

1. **Requested Motion:**

Meeting Date: June 5, 2023

First Reading and Public Hearing on proposed Ordinance 23-12 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 4, TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on June 20, 2023 at 9:00 a.m.

Why the action is necessary:

An ordinance requires two Town Council hearings.

What the action accomplishes:

This ordinance will allow lots less than 50 feet wide to have a setback of 6.5 feet. This is a change from 7.5 feet.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

The LPA asked staff to propose a decrease in side setbacks for lots less than 50 feet wide. Staff coordinated with the Fire Department and the Building Department to determine that a 6.5-foot setback would be an option that would not trigger additional building code or fire flow standards. The proposed ordinance before you proposes an amendment to Table 34-3 Dimensional Regulations in Conventional Zoning Districts to allow lots less than 50 feet wide to have a 6.5 foot side setback.

Attachments:

1. 23-12, Ordinance 23-12 re Setbacks for 50' Lots.(146189066.1)-C
2. Side Setback Memo TC1
3. Exhibit A Amended Setback Regulations

Financial Impact:

unknown

6. **Alternative Action**

Request changes and schedule a second hearing.

7. **Management Recommendations:**

Schedule ordinance for a second hearing.

8. **Recommended Approval:**

Sarah Propst, Planning & Zoning
Steve Poposki, Community Development Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk

Created/Initiated - 5/24/2023
Approved - 5/24/2023
Approved - 5/25/2023
Final Approval - 5/26/2023

ORDINANCE NO. 23-12

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE III., DIVISION 4, TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS; 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 ("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 that redevelopment of the Town, following Hurricane Ian requires evaluation and updates to the Fort Myers Beach Land Development Code ("LDC"); and

WHEREAS, the Town Council desires to update the LDC to clarify, improve and create consistency among sections; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on May 9, 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., Division 4, Table 34-3 "Dimensional Regulations in Conventional Zoning Districts" of the LDC; and

WHEREAS, on June 5, 2023, the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on June 20, 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 4, Table 34-3 Dimensional Regulations in Conventional Zoning Districts is hereby amended to read as found in attached Exhibit A –

Amended Setback Regulations.

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

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

ADOPTED this 20th day of June 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

This Ordinance was filed in the Office of the Town Clerk on this ____ day of June 2023.

Exhibits

Exhibit A – Amended Setback Regulations



Town of Fort Myers Beach COMMUNITY DEVELOPMENT DEPARTMENT

To: Town Council
From: Sarah Propst, Community Development
Date: June 5, 2023
Re: Setbacks for lots less than 50 feet wide

BACKGROUND

The LPA asked that staff provide some options for quick fixes to codes, to resolve unnecessary conflicts. One item that was raised as an issue, at a previous LPA hearing, is reconstruction of homes on parallelogram lots. Along with the parallelogram lot ordinance, the LPA asked staff to recommend, to Council, a side setback decrease to 6.5 feet for lots less than 50 feet wide.

Originally the LPA had been interested in a 5-foot setback for lots less than 50 feet wide, however, input from the Fire Department and the Building Department about the code modification to 5 feet raised concerns. The Fire Department stated it was important to ensure that adequate fire flow existed in these neighborhoods to protect the neighborhood in the instance of a fire. The Building Department was concerned that the allowed three-foot overhang would result in projections less than 40 inches from the property line, that are required to be fire rated.

Due to these concerns, the LPA recommended an ordinance to amend the side setback requirement for lots less than 50 feet wide to be decreased to 6.5 feet.

REQUESTED FEEDBACK

The attached ordinance reduces the side setbacks for lots less than 50 feet wide to 6.5 feet. This ordinance change will not require an amendment to any other code sections. Please provide staff with any recommendation and schedule a second hearing

EXHIBITS

Exhibit A- Proposed Amendments to the Dimensional Requirements Table 34-3

Table 34-3— Dimensional Regulations in Conventional Zoning Districts														
	street	side - waterfront lot	side - non-waterfront	rear	water body (1)	Gulf of Mexico (2)	area	width	depth	ratio	percentage		feet	stories
ZONING DISTRICT	Setbacks (see § 34-638 for explanations and exceptions)						Lot size (see § 34-637 for explanations and exceptions)			F.A.R. §34-633	Building Coverage § 34-634	Density § 34-632	Height (see § 34-631)	
<i>RS Residential Single-family</i>	25(8)	<u>6.5, 7.5 or 10</u> (9)	<u>6.5, 7.5 or 10</u> (9)	20	25	50	7,500	75	100	-	40%	(3), (4)	30	3
<i>RC Residential Conservation</i>	25(9)	<u>6.5, 7.5 or 10</u> (9)	<u>6.5, 7.5 or 10</u> (9)	20	25	50	4,000	45	80	-	40%	(3), (4), (5)	30	3
<i>RM Residential Multifamily</i>	25(8)	20 (6)	20 (6)	20	25	50	7,500	75	100	1.2	-/	(3), (4), (5)	35	3

<i>CR Commercial Resort</i>	10	20	15	20	25	50	20,000	100	100	1.2	-	(3)	30	3
<i>CM Commercial Marina</i>	20	20	20	20	0	50	20,000	100	100	1.0	-	-	35	3
<i>CO Commercial Office</i>	10	10	7	20	25	50	7,500	75	100	1.2	-	(3), (4), (5)	30	3
<i>Santos</i>	10	7	5	20	25	50	5,000	50	100	0.6	-	(3), (4), (5)	25	3
<i>IN Institutional</i>	20	10	7	20	25	50	7,500	75	100	0.8	-	(3)	35	3
<i>CF Community Facilities</i>	20	15	10	20	25	50	N/A	N/A	N/A	0.1	-	(3)	35	3
<i>BB Bay Beach</i>	— see § 34-651(b) —													
<i>EC Environmentally Critical</i>	20	25	-	25	20	50	(7)	N/A	N/A	0.01	-	(3), (7)	25	2

Note (1): An additional wetland buffer is required for new development; see § 34-638(c). Note (2): See § 34-638(d)(3)a.

Note (3): Maximum densities are established by the Fort Myers Beach Comprehensive Plan; see Section 34-632

Note (4): Accessory apartments are allowed in owner-occupied homes under certain conditions; see Section 34-1178.

Note (5): A second dwelling unit or accessory apartment may be allowed on larger lots; for details, see Section 34-632, 34-1177, and 34-1178

Note (6): Single-family and two-family homes in the RM zoning district must maintain a 6.5-foot side setback for lots less than 50 feet wide, 7.5-foot side setback for lots 50 feet wide up to 75 feet wide, and 10 feet for lots wider than 75 feet.

Note (7): See Section 34-652(e)(3).

Note (8): Maximum 65 feet of house may be built to the 25-foot front setback. Any house frontage exceeding 65 feet in length shall be subject to additional setbacks from the street property line. See Section 34-638(d)(5)a.

Note (9): Each side setback shall be 6.5 feet for lots less than 50 feet wide, 7.5 feet for lots 50 feet wide to 75 feet ~~or less~~ wide, and 10 feet for lots wider than 75 feet.