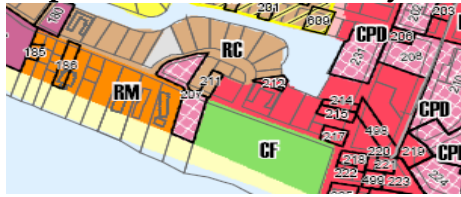


**Town of Fort Myers Beach
Department of Community Development**



MEMORANDUM

To: Local Planning Agency
CC: Anne Dalton, LPA Attorney
From: Frank Shockey, Interim Community Development Director
Date: September 23, 2009
RE: "Parcelization" and Ordinance 07-04

The Town Council has asked that the LPA consider the amendments to Land Development Code (LDC) Chapter 34 addressing the topic of "parcelization" that were recommended for approval by a prior LPA on May 8, 2007, and then adopted with very significant alterations by a prior Town Council as Ordinance 07-04 on February 11, 2008.

In the time period extending to before the LPA's May 2007 recommendation, through the Town Council's final vote to adopt its version of Ordinance 07-04 in February 2008, there was significant controversy over the content of the LDC sections that were amended and proposed to be amended. The crux of the matter is an argument about whether LDC Section 34-636 can and should require that existing buildings in the floodplain be brought into compliance with the required base flood elevation before they are divided up into separate parcels of real property.

Attached are the two versions, the LPA's May 2007 recommendation, and the ordinance that Town Council adopted in February 2008. In the interest of having a fruitful discussion about the Town's policy in the future, additional details of the various options that were discussed in between are not included here. Also attached is a brief summary from Bill Spikowski that lays out the major differences between the adopted version of Ordinance 07-04 and the proposed language. I am available to answer more detailed questions about the basic issues of policy.

Frank Shockey

From: Bill Spikowski [bill@spikowski.com]
Sent: Friday, March 27, 2009 12:45 PM
To: Frank Shockey
Cc: Anne Dalton (adalton@daltonlegal.com)
Subject: Changes from 07-04

Follow Up Flag: Follow up
Flag Status: Purple

Here is the simplest way that I can describe the effects of the proposed ordinance -- feel free to use this summary in a staff memo that accompanies the proposed ordinance to public hearings.

SUMMARY OF SUBSTANTIVE CHANGES if Ordinance 07-04 is repealed and replaced by the proposed ordinance:

- Section 3 of Ordinance 07-04 would be repealed; that section contradicted many of the actual provisions of Ordinance 07-04 yet would not appear in the codified edition of the Land Development Code.
- Sections 34-636(a)(2) and 34-636(b)(2) would revert to language that had been supported by the Local Planning Agency. The LPA language would have required two-family and multifamily buildings to be brought into compliance with floodplain requirements before they could be parcelized.
- Sections 34-636(c) and 34-1807(a) would also be restored to the LPA language, which treated hotels and motels like two-family and multifamily buildings in that floodplain compliance would be required. Ordinance 07-04 had dropped the LPA language and eliminated all parcelization requirements for hotels and motels.
- On pages 6 and 7 of the proposed ordinance, a choice is provided between 60 days and 120 days for the maximum stay in a hotel/motel room. Ordinance 07-04 selected the 60-day option (as originally proposed by staff).

Internal Virus Database is out of date.

Checked by AVG - www.avg.com

Version: 8.0.238 / Virus Database: 270.11.21/2014 - Release Date: 03/20/09 06:59:00

ORDINANCE No. 07-04

AN ORDINANCE AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES”; AMENDING SECTION 34-2 “DEFINITIONS”; AMENDING SECTION 34-621 “ALLOWABLE USES OF LAND DESCRIBED”; AMENDING SECTION 34-636 “PARCELIZATION OR SUBDIVISION OF EXISTING BUILDINGS”; AMENDING SECTION 34-1801 “DEFINITIONS”; AMENDING SECTION 34-1806 “REPLACING A NONCONFORMING HOTEL/MOTEL”; AMENDING SECTION 34-1807 “CONVERSIONS”; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. AUTHORITY. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. ADOPTION OF AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE. Chapter 34 of the Town of Fort Myers Beach land development code is titled “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES.” Chapter 34 is hereby amended as shown in Exhibit A. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 34:

- Sec. 34-2. Definitions.
- Sec. 34-621. Allowable uses of land described.
- Sec. 34-636. Parcelization or subdivision of existing buildings.
- Sec. 34-1801. Definitions and general requirements.
- Sec. 34-1806. Replacing a nonconforming hotel/motel.
- Sec. 34-1807. Conversions of existing buildings.

SECTION 3. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law, or contrary to the policy of express law although not expressly prohibited, or against public policy, or for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way shall affect the validity of all other provisions of this ordinance.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and, upon being put to a vote, the result was as follows:

Mayor Dennis Boback	_____
Vice-Mayor Larry Kiker	_____
Herb Acken	_____
Charles Meador, Jr.	_____
Bill Shenko, Jr.	_____

DULY PASSED AND ENACTED this ____th day of _____, 2007.

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Michelle Mayher, Town Clerk

By: _____
Dennis Boback, Mayor

Approved as to form by:

Anne Dalton, Town Attorney

EXHIBIT A

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 34 — ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

ARTICLE I. IN GENERAL

Sec. 34-2. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates a different meaning:

Bed-and-breakfast inn means a public lodging establishment with nine or fewer guest units that serves breakfast to overnight guests. A bed-and-breakfast inn may be located in a single building or in a cluster of separate buildings. See division 19 of article IV of this chapter.

Dwelling unit means a room or rooms connected together, which could constitute a separate, independent housekeeping establishment for a family, for owner occupancy, or for rental or lease on a weekly, monthly, or longer basis as specified in this code for various zoning districts, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing sleeping and sanitary facilities and a kitchen. The term “dwelling unit” shall not include rooms in certain assisted living or continuing care facilities (see § 34-1415) or in accessory apartments in owner-occupied homes (see § 34-1178(d)). See also Guest unit and Living unit.

Guest unit means a room or group of rooms in a hotel/motel or bed-and-breakfast inn that are designed to be used as temporary accommodations for one or more people traveling together. All guest units provide for sleeping and sanitation, although sanitation may be provided through shared bathrooms. Guest units may be equipped with a partial or full kitchen. See division 19 of article IV of this chapter.

Hotel/motel means a building, or group of buildings on the same premises and under single control, which are kept, used, maintained or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests for periods of one day or longer. See division 19 of article IV of this chapter.

Living unit means any temporary or permanent unit used for human habitation. See Dwelling unit and Guest unit.

Parcelization means dividing a given unit of real property into multiple parcels, units, or fractions. Examples of parcelization include, but are not limited to, divisions of land, fractional or timeshare interests in specific periods of time, condominiums, and cooperatives.

Resort means a mixed-use facility that accommodates transient guests or vacationers as well as longer-term residents. Resorts contain at least one hotel/motel and at least 50 total units, which may include a combination of dwelling units; and guest units and may also include timeshare units, and provide food service, outdoor recreational activities, and/or conference facilities for their guests.

Timeshare unit means any dwelling unit, guest unit, or living unit for which a timesharing plan, as defined in F.S. ch. 721, has been established and documented. See § 34-632 for determining density of timeshare units that include “lock-off accommodations.”

Transient guest means any guest registered as provided for in F.S. § 513.01(7), for six months or less.

[no other changes to this section]

**ARTICLE III, DIVISION 2.
ALLOWABLE LAND USES
IN EACH ZONING DISTRICT**

Sec. 34-621. Allowable uses of land described.

(a) *Applicability.* [no changes to this subsection]

(b) *Use tables.* Table 34-1 of this article lists specific uses followed by a symbol indicating whether the use is permitted by right (P), special exception (SE), administrative approval (AA), existing only (EO), or temporary use permit (TP). In all instances, unless specifically noted to the contrary, the symbols used in the use regulations tables shall have the following meaning:

There are no changes to the text of this section; see the following underlined changes to Table 34-1:

- “RESIDENTIAL OPEN” category: add immediately below “Timeshare units”:
“(provided these units qualify as dwelling units and meet residential density levels in § 34-632)”
- “LODGING OPEN” category:
 - delete “or guest unit” from “Rental of any permitted dwelling unit ~~or guest unit~~ for periods of one day or longer”
 - add “Timeshare units” as a permitted principal use

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p.1 of 2)

	<i>Residential</i>		<i>Lodging</i>		<i>Office</i>	
Restricted (R)	Community residential home	P	Rental of any permitted dwelling unit to a single family during any one-month period, with a minimum stay of one week (see §§ 34-2391-2410 for rules and exceptions)	P		
	Dwelling unit, single-family	P				
	Home care facility	P				
	AS ACCESSORY USES:		AS ACCESSORY USES:		AS ACCESSORY USES:	
	Accessory apartment (1) (see § 34-1177)	SE			Home occupation (no outside help)	P
	Accessory apartment (see § 34-1178)	EO			Home occupation (with outside help)	A
	Residential accessory uses	P				
Temporary mobile home (§ 34-3046)	TP					
Limited (L) <i>(plus R)</i>	Dwelling unit: two-family (1) live/work (see § 34-1773)	P SE	Rental of any permitted dwelling unit to a single family for periods of one week or longer (see §§ 34-2391-2410 for rules)	P		
	Mobile home or RV park (VILLAGE district only, as restricted in § 34-694)	EO	Bed-and-breakfast inn (see § 34-1801)	SE		
	AS ACCESSORY USES:		AS ACCESSORY USES:		AS ACCESSORY USES:	
	Accessory apartment (1) (see § 34-1177)	P	On-premises consumption of alcoholic beverages (see division 5 of article IV)	AA/ SE	Administrative office	P
Open (O) <i>(plus R & L uses)</i>	Assisted living facility (see § 34-1411)	P	Bed-and-breakfast inn (see § 34-1801)	P	Automobile rental	SE
	Dwelling unit: multiple-family live/work (see § 34-1773)	P P	Hotel/motel (see § 34-1801)	P	Health care facility	P
	Rooming house	P	Rental of any permitted dwelling unit or guest unit for periods of one day or longer	P	Offices, general or medical	P
	Timeshare units (provided these units qualify as dwelling units and meet residential density levels in § 34-632)	P	Resorts	P	Personal services	P
	AS ACCESSORY USES:		Timeshare units	P	Wholesale establishment	SE
	Golf course	EO	AS ACCESSORY USES:		AS ACCESSORY USES:	
	Recreation facility: private on-site private off-site	P SE	Resort accessory uses	P	Commercial accessory uses	P
	Subordinate commercial uses	P	Personal services	P	Drive-through, Type 1 (2)	P
			Subordinate commercial uses (see § 34-3021)	P	Subordinate commercial uses (see § 34-3021)	P

(1) Provided density complies with the Fort Myers Beach Comprehensive Plan (see § 34-632).
 (2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the DOWNTOWN zoning district except as provided in § 34-676(f), whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone. See also § 34-620(g)(1) regarding the prohibition on restaurant drive-throughs.

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p. 2 of 2)

	<i>Retail</i>	<i>Marine</i>	<i>Civic</i>	
Restricted (R)	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:	Restricted (R)
	ATM P	Dock (for sole use by occupants of principal use) P	Beach or bay access P Essential services (see § 34-1612(a)) P Hidden path P Park, neighborhood P Family day care home P	
Limited (plus R) (L)	Dwelling unit: work/live (see § 34-1774) SE	Dock (for use by water taxi or water shuttle) P	Communication tower (see § 34-1441-1550) SE	Limited (plus R uses) (L)
	Membership organization SE	Marina EO/SE	Day care center, adult or child SE	
	Recreation facilities, commercial SE	Parasailing operations office SE	Essential service building (see § 34-1612(b)) SE	
	Parking lot, seasonal (see § 34-2022) TP	Personal watercraft operations office SE	Essential service equipment P	
	Temporary uses (see §§ 34-3041-3050) SE	Rental of beach furniture P	Recreation facility: private off-site public SE public P	
	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:	
On-premises consumption of alcoholic beverages (see §§ 34-1261-1290) AA/SE	Dwelling unit, caretaker P Dock (may be leased to non-occupants of principal use) P	Dwelling unit, caretaker P Restaurant, accessory to private rec. facilities only SE		
Open (plus R & L uses) (O)	Automobile repair SE	Boat dealer P	Cultural facility SE	Open (plus R & L uses) (O)
	Bar or cocktail lounge AA/SE	Marina P	Day care center, adult or child P	
	Car wash SE		Park, community or regional P	
	Dwelling unit: work/live (see § 34-1774) P		Parking lot, shared permanent SE	
	Laundromat P		Place of worship P	
	Mini-warehouse SE		Religious facility SE	
	Parking lot, shared permanent (34-2015(2)b.) SE		School (see § 34-2381-2383) P	
	Personal services P		Theater SE	
	Restaurant (2) P			
	Retail store, small P			
	Retail store, large SE			
	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:	
	Commercial accessory uses P	Marina accessory uses P	Helistop SE Restaurant, accessory only to public recreation facilities P Subordinate commercial uses (see § 34-3021) P	

(2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the DOWNTOWN zoning district except as provided in § 34-676(f), whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone. See also § 34-620(g)(1) regarding the prohibition on restaurant drive-throughs.

**ARTICLE III, DIVISION 3.
EXPLANATION OF PROPERTY
DEVELOPMENT REGULATIONS**

Sec. 34-636. Parcelization or subdivision of existing buildings.

(a) **Two-family building.** When a building owner proposes further parcelization or subdivision of land in the RC zoning district into separate lots and/or separating two lawfully existing dwelling units into individual parcels, all of the following requirements must be satisfied before the required limited review development order can be issued:

- (1) The building cannot exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land and the lots resulting from the subdivision must each conform to the dimensional regulations for lot size in the RC zoning district (see Table 34-3).
- (2) ~~The~~ Existing buildings must be brought into compliance with all floodplain requirements for new construction as provided in ch. 6 of this code.
- (3) The entire building must meet the coastal construction requirements that apply to new structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).
- (4) The individual dwelling units must be separated by walls with not less than 1-hour fire resistance.
- (5) The development must meet all other requirements of this code, including Table 34-2.

(b) **Multiple-family building.** When a building owner proposes further parcelization or subdivision of lawfully existing dwelling units, all of the following requirements must be satisfied before the required development order can be issued:

- (1) The number of dwelling units in the existing building may exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, but may not exceed the number of lawfully permitted units. The burden to demonstrate the lawful nature of the units is on the applicant. If the number

of dwelling units exceeds the density limitations of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, the interior square footage of the building, as defined in §34-3238(2)d.1., may not be increased, but may be exchanged on a square-foot for square-foot basis to provide larger but fewer dwelling units within the same interior area.

- (2) Existing buildings must be brought into compliance with all floodplain requirements for new construction as provided in ch. 6 of this code. Owners of an existing buildings that cannot comply with these requirements may seek to replace their building by obtaining approval for pre-disaster buildback in accordance with § 34-3237.
- (3) The entire building must meet the coastal construction requirements that apply to new structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).
- (4) The individual dwelling units must be separated by walls with not less than at least 1-hour fire resistance rating as defined by the Florida Building Code.
- (5) The development must meet all other requirements of this code, including Table 34-2.

(c) **Hotels/motels.** When a hotel/motel owner proposes further parcelization or subdivision of a lawfully existing hotel/motel to convert all or a portion of its guest units to timeshared guest units or to a hotel condominium, all of the following requirements must be satisfied before the required development order can be issued:

- (1) The number of guest units in the existing building may exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, but may not exceed the number of lawfully permitted guest units. Each guest unit may be converted to no more than one timeshared or condominium guest unit. The burden to demonstrate the lawful number of guest units is on the owner. If the number of guest units exceeds the density limitations in the Fort Myers Beach comprehensive plans as they would apply to vacant land, the interior square footage of the building, as defined in § 34-3228(2)d.1., may not be increased, but may be exchanged on a square-foot by square-

- foot basis to provide larger but fewer guest units within the same interior area.
- (2) Existing buildings must be brought into compliance with all floodplain requirements for new construction as provided in ch. 6 of this code. Existing buildings that cannot comply with these requirements may seek to replace their building by obtaining approval for pre-disaster buildback in accordance with § 34-3237.
 - (3) The entire building must meet the coastal construction requirements that apply to new structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).
 - (4) The applicant must provide evidence that the proposed timeshared or condominium guest units will meet the standards of this code for hotels/motels. All sales agreements for guest units and the legal documents creating the timeshare or condominium arrangement must expressly incorporate each of the following requirements of this code:
 - a. Individual guest units are not residential dwelling units and are limited to transient usage only.
 - b. Individual guest units may be occupied in the same manner as hotel/motel units. The owner or owner's family may occupy the guest unit no more than 60 days in any year. "Owner or the owner's family" means the owner(s) of record, their children, and parents. "Year" means the period beginning October 1 and ending September 30 of each successive year.
 - c. All guest units in the building, including the timeshared or condominium units, must continue to meet all requirements for a hotel/motel as provided in §§ 34-1801-1830.
 - (5) Prior to execution, the legal documents creating the timeshare arrangement or hotel condominium, and all amendments to those documents, must be submitted to the Town Attorney for review for consistency with these requirements and other requirements of this code.
 - (6) The individual guest units must be separated by walls with at least 1-hour fire resistance

- rating as defined by the Florida Building Code.
- (7) The development must meet all other requirements of this code, including Table 34-2, except as to building height and except as otherwise provided by subsection (c) of this section.

ARTICLE IV, DIVISION 19. HOTELS, MOTELS, AND BED-AND-BREAKFAST INNS

Sec. 34-1801. Definitions and general requirements.

(a) The following definitions from § 34-2 are repeated here for convenience:

- (1) ~~(a)~~ ***Bed-and-breakfast inn*** means a public lodging establishment with nine or fewer guest units that serves breakfast to overnight guests. A bed-and-breakfast inn may be located in a single building or in a cluster of separate buildings.;
- (2) ~~(b)~~ ***Guest unit*** means a room or group of rooms in a hotel/motel or bed-and-breakfast inn that are designed to be used as temporary accommodations for one or more people traveling together. All guest units provide for sleeping and sanitation, although sanitation may be provided through shared bathrooms. Guest units may be equipped with partial or full kitchens.
- (3) ~~(c)~~ ***Hotel/motel*** means a building, or group of buildings on the same premises and under single control, which are kept, used, maintained, or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests for periods of one day or longer.
- (4) ~~(d)~~ ***Lock-off accommodations*** means a single guest unit or living unit designed in such a manner that at least one room and a bathroom can be physically locked off from the main unit and occupied as a separate unit. Each portion may have a separate outside entry or share a common foyer with separate lockable interior doors, or may share a lockable door or doors separating the two units.

(be) Hotels/motels and bed-and-breakfast inns must:

- (1) Be licensed as transient public lodging establishments registered accordingly with the Florida department of business and professional regulation; and are required to
- (2) Pay the levied tourist development tax promulgated by the county; and the state sales tax; and
- (3) Provide and staff a front desk during regular business hours to arrange for the rental of guest units; and
- (4) Guest units may not be occupied by the same guest for more than 60 days in any year. "Guest" includes the guest's children and parents." "Year" means the period beginning October 1 and ending September 30 of each successive year.

Hotels/motels and bed-and-breakfast inns which do not meet these requirements will be subject to enforcement action (see § 34-266). are not registered with the department or do not pay the tourist tax. Proposed developments that will not meet these requirements will not be approved as hotels/motels or bed-and-breakfast inns; if approved instead as multiple-family buildings, they will be subject to the density limitations and property development regulations for multiple-family buildings.

(c) Guest units in new hotels/motels and bed-and-breakfast inns may be sold as timeshare units or as hotel condominiums provided that they meet all requirements of this code for hotels/motels or bed-and-breakfast inns.

(d) Guest units in existing hotels/motels and bed-and-breakfast inns may be converted to timeshare units or hotel condominiums provided they meet all requirements of this code for hotels/motels or bed-and-breakfast inns and comply with the parcelization requirements of § 34-636(c).

Sec. 34-1806. Replacing a nonconforming hotel/motel.

(a) A nonconforming hotel/motel can be replaced with a new building in one of the following manners:

- (1) In full conformance with all current provisions of this code as they apply to a new hotel/motel on vacant land; or
- (2) In the same manner as provided for enlargements to the various types of

nonconforming buildings as provided in § 34-3234; or

- (3) As provided in the pre-disaster buildback regulations found in § 34-3237 or the post-disaster buildback regulations found in § 34-3238.

(b) If a nonconforming hotel/motel is being replaced by a multiple-family building, the existing number of guest units cannot be used as the basis for rebuilding more dwelling units than are permitted on undeveloped land by the Fort Myers Beach Comprehensive Plan. The equivalency factors in § 34-1803 are not applicable to replacement of an existing hotel/motel with a new multiple-family building.

Sec. 34-1807. Conversions of existing buildings.

(a) Any hotel or motel proposing to convert its guest units to timeshare units or to a hotel condominium must comply with § 34-636(c).

(b) Any hotel or motel proposing to convert its guest units to timeshare or dwelling units, or any residential building proposing to convert its dwelling units to timeshare or hotel/motel guest units, will be required to comply with density limitations of the Fort Myers Beach Comprehensive Plan, all applicable parking regulations, and all other regulations of this code including equivalency factors that affect the allowable number of hotel/motel guest units. proposed use. If the existing hotel/motel, timeshare, or residential building being converted exceeds the density or intensity limits of the comprehensive plan or this code, the conversion must use the pre-disaster buildback regulations found in § 34-3237 or the post-disaster buildback regulations found in § 34-3238 in order to rebuild at up to the existing density or intensity. Interior square footage, as defined in § 34-3238(2)d. for residential and in § 34-3238(2)e for hotel/motel and timeshare, may be exchanged during this process on square-foot for square-foot basis.

ORDINANCE No. 07-04

AN ORDINANCE AMENDING CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES”; AMENDING SECTION 34-2 “DEFINITIONS”; AMENDING SECTION 34-621 “ALLOWABLE USES OF LAND DESCRIBED” INCLUDING AMENDMENTS TO TABLE 1 “LAND USES ASSIGNED TO USE GROUPS AND SUB-GROUPS”; AMENDING SECTION 34-636 “PARCELIZATION OR SUBDIVISION OF EXISTING BUILDINGS”; AMENDING SECTION 34-1801 “DEFINITIONS”; AMENDING SECTION 34-1806 “REPLACING A NONCONFORMING HOTEL/MOTEL”; AMENDING SECTION 34-1807 “CONVERSIONS”; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. AUTHORITY. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. ADOPTION OF AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE. Chapter 34 of the Town of Fort Myers Beach land development code is titled “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES.” Chapter 34 is hereby amended as shown in Exhibit A. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 34:

- Sec. 34-2. Definitions.
- Sec. 34-621. Allowable uses of land described.
- Sec. 34-636. Parcelization or subdivision of existing buildings.
- Sec. 34-1801. Definitions and general requirements.
- Sec. 34-1806. Replacing a nonconforming hotel/motel.
- Sec. 34-1807. Conversions of existing buildings.

SECTION 3. PARCELIZATION. Anything in Chapter 34 of the Land Development Code notwithstanding, a change in the nature or form of the ownership of any property or properties, within any zoning or land use category, shall not in and of itself constitute parcelization of such property or properties or development thereof necessitating the approval thereof pursuant to the provisions of the Land Development Code. The provisions hereof shall supercede all provisions of Charter 34 of the Land Development Code inconsistent herewith.

SECTION 4. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law, or contrary to the policy of express law although not expressly prohibited, or against public policy, or for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way shall affect the validity of all other provisions of this ordinance.

SECTION 5. EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Meador and seconded by Council Member Shenko and, upon being put to a vote, the result was as follows:

Mayor Dennis Boback	<u>aye</u>
Vice-Mayor Larry Kiker	<u>aye</u>
Herb Acken	<u>aye</u>
Charles Meador, Jr.	<u>aye</u>
Bill Shenko, Jr.	<u>aye</u>

DULY PASSED AND ENACTED this 11th day of February, 2008.

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Michelle Mayher, Town Clerk

By: _____
Dennis Boback, Mayor

Approved as to form by:

Anne Dalton, Town Attorney

EXHIBIT A

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 34 — ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

ARTICLE I. IN GENERAL

Sec. 34-2. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates a different meaning:

Bed-and-breakfast inn means a public lodging establishment with nine or fewer guest units that serves breakfast to overnight guests. A bed-and-breakfast inn may be located in a single building or in a cluster of separate buildings. See division 19 of article IV of this chapter.

Dwelling unit means a room or rooms connected together, which could constitute a separate, independent housekeeping establishment for a family, for owner occupancy, or for rental or lease on a weekly, monthly, or longer basis as specified in this code for various zoning districts, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing sleeping and sanitary facilities ~~and a kitchen~~. The term “dwelling unit” shall not include rooms in certain assisted living or continuing care facilities (see § 34-1415) or in lawful accessory apartments in owner-occupied homes (see § 34-1178(d)). See also Guest unit and Living unit.

Guest unit means a room or group of rooms in a hotel/motel or bed-and-breakfast inn that are designed to be used as temporary accommodations for one or more people traveling together. All guest units provide for sleeping and sanitation, although sanitation may be provided through shared bathrooms. Guest units may be equipped with a partial or full kitchen. See division 19 of article IV of this chapter.

Hotel/motel means a building, or group of buildings on the same premises and under single control, which are kept, used, maintained or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests for periods of one day or longer. See division 19 of article IV of this chapter.

Living unit means any temporary or permanent unit used for human habitation. See Dwelling unit and Guest unit.

Parcelization means dividing a given unit of real property into multiple parcels, units, or fractions. Examples of parcelization include, but are not limited to, divisions of land, fractional or timeshare units for specific periods of time, condominiums, and cooperatives.

Resort means a mixed-use facility that accommodates transient guests or vacationers as well as longer-term residents. Resorts contain at least one hotel/motel and at least 50 total units, which may include a combination of dwelling units; and guest units and may also include timeshare units, and provide food service, outdoor recreational activities, and/or conference facilities for their guests.

Timeshare unit means any dwelling unit, guest unit, or living unit for which a timesharing plan, as defined in F.S. ch. 721, has been established and documented. See § 34-632 for determining density of timeshare units that include “lock-off accommodations.”

Transient guest means any guest registered as provided for in F.S. § 513.01(7), for six months or less.

[no other changes to this section]

**ARTICLE III, DIVISION 2.
ALLOWABLE LAND USES
IN EACH ZONING DISTRICT**

Sec. 34-621. Allowable uses of land described.

(a) *Applicability.* [no changes to this subsection]

(b) *Use tables.* Table 34-1 of this article lists specific uses followed by a symbol indicating whether the use is permitted by right (P), special exception (SE), administrative approval (AA), existing only (EO), or temporary use permit (TP). In all instances, unless specifically noted to the contrary, the symbols used in the use regulations tables shall have the following meaning:

There are no changes to the text of this section; see the following underlined changes to Table 34-1:

- “RESIDENTIAL OPEN” category: add immediately below “Timeshare units”:
“(provided these units qualify as dwelling units and meet residential density levels in § 34-632)”
- “LODGING OPEN” category:
 - delete “or guest unit” from “Rental of any permitted dwelling unit ~~or guest unit~~ for periods of one day or longer”
 - add “Timeshare units” as a permitted principal use

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p.1 of 2)

	<i>Residential</i>		<i>Lodging</i>		<i>Office</i>		
Restricted (R)	Community residential home	P	Rental of any permitted dwelling unit to a single family during any one-month period, with a minimum stay of one week (see §§ 34-2391-2410 for rules and exceptions)	P			Restricted (R)
	Dwelling unit, single-family	P					
	Home care facility	P					
	AS ACCESSORY USES:		AS ACCESSORY USES:		AS ACCESSORY USES:		
	Accessory apartment (1) (see § 34-1177)	SE			Home occupation (no outside help)	P	
	Accessory apartment (see § 34-1178)	EO			Home occupation (with outside help)	A	
	Residential accessory uses	P					
Temporary mobile home (§ 34-3046)	TP						
Limited (L) <i>(plus R)</i>	Dwelling unit: two-family (1) live/work (see § 34-1773)	P SE	Rental of any permitted dwelling unit to a single family for periods of one week or longer (see §§ 34-2391-2410 for rules)	P			Limited (L) <i>(plus R)</i>
	Mobile home or RV park (VILLAGE district only, as restricted in § 34-694)	EO	Bed-and-breakfast inn (see § 34-1801)	SE			
	AS ACCESSORY USES:		AS ACCESSORY USES:		AS ACCESSORY USES:		
	Accessory apartment (1) (see § 34-1177)	P	On-premises consumption of alcoholic beverages (see division 5 of article IV)	AA/ SE	Administrative office	P	
Open (O) <i>(plus R & L uses)</i>	Assisted living facility (see § 34-1411)	P	Bed-and-breakfast inn (see § 34-1801)	P	Automobile rental	SE	Open (O) <i>(plus R & L uses)</i>
	Dwelling unit: multiple-family live/work (see § 34-1773)	P P	Hotel/motel (see § 34-1801)	P	Health care facility	P	
	Rooming house	P	Rental of any permitted dwelling unit or guest unit for periods of one day or longer	P	Offices, general or medical	P	
	Timeshare units <u>(provided these units qualify as dwelling units and meet residential density levels in § 34-632)</u>	P	Resorts	P	Personal services	P	
	AS ACCESSORY USES:		AS ACCESSORY USES:		AS ACCESSORY USES:		
	Golf course	EO	Resort accessory uses	P	Wholesale establishment	SE	
	Recreation facility: private on-site private off-site	P SE	Personal services	P	Commercial accessory uses	P	
	Subordinate commercial uses	P	Subordinate commercial uses (see § 34-3021)	P	Drive-through, Type 1 (2)	P	
					Subordinate commercial uses (see § 34-3021)	P	

(1) Provided density complies with the Fort Myers Beach Comprehensive Plan (see § 34-632).
 (2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the DOWNTOWN zoning district except as provided in § 34-676(f), whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone. See also § 34-620(g)(1) regarding the prohibition on restaurant drive-throughs.

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p. 2 of 2)

	<i>Retail</i>	<i>Marine</i>	<i>Civic</i>	
Restricted (R)			Beach or bay access P Essential services (see § 34-1612(a)) P Hidden path P Park, neighborhood P	Restricted (R)
	AS ACCESSORY USES: ATM P	AS ACCESSORY USES: Dock (for sole use by occupants of principal use) P	AS ACCESSORY USES: Family day care home P	
Limited (plus R) (L)	Dwelling unit: work/live (see § 34-1774) SE Membership organization SE Recreation facilities, commercial SE Parking lot, seasonal (see § 34-2022) TP Temporary uses (see §§ 34-3041–3050) SE AS ACCESSORY USES: On-premises consumption of alcoholic beverages (see §§ 34-1261–1290) AA/SE	Dock (for use by water taxi or water shuttle) P Marina EO/SE Parasailing operations office SE Personal watercraft operations office SE Rental of beach furniture P AS ACCESSORY USES: Dwelling unit, caretaker P Dock (may be leased to non-occupants of principal use) P	Communication tower (see § 34-1441–1550) SE Day care center, adult or child SE Essential service building (see § 34-1612(b)) SE Essential service equipment P Recreation facility: private off-site SE public P Transit terminal SE AS ACCESSORY USES: Dwelling unit, caretaker P Restaurant, accessory to private rec. facilities only SE	Limited (plus R uses) (L)
		Boat dealer P Marina P	Cultural facility SE Day care center, adult or child P Park, community or regional P Parking lot, shared permanent SE Place of worship P Religious facility SE School (see § 34-2381–2383) P Theater SE AS ACCESSORY USES: Helistop SE Restaurant, accessory only to public recreation facilities P Subordinate commercial uses (see § 34-3021) P	
Open (plus R & L uses) (O)	Automobile repair SE Bar or cocktail lounge AA/SE Car wash SE Dwelling unit: work/live (see § 34-1774) P Laundromat P Mini-warehouse SE Parking lot, shared permanent (34-2015(2)b.) SE Personal services P Restaurant (2) P Retail store, small P Retail store, large SE AS ACCESSORY USES: Commercial accessory uses P Drive-through: (2) Type 1 P Type 2 SE Automobile fuel pumps (2) SE			Open (plus R & L uses) (O)

(2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the DOWNTOWN zoning district except as provided in § 34-676(f), whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone. See also § 34-620(g)(1) regarding the prohibition on restaurant drive-throughs.

**ARTICLE III, DIVISION 3.
EXPLANATION OF PROPERTY
DEVELOPMENT REGULATIONS**

Sec. 34-636. Parcelization or subdivision of existing buildings.

(a) **Two-family building.** All of the following requirements must be satisfied before the required limited review development order can be issued for ~~When a building owner proposes further parcelization or subdivision of land in the RC zoning district into separate lots and/or separating two lawfully existing dwelling units into individual parcels, all of the following requirements must be satisfied before the required limited review development order can be issued:~~

- (1) The building cannot exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land and the lots resulting from the subdivision must each conform to the dimensional regulations for lot size in the RC zoning district (see Table 34-3).
- (2) ~~The~~ Existing buildings must do not need to be brought into compliance with all floodplain requirements for new development, as provided in article IV of ch. 6 of this code.
- (3) The entire building must meet the coastal construction requirements that apply to new development structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).
- (4) The individual dwelling units must be separated by walls with ~~not less than~~ at least 1-hour fire resistance rating as defined by the Florida Building Code.
- (5) The development must meet all other requirements of this code, including Table 34-2.

(b) **Multiple-family building.** All of the following requirements must be satisfied before the required limited review development order can be issued for ~~When a building owner proposes further parcelization or subdivision of lawfully existing dwelling units, all of the following requirements must be satisfied before the required development order can be issued:~~

- (1) The number of dwelling units in the existing building may exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, but may not exceed the number of lawfully permitted units. The burden to demonstrate the lawful nature of the units is on the applicant. If the number of dwelling units exceeds the density limitations of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, the interior square footage of the building, as defined in §34-3238(2)d.1., may not be increased, but may be exchanged on a square-foot for square-foot basis to provide larger but fewer dwelling units within the same interior area.
- (2) Existing buildings must do not need to be brought into compliance with all floodplain requirements for new development, as provided in article IV of ch. 6 of this code. Owners of an existing buildings that cannot comply with these requirements may seek to replace their building by obtaining approval for pre-disaster buildback in accordance with § 34-3237.
- (3) The entire building must meet the coastal construction requirements that apply to new development structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).
- (4) The individual dwelling units must be separated by walls with ~~not less than~~ at least 1-hour fire resistance rating as defined by the Florida Building Code.
- (5) The development must meet all other requirements of this code, including Table 34-2.

(c) **Hotels/motels.** The special parcelization requirements in this section that apply to two-family and multiple-family buildings do not apply to hotels/motels that are being parcelized.

**ARTICLE IV, DIVISION 19.
HOTELS, MOTELS, AND
BED-AND-BREAKFAST INNS**

Sec. 34-1801. Definitions and general requirements.

(a) The following definitions from § 34-2 are repeated here for convenience:

- (1) ~~(a)~~ **Bed-and-breakfast inn** means a public lodging establishment with nine or fewer guest units that serves breakfast to overnight guests. A bed-and-breakfast inn may be located in a single building or in a cluster of separate buildings.;
- (2) ~~(b)~~ **Guest unit** means a room or group of rooms in a hotel/motel or bed-and-breakfast inn that are designed to be used as temporary accommodations for one or more people traveling together. All guest units provide for sleeping and sanitation, although sanitation may be provided through shared bathrooms. Guest units may be equipped with partial or full kitchens.
- (3) ~~(c)~~ **Hotel/motel** means a building, or group of buildings on the same premises and under single control, which are kept, used, maintained, or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests for periods of one day or longer.
- (4) ~~(d)~~ **Lock-off accommodations** means a single guest unit or living unit designed in such a manner that at least one room and a bathroom can be physically locked off from the main unit and occupied as a separate unit. Each portion may have a separate outside entry or share a common foyer with separate lockable interior doors, or may share a lockable door or doors separating the two units.

~~(b)~~ Hotels/motels and bed-and-breakfast inns must:

- (1) Be licensed as transient public lodging establishments registered accordingly with the Florida department of business and professional regulation; and ~~are required to~~
- (2) Pay the levied tourist development tax promulgated by the county; ~~and the state sales tax; and~~
- (3) Provide and staff a front desk during regular business hours to arrange for the rental of guest units; and
- (4) Guest units may not be occupied by the same guest for more than 60 days in any year. "Guest" includes the guest's children and parents." "Year" means the period beginning October 1 and ending September 30 of each successive year.

Hotels/motels and bed-and-breakfast inns which do not meet these requirements will be subject to enforcement action (see § 34-266). ~~are not registered with the department or do not pay the tourist tax.~~ Proposed developments that will not meet these requirements will not be approved as hotels/motels or bed-and-breakfast inns; if approved instead as multiple-family buildings, they will be subject to the density limitations and property development regulations for multiple-family buildings.

(c) Guest units in new hotels/motels and bed-and-breakfast inns may be sold as timeshare units or as hotel condominiums provided that they meet all requirements of this code for hotels/motels or bed-and-breakfast inns.

(d) Guest units in existing hotels/motels and bed-and-breakfast inns that are being parcelized to timeshare units or hotel condominiums do not need to comply with the special parcelization requirements of § 34-636.

Sec. 34-1806. Replacing a nonconforming hotel/motel.

(a) A nonconforming hotel/motel can be replaced with a new building in one of the following manners:

- (1) In full conformance with all current provisions of this code as they apply to a new hotel/motel on vacant land; or
- (2) In the same manner as provided for enlargements to the various types of nonconforming buildings as provided in § 34-3234; or
- (3) As provided in the pre-disaster buildback regulations found in § 34-3237 or the post-disaster buildback regulations found in § 34-3238.

(b) If a nonconforming hotel/motel is being replaced by a multiple-family building, the existing number of guest units cannot be used as the basis for rebuilding more dwelling units than are permitted on undeveloped land by the Fort Myers Beach Comprehensive Plan. The equivalency factors in § 34-1803 are not applicable to replacement of an existing hotel/motel with a new multiple-family building.

Sec. 34-1807. Conversions of existing buildings.

(a) Any hotel or motel proposing to parcelize its guest units to timeshare units or to a hotel condominium does not need to comply with the special parcelization requirements of § 34-636.

(b) Any hotel or motel proposing to convert its guest units to ~~timeshare or~~ dwelling units, or any residential building proposing to convert its dwelling units to ~~timeshare or~~ hotel/motel guest units, will be required to comply with density limitations of the Fort Myers Beach Comprehensive Plan, all applicable parking regulations, and all other regulations of this code including equivalency factors that affect the allowable number of hotel/motel guest units. ~~proposed use. If the existing hotel/motel, timeshare, or residential building being converted exceeds the density or intensity limits of the comprehensive plan or this code, the conversion must use the pre-disaster buildback regulations found in § 34-3237 or the post-disaster buildback regulations found in § 34-3238 in order to rebuild at up to the existing density or intensity. Interior square footage, as defined in § 34-3238(2)d. for residential and in § 34-3238(2)e for hotel/motel and timeshare, may be exchanged during this process on square-foot for square-foot basis.~~