

EXHIBIT B

PROPOSED FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 34 ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

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ARTICLE I. IN GENERAL

Sec. 34-1. Purpose and intent of chapter.

(a) The purpose of this chapter is to encourage and promote, in accordance with present and future needs, the safety, health, order, convenience, prosperity, and general welfare of the citizens of the Town of Fort Myers Beach county, to recognize and promote real property rights, and to provide:

- (1) for efficiency and economy in the process of development,
- (2) for the appropriate and best use of land,
- (3) for preservation, protection, development, and conservation of the historical and natural resources of land, water, and air,
- (4) for convenience of traffic and circulation of people and goods,
- (5) for the use and occupancy of buildings,
- (6) for healthful and convenient distribution of population,
- (7) for adequate public utilities and facilities,
- (8) for promotion of the amenities of beauty and visual interest,
- (9) for protection of the character and maintenance of the stability of residential; ~~agricultural, and~~ business and industrial areas, and
- (10) for development in accordance with the Fort Myers Beach Comprehensive Plan. ~~Fee Plan~~ adopted by the county;

(b) These purposes are furthered by establishing zoning districts and by regulating the location and use of buildings, signs, and other structures, water, and land ~~for agriculture, trade, industry and residence~~, by regulating and limiting or determining the height, bulk, and access to light and air of buildings and structures, the area of yards and other open spaces, and the density of use. To accomplish these objectives, the regulations and districts and accompanying maps have been designed with reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses.

(c) No building or structure, or part thereof, shall hereafter be erected, constructed, reconstructed, altered, or maintained, and no existing use, new use, or change of use of any building, structure, or land, or part thereof, shall be made or continued except in conformity with the provisions of this code. Special regulations apply to certain nonconforming

buildings and uses as provided in article V of this chapter.

Sec. 34-2. Definitions.

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

Abutting property, unless specifically stated otherwise within this chapter, means properties having a boundary line, or point or portion thereof, in common, with no intervening street right-of-way or easement, or any other easement over 25 feet in width.

Access, vehicular means the principal means of vehicular ingress and egress to abutting property from a street right-of-way or easement.

Accessory apartment. See §§ 34-1177–1178.

Accessory building or structure. See *Building or structure, accessory.*

Accessory use. See *Use, accessory.*

Administrative office means an office which is customarily ancillary and subordinate to the permitted principal use of the property and which is used for clerical and administrative functions of the principal use. This term shall be interpreted to include managers or association offices for residential rental property, subdivisions, recreational vehicle parks and similar type activities.

Aggrieved person or party means anyone who has a legally recognizable interest which is or which may be adversely affected by an action of or an action requested of the town council Board of County Commissioners or any other person or board that has been delegated such authority by the town council Board of County Commissioners. Property owners within 375 feet of the subject property are presumed to have a legally recognizable interest. A person or entity claiming to be aggrieved, and whose property lies outside of the 375-foot perimeter, will be required to offer proof that their interests are adversely affected. A person or entity pursuing an appeal solely out of spite shall not be presumed to have a legally recognizable interest.

~~*Agricultural uses* [deleted]~~

~~*Aircraft landing facilities, private* [deleted]~~

~~*Airport operations facilities* [deleted]~~

Alter and *alteration* mean any change in size, shape, character, or use of a building or structure.

Amateur radio antenna/tower means a structure erected and designed to receive or transmit radio waves by licensed amateur radio operators.

Amusement device means any mechanical device or combination of devices which carries or conveys passengers on, along, around, over, or through a fixed or restricted course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement. This definition shall specifically include all amusement devices, amusement attractions, and temporary structures regulated by F.S. ch. 616 and the state department of agriculture and consumer services.

Amusement device, permanent means a device which is used, or intended to be used, as an amusement device or amusement attraction that is erected to remain a lasting part of the premises.

~~*Amusement park* [deleted]~~

Animal clinic or kennel means an establishment providing for the diagnosis and treatment of ailments of animals other than humans, or for the temporary care of more than four dogs or cats for others, and which may include facilities for overnight care. See division 7 of article IV of this chapter. ~~*Animal kennel.*~~

~~*Animal kennel* means an establishment where more than four dogs or cats (except litters of animals of not more than six months of age) are kept, raised, bred, cared for, or boarded, for a fee.~~

~~*Animals, Class I* [deleted]~~

~~*Animals, Class II* [deleted]~~

~~*Apparel, manufacturing.* See § 34-622(c)(1).~~

Applicant means any individual, firm, association, syndicate, copartnership, corporation, trust, or other legal entity, or their duly authorized

representative, commencing proceedings under this chapter.

Application, ~~town-~~ county initiated means any application in which the town council Board of County Commissioners is designated as the applicant, regardless of whether the town ~~Lee County~~ is the owner of the subject parcel.

Application, owner-initiated means any application that is not town- ~~county~~ initiated.

Application or appeal means any matter lying within the jurisdiction of the town council, ~~hearing examiner and any application for rezoning which will be or is scheduled to be heard by the Board of County Commissioners.~~

Approved discharge device ~~[deleted]~~

Architect means a professional architect duly registered and licensed by the state.

Adult congregate living facilities (ACLF) or Assisted living facility means a residential land use, licensed under ch. 58A-5 F.A.C. 10A-5, Florida Administrative Code, which may be a building, a section of a building, a section of a development, a private home, a special boarding home, a home for the aged, or similar place, whether operated for profit or not, which undertakes through its ownership or management to provide, for a period exceeding 24 hours, housing and food service plus one or more personal services for four or more adults not related to the owner or administrator by blood or marriage. A facility offering such services for fewer than four adults shall be ~~constructed as being~~ within the context of this definition if it ~~formally or informally~~ advertises to or solicits the public for residents or referrals and holds itself out to the public ~~as to be~~ an establishment ~~which~~ providinges such services. These facilities are not synonymous with the term “health care facility” or “nursing home.” For purposes of this definition only, the term “personal services” means services in addition to housing and food service, which include but are not limited to personal assistance with bathing, dressing, ambulation, housekeeping, supervision, emotional security, eating, supervision of self-administered medications, restoration therapy, and assistance with securing health care from appropriate sources.

ATM and automatic teller machine mean an unattended banking station located outside of or away from the principal bank building and in operation beyond normal lobby hours, operated by computerized equipment, and capable of carrying out specific banking transactions.

Authorized representative means any person who appears with the permission of and on behalf of another person and who provides legal argument or relevant competent evidence through testimony, submission of documents, or otherwise.

Auto parts store means establishments primarily engaged in the retail sale of new or used automobile, truck, trailer, or motorcycle parts and accessories. ~~The term does not include auto wrecking yards.~~

Auto wrecking yard ~~[deleted]~~

Automobile self-service fuel pumps means vehicle fuel dispensing ~~devices~~ pumps providing an accessory use to a permitted retail ~~trade~~ establishment, ~~but in which only self-service pumps are provided and~~ No other vehicle service is permitted by approval of automobile fuel pumps. ~~provided.~~ For purposes of determining the number of “pumps,” a “pump” may serve only one vehicle at a time. If a pump island contains a pump which can be used simultaneously by two vehicles, then it is counted as two pumps.

Automobile rental means the use of any building, land area, or other premises or portion thereof primarily for the rental (not leasing) of automobiles and light trucks. Incidental servicing and maintenance of the rental vehicles, excluding body/frame repair and painting, is a normal ancillary function.

Automobile repair means establishments that primarily offer parts installation and general vehicle servicing including diagnostic centers and the servicing of brakes, electrical systems, engines, glass, mufflers, oil, radiators, tires, transmissions, upholstery, etc. Automobile repair establishments may also provide body/frame repair, painting, and similar services when ancillary to general vehicle servicing.

Automobile service station ~~means an establishment primarily engaged in the retail sale of motor fuel or lubricants, but which may also include~~

~~facilities for washing, polishing, waxing, greasing, tire repair (with no recapping or vulcanizing) and other minor incidental repairs, and emergency road service, including towing and emergency repairs and services, provided, however, such establishment is not primarily engaged in work or services listed as “automotive repair and service” (see § 34-622(c)(2)). See *Self-service fuel pump station*.~~

~~*Automotive repair and service.* See § 34-622(c)(2).~~

~~*Banks and financial establishments.* See § 34-622(c)(3).~~

Bar or and cocktail lounge mean any establishment devoted primarily to the retailing and on-premises drinking of beer, wine, malt, vinous, or other alcoholic beverages.

Beach or bay access means a right-of-way or easement that provides at least pedestrian access to beaches, bays, canals, or wetlands.

~~*Bed and breakfast establishment.* For purposes of this chapter, bed and breakfast establishments shall be treated the same as a boarding house.~~

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.

Board means the Board of County Commissioners of Lee County, Florida.

~~*Boarding house* means an establishment with lodging facilities for more than four but less than ten persons, where meals are regularly prepared and served for compensation, and where food is placed upon the table family style, without service or ordering of individual portions from a menu. See *Rooming house*.~~

Boat means any vessel, watercraft, or other artificial contrivance used, or which is capable of being used, as a means of transportation, as a mode of habitation, or as a place of business, professional, or social association on waters of the town county, including:

- (1) Foreign and domestic watercraft engaged in commerce;
- (2) Passenger or other cargo-carrying watercraft;
- (3) Privately owned recreational watercraft;
- (4) Airboats and seaplanes; and
- (5) Houseboats or other floating homes.

Boat dealers are establishments primarily engaged in the display, sales, or leasing of new or used motorboats, yachts, and other watercraft, including boat trailers. Incidental servicing and repairs and the stocking of replacement parts is a normal ancillary function.

~~*Boat parts store* [deleted]~~

Boat repair and service means establishments primarily engaged in minor repair service to small watercraft, including the sale and installation of accessories. See *Marina*.

Boatyard means a boating or harbor facility located on or having direct access to navigable water for building, maintaining, and performing extensive repair on boats and small ships, marine engines, and equipment. A boatyard shall be distinguished from a marina by the larger scale and greater extent of work done in a boatyard and by the use of dry dock, marine railway, or large capacity lifts used to haul out boats for maintenance or repair. See *Marina*.

~~*Bonita Beach* [deleted]~~

Building means any structure, either temporary or permanent, having a roof intended to be impervious to weather, and used or built for the shelter or enclosure of persons, animals, chattels, or property of any kind. This definition shall include tents, awnings, cabanas, or vehicles situated on private property and serving in any way the function of a building, but does not include screened enclosures not having a roof impervious to weather.

Building or structure, accessory means a building or structure which is customarily incidental and subordinate to a principal building or to the principal use of the premises, and located on the same premises. See *Building, principal*.

Building, conventional means:

- (1) A building, built upon the site and upon its own permanent foundation, constructed of

- basic materials such as wood, masonry, or metal or minimally prefabricated components such as roof trusses, wall panels, and bathroom/kitchen modules, and conformable to the locally adopted building, electrical, plumbing, and other related codes; or
- (2) A building manufactured off the site in conformance with F.S. ch. 553, pt. IV (or ch. 9B-1, F.A.C.), subsequently transported to its site complete or in modules and fixed to its own foundation with no intention to relocate.

~~*Building, heights.* See § 34-631. *of* means the vertical distance measured from grade to the highest point of the roof surface of a flat or Bermuda roof; to the deck line of a mansard roof; and to the mean height level between eaves and ridge of gable, hip, and gambrel roofs. Where minimum floor elevations in floodprone areas have been established by law, the building height shall be measured from such required minimum floor elevations (see article VII, division 30, subdivision H, of this chapter).~~

~~*Building material sales.* See § 34-622(c)(4). includes establishments selling new or used building materials such as lumber, roofing, siding, shingles, drywall, brick, tile, cement, sand, or gravel.~~

~~*Building official* means the director of the division of code enforcement or his designee.~~

Building, principal means a building in which is conducted the main or principal use of the premises on which the building is situated.

~~*Bus station/depot* [deleted]~~

~~*Bus stop* [deleted]~~

~~*Bus terminal.* See *Transit terminal.* means any premises for the transient housing or parking of buses and where the loading and unloading of passengers, luggage or packages or the transfer of passengers, luggage or packages to other buses may occur.~~

~~*Business office* [deleted]~~

~~*Business services.* See § 34-622(c)(5).~~

~~*Camera shop* [deleted]~~

Car wash means establishments primarily engaged in washing cars or in furnishing facilities for the self-service washing of cars.

Carnival means an enterprise which travels from community to community, generally staying for ten days or less in any one location, and which offers one or more amusement devices or attractions.

Carport means a freestanding or attached structure, consisting of a roof and supporting members such as columns or beams, unenclosed from the ground to the roof on at least two sides, and designed or used for the storage of motor-driven vehicles owned and used by the occupants of the building to which it is accessory.

~~*Cemetery* [deleted]~~

~~*Change of occupancy* [deleted]~~

~~*Chemicals and allied products.* [deleted]~~

~~*Cleaning and maintenance services.* See § 34-622(c)(7).~~

~~*Clothing stores, general.* See § 34-622(c)(8).~~

~~*Clubs.* See *Membership organization.*~~

~~(1) *Club, commercial* [deleted]~~

~~(2) *Club, country* [deleted]~~

~~(3) *Club, fraternal* [deleted]~~

~~(4) *Club, membership organization* [deleted]~~

~~(5) *Club, private* [deleted]~~

~~*Cluster development* [deleted]~~

Commercial means an activity involving the sale of goods or services carried out for profit.

Commercial accessory use means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a commercial structure or premises. See *Use, principal.* Typical commercial accessory uses are: *Parking lots, accessory; Storage, indoor; and Telephone booth or pay telephone station.* Various divisions of article IV of this chapter describe permitted commercial accessory uses. Uses that are listed separately on Table 34-1 of this code, such as drive-throughs and automobile fuel pumps, are not commercial accessory uses and are permitted only in zoning

districts where they are explicitly identified in Tables 34-1 and 34-2.

Commercial antenna (see definition in § 34-1442)

~~Commercial fishery~~ [deleted]

Communication tower (see definition in § 34-1442)

Community residential home means a dwelling unit licensed to serve clients of the state department of ~~children and family services health and rehabilitative services~~ which provides a living environment for one to six unrelated residents who operate as the functional equivalent of a family, including such supervision and care by a supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents. Residents include only aged persons as defined in F.S. § 400.618(3), as amended; physically disabled or handicapped persons as defined in F.S. § 760.22(7), as amended; developmentally disabled persons as defined in F.S. § 393.063(11), as amended; nondangerous mentally ill persons as defined in F.S. § 394.455(3), as amended; or children as defined in F.S. § 39.01(8) and F.S. § 39.01(10), as amended.

Compatible means, in describing the relation between two land uses, buildings or structures, or zoning districts, the state wherein those two things exhibit either a positive relationship based on fit, similarity or reciprocity of characteristics, or a neutral relationship based on a relative lack of conflict (actual or potential) or on a failure to communicate negative or harmful influences one to another.

Comprehensive plan means the document, and its amendments, adopted by the ~~town council Board of County Commissioners~~ pursuant to F.S. ch. 163, for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the town county. The terms “comprehensive plan” and “the Fort Myers Beach Comprehensive Lee Plan” are synonymous.

~~Condominium~~ means that form of ownership of property under which units or improvements are subject to ownership by one or more owners, and

~~there is appurtenant to each unit or part thereof an undivided share in common elements.~~

~~Consultant~~ [deleted]

~~Contiguous lots~~ [deleted]

Continuance. See § 34-231.

Continuing care facility (CCF) means a facility, licensed under F.S. ch. 651, ~~which must be developed as a planned development (PD)~~, which undertakes through its ownership or management to provide housing and food service to adult residents. The facility must meet the criteria for exemption from the Fair Housing Act Amendments of 1988, title VII USC.

~~Contractors and builders~~. See § 34-622(c)(9).

Contractor's shop means a room or group of rooms used by a contractor for the custom fabrication of building-related products such as, but not limited to, air conditioning duct work, pool screen enclosures, door trim, etc., and for the interior storage of materials, but which does perform any exterior fabricating or use any exterior storage area. Specifically prohibited is the storage or parking of heavy construction equipment such as cement trucks, cranes, bulldozers, well-drilling trucks and other similar heavy equipment, or wrecking or demolition debris.

Contractor's storage yard means a lot or parcel upon which a contractor maintains an area to store and maintain construction equipment and other materials customarily used in the trade carried on by the contractor. Storage of wrecking debris is prohibited.

~~Convenience food and beverage store~~ means a store which specializes in convenience products and other commodities, which may have self-service fuel pumps and which normally is open to the public beyond the normal sales hours of other retail stores.

~~Conversion~~ [deleted]

Corner lot. See Lot, corner.

Correctional facility, county means a county-operated facility for incarceration of offenders, including detention centers and jails.

~~County Coastal construction control line or zones. See definition in § 6-333(a). The county coastal construction control line or zones landward of the mean high water along the Gulf of Mexico are identified on the county coastal construction setback map which is on file at the department of community development.~~

Cross-access agreement means an agreement between adjacent property owners in which internal connections are provided between adjoining parking areas in order to minimize the number of driveways from the parking areas to streets.

Cultural facility means facilities of historic, educational, or cultural interest, such as art galleries, aquariums, botanical gardens, concert halls, historical sites, and museums. See § 34-622(c)(10).

~~Current assessed value [deleted]~~

Day care center, adult means a facility or establishment which undertakes through its ownership or management to provide basic services such as but not limited to a protective setting, social or leisure time activities, self-care training, or nutritional services to three or more adults not related by blood or marriage to the owner or operator, who require such services. This definition shall not be interpreted to include overnight care.

Day care center, child means a facility or establishment which provides care, protection, and supervision for six or more children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. This definition shall not include public or nonpublic schools which are in compliance with the Compulsory School Attendance Law, F.S. ch. 232. The term “child day care center” is synonymous with the terms “preschool” and “nursery school.”

Deferral. See § 34-231.

~~Denial with prejudice means an action taken by a hearing board indicating that the request being acted upon is formally denied and shall not be resubmitted, except as provided for in § 34-84(4)a. 34-211(a).~~

~~Denial without prejudice means an action taken by a hearing board indicating that the specific request being acted upon is formally denied but that the hearing board is willing to consider a modification of the request may be considered as set forth in § 34-84(4)b. 34-211(b).~~

Density means an existing or projected relationship between numbers of dwelling units and land area. See § 34-632 for methods of computing residential densities. Refer to article VII, division 12, subdivision H, of this chapter, and article VII, division 19, of this chapter.

~~Department [deleted]~~

~~Department store [deleted]~~

~~Detrimental uses [deleted]~~

Developer means any individual, firm, association, syndicate, copartnership, corporation, trust, or other legal entity commencing development.

Development and to develop. A development includes the construction of any new buildings or other structures on a lot, the relocation of any existing buildings, or the use of a tract of land for any new uses. To develop is to create a development.

~~Development of county impact (DCI) [deleted]~~

Development of regional impact (DRI) means any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.

~~Development parcel [deleted]~~

~~Development perimeter [deleted]~~

Deviation means a departure from a specific regulation of this code chapter, when requested and approved by the town council Board of County Commissioners as part of the application for a planned development (see § 34-932(b)) or special permit. A deviation is not the same as a variance in that the criteria for granting a variance in § 34-87(3) need not be met.

Director means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee. ~~administrative director of the department of community development or his designee. As used in this chapter, the terms "division director," "department director" and "director" are synonymous.~~

District [deleted]

Dock means a structure built across wetlands or open water use for the mooring of watercraft or for fishing, observation, or similar recreational activities.

Domestic tropical birds means birds not indigenous to the state or the United States that are commonly kept as pets in a home, including but not limited to canaries, finches, lovebirds, parrots, parakeets, cockatiels, and mynah birds.

Dormitory [deleted]

Double-frontage lot means any lot, not a corner or through lot, having two or more property lines abutting to a street right-of-way or easement.

Drive-in theater [deleted]

Drive-through facility means an establishment or portion thereof where a patron is provided products or services without departing from his automotive vehicle or in which the patron may temporarily depart from his vehicle in a nonparking space while servicing it, such as a do-it-yourself car wash or fuel pump. The terms "drive-through," "drive-in," and "drive-up" are synonymous. Drive-throughs are classified as Type 1 when they serve land uses with lower volumes and limited hours such as banks and pharmacies, and Type 2 when they serve land uses that typically have higher volumes and/or extended hours such as convenience stores, automobile fuel pumps, and car washes. See § 34-620(f) regarding the prohibition on drive-through lanes for restaurants and § 34-676(f) regarding drive-through lanes in the Downtown zoning district.

Drug paraphernalia. See § 34-1551.

Drugstore [deleted]

Duplex. See *Dwelling unit, types.*

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 one kitchen. The term "dwelling unit" shall not include rooms in ~~hotels, motels or institutional~~ 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 Housing unit* and *Living unit.*

Dwelling unit, types.

- (1) ~~Duplex~~ means a single, freestanding, conventional building on a single lot, designed for two dwelling units under single ownership, or wherein each dwelling unit is separately owned or leased but the lot is held under common ownership.
- (1) (2) ~~Single-family residence~~ means a single, freestanding, conventional detached building designed for one dwelling unit and which could be used for occupancy by one family.
- (2) (3) ~~Two-family attached~~ means a single, freestanding, conventional detached building designed as two dwelling units attached by a common wall or roof, but wherein each unit is located on a separate lot under separate ownership.
- (4) ~~Townhouse~~ means a group of three or more dwelling units attached to each other by a common wall or roof wherein each unit has direct exterior access and no unit is located above another, and each unit is completely separated from any others by a rated firewall or a fire and sound resistant enclosed separation or space, and wherein each dwelling unit is on a separate lot under separate ownership.
- (3) ~~Live/work unit~~ means a single dwelling unit in a detached building, or in a multifamily or mixed-use building, that also accommodates limited commercial uses within the dwelling unit. The predominate use of a live/work unit is residential, and commercial activity is a secondary use. See § 34-1773.
- (4) ~~Work/live unit~~ means a single dwelling unit in a detached building, or in a multifamily, mixed-use, or commercial building, where

the predominate use of the unit is commercial. See § 34-1774.

- (5) *Mobile home* means a building, manufactured off the site in conformance with the Federal Mobile Home Construction and Safety Standards (24 CFR 3280 et seq.), subsequently transported to a site complete or in sections where it is emplaced and tied down in accordance with ch. 15C-1, F.A.C., with the distinct possibility of being relocated at a later date. See §§ 34-1921–1950.
- (6) *Multiple-family building* means a group of three or more dwelling units within a single conventional building, attached side by side, or one above another, or both, regardless of whether and wherein each dwelling unit may be individually owned or leased but the land on which the building is located is under common, or single, or individual ownership. Freestanding dwelling units with at least one wall on a side or rear property line are also considered to be part of multiple-family buildings. Dwelling units, other than caretaker's quarters, which are included in a building which also contains permitted commercial uses shall also be deemed to be multiple-family dwelling units.
- (7) *Caretaker* means a single dwelling unit, whether in a freestanding building or part of another structure, that is permitted in some zoning districts as an accessory use to house an on-site caretaker.
- ~~(7) *Zero lot line* means a dwelling unit with at least one wall of a building on a side or rear line of the lot on which it stands.~~

Easement means a grant of a right to use land for specified purposes. It is a nonpossessory interest in land granted for limited use purposes.

~~*Electrical machinery and equipment, manufacturing.* [deleted]~~

Engineer means a professional engineer duly registered and licensed by the state.

Enlargement and *to enlarge*. An enlargement is an addition to the floor area or volume of an existing building, or an increase in that portion of a tract of land occupied by an existing use.

Entrance gate means a mechanized control device which is located near the point of access to a

development which serves to regulate the ingress of vehicles to the interior of the development for the purpose of security and privacy.

~~*Environmental quality* [deleted]~~

Environmentally sensitive land means any lands or waters, the development or alteration of which creates or has the potential to create a harm to the public interest due to their value as sources of biological productivity, as indispensable components of various hydrologic regimes, as irreplaceable and critical habitat for native species of flora and fauna, or as objects of scenic splendor and natural beauty. Among these types of land are those designated wetlands, resource protection areas and transition zones.

Equivalent means the state of correspondence or virtual identity of two land uses or zoning districts that exhibit similar levels of effects on each other and the community at large as defined by such factors as their intensities and schedules of use and activity, their demands for services and infrastructure such as roads and water and sewer systems, their impacts on natural resources and other similar parameters. The term “equivalent” is not synonymous with the term “compatible.”

~~*Essential service facilities.* See § 34-622(c)(13).~~

Essential service building means a free-standing building or structure exceeding 6 feet in height or 100 square feet in area that, except for its size would qualify as an “essential services.” See division 14 of article IV of this chapter.

Essential service equipment means an above-ground structure that exceed 27 cubic feet, but less than 6 feet high and 100 square feet in area, and that except for its size would qualify as “essential services” See division 14 of article IV of this chapter.

Essential services means the erection, construction, alteration, or maintenance, by a public or private utility company for the purpose of furnishing adequate service by such company for the public health, safety, or general welfare, of electrical and communication cables, poles, and wires, and water and sewer collection, transmission or distribution mains, drains, and pipes, including fire hydrants. This definition includes necessary

transformers, switching equipment, meters, pumps, and similar equipment which is less than 27 cubic feet in size, but does not include communication towers which are regulated by division 11 of article IV of this chapter or telephone booths or pay telephone stations which are regulated by §§ 34-634(c) and 34-2019(b). This definition shall not be interpreted to include buildings, structures, or uses listed as “essential service equipment” or “essential service building” (as defined herein). See division 14 of article IV of this chapter, facilities” (see § 34-622(c)(13)).

Existing only. ~~When used following a listed permitted use, the term “existing only” shall mean a building, structure or use which lawfully existed on the effective date of the ordinance from which this chapter is derived (August 1, 1986). Such lawfully existing use shall have the same rights as a permitted use and may be expanded or reconstructed in accordance with all applicable regulations on the parcel which existed on August 1, 1986. The use is permitted only if it lawfully existed on September 27, 1993, or was granted a special exception within the two years prior to that date and commenced the approved construction within two years after that date. Except for mobile home and recreational vehicle parks, a use that qualifies as “existing only” will not be classified as a nonconforming use; it will be afforded the same privileges as a permitted use and may be expanded or reconstructed, in accordance with all applicable current regulations, but only on the specific parcel on which it is located, as that parcel was legally described on September 27, 1993.~~

Exotic animals [deleted]

Fabricated metal products, manufacturing. [deleted]

Fair [deleted]

Family means one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family. The term “family” shall not be construed to mean a ~~fraternity, sorority~~, club, monastery, convent, or institutional group.

Family day care home, as defined in F.S. § 403.302, means an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. A family day care home shall be allowed to provide care for one of the following groups of children, which shall include those children under 13 years of age who are related to the caregiver:

- (1) A maximum of four children from birth to 12 months of age.
- (2) A maximum of three children from birth to 12 months of age, and other children, for a maximum total of six children.
- (3) A maximum of six preschool children if all are older than 12 months of age.
- (4) A maximum of 10 children if no more than 5 are preschool age and, of those 5, no more than 2 are under 12 months of age.

Farm labor housing [deleted]

Flea market, indoor [deleted]

Floor area means the ~~usable~~ total area of every each story of a building, or portion thereof, within the surrounding exterior walls of the building or structure.

Floor area ratio. See § 34-633.

Florist shop [deleted]

Food and beverage service, limited means the provision of food or beverages for members and guests of a membership organization private club or recreational hall center but not available to the general public. See the provisions of article ~~IV~~ VII, division 5, of this chapter relating to on-premises consumption of alcoholic beverages.

Food and kindred products, manufacturing. [deleted]

Food stores. See § 34-622(c)(16).

Foodcart [deleted]

Fraternity house [deleted]

Furniture and fixtures, manufacturing. See § 34-622(c)(18).

Garage, private [deleted]

Garage, public [deleted]

Garage sale or yard sale mean an informal sale of used household or personal articles, such as furniture, tools, or clothing, held on the seller's own premises, or conducted by several people on one of the sellers' own premises. Garage and yard sales are limited to not more than one week in duration, with sales limited to two garage or yard sales per year. See Residential accessory use.

Gasoline dispensing system, special means a gasoline dispensing system which is card-operated for governmental or commercial entities only in accordance with the provisions of ch. 4A-16, part VI, "Service Stations," of the Florida Administrative Code.

Gasparilla Island conservation district [deleted]

Gatehouse [deleted]

Gift, novelty, and souvenir shops [deleted]

Glare means bright or brilliant light emitting from a point source of light, or reflected or refracted from a point source of light, with an intensity great enough to:

- (1) reduce an observer's ability to see;
- (2) cause an observer to experience momentary blindness or a temporary loss of visual performance or ability; or
- (3) cause an observer with normal sensory perception annoyance or discomfort to the degree which constitutes a nuisance.

Golf course means a tract of land laid out for at least nine holes for playing the game of golf and improved with tees, greens, fairways, and hazards. Miniature golf is classified as a Recreation facility, commercial and not as a golf course.

Government agency [deleted]

Greater Pine Island [deleted]

Grocery [deleted]

Gross floor area includes the total floor area of a building within the surrounding exterior walls. See also § 34-633.

Group quarters means a building in which a number of unrelated individuals that do not constitute a family live and share various spaces and facilities for, for example, cooking, eating, sanitation, relaxation, study, and recreation. Examples of group quarters include fraternity houses, boarding houses, adult congregate assisted living facilities, dormitories, sororities, rooming houses, and other similar uses.

Guest house [deleted]

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. See division 19 of article IV of this chapter.

Habitable means space in a structure available for living, sleeping, eating, cooking, or any commercial purposes. However, storage space is not considered to be habitable space.

Hardship means an unreasonable burden that is unique to a parcel of property, such as peculiar physical characteristics. Economic problems may be considered but may not be the sole basis for finding the existence of a hardship.

Hardware store [deleted]

Health care facility. See § 34-622(c)(20). means an establishment such as a nursing home or hospice that is primarily engaged in furnishing medical, nursing, or other care to persons residing on the premises, but not including hospitals.

Hearing board [deleted]

Hearing examiner [deleted]

Heliport [deleted]

Helistop means an area, either at ground level or elevated on a structure, licensed, or approved for the landing and takeoff of helicopters, heliport, but without auxiliary facilities such as parking, waiting room, fueling, and maintenance equipment.

Hidden path means an interconnected system of pedestrian and bicycle pathways throughout the town that improves mobility and promotes community interaction (see Objective 2-A of the Fort Myers Beach Comprehensive Plan).

~~Hobby, toy, and game shops. See § 34-622(c)(21).~~

Home care facility means a conventional residence in which up to three unrelated individuals are cared for, but without provision for routine nursing or medical care.

Home occupation means an business, occupation, or other activity undertaken for gain customarily carried on by an occupant of a dwelling unit as an accessory use which is clearly incidental to the use of the dwelling unit for residential purposes and which is operated in accordance with the application provisions of article ~~IV~~ ~~VII~~, division 18, of this chapter. See also *Dwelling unit, live/work unit and Dwelling unit, work/live unit.*

~~Hospice [deleted]~~

Hospital means a medical establishment that offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for injury or infirmity.

Hotel/motel means a building, or group of buildings on the same premises and under single control, consisting of ten or more guest units kept, used, maintained or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests or tenants. See division 19 of article IV of this chapter.

~~Hotel/motel, business. See article VII, division 19, of this chapter.~~

~~Hotel/motel, efficiency. See article VII, division 19, of this chapter.~~

~~Household/office furnishings. See § 34-622(c)(22).~~

~~Housing unit~~ means a house, apartment, mobile home or trailer, group of rooms or single room

~~occupied or intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants do not live and eat with any other person in the structure and which have direct access from the outside of the building or through a common hall. See *Dwelling unit* and *Living unit.*~~

~~Increase nonconformity [deleted]~~

Independent living unit means a unit which is authorized only as a part of a licensed continuing care facility (CCF), which may be equipped with a kitchen.

~~Insurance companies. See § 34-622(c)(23).~~

Intensity means a measurement of the degree of customarily nonresidential uses based on use, size, impact, bulk, shape, height, coverage, sewage generation, water demand, traffic generation, or floor area ratios. See also § 34-633.

~~Junkyard [deleted]~~

Land means earth, water, and air above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

Land use means the development that has occurred on the land, the development that is proposed by a developer on the land, or the use that is permitted or permissible on the land under the Fort Myers Beach Comprehensive ~~Lee~~ Plan or an element or portion thereof, land development regulations, or a land development code, as the context may indicate.

Landscape architect means a professional landscape architect duly registered and licensed by the state.

Laundromat means a business that provides washing, drying, dry cleaning, or ironing machines for hire for customers to use on the premises.

~~Laundry or dry cleaning. See § 34-622(c)(24).~~

Lawful or lawfully means a building, or use, or lot which was permitted by right, special exception, variance, special permit, or other action approving the use or placement of a structure by the Board of County Commissioners or zoning board (such as by variance); at the time it was built, or occupied, or

subdivided, and such building, ~~or use, or lot~~ was located in compliance with the comprehensive plan and zoning regulations for the district in which located, or in accordance with the terms of the variance.

~~Lawn and garden supply stores [deleted]~~

~~Leather products, manufacturing. [deleted]~~

~~Lee Plan [deleted]~~

Light trespass means light emitting from a point source of light that falls outside the boundaries of the property on which the point source of light is located and which constitutes a nuisance to a reasonable person of normal sensory perception.

Live-aboard means the use of a boat as a living unit.

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

Loading space, off-street means a space logically and conveniently located for pickups or deliveries or for loading or unloading, scaled to delivery vehicles expected to be used and accessible to such vehicles when required off-street parking spaces are filled.

~~Local planning agency. See article II, division 3 of this chapter. means the county planning and zoning commission performing the functions set forth in § 163.3174, as well as the functions set forth in § 34-115.~~

~~Lock-off accommodations means a living unit which cannot be physically separated from another living unit but can be separated from it by locking a door, and which contains at least one bedroom and one bath and is accessible from a separate outside door.~~

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 share a lockable door or doors separating the two units. See § 34-632 and division 19 of article IV of this chapter.

Lot means a parcel of land considered as a unit. See also Lot, corner.

Lot area means the total horizontal area within the lot lines.

Lot, corner means:

- (1) A lot located at the intersection of two or more streets where the corner interior angle formed by the intersection of the two streets is 135 degrees or less; or
- (2) A lot abutting a curved street if straight lines drawn between the intersections of the side lot lines and the street right-of-way or easement to the foremost point of the lot form an interior angle of less than 135 degrees.

~~Lot coverage means that portion of the lot area, expressed as a percentage, occupied by all buildings or structures.~~

Lot line means a line which delineates the boundary of a lot.

Lot line, front means the lot line which separates the lot from a street right-of-way or easement.

Lot line, rear means that lot line which is parallel to or concentric with and most distant from the front lot line of the lot. In the case of an irregular or triangular lot, a line 20 feet in length, entirely within the lot, parallel to or concentric with and at the maximum possible distance from the front lot line, shall be considered to be the rear lot line. In the case of a through lot, there shall be no rear lot line. In the case of a double-frontage lot, the line directly opposite from the front line shall be designated as either a rear line or a side line depending upon the designation of the adjacent property. In the case of corner lots, the rear lot line shall be the line most nearly parallel to or concentric with and most distant from the front lot line most prevalent along the block.

Lot line, side means any lot line which is not a front or rear lot line.

Lot measurement, depth.

- (1) For lots lawfully created prior to January 28, 1983, depth of a lot shall be considered the distance between the midpoints of straight lines connecting the foremost points of the

side lot lines in the front and the rearmost points of the side lot lines in the rear.

- (2) For lots lawfully created after January 28, 1983, depth of a lot shall be considered to be the distance between the front lot line and the rear lot line as measured at the midpoint of the front lot line to the midpoint of the rear lot line. To determine the midpoint of a curved line, a straight line is drawn connecting the points of intersection of the curved line with the side lot lines. A line drawn perpendicular to the midpoint of the straight line to the point it intersects the curved line shall determine the midpoint of the curved line for purposes of this chapter.

Lot measurement, width.

- (1) For lots lawfully created prior to January 28, 1983, width of a lot shall be considered to be the average distance between straight lines connecting front and rear lot lines at each side of the lot, measured as straight lines between the foremost points of the side lot lines in front (where they intersect with the street line) and the rearmost points of the side lot lines in the rear.
- (2) For lots lawfully created after January 28, 1983, width of a lot shall be considered to be the distance between the side lot lines (or a front and side lot line for corner lots) as measured along the minimum required street setback line. See § 34-637(d) for exceptions.

~~*Lot of record* means a lot which is part of a plat which has been lawfully recorded in the plat books in the office of the clerk of the circuit court of the county, and is in compliance with F.S. ch. 177, or a parcel of land, the deed of which was lawfully recorded in the office of the clerk of the circuit court of the county on or before January 28, 1983.~~

Lot, through means any lot having two opposite lot lines abutting a street right-of-way or easement.

~~*Machinery, manufacturing.* [deleted]~~

Manufactured housing. See *Building, conventional*.

Manufacturing means establishments which are primarily engaged in the mechanical or chemical transformation of materials or substances into new products, as well as establishments primarily

engaged in assembling component parts of manufactured products if the new product is not a permanent structure or other fixed improvement.

~~*Marina* means a boating facility, chiefly for recreational boating, located on navigable water frontage, which provides a boat ramp with parking for vehicles and trailers, boat slips, dockage, or dry boat storage (with a service to place boats in the water upon request), and one or more marina accessory uses (df), to patrons other than residents of the premises. The word "marine" will also apply to navigable fresh waters. This term may not be construed to apply to docks, davits, boathouses, and similar facilities appurtenant to a residential land use providing only dockage or mooring to the residents, or to any county-owned boatramp or docking facility.~~

Marina means a commercial water-dependent use located on property adjacent to water with direct access to a navigable channel. The primary function must be to provide commercial dockage, mooring, storage, and service facilities for watercraft and land-based facilities and activities necessary to support the water-dependent use. The term "marina" does not include boatyards, nor does it include cruise ships and similar uses that draw large amounts of vehicular traffic (see § 34-620(f)), nor does it apply to docks, davits, boathouses, and similar docking facilities that are accessory or ancillary and subordinate to:

- (1) residential buildings that are located on the same premises and under the same ownership or control as the docks, davits, boathouses, boat ramps, and similar docking facilities; and
- (2) commercial establishments that are not water-dependent uses.

Marina accessory uses means uses normally ancillary and subordinate to a marina, including but not limited to: boat dealers; sale of marine fuel and lubricants, marine supplies, boats, boat motors, and boat parts; restaurant or refreshment facility, boat rental, minor boat rigging, boat repair and service, and motor repair. However, no dredge, barge, or other work dockage or service is permitted and no boat construction or reconstruction is permitted. See *Boatyard*.

~~*Massage establishment* [deleted]~~

~~Measuring, analyzing, and controlling instruments, manufacturing.~~ See § 34-622(c)(28).

~~Medical office~~ [deleted]

Membership organization means an organization operating with formal membership requirements with the intent to pursue common goals or activities.

~~Mining~~ [deleted]

Mini-warehouse means any building designed or used to provide separate individual storage units with separate exterior doors as the primary means of access rooms to individuals or businesses for a fee, or rental, with such rooms being intended The storage units must be used solely as dead storage depositories for personal property, inventory, and equipment and not for any other commercial or industrial use. See Warehousing, public and Storage, dead.

Mixed-use building means a single building that contains two different land uses, such as commercial and residential uses, or commercial and civic uses.

Mobile home. See Dwelling unit, types.

~~Model~~ [deleted]

Modular home. See Building, conventional.

Moor means to secure a vessel with lines.

Multiple-family building. See Dwelling unit, types.

Multiple-occupancy complex means a parcel of property under one ownership or singular control, or developed as a unified or coordinated project, with a building or buildings housing more than five occupants conducting a business operation of any kind.

~~Multi-slip docking facility~~ [deleted]

~~Music store~~ [deleted]

~~Newsstand~~ [deleted]

~~Nightclub~~ [deleted]

~~Nonconforming building, nonconforming or structure, lot, or nonconforming use~~ – see definitions in § 34-3202 of means an existing building or structure, lot, or use, lawful when established, which fails to comply with any provisions of this chapter, or which fails to comply as the result of subsequent amendments. See article VHH of this chapter.

~~Nonstore retailers.~~ See § 34-622(c)(30).

~~Nontransient park~~ [deleted]

Notary, notarize(d). Whenever the terms “notarize” or “notarized” appear, they expressly include and contemplate the use of the written declaration set forth under F.S. § 92.525, so long as the cited statutory requirements are met, except that written declarations may not include the words “to the best of my knowledge and belief” as this limitation is not permitted by the provisions of this code.

~~Novelties, jewelry, toys, and signs, manufacturing.~~ See § 34-622(c)(29).

~~Nursery school.~~ See Day care center, child.

Offices, general or medical mean a room or group of rooms where a business, government, profession, agency, or financial institution provides its services, but excluding uses listed as residential, lodging, retail, marine and civic in division 2 of article III of this chapter and otherwise classified by this code, and excluding uses that the director deems to have potential impacts that differ substantially from conventional office uses. Incidental retail sales and indoor storage may be provided in conjunction with these services. The following types of establishments are not considered to be offices for the purposes of this chapter: Automobile rental Drive-throughs (Type 1 or Type 2); and Wholesale establishments. See also Administrative office.

Opaque means the quality of blocking visibility through a material. For instance, concrete is 100% opaque; clear glass is 0% opaque; and a picket fence with 3-inch pickets separated by 3 inches of space is 50% opaque.

~~Outparcel~~ [deleted]

~~Package store~~ [deleted]

~~Paint ball range, outdoor [deleted]~~

~~Paint, glass, and wallpaper store [deleted]~~

~~Paper and allied products, manufacturing.
[deleted]~~

Parasailing operations office means a land-based site that can qualify for a parasailing activity license in accordance with chapter 27 of this code. Parasailing operations offices are permitted as resort accessory uses and also by special exception in certain zoning districts.

Park, neighborhood means a recreational area open to the public and no larger than one acre that primarily serves the immediately surrounding neighborhood.

Park, community or regional means a recreational area open the public and larger than one acre that is designed to serve the entire community or larger areas.

~~Park-trailer. See Recreational vehicle.~~

Parking garage means a building or structure that allows the parking of motor vehicles on two or more levels, whether the garage is provided only for vehicles of occupants of the principal use or the garage is available for the use of the general public. However, for the purposes of this chapter, a building containing two or more levels of parking only for the vehicles of occupants of the principal use shall not be considered a parking garage if it is built below and fully within the perimeter of the remainder of the principal building.

Parking lot, accessory means an area of land set aside for the temporary parking of vehicles owned or leased by the owner of the premises, guests, employees, or customers of the principal use. See Commercial accessory use.

Parking lot, shared permanent commercial means a parking lot which constitutes the principal use of the property and which is available to the public for a fee, or which may be leased to individual persons.

Parking lot, seasonal temporary means an area of land set aside temporarily to provide overflow parking to meet (seasonal) demands, as set forth in § 34-2022.

~~Parks. See § 34-622(c)(32).~~

~~Party of record [deleted]~~

~~Permanent resident [deleted]~~

~~Permanent unit [deleted]~~

Personal services. See § 34-622(c)(33). means establishments primarily engaged in providing frequent or recurrent services involving the care of a person or his or her personal goods or apparel, such as beauty and barber shops, clothing alterations and repair, health clubs, and laundry drop-off points. The following types of establishments are not considered to be personal services for the purposes of this chapter: Automobile rentals, Car wash, Laundromat (whether self-service or operator-assisted); and Mini-warehouse. This chapter contains specific regulations for certain personal services (for example, see § 34-3066–3070 on tattoo studios and body piercing).

Personal watercraft operations office means a land-based site that can qualify for a personal watercraft vendor's license in accordance with chapter 27 of this code. Personal watercraft operations offices are permitted as resort accessory uses and also by special exception in certain zoning districts.

~~Pet services [deleted]~~

~~Pet shop [deleted]~~

~~Petroleum, manufacturing. [deleted]~~

~~Pharmacy [deleted]~~

~~Photofinishing laboratories [deleted]~~

Place of worship means a structure or structures designed primarily for accommodating an assembly of people for the purpose of religious worship, including related religious instruction, church, or synagogue ministries involving classes for 100 or less children during the week, and other church or synagogue sponsored functions which do not exceed the occupancy limits of the building.

Planned development. See article III, division 6 of this chapter. means a development that is designed and developed as a cohesive, integrated

~~unit under single ownership or unified control which permits flexibility in building siting, mixture of housing types or land uses, clustering, common functional open space, the sharing of services, facilities, and utilities, and protection of environmental and natural resources.~~

~~*Planned unit development (PUD).* See article VI, division 10, subdivision IV, of this chapter.~~

~~*Plant nursery* [deleted]~~

Plat means a plat as defined by F.S. ch. 177.

Plaza means an unroofed public open space designed for pedestrians that is open to the sidewalk on at least one side.

Point source of light means a manmade source emanating light, including but not limited to: incandescent, tungsten-iodine (quartz), mercury vapor, fluorescent, metal halide, neon, halogen, high-pressure sodium, and low-pressure sodium light sources, as well as torches, campfires, and bonfires.

~~*Portable kiosk.* See § 34-1712.~~

Premises means any lot, area, or tract of land.

Premises, on the same means being on the same lot or building parcel or on an abutting lot or adjacent building in the same ownership.

~~*Primary metal industries, manufacturing.* See § 34-622(c)(35).~~

Principal building. See *Building, principal*.

Principal use. See *Use, principal*.

~~*Printing and publishing.* See § 34-622(c)(36).~~

~~*Prison* [deleted]~~

~~*Private park* [deleted]~~

Processing and warehousing means the storage of materials in a warehouse or terminal and where such materials may be combined, broken down or aggregated for transshipment or storage purposes where the original material is not chemically or physically changed. The term “processing and

warehousing” shall mean an establishment essentially for storage and shipment as opposed to a manufacturing establishment.

~~*Produce stand.* See article VII, division 16, of this chapter.~~

~~*Property line.* See *Lot line*.~~

~~*Public park* [deleted]~~

~~*Quarter section line* [deleted]~~

~~*Racetracks.* See § 34-622(c)(37).~~

Recreation hall means a building owned or operated by a condominium or homeowners’ association for a social or recreational purpose, but not for profit or to render a service which is customarily carried on as a business. ~~This definition does not include fraternities or sororities.~~

~~*Recreational facilities.*~~

- (1) ~~*Commercial Recreation facilities,*~~ *commercial* means a recreation equipment or facilities not classified as a *Park, neighborhood or Park, community or regional,* or as *personal, private-on-site, or private-off-site recreation facility,* but instead operated as a business and open to the public for a fee. (*Golf courses are defined separately in this section.*) See § 34-622(c)(38).
- (2) ~~*Personal Recreation facilities,*~~ *personal* means a recreation equipment or facilities such as swimming pools, tennis, shuffleboard, handball or racquetball courts, swings, slides, and other playground equipment provided as an accessory use on the same premises and in the same zoning district as the principal permitted use and designed to be used primarily by the owners, tenants, or employees occupants of the principal use and their guests. See *Residential accessory use*.
- (3) ~~*Private Recreation facilities,*~~ *private ON-SITE* means a recreation hall, equipment, or facilities such as swimming pools, tennis, shuffleboard, handball, or racquetball courts, swings, slides, and other playground equipment which are located on the same premises and in the same zoning district as the development or neighborhood it serves, owned, leased or, operated by a nonprofit

~~organization, such as a homeowners', co-op, or condominium association and located in the development or neighborhood controlled by the association, and open only to bona fide members and guests of such nonprofit organization. This term shall not be interpreted to include fraternal or membership organization clubs.~~

- (4) Recreation facilities, private OFF-SITE means recreation hall, equipment, or facilities such as swimming pools, tennis, shuffleboard, handball, or racquetball courts, swings, slides, and other playground equipment which are owned, leased or operated by a homeowners', co-op, or condominium association for use by the association's members and guest, but which are not located in the development or neighborhood controlled by the association.
- (5) ~~(4)~~ Public Recreation facility, public means a recreation facility operated by a governmental agency and open to the general public.

Recreational vehicle means a recreational vehicle type unit which is so defined in F.S. § 320.01(b). It is primarily designed as temporary living quarters for recreational, camping or travel use, and has its own motive power or is mounted on or drawn by another vehicle. Because the statutory definition set forth in F.S. § 320.01(b) changes, the definition of the term "recreational vehicle," as used in this chapter, is intended to change with such statutory changes so as to be consistent with them. See also § 34-694.

[remainder of this definition has been deleted; it described six types of recreational vehicles]

Recreational vehicle park, developed means a parcel (or portion thereof) or abutting contiguous parcels of land designed, used or intended to be used to accommodate two or more occupied recreational vehicles. See § 34-694 and division 31 of article IV of this chapter, and in which necessary utilities and streets and the final site grading or paving of concrete pads or vehicle stands was completed prior to September 16, 1985.

Recreational vehicle park, expanded expansion to an-existing means the preparation of additional sites, by the construction of facilities for servicing the sites on which the recreational vehicles are to be located (including the installation of utilities, final

site grading, pouring of concrete pads or the construction of streets), ~~for which a preliminary development order was not issued by the county prior to September 16, 1985.~~ This shall not be interpreted to include pads for utility rooms, enclosures or storage sheds where explicitly permitted. See division 31 of article IV of this chapter.

Recreational vehicle park, new [deleted]

Recreational vehicle park, phased [deleted]

Recreational vehicle park resident, permanent [deleted]

Recycling facility [deleted]

Religious facilities means religious-related facilities and activities, which may include but are not limited to ~~places of worship~~, bus storage facilities or areas, convents, monasteries, retreats, church or synagogue ministries involving classes for more than 100 children during the week, and homes for the aged.

Rental establishments. See § 34-622(c)(39).

Rental of beach furniture means a business that provides beach chairs, umbrellas, and similar equipment for a fee. Rental of beach furniture is permitted as a resort accessory use and also by right in certain zoning districts. See divisions 1 and 2 of ch. 14 and § 34-3151.

Repair shops. See § 34-622(c)(40).

Research and development laboratories. See § 34-622(c)(41).

Residence. See Dwelling unit, and Living unit and Housing unit.

Residential accessory uses. See § 34-622(c)(42); means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a residential structure. See Use, principal. Typical residential accessory uses are: carports and garages (§ 34-1013); decks, gazebos, patios, and screen enclosures; dock, personal (§ 34-1863); fences and walls (division 17 in article IV); garage sales or yard sales (see definition in this section); recreation facilities, personal; seawalls

(ch. 26); and storage sheds. Division 2 and other portions of article IV provide regulations for many residential accessory uses.

Resort means a mixed-use facility that accommodates transient guests or vacationers. Resorts contain at least 50 units, which may include a combination of dwelling units, guest units and timeshare units, and provide food service, outdoor recreational activities, and/or conference facilities for their guests, facility principally for the accommodation or short-term residence of transient guests or vacationers, but where the primary attraction is generally recreational features or activities.

Resort accessory use means the use of a structure or premises that is customarily incidental and subordinate to a resort. See Use, principal. Typical resort accessory uses are: Amusement devices (§§ 34-2141–2145 and 34-3042); Golf courses; Parasailing operations office (ch. 27); Personal watercraft operations office (ch. 27); and Rental of beach furniture (ch. 14).

Resource protection area [deleted]

Resource recovery [deleted]

Restaurant, fast food means an establishment whose principal business is the sale of food or beverages in a ready-to-consume state primarily for off-site consumption, and which may not contain drive-through facilities. [as amended by Fort Myers Beach Ordinance 00-13]

Restaurant, standard means an establishment whose principal business is the sale of food or beverages to customers in a ready-to-consume state. See § 34-620(f) regarding the prohibition on drive-through lanes for restaurants, and whose principal method of operation includes one or both of the following characteristics:

- (1) Customers, normally provided with an individual menu, are served their foods and beverages by a restaurant employee at the same table or counter at which food and beverages are consumed.
 - (2) A cafeteria-type operation is conducted where food and beverages generally are consumed within the restaurant building.
- See § 34-622(c)(43).

Retail store means an establishment operating within a fully enclosed building that provides goods and incidental services directly to consumers where such goods are available for immediate purchase or rental. Retail stores are classified as small (less than 5,000 square feet) or large (more than 5,000 square feet), based on gross floor area per establishment. The following types of establishments are not considered to be retail stores for the purposes of this chapter: Automobile fuel pumps, Automobile rentals, Marina, and Mini-warehouse.

Retaining wall [deleted]

Right-of-way line. See Street right-of-way line.

Roadside stand. See article VII, division 16, of this chapter.

Rooming house means a residential building used, or intended to be used, as a place where sleeping or housekeeping accommodations are furnished or provided for pay to transient or permanent guests or tenants on a weekly or longer basis in which less than ten and more than three rooms are used for the accommodation of such guests or tenants, but which does not maintain a public dining room in the same building or in any accessory building.

Rooming unit means a room or group of rooms used, or designed and intended to be used, as a living facility for a single family, and which contains provisions for living, sleeping and sanitation but does not provide cooking or eating facilities.

Rubber and plastics products, manufacturing [deleted]

School, commercial. See § 34-622(c)(45): means an educational institution run by a public agency, a church or synagogue, or a not-for-profit organization. See division 32 of article IV of this chapter.

Vertical Seawall has the meaning provided in § 26-41. means a vertical bulkhead located at or below mean high water, built to withstand wave force and erosion. See Retaining wall.

Self-service fuel pump station [deleted]

~~Self-service fuel pumps [renamed Automobile fuel pumps]~~

~~Servants' quarters [deleted]~~

Setback means the minimum horizontal distance required between a specified line and the nearest point of a building or structure. See also “build-to” lines in § 34-662 and setback exceptions in § 34-637(d).

- (1) *Street setback* means the setback extending across the front of a lot measured from the edge centerline of an existing or proposed street right-of-way or street easement. See § 34-637, 2192 for requirements. ~~Whenever this chapter refers to street setback it shall be interpreted to mean existing or proposed street right-of-way or street easement, whichever is greater.~~
- (2) *Side setback* means the setback, extending from the required street setback to the required rear lot line, or opposing street setback in the case of a double-frontage lot, measured from the side lot line. There are two types of side setbacks, those applying to waterfront lots and those applying to non-waterfront lots. See § 34-637.
- (3) *Rear setback* means the setback, extending across the rear of a lot, measured from the rear lot line. See § 34-637.
- (4) *Water body setback* means the setback measured from the mean high ~~water~~ tide line (MHWL), or the control elevation line if applicable, of a water body. See § 34-637, 2194 for requirements.
- (5) ~~Section line or quarter section line setback means the setback measured from a section or quarter section line, as applicable.~~

Shield means to establish a visual and sound barrier by the use of a berm, wall, screening, or other methods that will not permit the sound or sight of the facility in question to be apparent from adjoining property.

~~Shopping center [deleted]~~

Shoreline means a straight or smoothly curved line which, on tidal waters, follows the general configuration of the mean high-water line, and which on nontidal waters is determined by the annual average waterline. Boat slips and other manmade or minor indentations shall be construed

as lying landward of the shoreline and are considered upland when computing the lot area of waterfront property.

~~SIC code [deleted]~~

Single-family residence. See *Dwelling unit, types.*

~~Social services.~~ See § 34-622(c)(46).

Special exception. See *Use, special exception.*

~~Specialty retail shop.~~ See § 34-622(c)(47).

~~Stable, boarding [deleted]~~

~~Stable, commercial [deleted]~~

~~Stable, private [deleted]~~

~~Stone, clay, glass and concrete products, manufacturing [deleted]~~

Storage means the safekeeping of any goods, wares, products, or other commodities in any area for more than 48 hours for later use or disposal. The term “storage” includes the keeping of boats, cars, recreational vehicles, etc., for others, whether or not compensation is made to the property owner. The term shall not include animals, nor shall it apply to normally anticipated outdoor display of products for sale such as by boat, mobile home, construction equipment or vehicle dealers, or landscaping materials, or customary and usual activities accessory to agricultural or residential dwellings.

Storage, dead means the storage of goods, wares, products, or other commodities, with no sales, conferences, or other human activity other than the placement, removal, or sorting of stored items.

Storage, indoor means storage accessory to a permitted use and which is contained wholly within a building. When listed as a permitted or permissible use in the zoning district regulations, it shall not be construed to mean a warehouse or a mini-warehouse. See *Commercial accessory use.*

Storage, open means any storage not defined as indoor storage.

Story (floor) means that portion of a building included between the upper surface of a floor and

upper surface of the floor or roof next above, including space at ground level as the first story provided it is six feet or more in height. Space within a roofline that is entirely non-habitable shall not be considered to be a story. See § 34-631.

STRAP number is a means of property identification which consists of seventeen digits including the section, township, range, area, and parcel numbers.

Street means a public or private thoroughfare which affords vehicle access to the principal means of ingress or egress to a lot. The term “street” is synonymous with the terms “avenue,” “boulevard,” “drive,” “lane,” “place,” “road,” and “way,” or similar terms.

Street right-of-way, existing is a general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes, which has been dedicated to the public and accepted by the town council or board of county commissioners.

Street right-of-way or street easement line [deleted]

Street right-of-way, proposed [deleted]

Structure means that which is built or constructed. The term “structure” shall be construed as if followed by the words “or part thereof.”

Studios. See § 34-622(c)(49).

Supermarket [deleted]

Surveyor or professional surveyor means a Professional Land Surveyor and Mapper (PSM) duly registered and licensed by the state.

Telephone booth or pay telephone station means a telephone installation made available for use by the general public for a fee, whether installed in an enclosed booth, attached to a pole, post, or pedestal, or attached to a building. A telephone booth or pay telephone station is not an “essential service” nor “essential service equipment,” nor is it considered to be a “Residential Accessory Use.” See *Commercial accessory use.*

Temporary use. See *Use, temporary.*

Textile mill products. [deleted]

Theater means a building or part thereof that seats more than 200 people and is devoted to showing motion pictures, or for dramatic, musical, or live entertainment.

Through lot. See *Lot, through.*

Timeshare unit means any dwelling unit, guest unit, or living unit rooming 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.”

Tobacco manufacturing. [deleted]

Tower [deleted]

Townhouse. See *Dwelling unit, types.*

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

Transient park [definition moved to § 34-694]

Transient unit [definition moved to § 34-694]

Transit terminal means a location where airport shuttles may stop to load or unload passengers and luggage and which allows convenient transfers to local trolleys and taxis.

Transition zone [deleted]

Transportation department [deleted]

Transportation equipment, manufacturing. [deleted]

Transportation services. See § 34-622(c)(53).

Travel trailer. See *Recreational vehicle.*

Truck stop [deleted]

Trucking terminal [deleted]

Two-family. See *Dwelling unit, types.*

Unauthorized communication [deleted]

Unified control means that a single property owner or entity has been authorized by all owners of the property to represent them and to encumber the parcel with covenants and restrictions applicable to development of the property as approved by the town. ~~the unrestricted right of any owner or agent to enforce whatever conditions are set on the use and development of a parcel of land through the provisions of this chapter, by binding his heirs, assigns, or other successors in title with covenants or restrictions on the development and subsequent use of the property.~~

Unified control, covenant of means the demonstration and documentation that an owner or agent has unified control over a piece of property and is competent and willing to bind his heirs, assigns or other successors in title in the public interest to whatever conditions are placed on the development and subsequent use of the property through the provisions of this chapter.

Unit of high impact means any dwelling unit or rooming unit:

- (1) Located in a hotel or motel and rented or leased to guests for terms of less than 30 consecutive days;
- (2) That is being developed or converted to a timeshare unit as defined by the Florida Real Estate Time-Share Act, F.S. ch. 721, and being created and divided into ten or more periods.

Use means any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied; or any activity, occupation, business, or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.

Use, accessory means a use of a structure or premises which is customarily incidental and subordinate to the principal use of the structure or premises. See *Use, principal*; *Commercial accessory use*; *Residential accessory use*; and *Resort accessory use*.

Use, mixed means the development of land or building or structure with two or more different but compatible uses, such as but not limited to residential, office, industrial and technological, retail, commercial, public, entertainment or recreation uses, in a compact urban form.

Use permitted by right means a use or uses which, by their very nature, are allowed within the specified zoning district provided all applicable regulations of the town county are met. Permitted use includes the principal use of the land or structure as well as accessory uses, unless specifically stated to the contrary.

Use, principal means the primary purpose for which land or a structure or building is used.

Use, public means the use of any land, water, or building by a public agency for a public service or purpose.

Use, special exception means a use or certain specified departures from the regulations of this chapter that may not be appropriate generally or without restriction throughout a zoning district, but which, when controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity, and may be permitted, in accordance with all applicable regulations.

~~*Use, special permit* [deleted]~~

Use, temporary means a use or activity which is permitted only for a limited time, and subject to specific regulations and permitting procedures. See article IV, division 37 of this chapter.

Use variance. See *Variance, use.*

~~*Used merchandise stores.* See § 34-622(c)(54).~~

Variance means a departure from the provisions of this chapter or from any town county ordinance (excluding building codes) relating to building and other structural setbacks, lot dimensions such as width, depth, or area, structure or building height, open space, buffers, ~~off-street~~ parking or loading requirements, floor area ratio, design, lot coverage, impervious areas, landscaping, and similar type regulations, but not involving A variance may not involve the actual use of the property, building, or structures, procedural requirements, or definitions. This definition specifically excludes section and quarter section line setbacks, street setbacks, modifications for solar or wind energy or other provisions specifically indicated as requiring a special exception permit, and variances from impact

fees. However, in the case of planned development districts, the term “variance” means all of those requests to deviate from the provisions of this chapter, chapter 10 or other applicable regulations. A variance may be granted in accordance with the procedures set forth in § 34-87, when the enforcement of the ordinance, as it applies to a specific lot, would work an undue hardship. The applicant must demonstrate that the hardship is peculiar to his property and not to other properties in the zone. A finding must be made that the variance can be granted without any adverse impact on the public good. See *Variance, use* and *Variance, procedural*.

Variance, procedural means any departure from the procedural requirements of this chapter, chapter 10 or any other ordinance. Procedural variances are never permitted.

Variance, use means any departure from the provisions of this chapter and not specifically included in the definition set forth under *Variance* or *Variance, procedural*. The term “use variance” also means any attempt to vary any one or more of the definitions set forth in this chapter, either directly or indirectly. Use variances are never permitted.

~~*Variety store* [deleted]~~

~~*Vehicle and equipment dealers*: See section 34-622(c)(55): means the use of any building or land area for the display, sales, leasing, or storage of automobiles, trucks, trailers, recreational vehicles, construction equipment, and similar vehicles and equipment. See also *Automobile rental* and *Boat dealers*.~~

~~*Warehouse, private* [deleted]~~

~~*Warehouse, public* [deleted]~~

Water-dependent uses means land uses for which water access is essential and which could not exist without water access.

Water-related uses means land uses that might be enhanced by proximity to the water but for which water access is not essential.

Water, body of: means any artificial or natural depression in the surface of the earth that is inundated with daily tidal flows, and all adjacent wetlands as defined in § 14-293.

- (1) *Artificial bodies of water* means man-made canals and similar water bodies that extend a natural water body into uplands, a depression or concavity in the surface of the earth, other than a swimming pool, created by human artifice, or that portion of a natural body of water extended or expanded by human artifice, and in which water stands or flows for more than three months of the year.
- (2) *Natural bodies of water* include the Gulf of Mexico, Matanzas Pass, Estero Bay, Ostego Bay, Buccaneer Lagoon, and similar water bodies that were created by natural geophysical forces. means a depression or concavity in the part of the surface of the earth lying landward of the line of mean sea level (NGVD) which was created by natural geophysical forces and in which water stands or flows for more than three months of the year; also, the bays and estuaries lying between the county mainland and the barrier islands (Gasparilla Island, Cayo Costa, North Captiva Island, Captiva Island, Sanibel Island, Estero Island, Lovers Key, Big Hickory Island and Little Hickory Island and Bonita Beach) with the outermost boundary defined by a series of short straight lines that can be drawn connecting these islands.

~~*Waterway* [deleted]~~

Wetlands are defined in § 14-293. Wetlands in the Town of Fort Myers Beach are generally indicated on the future land use map of the Fort Myers Beach Comprehensive Plan, but the precise boundaries of wetlands shall be determined by this definition. means an area that is subject to permanent or prolonged periods of inundation or saturation (i.e., water is at the soil surface for at least two to seven months, seven out of ten years) and does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps and marshes and may include similar areas such as sloughs, wet meadows and natural ponds.

~~Wholesale establishments. See § 34-622(c)(56): means a place of business primarily engaged in preparing and selling merchandise to retailers, other businesses, or other wholesale establishments, and operating completely within an enclosed building.~~

~~Zero-lot-line development [deleted]~~

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

Sec. 34-3. Rules of construction.

The following rules of construction apply to the text of this chapter:

- (1) Where the term “ordinance,” “law,” “statute,” or “map” is referred to in the text, it is meant to include the phrase “as adopted and as amended from time to time” unless specifically stated to the contrary in the text.
- (2) In case of any difference of meaning or implication between the text of this chapter and any caption, illustration, summary table, or illustrative table, the text will control.
- (3) Where this chapter refers to a specific federal, state, ~~or~~ county, or town agency, department or division, it will be interpreted to mean “or any succeeding agency authorized to perform similar functions or duties.”

Sec. 34-4. Applicability of chapter; deed restrictions and vested rights.

(a) *Scope of chapter.* The provisions of this chapter shall apply uniformly to all land, water, buildings, and structures now or hereafter located in the Town of Fort Myers Beach ~~unincorporated areas of the county.~~

(b) *Deed restrictions.* The provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, safety, and welfare. It is not intended by this chapter to interfere with, abrogate, or annul any easements, covenants, or other agreement between the parties; provided, however, that, where this chapter imposes a greater restriction upon the uses of structures, land, and water, or requires more open space, than is required by other rules or regulations, or by easements, covenants, or agreements, by recorded deed, plat, or otherwise, the provisions of this chapter shall govern. The town ~~county~~ shall not be

responsible for the enforcement of private deed restrictions.

(c) *Vested rights.* Nothing in this chapter is to be interpreted or construed to give rise to any vested right in the continuation of any particular use, district or zoning classification or any permissible activities therein; and such use, district, zoning classification, and permissible activities are hereby declared to be subject to subsequent amendment, change, or modification as may be necessary to the protection of public health, safety, and welfare.

~~(d) Special regulations for Gasparilla Island conservation district. [deleted in its entirety]~~

Sec. 34-5. Interpretation of chapter.

(a) The interpretation and application of the provisions of this chapter shall be reasonably and uniformly applied to all property within the Town of Fort Myers Beach ~~unincorporated areas of the county.~~ The provisions of this chapter are regulatory.

(b) The provisions of this chapter shall be held to be the minimum requirements adopted for the protection and promotion of the public health, safety, comfort, convenience, order, appearance, prosperity, or general welfare, and for securing safety from fire and other dangers, providing adequate light and air, and preventing excessive concentration of population.

(c) Whenever the regulations and requirements of this chapter are at variance with the requirements of any other lawfully enacted and adopted rules, regulations, ordinances, or laws, the most restrictive shall apply.

Secs. 34-6--34-50. Reserved.