

ORDINANCE NO. 20-01

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 34-3274 – MINIMUM USE DETERMINATION - OF CHAPTER 34 OF THE FORT MYERS BEACH LAND DEVELOPMENT CODE TO ALLOW THE ISSUANCE OF MINIMUM USE DETERMINATIONS FOR THE DEVELOPMENT OF SUBSTANDARD SIZED LOTS WITHIN THE TOWN'S JURISDICTION; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

WHEREAS, the Florida Constitution and Chapter 166, *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 ("Town") 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 the need to make minimum use determinations regarding substandard sized lots to maintain the orderly development of the Town; and

WHEREAS, the Town Council desires to update Section 34-3274 of Chapter 34 of the Fort Myers Beach Land Development Code ("LDC") to allow development of substandard sized lots with access to infrastructure; and

WHEREAS, on December 10, 2019 the Town Local Planning Agency (LPA) reviewed and provided a recommendation of approval to the proposed amendments to Section 34-3274 of Chapter 34 of the LDC by a vote of 6-0; and

WHEREAS, on January 6th, 2020 the Town Council held a first reading of the proposed Ordinance; and

WHEREAS, on February 18th, 2020 the Town Council held a second reading of the proposed Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA 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.

^{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~~.

Section 2. That Section 34-3274 of Chapter 34 of the Town of Fort Myers Beach Land Development Code is hereby amended to read as follows:

Sec. 34-3274. - Minimum use determinations.

- (a) A single-family residence may ~~also~~ 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 Section 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. ~~Lot area of 4,000 square feet if the lot was created prior to 1962; or~~
 - b. ~~Lot width of 50 feet and lot area of 5,000 square feet if part of a platted subdivision recorded between 1962 and 1984; or~~
 - c. ~~Lot area of 7,500 square feet if not part of a platted subdivision created between 1962 and 1984; or~~
 - d. ~~Lot width, depth, and area were in conformance with the zoning regulations if created after 1984; or~~
 - e. ~~Lot sizes were explicitly approved as part of a planned development rezoning.~~
- a. The property is a legally platted, recorded lot; and
 - b. The property has direct access to a developed, public right-of-way;
 - 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) ~~Ownership~~ Unplatted lot (a lot that is described in metes and bounds only and does not exist as part of a recorded subdivision) requirements:

- ~~a. Prior to November 21, 2000, the lot shall have been vacant or shall have been improved with one structure located wholly on this lot.~~
- ~~b. If a structure had been placed on two or more adjoining lots at any time, prior to November 21, 2000, the individual lots shall not qualify for this determination.~~
- a. The owner of any unplatted lot must provide evidence of the lots 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; and
- c. The property has access to and will be connected to utilities.

Section 3. The Town Council intends that this Ordinance be made part of the Town of Fort Myers Beach Land Development Code; and that sections of this Ordinance can be renumbered or re-lettered to the appropriate word or phrase to accomplish codification, and regardless of whether this Ordinance is ever codified, the Ordinance can be renumbered or re-lettered and typographical errors and clarification of ambiguous wording that do not affect the intent can be corrected with the authorization of the Town Manager without the need for a public hearing.

Section 4. 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 requirements will apply.

Section 5. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

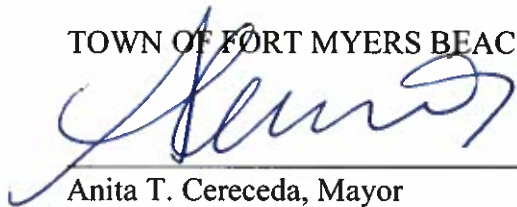
Section 7. This Ordinance will take effect immediately upon adoption by the Town Council.

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

Anita Cereceda, Mayor	Aye
Ray Murphy, Vice Mayor	Aye
Joanne Shamp, Councilmember	Aye
Rexann Hosafros, Councilmember	Aye
Bruce Butcher, Councilmember	Aye

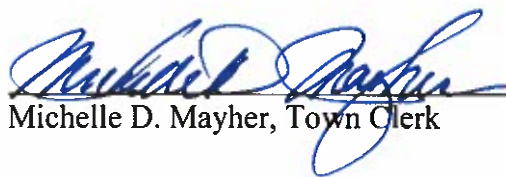
ADOPTED this 18th day of February, 2020 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



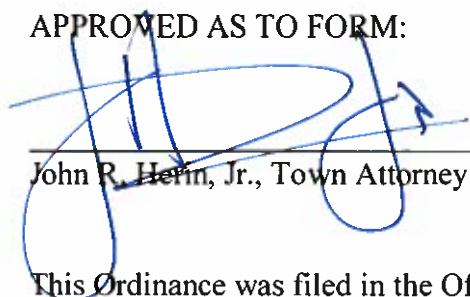
Anita T. Cereceda, Mayor

ATTEST:



Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM:



John R. Herrin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this 3rd day of March 2020.