

**ORDINANCE NO. 23-14**

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING 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 September 12, 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 34-268; and

**WHEREAS**, on October 2, 2023, the Town Council held a first reading of this proposed Ordinance; and

**WHEREAS**, on October 16, 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 II., Division 6, Section 34-268 Administrative Setback Variances is hereby amended to read as found in **attached Exhibit A** – Amended Sec. 34-268.

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 Veach and seconded by Councilmember Woodson and upon being put to a roll call vote, the result was as follows:

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

ADOPTED this 16th day of October 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:**

**Gretchen R. H. "Becky" Vose**

Gretchen R. H. ("Becky") Vose, Esq., Town Attorney

**EXHIBITS**

Exhibit A – Amended Sec. 34-268

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) Nonconforming lots that receive an affirmative Minimum Use Determination (see § 34-3274) 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) For administrative setback variances on nonconforming lots, found in Sec. 34-268(a)(8), ~~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)

**Signature:** Dan Allers  
Dan Allers (Oct 24, 2023 11:18 EDT)

**Email:** allersd@fmbgov.com

**Signature:** Amy Baker  
AMY BAKER (Oct 24, 2023 13:08 EDT)

**Email:** AMY@FMBGOV.COM

**Signature:** Becky Vose  
Becky Vose (Oct 24, 2023 11:30 EDT)

**Email:** bvose@voselaw.com