

ORDINANCE NO. 23-02

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 3, SECTION 34-638 MINIMUM SETBACKS, SECTION 34-2 DEFINITIONS, AND TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND 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 recognizes that redevelopment of the Town, following hurricane Ian requires evaluation and updates to the Land Development Code; and

WHEREAS, the Town Council desires updates to the Fort Myers Beach Land Development Code to clarify, improve and create consistency among sections; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on January 18, 2023, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 7-0, to recommend approval of the requested amendment to Chapter 34., Section 34-638, Section 34-2 and Table 34-3; and

WHEREAS, on February 6, 2023, the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on February 21, 2023, the Town Council held a second reading of this proposed Ordinance.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:

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. Chapter 34, Article III., Division 3, Section 34-638 Minimum Setbacks, Section 34-2 Definitions, and Table 34-3 Dimensional Regulations in Conventional Zoning

Districts is hereby amended to read as found in attached Exhibit A – New Corner Lot Regulations and Exhibit B – New Setback Regulations:

Section 3. 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 4. Whenever the requirements or provisions of this ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. 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, or any part thereof, other than the part so declared.

Section 6. This ordinance shall become effective upon adoption by the Town Council.

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

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Bill Veach, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 21st day of February 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



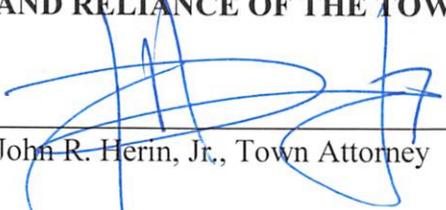
Dan Allers, Mayor

ATTEST:



Amy Baker, Town Clerk

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



John R. Herin, Jr., Town Attorney

Exhibits

Exhibit A – New Corner Lot Regulations

Exhibit B – New Setback Regulations

Section 34-2 - Definitions:

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.
- 3) Corner lots will have a front street setback, a side street setback, a rear setback and a side setback. See Sec. 34-638(a)(4) for additional explanation.

Lot line, front means the lot line which separates the lot from a street right-of-way or easement. A corner lot will have a front and a side street setback.

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 lot line or a side lot 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 street lot line. ~~most prevalent along the block.~~

Street setback means the setback extending across the front of a lot measured from the edge of an existing street right-of-way or street easement. See definition of "*Lot line, front*" and [§ 34-638](#) of this chapter. Corner lots will have two street setbacks, a front street setback and a side street setback, see Sec. 34-638(a)(4) for additional explanation.

Street setback, front means the street setback, on a corner lot, that is the opposite of the rear setback and is the full required depth of the street setback. Corner lots located on Estero Boulevard must have the front street setback from Estero Boulevard.

Street setback, side means the street setback, on a corner lot, that is opposite of the side setback and is less than the full required depth of the front street setback. See Sec. 34-638(d)(6) for additional explanation.

Sec. 34-638. - Minimum setbacks.

- (a) *Generally.* Most zoning districts require minimum setbacks between all buildings and structures and the street, the side lot line, the rear lot line, and any waterbody.
 - (1) Setbacks are minimum horizontal distances between a property line and the nearest point of all structures that ensure a minimum area without buildings. Detailed definitions are provided under "setback" in § 34-2 of this LDC.
 - a. Where an unusual lot configuration or orientation makes it unclear which property lines are street, side, or rear lot lines, the director will establish street, side, and rear lot lines for setback purposes after taking into account existing buildings on the same block as well as the intent of this code. Where access is provided by a shared driveway rather than a street, the director may determine that no street setback applies to that lot.
 - b. Once established through this process, the same setbacks will be applied by the director to other lots on that block.
 - (2) There are two types of side setbacks:

Exhibit A – New Corner Lot Regulations

- a. *Side setbacks - waterfront lots.* Larger side setbacks are required for waterfront lots, defined as lots that immediately adjoin a tidally influenced body of water, whether artificial or natural (see definitions in § 34-2 of this LDC).
 - b. *Side setbacks - non-waterfront lots.* Smaller side setbacks are required for all other lots.
- (3) The distinction between street setback lines and build-to lines is explained in § 34-662 of this chapter.
- (4) Corner Lot Street Setbacks. Corner lots, as defined in 34-2, shall have a front street setback, a side street setback, a standard side setback and a standard rear setback, as defined in Table 34-3 – Dimensional Regulations in Conventional Zoning Districts.
- a. Front Street Setback. The front street setback will be the typical required street setback as defined in Table 34-3. Any corner lot on Estero Boulevard, must treat the Estero Boulevard frontage as the front street setback. Any corner lot not on Estero Boulevard may choose the front street which best allows development of the property and meets all other code requirements. The rear setback shall be opposite of the front street setback
 - b. Side Street Setback. The side street setback width will vary depending on the width of the lot. Lot width is measured from the side street property line to the side property line (opposite from the side street property line). See Sec. 34-638(d)(6)
- (45) Certain exceptions to minimum setbacks are provided in subsection (d) below.
- (b) *Where to find minimum setback dimensions.* Minimum setback dimensions are specified as follows:
- (1) *For principal buildings:*
 - a. For all conventional zoning districts, see Table 34-3.
 - b. For redevelopment zoning districts, as described for the individual districts in division 5 of this article.
 - c. For RPD districts, see § 34-943 of this chapter.
 - d. For CPD districts, see § 34-953 of this chapter.
 - (2) *For accessory buildings,* see §§ 34-1174—34-1176 of this chapter.
- (c) *Additional wetlands buffers.* New development must maintain a 75-foot separation between wetlands and buildings or other impervious surfaces, in accordance with Policy 4-C-12 of the Fort Myers Beach Comprehensive Plan.
- (1) This requirement does not apply to lawfully existing subdivided lots.
 - (2) This requirement also does not apply to a previously approved development order to the extent it cannot reasonably be modified to comply with this requirement (see ch. 15 of the Fort Myers Beach Comprehensive Plan for details).
- (d) *Exceptions to setbacks and 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.
- (1) *Exceptions to all setbacks.*
 - a. *Administrative setback variances.* Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268 of this chapter.
 - b. *Overhangs.* An overhang which is part of a building may be permitted to encroach into any setback as long as the overhang does not extend more than three feet into the setback and does not permit any balcony, porch, or living space located above the overhang to extend into the setback.
 - c. *Shutters.* A shutter which is attached to a building may be permitted to encroach one foot into the setbacks.

Exhibit A – New Corner Lot Regulations

- d. *Awnings and canopies.*
 1. Awnings and canopies which are attached to a building may be permitted to encroach three feet into the setbacks, as long as their location does not interfere with traffic, ingress and egress, or life safety equipment.
 2. For purposes of this section, awnings and canopies may be attached to a nonconforming building and shall not be considered an extension or enlargement of a nonconformity, as long as the building is properly zoned for its use and the conditions as set forth in this section are met.
 - e. *Essential services.* Essential services and essential service equipment shall not be required to meet the minimum setbacks for the district wherein located (see § 34-1617 of this chapter).
 - f. *Two-family dwelling units.* If a two-family dwelling unit is on a lot of sufficient size to allow it to be subdivided into a separate lot under each dwelling unit (see Table 34-3), the side setback regulations in this section shall not be interpreted to forbid such subdivision. Existing two-family buildings that are being subdivided must be separated by not less than one-hour fire resistance.
 - g. *Mechanical equipment.* Mechanical equipment such as air conditioners, generators, service panels, meters, and pool equipment, associated with new homes, may encroach up to three feet into rear and waterbody primary structure setbacks but must meet the same street and side setbacks as the building it serves. ~~These requirements apply to new buildings and to new mechanical equipment but will not apply to replacement of mechanical equipment on existing buildings if the equipment was installed in conformance with prior regulations.~~
 1. On lots where the side setbacks are not equal on both sides, mechanical equipment may not be placed on the side of the house with the smaller setback unless the smaller setback is 20 feet wide or more.
 2. For existing homes, mechanical equipment may be replaced or elevated in the original location it was installed, in conformance with prior regulations.
 3. New, elevated, mechanical equipment, for existing homes, may be located or relocated into the rear, side or side street setback. The equipment may encroach no more than three (3) feet or the same encroachment of the existing equipment, whichever is greater. An access ladder may be installed which encroaches no more than 3 feet into the side yard or side street setback and is removable or movable.
- (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 encroach into the street setback extend up to ten feet or half the width of the street setback, whichever is less, into the 25-foot street setback on the first living level 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.~~
 3. Porches, balconies and stoops, which extend into the front street setback, may not exceed 35 feet in width.

Exhibit A – New Corner Lot Regulations

- c. *Mail and newspaper delivery boxes.* Mail and newspaper delivery boxes may be placed in accordance with U.S. Postal Service regulations; however, the support for a mail or newspaper delivery box must be of a suitable breakaway or yielding design, and any mail or newspaper delivery box placed in an unsafe or hazardous location can be removed by the government agency with jurisdiction over the right-of-way at the property owner's expense.
 - d. *Bus shelters, bus stop benches and bicycle racks.* Bus shelters, bus stop benches, and bicycle racks may be located in any district without regard for minimum setbacks, provided the location of the structure is approved by the town manager. No advertising is permitted on bus stop benches.
 - e. *Telephone booths.* Telephone booths and pay telephone stations may be located in any zoning district that permits multifamily or commercial uses without regard for minimum setbacks; provided that the location shall be approved by the director.
- (3) *Waterbody setbacks.*
- a. *Gulf of Mexico.* Except as provided in this section or elsewhere in this code, no building or structure shall be placed closer to the Gulf of Mexico than set forth in ch. 6, articles III and IV of this LDC, or 50 feet from mean high-water, whichever is the most restrictive. See also special regulations for the EC zoning district in § 34-652 of this chapter and the coastal zone restrictions in § 34-1575 of this chapter.
 - b. *Other bodies of water.* Except as provided in this section or elsewhere in this chapter, no building or structure shall be placed closer than 25 feet to a property line adjacent to a canal, bay, or other waterbody. For purposes of measuring setbacks from a canal, bay, or other body of water, the following will also be used:
 - 1. If the body of water is subject to tidal changes, the setback will be measured from the mean high-water line.
 - 2. If the body of water is not subject to tidal changes, the setback will be measured from the control elevation of the body of water if known, or from the ordinary high-water line if unknown.
 - 3. In addition to the property line setback, if the property has a seawall, a minimum setback of five feet will be measured from the seaward side of the seawall, not including the seawall cap.
 - 4. If property lines encroach into the waterbody, then no more than five feet shall be applied to the setback measurement.
 - 5. If plats or legal descriptions of property reference water bodies as boundaries, the mean high-water line shall be utilized, unless otherwise stated in those legal descriptions or survey.
 - c. *Exceptions for certain accessory structures.* Certain accessory buildings and structures may be permitted closer to a body of water as follows:
 - 1. *Fences and walls.* See division 17 of this article.
 - 2. *Shoreline structures.* See § 34-1863 and ch. 26 of this LDC.
 - 3. *Nonroofed structures.* Swimming pools, tennis courts, patios, decks, and other nonroofed accessory structures or facilities which are not enclosed, except by fence, or which are enclosed on at least three sides with open-mesh screening from a height of 3½ feet above grade to the top of the enclosure, shall be permitted up to but not closer than:
 - (i) Five feet from a seawalled canal or seawalled natural body of water;
 - (ii) Ten feet from a nonseawalled artificial body of water; or
 - (iii) Twenty-five feet from a nonseawalled natural body of water;

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whichever is greater. Enclosures with any two or more sides enclosed by opaque material shall be required to comply with the setbacks set forth in subsections (d)(3)a. and (d)(3)b. of this section.

4. *Roofed structures.*

- (i) Accessory structures with roofs intended to be impervious to weather and which are structurally built as part of the principal structure shall be required to comply with the setbacks set forth in subsections (a) and (b) of this section.
- (ii) Accessory structures with roofs intended to be impervious to weather and which are not structurally built as part of the principal structure may be permitted up to but not closer than 25 feet to a natural body of water, and ten feet to an artificial body of water.

(4) *Exceptions for certain nonconforming lots.*

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

(5) *Additional street setbacks for single-family and two-family homes exceeding 65 feet in width in the RS, RC and RM zoning district.*

- a. Single-family and two-family homes exceeding 65 feet in width, shall have additional street setback requirements.

- 1. No more than 65 feet of the structure may be constructed between the street setback line (25 feet from right-of-way property line) and 37 feet from the street property line. Any portion of the structure exceeding 65 feet in width shall be set back an additional 12 feet (37 feet from the right-of-way property line).

- (i) For corner lots, the additional 12-foot setback requirement applies to the front street setback.

- (ii) For corner lots, the additional setback may be reduced for the side street setback. The side street additional setback shall apply to the length of the home, exceeding 65 feet, that fronts on the side street. The additional setback from the side street shall be based on the width of the lot from the side street property line to the opposite side property line.

Properties 50 feet or less in width shall have an additional setback of 3 feet.

Properties greater than 50 feet in width to 85 feet in width shall have an additional setback of 6 feet.

Properties greater than 85 feet in width shall have an additional setback of 12 feet.

- 2. No more than 80 percent of the portion of the structure between the street setback line (25 feet from right-of-way property line) and 37 feet from the street property line may be taller than one story above flood elevation. Any portion of the building behind the 37-foot front setback may be built to the maximum buildable height for that zoning district.
- 3. The 65 feet of building between the 25-foot street setback and 37 feet from the street property line, must be constructed as at least two separate projections. The front façade may not be a continuous wall without setback changes. See Figure 34-2.

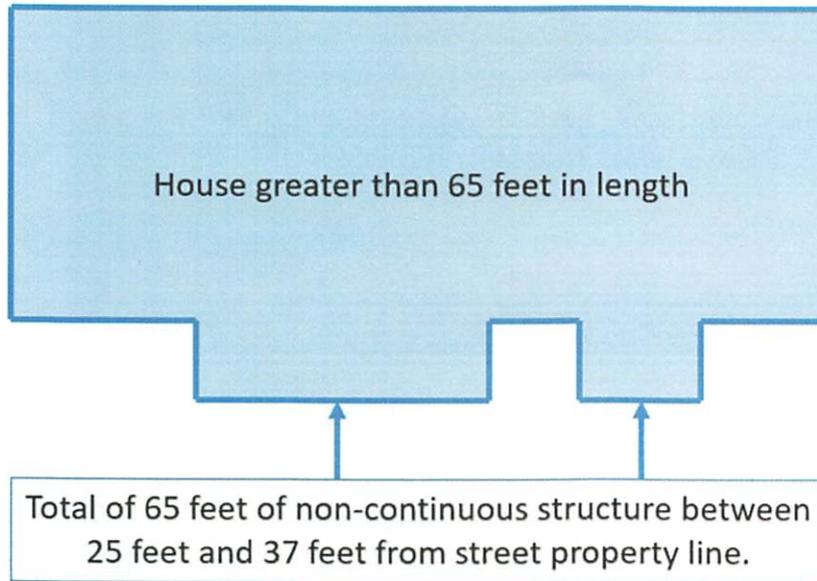


Figure 34-2

- b. *Exemption from additional setbacks for open ground level.* A residential structure greater than 65 feet in width will be exempt from the additional front and side setback requirements found in § 34-638(d)(5), if the ground-level enclosed or screened area is limited to no more than 30 feet in width, as viewed from the ROW. The enclosed area may extend the full depth of the house but limited in width to 30 feet.
- (6) *Side setback requirement for single-family and two-family homes in the RS, RC and RM zoning districts.*
 - a. Single-family and two-family homes must provide side setbacks equal to 15 percent of the lot width, but not less than 7.5 feet, on each side.
 - 1. Lot width is measured from the property line adjacent to the right-of-way. Where the property is a corner lot, the front will be the side of the property that is deemed the front based on the setbacks (in relation to where the front setback, rear setback, and side setbacks are applied).
 - 2. The cumulative total of the side setbacks shall be 30 percent of the parcel width, however, the setbacks do not have to be equal on both sides. No side setback shall be less than ten percent of the parcel width or a minimum of 7.5 feet, whichever is greater.
 - (i) Mechanical equipment may not be located on the side of the house with a smaller setback unless the smaller setback is 20 feet wide or more.
 - 3. The setback measurement shall be rounded to the nearest half-foot.
- (6) Corner Lot Street Setbacks. Corner lots, as defined in 34-2, shall have two street setbacks which may vary depending on lot width. a standard side setback and a standard rear setback shall apply, as defined in Table 34-3 – Dimensional Regulations in Conventional Zoning Districts.
 - a. Front Street Setback - for single-family and two-family homes in the RS, RC and RM zoning districts will be 25 feet. Any corner lot on Estero Boulevard, must treat the Estero Boulevard frontage as the front street setback. Any corner lot not on Estero Boulevard may choose the front and side street which best allows development of the property and meets all other code requirements. The rear setback shall be opposite of the front street setback

Exhibit A – New Corner Lot Regulations

b. Side Street Setback - for single-family and two-family homes in the RS, RC and RM zoning districts.

The side street setback will vary between 10 feet and 20 feet depending on the width of the lot, measured from the side street property line and the side property line (opposite from the side street property line).

1. Properties that measure 50 feet or less shall have a 10-foot side street setback.
 - (i) Proposed layout must indicate how parked cars will be maintained out of the right of way, if the property will be accessed from this side.
2. Properties that measure greater than 50 feet up to 75 feet shall have a 15-foot side street setback.
 - (i) Proposed layout must indicate how parked cars will be maintained out of the right of way, if the property will be accessed from this side.
4. Properties that are greater than 75 feet shall have a 20-foot side street setback.

([Ord. No. 20-08](#), § 2, 4-6-2020; Ord. No. [20-19](#), § 4, 1-19-2021; Ord. No. [22-01](#), § 2, 2-7-2022)

Exhibit B - New Setback Regulations

Table 34-3— Dimensional Regulations in Conventional Zoning Districts														
	street	side - waterfront lot	side - non-waterfront	rear	water body (1)	Gulf of Mexico (2)	area	width	depth	ratio	percentage		feet	stories
ZONING DISTRICT	Setbacks (see § 34-638 for explanations and exceptions)						Lot size (see § 34-637 for explanations and exceptions)			F.A.R. §34-633	Building Coverage § 34-634	Density § 34-632	Height (see § 34-631)	
<i>RS Residential Single-family</i>	25(9)	45% of lot width 7.5 or 10 (8) (9)/(10)	45% of lot width 7.5 or 10 (8) (9)/(10)	20	25	50	7,500	75	100	-	40%	(3), (4)	30	3
<i>RC Residential Conservation</i>	25(9)	45% of lot width 7.5 or 10 (10) (10)	45% of lot width 7.5 or 10 (10) (10)	20	25	50	4,000	45	80	-	40%	(3), (4), (5)	30	3

Exhibit B - Proposed Setback Table Changes

<i>RM Residential Multifamily</i>	25(9)	20 (6) (10)	20 (6)	20	25	50	7,500	75	100	1.2	-/	(3), (4), (5)	35	3
<i>CR Commercial Resort</i>	10	20	15	20	25	50	20,000	100	100	1.2	-	(3)	30	3
<i>CM Commercial Marina</i>	20	20	20	20	0	50	20,000	100	100	1.0	-	-	35	3
<i>CO Commercial Office</i>	10	10	7	20	25	50	7,500	75	100	1.2	-	(3), (4), (5)	30	3
<i>Santos</i>	10	7	5	20	25	50	5,000	50	100	0.6	-	(3), (4), (5)	25	3
<i>IN Institutional</i>	20	10	7	20	25	50	7,500	75	100	0.8	-	(3)	35	3
<i>CF Community Facilities</i>	20	15	10	20	25	50	N/A	N/A	N/A	0.1	-	(3)	35	3
<i>BB Bay Beach</i>	— see § 34-651(b) —													

Exhibit B - Proposed Setback Table Changes

<i>EC Environmentally Critical</i>	20	25	-	25	20	50	(7)	N/A	N/A	0.01	-	(3), (7)	25	2
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Note (1): An additional wetland buffer is required for new development; see § 34-638(c). Note (2): See § 34-638(d)(3)a.

Note (3): Maximum densities are established by the Fort Myers Beach Comprehensive Plan; see Section 34-632

Note (4): Accessory apartments are allowed in owner-occupied homes under certain conditions; see Section 34-1178.

Note (5): A second dwelling unit or accessory apartment may be allowed on larger lots; for details, see Section 34-632, 34-1177, and 34-1178

Note (6): Single-family and two-family homes in the RM zoning district must maintain ~~a side setback of 15% of the lot width, but not less than a 7.5-foot side setback~~ for lots up to 75 feet and 10 feet for lots wider than 75 feet.

Note (7): See Section 34-652(e)(3).

~~Note (8): For all RS lots fronting on Matanzas Street and Matanzas Court, all side setbacks shall be at least 10 feet.~~

Note (9): Maximum 65 feet of house may be built to the 25-foot front setback. Any house frontage exceeding 65 feet in length shall ~~be built 37 feet from the front~~ be subject to additional setbacks from the street property line. See Section 34-638(d)(5)a.

Note (10): ~~Each side setbacks shall be 15% of the lot width, but not less than 7.5 feet. Each side setback shall be 7.5 feet for lots 75 feet or less wide and 10 feet for lots wider than 75 feet.~~
