; striking 34-1801 in its entirety; striking 34-1807 in its entirety; and striking 34-1806 in its entirety. Councilmember Shenko seconded the motion.

Motion failed 3-2, with Mayor Boback Vice Mayor Kiker and Councilmember Acken dissenting.

Vice Mayor Kiker moved to send ordinance 07-04 back to the LPA and for Spikowski Planning to re-work it with new direction.

After some discussion regarding what direction to give to the LPA and to staff, Vice Mayor Kiker withdrew his motion.

Councilmember Acken moved to have the ordinance go forward wit the language to allow the alternate of 120 days and easing the restrictions on the flood plain build back requirements.

Motion failed for lack of a second.

Mayor Boback made a motion to move ordinance 07-04 to the second public hearing. Vice Mayor Kiker seconded the motion.

Councilmember Acken made a secondary motion to allow public comment from someone who had already spoken at public comment and on this item.

Councilmember Meador asked to amend the motion to allow only 2 minutes for the speaker. The motion passed 4-1 to allow the speaker.

Richard Yavanovich spoke again to the Council regarding the DiamondHead Beach Resort.

As to the primary motion to move this ordinance to the second public hearing, the motion passed 3-2 with Councilmember Meador and Councilmember Shenko dissenting.

Mayor Boback opened the public hearing, DCI2006-00033 2500 Estero Place. Council reported not having any ex-parte communication.

Attorney Dalton read **Resolution 07-28,**
RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS
BEACH, FLORIDA RESOLUTION NUMBER 07-28

Attorney Dalton swore in all those intending to testify.

Joe McHarris, McHarris Planning and Design came forward as applicant. Mr. McHarris presented models and displays for two options. He expressed a preference for approval of Option A. He spoke to the concerns of the neighboring condominium, Pelican Watch, whereby a "NO OUTLET SIGN" or similar signage could be installed.

Lee County Community Development staff member, Nettie Richardson, Senior Planner indicated that staff recommends option A, as it is consistent with the Town's Comprehensive Plan; it provides shopping services for overnight guests, as well as affording a pedestrian character. It is also in compliance as to height.

Opened Public Comment

Public Comment was heard:

Town Clerk Michelle Mayher read a letter from NancyLynn Van Oyen in favor of the project, preferring option B.

Thomas Van Oyen spoke in favor of the project.

Closed Public Comment

Responding to a question by the Council, Community Development Director Jerry Murphy stated the Residential Conversation language in the draft resolution should be stricken. Mr. Murphy further explained that a required traffic study has been waived, as the applicant is replacing a restaurant, and there is no expected greater impact to traffic.

Councilmember Meador made a motion to approve Resolution 07-28, with the following changes: strike the language referencing Residential Conservation, (RC); as to option "A", the maximum building height be amended to 35'; to hereby approve Option "A" and disapprove Option "B"; as to Conditions, the maximum height be amended to 35'; on page 4 of 5, approves with the property owner donating 5 feet of additional right of way; under Findings, 1. DOES comply with, 2. IS appropriate, 3. ARE provided, 4. ARE



SPIKOWSKI PLANNING ASSOCIATES

MEMORANDUM

TO: Gary Parker, Town Manager
FROM: Bill Spikowski
DATE: July 30, 2007
SUBJECT: Proposed Ordinance 07-04 – First Public Hearing on August 13, 2007

Proposed Ordinance 07-04 was tabled at its initial public hearing on July 9; that hearing was later rescheduled for August 13.

This ordinance is limited to changes in the Land Development Code about specific lodging issues, as recommended in the town's Evaluation/Appraisal Report. Those recommendations are attached.

Attached are two drafts of this ordinance, both of which should go before the Town Council on August 13:

- ❑ **The first draft is dated March 28.** This very early draft was in the Town Council packets by mistake when this ordinance was formally introduced on June 11. It is being circulated again to comply with a July 9 Town Council directive to that effect.
- ❑ **A second draft is dated June 13.** This is the correct public hearing draft, which was prepared immediately after the June 11 introduction of this ordinance. This draft contains the following changes from the version that the LPA approved at its public hearing on May 8:
 - (1) Margin notes on pages 6 and 7 reflect the Town Council's direction on June 11 to provide a 120-day option in addition to the 60-day option for hotel occupancy; and
 - (2) The word "parcelized" replaces the phrase "timeshared or condominium" once on page 5 and twice on page 6.

*Attachments: Recommendations on Lodging Issues (from Evaluation/Appraisal Report)
Early draft of ordinance, dated March 28, 2007
Public hearing draft of ordinance, dated June 13, 2007
LPA Resolution 2007-11 supporting adoption of Ordinance 07-04*

cc: Community Development Director, Town Attorney

E. Recommendations on Lodging Issues

In recent years property values have been escalating at previously unforeseen rates. The health of the lodging industry is very cyclical and thus it is often difficult to obtain construction financing. In addition, the future of the lodging industry at Fort Myers Beach is now being eclipsed by real estate investors and condominium buyers whose optimism for continuing increases in underlying property values are driving the real estate market continually upward. While the town hesitates to encourage new hotels and motels given the past overbuilding at Fort Myers Beach, the loss of the town's active and healthy lodging industry would change the character of Fort Myers Beach forever.

The town's options to respond to this situation are fairly limited. The most effective options are simply to ensure that town policies and regulations do not inadvertently contribute to the displacement of existing hotels and motels. To this end, the pre-disaster buildback policy should be clarified to ensure that large condominium buildings cannot be substituted for existing hotels and motels in the guise of buildback. (New condominiums or other residential buildings could still replace older hotels or motels, but the new structures would have to meet today's more restrictive density cap.)

The comprehensive plan should also be amended to establish as town policy the desirability of retaining a wide variety of short-term lodging establishments that support the town's economy and walkability, and to specifically allow condominium ownership of lodging establishments (provided they will be operated as hotels or motels), and to clarify that Policy 4-C-6 applies to all guest units, not just motel rooms.

Further, the town's land development code could be amended to clarify many lodging issues. For instance:

- It could be clarified that guest units may be placed in three different types of establishments:
 - resorts (50 or more guest units or dwelling units)
 - hotels/motels (10 or more guest units)
 - bed-and-breakfast inns (9 or fewer guest units)
- Guest units in resorts and hotels/motels may take advantage of the multipliers in § 34-1803 provided they are located in accordance with the restrictions on lodging uses in Tables 34-1 and 34-2 of the code. These multipliers would not be available for use “in reverse” to tear down a hotel/motel and convert it into an over-density residential building using buildback regulations. § 34-1807 of the code would be modified to address only the conversion of an existing building to or from a hotel/motel and to remove other troublesome ambiguities in that section.
- Restrictions on kitchen facilities in guest units could be lifted.
- The definition of resorts and hotels/motels could be expanded to require licensing by the state as a hotel or motel, paying tourist and sales taxes on all rentals, limiting stays to a fixed period (perhaps 60 days), disallowing all permanent residency; and requiring a front desk that is staffed during regular business hours to arrange transient rentals.
- The code could be clarified to clearly allow new and replacement lodging establishments to be financed as “condo hotels” provided they are operated either as resorts, hotels, or motels under the new and expanded definitions. The town could require that the length-of-stay and other lodging requirements be contained in the condominium documents and might be able to require that modifications to those requirements be subject to town approval.

- The code now defines timeshare units as a special type of dwelling unit or guest unit. However, Table 34-1 lists timeshare buildings as being allowable anywhere that multifamily buildings are allowed. This definition could be misread to allow hotels in residential districts provided they are owned as timeshares, which was clearly not the intent. This contradiction should be clarified in the code.
- A new § 34-636 of the code now determines when the owner of an existing two-family or multifamily building may parcelize or subdivide that building into individual units. This section of the code should be expanded to address parcelization or subdivision of existing resorts and hotels/motels.

ORDINANCE No. 07-__

AN ORDINANCE AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES”; AMENDING SECTION 34-2 “DEFINITIONS”; AMENDING SECTION 34-621 “ALLOWABLE USES OF LAND”; AMENDING SECTION 34-636 “PARCELIZATION OR SUBDIVISION OF EXISTING BUILDINGS”; AMENDING SECTION 34-1801 “DEFINITIONS AND GENERAL REQUIREMENTS”; AMENDING SECTION 34-1806 “REPLACING A NONCONFORMING HOTEL/MOTEL”; AMENDING SECTION 34-1807 “CONVERSIONS OF EXISTING BUILDINGS”; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. AUTHORITY. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. ADOPTION OF AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE. Chapter 34 of the Town of Fort Myers Beach land development code is titled “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES.” Chapter 34 is hereby amended as shown in Exhibit A. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following section of Chapter 34:

- Sec. 34-2. Definitions.
- Sec. 34-621. Allowable uses of land.
- Sec. 34-636. Parcelization or subdivision of existing buildings.
- Sec. 34-1801. Definitions and general requirements.
- Sec. 34-1806. Replacing a nonconforming hotel/motel.
- Sec. 34-1807. Conversions of existing buildings.

SECTION 3. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law, or contrary to the policy of express law although not expressly prohibited, or against public policy, or for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way shall affect the validity of all other provisions of this ordinance.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and, upon being put to a vote, the result was as follows:

Mayor Dennis Boback	_____
Vice-Mayor Larry Kiker	_____
Herb Acken	_____
Charles Meador, Jr.	_____
Bill Shenko, Jr.	_____

DULY PASSED AND ENACTED this ____th day of _____, 2007.

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Michelle Mayher, Town Clerk

By: _____
Dennis Boback, Mayor

Approved as to form by:

Anne Dalton, Town Attorney

EXHIBIT A

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 34 — ZONING DISTRICTS,
DESIGN STANDARDS, AND NONCONFORMITIES

ARTICLE I. IN GENERAL

Sec. 34-2. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates a different meaning:

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. See division 19 of article IV of this chapter.

Dwelling unit means a room or rooms connected together, which could constitute a separate, independent housekeeping establishment for a family, for owner occupancy, or for rental or lease on a weekly, monthly, or longer basis as specified in this code for various zoning districts, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing sleeping and sanitary facilities and a kitchen. The term “dwelling unit” shall not include rooms in certain assisted living or continuing care facilities (see § 34-1415) or in accessory apartments in owner-occupied homes (see § 34-1178(d)). See also Guest unit and Living unit.

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. Guest units may be equipped with a partial or full kitchen. See division 19 of article IV of this chapter.

Hotel/motel means a building, or group of buildings on the same premises and under single control, 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 for periods of one day or longer. See division 19 of article IV of this chapter.

Living unit means any temporary or permanent unit used for human habitation. See Dwelling unit and Guest unit.

Parcelization means dividing a given unit of real property into multiple parcels, units, or fractions. Examples of parcelization include, but are not limited to, divisions of land, fractional or timeshare interests in specific periods of time, condominiums, and cooperatives.

Resort means a mixed-use facility that accommodates transient guests or vacationers as well as longer-term residents. Resorts contain at least one hotel/motel and at least 50 total units, which may include a combination of dwelling units; and guest units and may also include timeshare units, and provide food service, outdoor recreational activities, and/or conference facilities for their guests.

Timeshare unit means any dwelling unit, guest unit, or living unit for which a timesharing plan, as defined in F.S. ch. 721, has been established and documented. See § 34-632 for determining density of timeshare units that include “lock-off accommodations.”

Transient guest means any guest registered as provided for in F.S. § 513.01(7), for six months or less.

[no other changes to this section]

**ARTICLE III, DIVISION 2.
ALLOWABLE LAND USES
IN EACH ZONING DISTRICT**

Sec. 34-621. Allowable uses of land described.

(a) *Applicability.* [no changes to this subsection]

(b) *Use tables.* Table 34-1 of this article lists specific uses followed by a symbol indicating whether the use is permitted by right (P), special exception (SE), administrative approval (AA), existing only (EO), or temporary use permit (TP). In all instances, unless specifically noted to the contrary, the symbols used in the use regulations tables shall have the following meaning:

There are no changes to the text of this section; see the following underlined changes to Table 34-1:

- “RESIDENTIAL OPEN” category: add immediately below “Timeshare units”:
“(provided these units qualify as dwelling units and meet residential density levels in § 34-632)”
- “LODGING OPEN” category:
 - delete “or guest unit” from “Rental of any permitted dwelling unit ~~or guest unit~~ for periods of one day or longer”
 - add “Timeshare units” as a permitted principal use

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p.1 of 2)

	<i>Residential</i>	<i>Lodging</i>	<i>Office</i>		
Restricted (R)	Community residential home	P	Rental of any permitted dwelling unit to a single family during any one-month period, with a minimum stay of one week (see §§ 34-2391-2410 for rules and exceptions)	P	Restricted (R)
	Dwelling unit, single-family	P			
	Home care facility	P			
	AS ACCESSORY USES:		AS ACCESSORY USES:		
	Accessory apartment (1) (see § 34-1177)	SE		Home occupation (no outside help) P	
	Accessory apartment (see § 34-1178)	EO		Home occupation (with outside help) A	
	Residential accessory uses	P			
Temporary mobile home (§ 34-3046)	TP				
Limited <i>(plus R)</i> (L)	Dwelling unit: two-family (1) live/work (see § 34-1773)	P SE	Rental of any permitted dwelling unit to a single family for periods of one week or longer (see §§ 34-2391-2410 for rules)	P	Limited <i>(plus R)</i> (L)
	Mobile home or RV park (VILLAGE district only, as restricted in § 34-694)	EO	Bed-and-breakfast inn (see § 34-1801)	SE	
	AS ACCESSORY USES:		AS ACCESSORY USES:		
	Accessory apartment (1) (see § 34-1177)	P	On-premises consumption of alcoholic beverages (see division 5 of article IV)	AA/ SE	
Open <i>(plus R & L uses)</i> (O)	Assisted living facility (see § 34-1411)	P	Bed-and-breakfast inn (see § 34-1801)	P	Automobile rental SE
	Dwelling unit: multiple-family live/work (see § 34-1773)	P P	Hotel/motel (see § 34-1801)	P	Health care facility P
	Rooming house	P	Rental of any permitted dwelling unit or guest unit for periods of one day or longer	P	Offices, general or medical P
	Timeshare units (provided these units qualify as dwelling units and meet residential density levels in § 34-632)	P	Resorts	P	Personal services P
	AS ACCESSORY USES:		Timeshare units	P	Wholesale establishment SE
	Golf course	EO	AS ACCESSORY USES:		AS ACCESSORY USES:
	Recreation facility: private on-site private off-site	P SE	Resort accessory uses	P	Commercial accessory uses P
	Subordinate commercial uses	P	Personal services	P	Drive-through, Type 1 (2) P
			Subordinate commercial uses (see § 34-3021)	P	Subordinate commercial uses (see § 34-3021) P

(1) Provided density complies with the Fort Myers Beach Comprehensive Plan (see § 34-632).

(2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the DOWNTOWN zoning district except as provided in § 34-676(f), whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone. See also § 34-620(g)(1) regarding the prohibition on restaurant drive-throughs.

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p. 2 of 2)

	<i>Retail</i>	<i>Marine</i>	<i>Civic</i>	
Restricted (R)	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:	Restricted (R)
	ATM P	Dock (for sole use by occupants of principal use) P	Beach or bay access P Essential services (see § 34-1612(a)) P Hidden path P Park, neighborhood P Family day care home P	
Limited (plus R) (L)	Dwelling unit: work/live (see § 34-1774) SE	Dock (for use by water taxi or water shuttle) P	Communication tower (see § 34-1441-1550) SE	Limited (plus R uses) (L)
	Membership organization SE	Marina EO/SE	Day care center, adult or child SE	
	Recreation facilities, commercial SE	Parasailing operations office SE	Essential service building (see § 34-1612(b)) SE	
	Parking lot, seasonal (see § 34-2022) TP	Personal watercraft operations office SE	Essential service equipment P	
	Temporary uses (see §§ 34-3041-3050) SE	Rental of beach furniture P	Recreation facility: private off-site public SE public P	
	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:	
On-premises consumption of alcoholic beverages (see §§ 34-1261-1290) AA/SE	Dwelling unit, caretaker P Dock (may be leased to non-occupants of principal use) P	Dwelling unit, caretaker P Restaurant, accessory to private rec. facilities only SE		
Open (plus R & L uses) (O)	Automobile repair SE	Boat dealer P	Cultural facility SE	Open (plus R & L uses) (O)
	Bar or cocktail lounge AA/SE	Marina P	Day care center, adult or child P	
	Car wash SE		Park, community or regional P	
	Dwelling unit: work/live (see § 34-1774) P		Parking lot, shared permanent SE	
	Laundromat P		Place of worship P	
	Mini-warehouse SE		Religious facility SE	
	Parking lot, shared permanent (34-2015(2)b.) SE		School (see § 34-2381-2383) P	
	Personal services P		Theater SE	
	Restaurant (2) P			
	Retail store, small P			
	Retail store, large SE			
	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:	
	Commercial accessory uses P	Marina accessory uses P	Helistop SE Restaurant, accessory only to public recreation facilities P Subordinate commercial uses (see § 34-3021) P	

(2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the DOWNTOWN zoning district except as provided in § 34-676(f), whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone. See also § 34-620(g)(1) regarding the prohibition on restaurant drive-throughs.

**ARTICLE III, DIVISION 3.
EXPLANATION OF PROPERTY
DEVELOPMENT REGULATIONS**

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

(a) **Two-family building.** When a building owner proposes further parcelization or subdivision of land in the RC zoning district into separate lots and/or separating two lawfully existing dwelling units into individual parcels, all of the following requirements must be satisfied before the required limited review development order can be issued:

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

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

- (1) The number of dwelling units in the existing building may exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, but may not exceed the number of lawfully permitted units. The burden to demonstrate the lawful nature of the units is on the applicant. If the number

of dwelling units exceeds the density limitations of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, the interior square footage of the building, as defined in §34-3238(2)d.1., may not be increased, but may be exchanged on a square-foot for square-foot basis to provide larger but fewer dwelling units within the same interior area.

- (2) Existing buildings must be brought into compliance with all floodplain requirements for new construction as provided in ch. 6 of this code. Owners of an existing buildings that cannot comply with these requirements may seek to replace their building by obtaining approval for pre-disaster buildback in accordance with § 34-3237.
- (3) The entire building must meet the coastal construction requirements that apply to new structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).
- (4) The individual dwelling units must be separated by walls with not less than at least 1-hour fire resistance rating as defined by the Florida Building Code.
- (5) The development must meet all other requirements of this code, including Table 34-2.

(c) **Hotels/motels.** When a hotel/motel owner proposes further parcelization or subdivision of a lawfully existing hotel/motel to convert all or a portion of its guest units to timeshared guest units or to a hotel condominium, all of the following requirements must be satisfied before the required development order can be issued:

- (1) The number of guest units in the existing building may exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, but may not exceed the number of lawfully permitted guest units. Each guest unit may be converted to no more than one timeshared or condominium guest unit. The burden to demonstrate the lawful number of guest units is on the owner. If the number of guest units exceeds the density limitations in the Fort Myers Beach comprehensive plans as they would apply to vacant land, the interior square footage of the building, as defined in § 34-3228(2)d.1., may not be increased, but may be exchanged on a square-foot by square-

- foot basis to provide larger but fewer guest units within the same interior area.
- (2) Existing buildings must be brought into compliance with all floodplain requirements for new construction as provided in ch. 6 of this code. Existing buildings that cannot comply with these requirements may seek to replace their building by obtaining approval for pre-disaster buildback in accordance with § 34-3237.
 - (3) The entire building must meet the coastal construction requirements that apply to new structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).
 - (4) The applicant must provide evidence that the proposed timeshared or condominium guest units will meet the standards of this code for hotels/motels. All sales agreements for guest units and the legal documents creating the timeshare or condominium arrangement must expressly incorporate each of the following requirements of this code:
 - a. Individual guest units are not residential dwelling units and are limited to transient usage only.
 - b. Individual guest units may be occupied in the same manner as hotel/motel units. The owner or owner's family may occupy the guest unit no more than 60 days in any year. "Owner or the owner's family" means the owner(s) of record, their children, and parents. "Year" means the period beginning October 1 and ending September 30 of each successive year.
 - c. All guest units in the building, including the timeshared or condominium units, must continue to meet all requirements for a hotel/motel as provided in §§ 34-1801-1830.
 - (5) Prior to execution, the legal documents creating the timeshare arrangement or hotel condominium, and all amendments to those documents, must be submitted to the Town Attorney for review for consistency with these requirements and other requirements of this code.
 - (6) The individual guest units must be separated by walls with at least 1-hour fire resistance

- rating as defined by the Florida Building Code.
- (7) The development must meet all other requirements of this code, including Table 34-2, except as to building height and except as otherwise provided by subsection (c) of this section.

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

Sec. 34-1801. Definitions and general requirements.

- (a) The following definitions from § 34-2 are repeated here for convenience:
- (1) ~~(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.;
 - (2) ~~(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. Guest units may be equipped with partial or full kitchens.
 - (3) ~~(c)~~ ***Hotel/motel*** means a building, or group of buildings on the same premises and under single control, 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 for periods of one day or longer.
 - (4) ~~(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.

(be) Hotels/motels and bed-and-breakfast inns must:

- (1) Be licensed as transient public lodging establishments registered accordingly with the Florida department of business and professional regulation; and ~~are required to~~
- (2) Pay the levied tourist development tax promulgated by the county; and the state sales tax; and
- (3) Provide and staff a front desk during regular business hours to arrange for the rental of guest units; and
- (4) Guest units may not be occupied by the same guest for more than 60 days in any year. "Guest" includes the guest's children and parents." "Year" means the period beginning October 1 and ending September 30 of each successive year.

Hotels/motels and bed-and-breakfast inns which do not meet these requirements will be subject to enforcement action (see § 34-266). are not registered with the department or do not pay the tourist tax. Proposed developments that will not meet these requirements will not be approved as hotels/motels or bed-and-breakfast inns; if approved instead as multiple-family buildings, they will be subject to the density limitations and property development regulations for multiple-family buildings.

(c) Guest units in new hotels/motels and bed-and-breakfast inns may be sold as timeshare units or as hotel condominiums provided that they meet all requirements of this code for hotels/motels or bed-and-breakfast inns.

(d) Guest units in existing hotels/motels and bed-and-breakfast inns may be converted to timeshare units or hotel condominiums provided they meet all requirements of this code for hotels/motels or bed-and-breakfast inns and comply with the parcelization requirements of § 34-636(c).

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

(a) A nonconforming hotel/motel can be replaced with a new building 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.

(b) If a nonconforming hotel/motel is being replaced by a multiple-family building, the existing number of guest units cannot be used as the basis for rebuilding more dwelling units than are permitted on undeveloped land by the Fort Myers Beach Comprehensive Plan. The equivalency factors in § 34-1803 are not applicable to replacement of an existing hotel/motel with a new multiple-family building.

Sec. 34-1807. Conversions of existing buildings.

(a) Any hotel or motel proposing to convert its guest units to timeshare units or to a hotel condominium must comply with § 34-636(c).

(b) Any hotel or motel proposing to convert its guest units to timeshare or dwelling units, or any residential building proposing to convert its dwelling units to timeshare or hotel/motel guest units, will be required to comply with density limitations of the Fort Myers Beach Comprehensive Plan, all applicable parking regulations, and all other regulations of this code including equivalency factors that affect the allowable number of hotel/motel guest units. proposed use. If the existing hotel/motel, timeshare, or residential building being converted exceeds the density or intensity limits of the comprehensive plan or this code, the conversion must use the pre-disaster buildback regulations found in § 34-3237 or the post-disaster buildback regulations found in § 34-3238 in order to rebuild at up to the existing density or intensity. Interior square footage, as defined in § 34-3238(2)d. for residential and in § 34-3238(2)e for hotel/motel and timeshare, may be exchanged during this process on square-foot for square-foot basis.

PUBLIC HEARING DRAFT – JUNE 13, 2007

ORDINANCE No. 07-04

AN ORDINANCE AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES”; AMENDING SECTION 34-2 “DEFINITIONS”; AMENDING SECTION 34-621 “ALLOWABLE USES OF LAND DESCRIBED” INCLUDING AMENDMENTS TO TABLE 1 “LAND USES ASSIGNED TO USE GROUPS AND SUB-GROUPS”; AMENDING SECTION 34-636 “PARCELIZATION OR SUBDIVISION OF EXISTING BUILDINGS”; AMENDING SECTION 34-1801 “DEFINITIONS”; AMENDING SECTION 34-1806 “REPLACING A NONCONFORMING HOTEL/MOTEL”; AMENDING SECTION 34-1807 “CONVERSIONS”; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. AUTHORITY. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. ADOPTION OF AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE. Chapter 34 of the Town of Fort Myers Beach land development code is titled “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES.” Chapter 34 is hereby amended as shown in Exhibit A. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 34:

- Sec. 34-2. Definitions.
- Sec. 34-621. Allowable uses of land described.
- Sec. 34-636. Parcelization or subdivision of existing buildings.
- Sec. 34-1801. Definitions and general requirements.
- Sec. 34-1806. Replacing a nonconforming hotel/motel.
- Sec. 34-1807. Conversions of existing buildings.

SECTION 3. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law, or contrary to the policy of express law although not expressly prohibited, or against public policy, or for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way shall affect the validity of all other provisions of this ordinance.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and, upon being put to a vote, the result was as follows:

Mayor Dennis Boback	_____
Vice-Mayor Larry Kiker	_____
Herb Acken	_____
Charles Meador, Jr.	_____
Bill Shenko, Jr.	_____

DULY PASSED AND ENACTED this ____th day of _____, 2007.

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Michelle Mayher, Town Clerk

By: _____
Dennis Boback, Mayor

Approved as to form by:

Anne Dalton, Town Attorney

EXHIBIT A

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 34 — ZONING DISTRICTS,
DESIGN STANDARDS, AND NONCONFORMITIES

ARTICLE I. IN GENERAL

Sec. 34-2. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates a different meaning:

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. See division 19 of article IV of this chapter.

Dwelling unit means a room or rooms connected together, which could constitute a separate, independent housekeeping establishment for a family, for owner occupancy, or for rental or lease on a weekly, monthly, or longer basis as specified in this code for various zoning districts, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing sleeping and sanitary facilities ~~and a kitchen~~. The term “dwelling unit” shall not include rooms in certain assisted living or continuing care facilities (see § 34-1415) or in lawful accessory apartments in owner-occupied homes (see § 34-1178(d)). See also Guest unit and Living unit.

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. Guest units may be equipped with a partial or full kitchen. See division 19 of article IV of this chapter.

Hotel/motel means a building, or group of buildings on the same premises and under single control, 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 for periods of one day or longer. See division 19 of article IV of this chapter.

Living unit means any temporary or permanent unit used for human habitation. See Dwelling unit and Guest unit.

Parcelization means dividing a given unit of real property into multiple parcels, units, or fractions. Examples of parcelization include, but are not limited to, divisions of land, fractional or timeshare units for specific periods of time, condominiums, and cooperatives.

Resort means a mixed-use facility that accommodates transient guests or vacationers as well as longer-term residents. Resorts contain at least one hotel/motel and at least 50 total units, which may include a combination of dwelling units; and guest units and may also include timeshare units, and provide food service, outdoor recreational activities, and/or conference facilities for their guests.

Timeshare unit means any dwelling unit, guest unit, or living unit for which a timesharing plan, as defined in F.S. ch. 721, has been established and documented. See § 34-632 for determining density of timeshare units that include “lock-off accommodations.”

Transient guest means any guest registered as provided for in F.S. § 513.01(7), for six months or less.

[no other changes to this section]

**ARTICLE III, DIVISION 2.
ALLOWABLE LAND USES
IN EACH ZONING DISTRICT**

Sec. 34-621. Allowable uses of land described.

(a) *Applicability.* [no changes to this subsection]

(b) *Use tables.* Table 34-1 of this article lists specific uses followed by a symbol indicating whether the use is permitted by right (P), special exception (SE), administrative approval (AA), existing only (EO), or temporary use permit (TP). In all instances, unless specifically noted to the contrary, the symbols used in the use regulations tables shall have the following meaning:

There are no changes to the text of this section; see the following underlined changes to Table 34-1:

- “RESIDENTIAL OPEN” category: add immediately below “Timeshare units”:
“(provided these units qualify as dwelling units and meet residential density levels in § 34-632)”
- “LODGING OPEN” category:
 - delete “or guest unit” from “Rental of any permitted dwelling unit ~~or guest unit~~ for periods of one day or longer”
 - add “Timeshare units” as a permitted principal use

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p.1 of 2)

	<i>Residential</i>	<i>Lodging</i>	<i>Office</i>		
Restricted (R)	Community residential home	P	Rental of any permitted dwelling unit to a single family during any one-month period, with a minimum stay of one week (see §§ 34-2391–2410 for rules and exceptions)	P	Restricted (R)
	Dwelling unit, single-family	P			
	Home care facility	P			
	AS ACCESSORY USES:		AS ACCESSORY USES:		
	Accessory apartment (1) (see § 34-1177)	SE		Home occupation (no outside help) P	
	Accessory apartment (see § 34-1178)	EO		Home occupation (with outside help) A	
	Residential accessory uses	P			
Temporary mobile home (§ 34-3046)	TP				
Limited (L) <i>(plus R)</i>	Dwelling unit: two-family (1) live/work (see § 34-1773)	P SE	Rental of any permitted dwelling unit to a single family for periods of one week or longer (see §§ 34-2391–2410 for rules)	P	Limited (L) <i>(plus R)</i>
	Mobile home or RV park (VILLAGE district only, as restricted in § 34-694)	EO	Bed-and-breakfast inn (see § 34-1801)	SE	
	AS ACCESSORY USES:		AS ACCESSORY USES:		
	Accessory apartment (1) (see § 34-1177)	P	On-premises consumption of alcoholic beverages (see division 5 of article IV)	AA/ SE	
Open (O) <i>(plus R & L uses)</i>	Assisted living facility (see § 34-1411)	P	Bed-and-breakfast inn (see § 34-1801)	P	Open (O) <i>(plus R & L uses)</i>
	Dwelling unit: multiple-family live/work (see § 34-1773)	P P	Hotel/motel (see § 34-1801)	P	
	Rooming house	P	Rental of any permitted dwelling unit or guest unit for periods of one day or longer	P	
	Timeshare units (provided these units qualify as dwelling units and meet residential density levels in § 34-632)	P	Resorts	P	
	AS ACCESSORY USES:		Timeshare units	P	
	Golf course	EO	AS ACCESSORY USES:		
	Recreation facility: private on-site private off-site	P SE	Resort accessory uses	P	
	Subordinate commercial uses	P	Personal services	P	
			Subordinate commercial uses (see § 34-3021)	P	
			AS ACCESSORY USES:		

(1) Provided density complies with the Fort Myers Beach Comprehensive Plan (see § 34-632).

(2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the DOWNTOWN zoning district except as provided in § 34-676(f), whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone. See also § 34-620(g)(1) regarding the prohibition on restaurant drive-throughs.

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p. 2 of 2)

	<i>Retail</i>	<i>Marine</i>	<i>Civic</i>	
Restricted (R)	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:	Restricted (R)
	ATM P	Dock (for sole use by occupants of principal use) P	Beach or bay access P Essential services (see § 34-1612(a)) P Hidden path P Park, neighborhood P Family day care home P	
Limited (plus R) (L)	Dwelling unit: work/live (see § 34-1774) SE	Dock (for use by water taxi or water shuttle) P	Communication tower (see § 34-1441-1550) SE	Limited (plus R uses) (L)
	Membership organization SE	Marina EO/SE	Day care center, adult or child SE	
	Recreation facilities, commercial SE	Parasailing operations office SE	Essential service building (see § 34-1612(b)) SE	
	Parking lot, seasonal (see § 34-2022) TP	Personal watercraft operations office SE	Essential service equipment P	
	Temporary uses (see §§ 34-3041-3050) SE	Rental of beach furniture P	Recreation facility: private off-site public SE public P	
	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:	
On-premises consumption of alcoholic beverages (see §§ 34-1261-1290) AA/SE	Dwelling unit, caretaker P Dock (may be leased to non-occupants of principal use) P	Dwelling unit, caretaker P Restaurant, accessory to private rec. facilities only SE		
Open (plus R & L uses) (O)	Automobile repair SE	Boat dealer P	Cultural facility SE	Open (plus R & L uses) (O)
	Bar or cocktail lounge AA/SE	Marina P	Day care center, adult or child P	
	Car wash SE		Park, community or regional P	
	Dwelling unit: work/live (see § 34-1774) P		Parking lot, shared permanent SE	
	Laundromat P		Place of worship P	
	Mini-warehouse SE		Religious facility SE	
	Parking lot, shared permanent (34-2015(2)b.) SE		School (see § 34-2381-2383) P	
	Personal services P		Theater SE	
	Restaurant (2) P			
	Retail store, small P			
	Retail store, large SE			
	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:	
	Commercial accessory uses P	Marina accessory uses P	Helistop SE Restaurant, accessory only to public recreation facilities P Subordinate commercial uses (see § 34-3021) P	

(2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the DOWNTOWN zoning district except as provided in § 34-676(f), whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone. See also § 34-620(g)(1) regarding the prohibition on restaurant drive-throughs.

**ARTICLE III, DIVISION 3.
EXPLANATION OF PROPERTY
DEVELOPMENT REGULATIONS**

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

(a) **Two-family building.** All of the following requirements must be satisfied before the required limited review development order can be issued for ~~When a building owner proposes further parcelization or subdivision of land in the RC zoning district into separate lots and/or separating two lawfully existing dwelling units into individual parcels, all of the following requirements must be satisfied before the required limited review development order can be issued:~~

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

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

- (1) The number of dwelling units in the existing building may exceed the density limits of the

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

- (2) Existing buildings must be brought into compliance with all floodplain requirements for new development, as provided in article IV of ch. 6 of this code. Owners of an existing building that cannot comply with these requirements may seek to replace their building by obtaining approval for pre-disaster buildback in accordance with § 34-3237.
- (3) The entire building must meet the coastal construction requirements that apply to new development structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).
- (4) The individual dwelling units must be separated by walls with not less than at least 1-hour fire resistance rating as defined by the Florida Building Code.
- (5) The development must meet all other requirements of this code, including Table 34-2.

(c) **Hotels/motels.** All of the following requirements must be satisfied before the required limited review development order can be issued for further parcelization or subdivision of a lawfully existing hotel/motel to convert all or a portion of its guest units to timeshared guest units or to a hotel condominium:

- (1) The number of guest units in the existing building may exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, but may not exceed the number of lawfully permitted guest units. The burden to demonstrate the lawful number of guest units is on the owner. Each guest unit may be converted to no more than one parcelized guest unit. If the number of guest units exceeds the density limitations in the Fort

- Myers Beach comprehensive plans as they would apply to vacant land, the interior square footage of the building, as defined in § 34-3228(2)d.1., may not be increased, but may be exchanged on a square-foot by square-foot basis to provide larger but fewer guest units within the same interior area.
- (2) Existing buildings must be brought into compliance with all floodplain requirements for new development, as provided in article IV of ch. 6 of this code. Existing buildings that cannot comply with these requirements may seek to replace their building by obtaining approval for pre-disaster buildback in accordance with § 34-3237.
 - (3) The entire building must meet the coastal construction requirements that apply to new development, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).
 - (4) The applicant must provide evidence that the proposed parcelized guest units will meet the standards of this code for hotels/motels. All sales agreements for guest units and the legal documents creating the parcelized arrangement must expressly incorporate each of the following requirements of this code:
 - a. Individual guest units are not residential dwelling units and are limited to transient usage only.
 - b. Individual guest units may be occupied in the same manner as hotel/motel units. The owner or owner’s family may occupy the guest unit no more than 60 days in any year. “Owner or the owner’s family” means the owner(s) of record, their children, and parents. “Year” means the period beginning October 1 and ending September 30 of each successive year.
 - c. All guest units in the building, including the parcelized units, must continue to meet all requirements for a hotel/motel as provided in §§ 34-1801–1830.
 - (5) Prior to execution, the legal documents creating the parcelized arrangement, and all amendments to those documents, must be submitted to the Town Attorney for review for consistency with these requirements and other requirements of this code.

Alternate:
60 days
could be changed
to 120 days

- (6) The individual guest units must be separated by walls with at least 1-hour fire resistance rating as defined by the Florida Building Code.
- (7) The development must meet all other requirements of this code, including Table 34-2, except as to building height and except as otherwise provided by subsection (c) of this section.

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

Sec. 34-1801. Definitions and general requirements.

- (a) The following definitions from § 34-2 are repeated here for convenience:
 - (1) ~~(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.;
 - (2) ~~(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. Guest units may be equipped with partial or full kitchens.
 - (3) ~~(c)~~ **Hotel/motel** means a building, or group of buildings on the same premises and under single control, 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 for periods of one day or longer.
 - (4) ~~(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.

(be) Hotels/motels and bed-and-breakfast inns must:

- (1) Be licensed as transient public lodging establishments registered accordingly with the Florida department of business and professional regulation; and are required to
- (2) Pay the levied tourist development tax promulgated by the county; and the state sales tax; and
- (3) Provide and staff a front desk during regular business hours to arrange for the rental of guest units; and
- (4) Guest units may not be occupied by the same guest for more than 60 days in any year. "Guest" includes the guest's children and parents." "Year" means the period beginning October 1 and ending September 30 of each successive year.

*Alternate:
60 days
could be
changed
to 120 days*

Hotels/motels and bed-and-breakfast inns which do not meet these requirements will be subject to enforcement action (see § 34-266). are not registered with the department or do not pay the tourist tax. Proposed developments that will not meet these requirements will not be approved as hotels/motels or bed-and-breakfast inns; if approved instead as multiple-family buildings, they will be subject to the density limitations and property development regulations for multiple-family buildings.

(c) Guest units in new hotels/motels and bed-and-breakfast inns may be sold as timeshare units or as hotel condominiums provided that they meet all requirements of this code for hotels/motels or bed-and-breakfast inns.

(d) Guest units in existing hotels/motels and bed-and-breakfast inns may be parcelized to timeshare units or hotel condominiums provided they meet all requirements of this code for hotels/motels or bed-and-breakfast inns and comply with the parcelization requirements of § 34-636(c).

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

(a) A nonconforming hotel/motel can be replaced with a new building 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.

(b) If a nonconforming hotel/motel is being replaced by a multiple-family building, the existing number of guest units cannot be used as the basis for rebuilding more dwelling units than are permitted on undeveloped land by the Fort Myers Beach Comprehensive Plan. The equivalency factors in § 34-1803 are not applicable to replacement of an existing hotel/motel with a new multiple-family building.

Sec. 34-1807. Conversions of existing buildings.

(a) Any hotel or motel proposing to parcelize its guest units to timeshare units or to a hotel condominium must comply with § 34-636(c).

(b) Any hotel or motel proposing to convert its guest units to timeshare or dwelling units, or any residential building proposing to convert its dwelling units to timeshare or hotel/motel guest units, will be required to comply with density limitations of the Fort Myers Beach Comprehensive Plan, all applicable parking regulations, and all other regulations of this code including equivalency factors that affect the allowable number of hotel/motel guest units. proposed use. If the existing hotel/motel, timeshare, or residential building being converted exceeds the density or intensity limits of the comprehensive plan or this code, the conversion must use the pre-disaster buildback regulations found in § 34-3237 or the post-disaster buildback regulations found in § 34-3238 in order to rebuild at up to the existing density or intensity. Interior square footage, as defined in § 34-3238(2)d. for residential and in § 34-3238(2)e for hotel/motel and timeshare, may be exchanged during this process on square-foot for square-foot basis.

**RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE
TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 2007-11**

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto; and

WHEREAS, the LPA determined that issues related to parcelization of existing structures within the Town of Fort Myers Beach, Florida should be reviewed by the Town an potentially codified within the LDC; and

WHEREAS, as a result of such determination, the LPA initiated a review process related to such parcelization issues; and

WHEREAS, following proper notice and as required under Florida Statute and the LDC, the LPA conducted a Public Hearing on May 8, 2007, to review Ordinance 07-04, which would amend Chapter 34 of the Land Development Code (LDC) which is titled "Zoning Districts, Design Standards, and Nonconformities" with regard to parcelization issues with the Town.

NOW THEREFORE BE IT RESOLVED, that the LPA recommends **approval and adoption** of Ordinance 07-04 by the Town Council on behalf of the Town of Fort Myers Beach, Florida.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Weimer and seconded by LPA Member Simon, and upon being put to a vote, the result was as follows:

Thomas Babcock	<u>aye</u>	Bob Raymond	<u>aye</u>
Evie Barnes	<u>aye</u>	Bob Simon	<u>aye</u>
Rochelle Kay	<u>aye</u>	Dennis Weimer	<u>aye</u>
Alan Mandel	<u>aye</u>		

DULY PASSED AND ADOPTED THIS 8th day of May, 2007.

LOCAL PLANNING AGENCY OF THE TOWN OF FORT MYERS BEACH

By: _____
Thomas Babcock, Chair

Approved as to legal sufficiency:

ATTEST:

By: _____ By: _____
Anne Dalton, Esquire Michelle Mayher, Town Clerk
LPA Attorney