

ORDINANCE NO. 23-03

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V., DIVISION 4, SECTIONS 34-3273 GENERAL REQUIREMENTS FOR RESIDENTIAL USES ON NONCONFORMING LOTS, SECTION 34-3274 MINIMUM USE DETERMINATIONS, AND CHAPTER 34, ARTICLE II., DIVISION 6, SECTION 34-268 ADMINISTRATIVE SETBACK VARIANCES; 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 34-3273, Section 34-3274 and Section 34-268; 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 V., Division 4, Sections 34-3273 General Requirements

for Residential Uses on Nonconforming Lots, Section 34-3274 Minimum Use Determinations, and Chapter 34, Article II., Division 6, Section 34-268 Administrative Setback Variances is hereby amended to read as found in **attached Exhibit A** – Amended Residential Uses and Minimum Use and **attached Exhibit B** – Amended Administrative Setback Variances:

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 Council Member Veach and seconded by Vice Mayor Atterholt, 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	nay

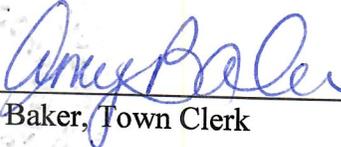
ADOPTED this 21st day of February, 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



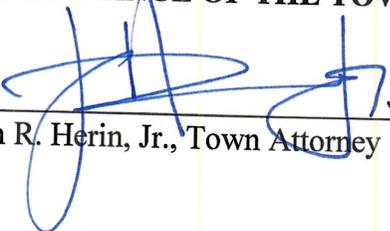
Dan Allers, Mayor

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 – Amended Sec. 34-3273 and Sec. 34-3274
Exhibit B – Amended Sec. 34-268

Exhibit A – Amended Sec. 34-2373 and Sec. 34-3274

Sec. 34-3273. - General requirements for residential uses on nonconforming lots.

Nonconforming lots may be developed subject to the following provisions:

- (1) All other regulations of this chapter shall be met, except as modified by this division.
- (2) A residential building may be placed on a single nonconforming lot provided the lot receives an affirmative minimum use determination per Sec. 34-3274 or has at least 40 feet in width, 75 feet in depth.
- (3) Any development on nonconforming lots must comply with all density restrictions of the Fort Myers Beach Comprehensive Plan.
 - a. Density computations shall be in accordance with § 34-632 of this chapter.
 - b. If density computations do not allow even one dwelling unit on a nonconforming lot, one single-family residence may still be permitted if a minimum-use determination is obtained in accordance with § 34-3274, below.
- (4) No division of any nonconforming lot may be permitted which creates a lot with width, depth, or area below the minimum requirements stated in this chapter, except for combinations and redivisions in accordance with § 34-3275 of this chapter.
- (5) The burden of proof for demonstrating that a lot is a nonconforming lot in accordance with this division, and lawfully existed at the specified date, shall be with the owner.
- (6) The remaining lot after condemnation shall be treated in accordance with § 34-3206 of this chapter.
- (7) A nonconforming lot, which previously had or currently has a residence constructed on it, and receives an affirmative minimum use determination per Sec. 34-3274 may request an administrative setback variance in accordance with sec. 34-268.

(Ord. No. [21-04](#), § 2, 6-7-2021)

Sec. 34-3274. - Minimum use determinations.

- (a) A single-family residence may be constructed on a nonconforming lot which does not comply with the density requirements of the Fort Myers Beach Comprehensive Plan, provided the owner receives a favorable administrative interpretation of the single-family residence provision (also known as a minimum use determination) in accordance with ch. 15 of the Fort Myers Beach Comprehensive Plan, and the criteria included in subsection 34-3274(b). Density created through this process may not be transferred to any other property.
- (b) To qualify for a minimum use determination, the following additional requirements must be met:
 - (1) *Minimum lot requirements:*
 - a. The property is a legally platted, recorded lot; and
 - b. The property has ~~direct access~~ to a developed, public right-of-way by an approved access easement; and
 - c. The property has access to and will be connected to utilities; and
 - d. The lot is located within a future land use and zoning district that permits construction of a single-family residence.
 - (2) *Unplatted lot (a lot that is described in metes and bounds only and does not exist as part of a recorded subdivision) requirements:*

- a. The owner of any unplatted lot must provide evidence of the lot's existence prior to town incorporation, (January 1, 1996), and the lot's current legal description must match the lot's legal description prior to incorporation;
 - b. The property has ~~direct~~ access to a developed, public right-of-way by an approved access easement ; and
 - c. The property has access to and will be connected to utilities.
- (c) Lots qualifying for a minimum use determination may not place the home, accessory structures, or driveways on any land in the "wetlands" or "recreation" category on the future land use map of the comprehensive plan.
- (d) The rights granted by a minimum use determination run with the lot and are available to any subsequent owner if the lot is transferred in its entirety.
- (e) Applications for a minimum use determination shall be filed with the town clerk in accordance with ch. 15 of the comprehensive plan. Complete applications will be reviewed by the legal counsel for the local planning agency (see § 34-124(3) of this chapter) and may be referred to the local planning agency for a decision (see § 34-120(6) of this chapter).

([Ord. No. 20-01](#) , § 2, 2-18-2020)

Sec. 34-268. - Administrative setback variances.

- (a) Upon written request using a form prepared by the director, the director is authorized to modify the setbacks in §§ 34-638, 34-1174—34-1176, and 34-1744 of this chapter under the following circumstances:
- (1) Street, rear, side, or waterbody setbacks may be modified to permit the remodeling of or additions to existing structures that are nonconforming with regard to a specific setback so long as the remodeling or addition will not result in:
 - a. An increase in the height of the structure; or
 - b. A further diminution of the setback. The director may approve bay windows, chimneys, and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.
 - (2) Street, rear, side, or waterbody setbacks may be modified to permit the construction of a handicapped access appurtenant to any existing structure.
 - (3) Street, rear, side, or waterbody setbacks may be modified to allow the replacement of stairs or decking that provides access into an existing dwelling unit.
 - (4) Street, rear, side, or waterbody setbacks may be modified to legitimize minor errors, not exceeding 1 foot, in setbacks at the time of construction.
 - (5) Street, rear, or side setbacks may be modified for a residential lot with an unusual shape or orientation where, for instance, side and rear setbacks should be reversed.
 - (6) Buildings or structures that are not in compliance with current setback regulations and which can be proven to have been permitted may also be reviewed by the director for consideration under this section.
 - (7) Requirements for large satellite dishes may be modified as provided in § 34-1175(a)(6) of this chapter.
 - (8) ~~Certain n~~Nonconforming lots that receive an affirmative Minimum Use Determination (see § 34-32743) may qualify for an administrative setback variance.
- (b) The director, prior to approving the modifications, must make the following findings of fact:
- (1) There are no apparent deleterious effects upon the adjoining property owners;
 - (2) The modifications will not have an adverse impact on the public health, safety and welfare including safe access to the subject property or properties which utilize a common access easement; and
 - (3) The modifications will be the minimum required to allow a home with a footprint of the same square footage as was previously legally constructed on that property and one story in height, above flood elevation, with no enclosure below base flood elevation.
 - (4) Modified setbacks may not be less than 5 feet except in instances where homes share a common wall, such as a duplex or townhome.
 - (5) Modified setbacks may not be encroached by mechanical equipment or structures.
- (c) Decisions by the director pursuant to this section are discretionary and may not be appealed in accordance with § 34-86 of this chapter.

(Ord. No. 21-04, § 2, 6-7-2021)