

**ORDINANCE NO. 23-08**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE II., DIVISION 6, ADDING SECTIONS 34-269 PARALLELOGRAM LOT SETBACKS, AND ASSOCIATED DEFINITIONS IN CHAPTER 34, ARTICLE I., SECTION 34-2 DEFINITIONS; 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 April 11, 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 34-269 and Section 34-2; and

**WHEREAS**, on May 15, 2023, the Town Council held a first reading of this proposed Ordinance; and

**WHEREAS**, on June 5, 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 34-269 Parallelogram Lot Setbacks, and Section 34-2 Definitions is hereby amended to read as found in attached Exhibit A

– Parallelogram Lot Setbacks and Amended Definitions:

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 council Member Woodson, 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 5<sup>th</sup> day of June 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

**Dan Allers**

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Dan Allers, Mayor

**ATTEST:**

**Amy Baker**

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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.

John R. Herin, Jr., Town Attorney

Exhibits

Exhibit A – Parallelogram Lot Setbacks and Amended Definitions

Signature: Dan Allers  
Dan Allers (Jun 6, 2023 16:11 EDT)  
Email: allersd@fmbgov.com

Signature: John R. Herin, Jr.  
John R. Herin, Jr. (Jun 7, 2023 18:54 EDT)  
Email: jherin@foxrothschild.com

Signature: Amy Baker  
AMY BAKER (Jun 9, 2023 11:31 EDT)  
Email: AMY@FMBGOV.COM

Definitions Sec. 34-2:

Lot, Parallelogram is a four-sided parcel which has substantially parallel front and rear lot lines and substantially parallel side lot lines, which are not at a right angle (not 90°) to the front and rear lot lines.

Lot Measurement, Width is the shortest distance between the side lot lines at the front setback line. When side lot lines are not parallel, the lot width will be considered the average distance between the width measured at the front setback line and the rear setback line.

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\(c\)](#) of this chapter for exceptions.

#### Sec. 34-269 – Parallelogram Lot Setbacks

(a) For parallelogram lots, created prior to January 2023, front and rear setbacks shall be measured as depicted in figure 34-0 and described in Section 34-269(a)(1).

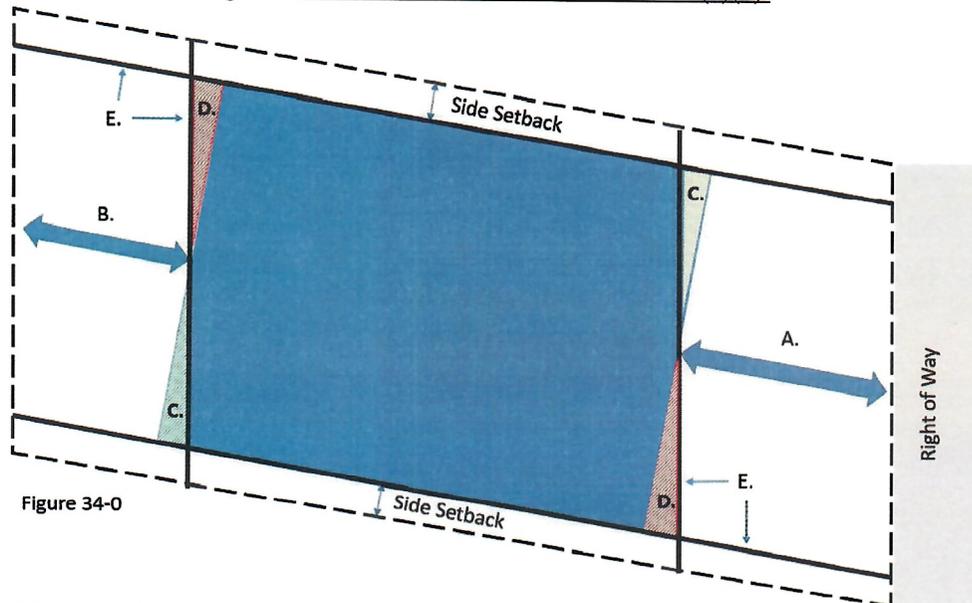


Figure 34-0

A. Front setback distance from midpoint of front lot line to midpoint of structure

B. Rear setback distance from midpoint of rear lot line to midpoint of structure

C. Encroachment area

D. Compensation area

E. Standard building setback lines

- (1) The front setback shall be measured from the midpoint of the front lot line to the midpoint of the parallel front setback line. The rear setback shall be measured from the midpoint of the rear lot line to the midpoint of the parallel rear setback line. Principal structures may encroach into the front or rear setback on either side of the midpoint by no more than 8 feet but must offset that encroachment on the other side of the midpoint by a compensating area equivalent to the encroachment.