

ORDINANCE NO. 20-19

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE DEFINITIONS IN THE FORT MYERS BEACH LAND DEVELOPMENT CODE AND AMENDING DIVISION 3 OF ARTICLE III OF CHAPTER 34, OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE, ENTITLED "EXPLANATION OF PROPERTY DEVELOPMENT REGULATIONS FOR ALL ZONING DISTRICTS" REVISING HEIGHT AND SETBACK REQUIREMENTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town Council desires to update the Fort Myers Beach Land Development Code to clarify, improve, and create consistency among sections regarding building heights and setbacks; and

WHEREAS, on December 1, 2020 the Local Planning Agency, after giving consideration to the staff recommendation, public testimony, and consistency with the Comprehensive Plan, recommended approval of the proposed amendments; and

WHEREAS, on December 7, 2020 the Town Council held a first reading of the proposed Ordinance; and.

WHEREAS, on January 19, 2021 the Town Council held a second reading of the proposed Ordinance; and.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:¹

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. Section 34-2 of the Fort Myers Beach Land Development Code is hereby amended to read as follows:

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as ~~strikethrough~~.

Sec. 34-2. - Definitions

Balcony means a cantilevered, open, unroofed portion of an upper floor extending beyond (or indented into) a building's exterior wall.

Porch is a single-story wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. A porch must be covered with an awning or roof or umbrellas. Wood must be painted or stained.

Section 3. Section 34-933 of the Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 34-933 – Definitions

Balcony means an cantilevered, open, unroofed portion of an upper floor extending beyond (or indented into) a building's exterior wall.

Section 4. Division 3, of Article III, of Chapter 34 of the Town of Fort Myers Beach Land Development Code entitled “Explanation of Property Development Regulations for All Zoning Districts” is hereby amended to read as follows (edits to Table 34-3 “Dimensional Regulations in Conventional Zoning Districts” are included as Exhibit “A” attached hereto and incorporated herein):

Sec. 34-631 – Building Height

(a) *Methods of measurement.* Maximum building heights specified in this code are measured in two ways, as shown in Figure 34-1-a. Both measurement methods apply to each building.

(1) *Measured in stories,* the height includes enclosed or unenclosed space at ground level as the first story, provided it is six feet or more in height.

a. Space within a roofline that is entirely non-habitable shall not be considered to be a separate story, for example overhead space enclosed by a cathedral ceiling, cupola, or similar roof enclosure.

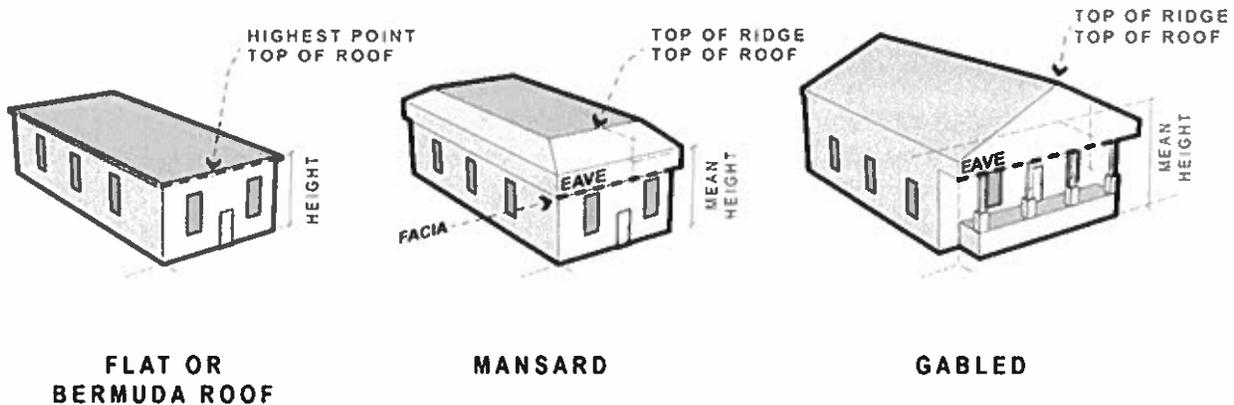
b. ~~Any single story cannot exceed 16 feet in height, including structural members, except that the first story may be taller if required to comply with any regulation in this code.~~

(2) Measured in feet, the height of a building shall be the vertical distance measured from one foot above the base flood elevation (BFE), (up to three feet above the BFE if the developer chooses to elevate the first living level more than the required minimum) to the following point on each roof type:

a. Flat or Bermuda Roof, the high point is the highest point on the roof, the roof itself or parapet walls;

b. Mansard Roof, the high point is the mean height between the eave and highest part of the roof;

c. Gable, Hip and Gambrel Roof, the high point is the mean height between eaves and ridge and the top of the structural members that serve as the ceiling for the highest habitable story of the building.



a. ~~Where ceilings are sloped, height is measured to the highest vertical point on a wall of the highest habitable story of the building.~~

b. ~~For parking garages, height is measured to the top of the structural members of the highest ceiling, or if parking is allowed on the roof level, to the highest point on the rooftop parking level.~~

~~e. When determining maximum building heights only, base flood elevation (BFE) means the minimum required elevation for a property as established by the floodplain maps described in § 6-408 of this chapter, or the minimum 100-year storm elevation as established by the Florida Department of Environmental Protection for structures seaward of the 1991 coastal construction control line, whichever is higher for a particular property.~~

~~d. On July 31, 2006, FEMA released maps showing preliminary BFE increases that could become mandatory in 2007. Landowners who voluntarily meet the higher elevations shown on the preliminary FEMA maps may measure their building's height in feet from the higher elevation.~~

~~e. Landowners who choose to elevate up to three feet above the heights in subsections c. or d. above, may increase their maximum building height by the same number of feet.~~

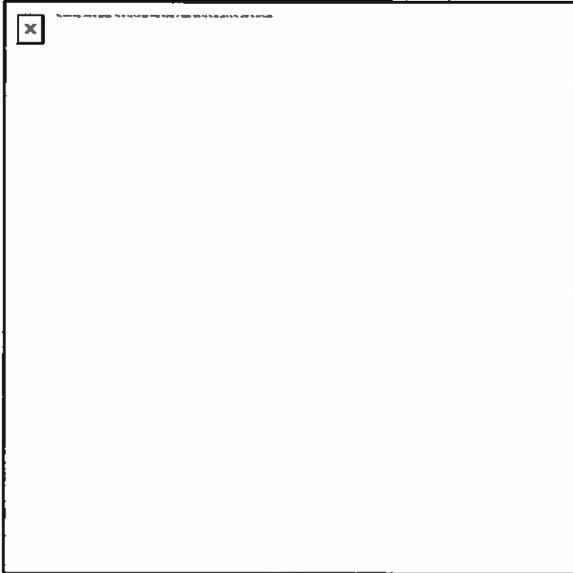
(3) *Specific height regulations* are provided for each zoning district.

a. For conventional zoning districts, see Table 34-3 in division 4 of this chapter.

b. For redevelopment zoning districts, see individual districts in division 5 of this chapter.

c. For planned development zoning districts, see division 6 of this chapter.

(b) *Exceptions to height regulations.*



Roofed towers, Figure 34-1-b

(1) ~~Roof structures and parapet walls may exceed the height limit defined in any zoning district provided there is no habitable space inside the roof structure~~ For structures to receive an additional 5 feet of height above the current building height regulations:

a. The third story (second story above BFE) must be set back an additional 5 feet from the required property line setback; and

b. The third story must not begin more than 15 feet above base flood elevation; and

c. Roof overhangs may not protrude more than 3 feet into the additional required setback. Balconies may not encroach the additional setback; and

d. Vegetation in side yards will be limited to trees and low shrubs, which will not block the view corridor above six feet along beach and bay front properties.

(2) ~~Non-habitable architectural appurtenances such as cupolas, clerestories, and steeples may also extend above the height limit if they do not exceed an area of 250 square feet. A habitable roofed tower up to 150 square feet, whether open-sided or enclosed, may also qualify as an acceptable architectural appurtenance and extend above the height limit provided it is roofed in a manner consistent with the design of the building. Decks do not qualify as architectural~~

~~appurtenances for the purposes of this subsection. Any proposed appurtenance taller than an additional 15 feet or larger than the specified sizes would require a variance from this code~~ For structures to receive an additional story. The overall height shall not exceed 5 feet of height above the current building height regulations and the following requirements shall apply:

a. The primary structure setbacks for the building shall be increased by 5 feet on all sides or the first floor; and one or more of the following:

1. Below flood must be unenclosed other than a maximum 300 square feet enclosure for parking, storage, or upper level access;

i. Including a signed Declaration of Restrictive Covenant in a form acceptable to the Town shall be recorded in the Lee County Public Records prior to issuance of the Certificate of Occupancy stating the ground floor, below flood, may never be enclosed.

2. All requirements for the 5-foot increase in height shall apply.

4. The fourth story (third story above BFE) must be set back 10 feet from all of the required property line setbacks.

5. Roof overhangs may not protrude into the additional required setback.

6. Vegetation in side yards will be limited to trees and low shrubs, which will not block the view corridor above six feet along beach and bay front property.

7. Limit to the impervious surface area to no more than 60% of the site by signed Declaration of Restrictive Covenant in a form

acceptable to the Town shall be recorded in the Lee County Public Records prior to issuance of the Certificate of Occupancy.

Sec 34-638 – Minimum Setbacks

(d) *Exceptions to setback dimensions.* In addition to the following general exceptions to minimum setbacks, commercial buildings that are subject to the commercial design standards may encroach into certain setbacks as provided in §§ 34-991—34-1010 of this chapter.

(2.) *Exceptions to street setbacks.* Certain structures are exempt from the street setback requirements as follows. See also § 34-1174 of this chapter.

a. *Build-to lines.* Some zoning districts do not have any street setback requirements but instead have build-to lines, as described in § 34-662 of this chapter. Awnings, canopies, balconies, bay windows, porches, stoops, arcades, and colonnades may extend forward of the build-to line provided that they comply with the commercial design standards (see § 34-995(e) of this chapter).

b. *Porches, balconies and stoops.* Porches, balconies and stoops may extend up to ten feet into the 25-foot street setback on the first living level zone of residential buildings, provided that:

1. Any walls, screened areas, or railings in the setback zone extend no higher than 42 inches above the floor of the porch, balcony or stoop; and
2. No portion of a porch or balcony and no walls or screened areas may be closer than ten feet to the edge of any street right-of-way or street easement.

(4) *Exceptions for certain nonconforming lots.*

~~a. Certain nonconforming residential lots are subject to the modified side and rear setback requirements that are found in § 34-3273 of this chapter.~~

ab. Certain nonconforming mobile home lots in the village zoning district are subject to the modified side and rear setback requirements that are found in § 34-694 of this chapter.

be. Certain nonconforming commercial lots are subject to the modified side and rear setback requirements that are found in § 34-3277 of this chapter.

Section 5. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 7. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

Section 8. This ordinance shall become effective 30 from adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Council Member Atterholt and seconded by Council Member Allers, and upon being put to a roll call vote, the result was as follows:

Raymond P. Murphy, Mayor	Excused
Rexann Hosafros, Vice Mayor	Aye
Dan Allers, Council Member	Aye
Jim Atterholt, Council Member	Aye
Bill Veach, Council Member	Aye

ADOPTED this 19th day of January, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



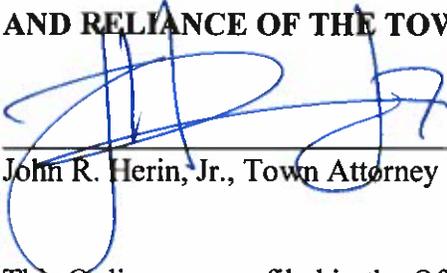
Rexann Hosafros, Vice Mayor

ATTEST:



Amy Baker, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE TOWN OF FORT MYERS BEACH SOLELY:



John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 21 day of January, 2021.

Secs. 34-653—34-660. - Reserved.

Table 34-3— Dimensional Regulations in Conventional Zoning Districts

ZONING DISTRICT	street	side - waterfront lot	side - non-waterfront	rear	water body (1)	Gulf of Mexico (2)	area	width	depth	ratio	percentage	Density § 34-632	feet	stories
							Setbacks (see § 34-638 for explanation and exceptions)	Lot size (see § 34-637 for explanations and exceptions)				Building Coverage § 34-634	Height (see § 34-631)	
RS Residential Single-family	25	7.5 (8)(9) / 10 (9)	7.5 (8) (9) / 10 (9)	20	25	50		7,500	75	100	40%	(3), (4)	25 <u>30</u>	3
RC Residential Conservation	25	7.5 (8)(9) / 10 (9)	7.5 (9) / 10 (9)	20	25	50		4,000	45	80	40%	(3), (4), (5)	25 <u>30</u>	3
RM Residential Multifamily	25	20 (6)	20 (6)	20	25	50		7,500	75	100	-	(3), (4), (5)	30 <u>35</u>	3
CR Commercial Resort	10	20	15	20	25	50		20,000	100	100	-	(3)	30	3
CM Commercial Marina	20	20	20	20	0	50		20,000	100	100	-	-	35	3
CO Commercial	10	10	7	20	25	50		7,500	75	100	-	(3), (4),	30	3

EXHIBIT "A"

Office													(5)		
Santos	10	7	5	20	25	50	5,000	50	100	0.6	-		(3), (4), (5)	25	3
IN Institutional	20	10	7	20	25	50	7,500	75	100	0.8	-		(3)	35	3
CF Community Facilities	20	15	10	20	25	50	N/A	N/A	N/A	0.1	-		(3)	35	3
BB Bay Beach	--- see § 34-651(b) ---														
EC Environmentally Critical	20	25	-	25	20	50	(7)	N/A	N/A	.01	-		(3), (7)	25	2
<p>Note (1): An additional wetland buffer is required for new development; see § 34-638(c).</p> <p>Note (2): See § 34-638(d)(3)a.</p> <p>Note (3): Maximum densities are established by the Fort Myers Beach Comprehensive Plan; see § 34-632.</p> <p>Note (4): Accessory apartments are allowed in owner-occupied homes under certain conditions; see §34-1178.</p> <p>Note (5): A second dwelling unit or accessory apartment may be allowed on larger lots; for details, see §§ 34-632, 34-1177, and 34-1178.</p> <p>Note (6): Single-family and two-family homes on waterfront lots in the RM zoning district must maintain only a 7.5-foot side setback for lots less than 70 feet in width and 10 feet for lots 70 feet or greater in width.</p> <p>Note (7): See § 34-652(e)(3).</p> <p>Note (8): For all RS lots fronting on Matanzas Street and Matanzas Court, all side setbacks shall be at least 10 feet.</p> <p>Note (9): Side yard setbacks for all RS and RC lots less than 70 feet in width shall be 7.5 feet; lots 70 feet or greater in width shall be 10 feet.</p>															