

1. Requested Motion:

Meeting Date: December 2, 2013

To introduce the Ordinance 13-10, Prohibition of Elevated Pools and set the hearing date for December 16th at 6:30PM.

Why the action is necessary:

On October 21st, Town Council approved Resolution 13-26 declaring "Zoning in Progress" with regard to regulations for elevated pools. This Ordinance prohibits elevated pools until such time as regulations can be adopted to more effectively regulate them.

What the action accomplishes:

Prohibits the development of pools elevated above the crown of the adjacent roadway.

2. Agenda:

- Consent
- Administrative
- Public Hearing

3. Requirement/Purpose:

- Resolution
- Ordinance
- Other Special Events Permit

4. Submitter of Information:

- Council
- Town Staff – Com. Dev.
- Town Attorney

5. Background:

On October 21st, Town Council approved Resolution 13-26 declaring "Zoning in Progress" with regard to regulations for elevated pools. On November 12, 2013, the LPA recommended approval of the proposed Ordinance, as shown on pages 5 & 6 of the draft LPA minutes.

Exhibits

- Tab a – Draft Town Council Ordinance 13-10
- Tab b – LPA Resolution 2013-022
- Tab c – Draft LPA Minutes of November 12, 2013
- Tab d – Resolution 13-26, Zoning in Progress

6. Alternative Action:

7. Management Recommendations:

Set the hearing date for Ordinance 13-10 for December 16, 2013.

8. Recommended Approval:

| Town Manager | Town Attorney | Finance Director | Public Works Director | Community Development Director | Park & Recreation Director | Town Clerk |
|---|---------------|------------------|-----------------------|--|----------------------------|------------|
|  | | | |  | | |

9. Council Action:

- Approved
- Denied
- Deferred
- Other

Town of Fort Myers Beach
ORDINANCE NO. 13-10

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE IV, DIVISION 2, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ACCESSORY USES, BUILDINGS, AND STRUCTURES;" AMENDING SECTION 34-1173, "DEVELOPMENT REGULATIONS;" ADDING A NEW SUBSECTION (3), "HEIGHT" TO PROVIDE THAT ACCESSORY STRUCTURES MUST COMPLY WITH THE HEIGHT LIMITATIONS FOR PRINCIPAL STRUCTURES AND PROVIDING THAT SWIMMING POOLS AND SWIMMING POOL DECKS CANNOT BE HIGHER THAN THE CROWN OF THE ADJACENT ROADWAY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

Section 1. 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 Town of Fort Myers Beach Land Development Code. Chapter 34, Article IV, Division 2, Section 34-1173 of the Town of Fort Myers Beach Land Development Code is hereby amended as set forth in Exhibit "A," attached hereto and incorporated herein by reference. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with strikethroughs. Existing language being retained is shown without underlining or strikethrough.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

Section 4. Effective Date. This Ordinance shall be effective immediately upon 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:

| | | | |
|--------------------------|---------|-------------|---------|
| Alan Mandel, Mayor | AYE/NAY | Bob Raymond | AYE/NAY |
| Joe Kosinski, Vice Mayor | AYE/NAY | Jo List | AYE/NAY |
| Dan Andre | AYE/NAY | | |

DULY PASSED AND ENACTED by the Council of the Town of Fort Myers Beach, Florida, this _____ day of _____, 2013.

ATTEST:

TOWN OF FORT MYERS BEACH

BY: _____
Michelle D. Mayher, Town Clerk

BY: _____
Alan Mandel, Mayor

Approved as to legal sufficiency by:

Fowler White Boggs, Town Attorney

EXHIBIT "A"

Sec. 34-1173. Development regulations.

(a) Unless specifically indicated to the contrary, accessory uses and related buildings and structures that are customarily recognized as clearly incidental and subordinate to the principal use of the property are permitted by right when located on the same lot or parcel and in the same zoning category as the principal use, provided that:

- (1) Uses that are listed separately on Table 34-1 of this code, such as drive-throughs and automobile fuel pumps, are not accessory uses and are permitted only in zoning districts where they are explicitly identified in Tables 34-1 and 34-2. However, this limitation does not apply to uses that are explicitly listed in the definitions of residential, commercial, or resort accessory uses.
- (2) All uses, buildings, and structures must comply with all applicable development regulations and building codes.
- (3) Accessory buildings or structures may be built concurrently with a principal building or structure but, except as provided herein, no accessory use, building, or structure shall be commenced, erected, placed, or moved onto a lot or parcel prior to the principal use, building, or structure. Exceptions are as follows:
 - a. Fences or walls when in compliance with division 17 of this article.
 - b. Seawalls or retaining walls (see § 26-43(a)).
 - c. Docks accessory to residential uses (see § 26-43(a)). Only permitted if the lot meets the minimum lot size and dimensions required for a principal use.

(b) ***Attachment to principal building.*** Authorized accessory buildings or structures may be erected as part of the principal building or may be connected to it by a roofed porch, patio, or breezeway, or similar structure, or they may be completely detached, provided that:

- (1) Any accessory building or structure which is structurally a part of the principal building shall comply in all respects with the regulations for a principal building.
- (2) Any accessory building or structure not structurally made a part of the principal building shall comply with the location requirements set forth in § 34-1174.

(c) ***Height.*** Accessory structures shall comply with the height limitations for principal structures, provided, however, that in no event shall an accessory structure exceed the height of a principal structure located on the same lot or parcel. For swimming pools, whether the swimming pool is attached to the principal structure as part of the principal structure or is a freestanding accessory structure, the height of the swimming pool and swimming pool deck shall be no higher than the height of the crown of the adjacent roadway.

RESOLUTION OF THE LOCAL PLANNING AGENCY OF
THE TOWN OF FORT MYERS BEACH FLORIDA
RESOLUTION NUMBER 2013-022
Prohibiting Elevated Pools Ordinance

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Beach Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the town Council; and

WHEREAS, following proper notice and as required under Florida Statute and the LDC, the LPA conducted a public hearing on November 12, 2013, to consider a proposed Town Ordinance amending the LDC with regard to Prohibition of Elevated Pools, specifically amending LDC Sec. 34-1173, adopting a new subsection C prohibiting elevated pools built higher than the height of the crown of the adjacent roadway; and

WHEREAS, a copy of the proposed Ordinance 13- is attached hereto as Exhibit A and is hereby incorporated by reference.

NOW THEREFORE BE IT RESOLVED, that the LPA recommends that the Town Council of the Town of Fort Myers Beach **APPROVE** and adopt a Town Ordinance amending the LDC with regard to Accessory Structures, as set forth in the Ordinance 13- attached as Exhibit A.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member Bodenhafer and seconded by LPA Member Kakatsch, and upon being put to a vote, the result was as follows:

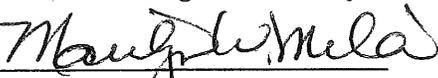
| | | | |
|------------------|-----|--------------------------|-----|
| Hank Zuba, Chair | AYE | Joanne Champ, Vice Chair | AYE |
| Chuck Bodenhafer | AYE | Al Durrett | AYE |
| John Kakatsch | AYE | Jane Plummer | AYE |
| Jim Steele | AYE | | |

DULY PASSED AND ADOPTED THIS **12th** day of **NOVEMBER, 2013**.

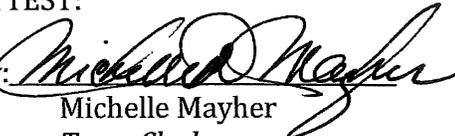
Local Planning Agency of the Town of Fort Myers Beach

By: 
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

By: 
Fowler White Boggs, P.A.
LPA Attorney

ATTEST:

By: 
Michelle Mayher
Town Clerk

Town of Fort Myers Beach
ORDINANCE NO. 13-

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE IV, DIVISION 2, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ACCESSORY USES, BUILDINGS, AND STRUCTURES;" AMENDING SECTION 34-1173, "DEVELOPMENT REGULATIONS;" ADDING A NEW SUBSECTION (3), "HEIGHT" TO PROVIDE THAT ACCESSORY STRUCTURES MUST COMPLY WITH THE HEIGHT LIMITATIONS FOR PRINCIPAL STRUCTURES AND PROVIDING THAT SWIMMING POOLS AND SWIMMING POOL DECKS CANNOT BE HIGHER THAN THE CROWN OF THE ADJACENT ROADWAY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

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

Section 1. 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 Town of Fort Myers Beach Land Development Code. Chapter 34, Article IV, Division 2, Section 34-1173 of the Town of Fort Myers Beach Land Development Code is hereby amended as set forth in Exhibit "A," attached hereto and incorporated herein by reference. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with strikethroughs. Existing language being retained is shown without underlining or strikethrough.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.

Section 4. Effective Date. This Ordinance shall be effective immediately upon 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:

Alan Mandel, Mayor
Joe Kosinski, Vice Mayor
Dan Andre

Bob Raymond
Jo List

Local Planning Agency of the Town of Fort Myers Beach

By: _____
Hank Zuba, LPA Chair

Approved as to legal sufficiency:

ATTEST:

By: _____
Fowler White Boggs, P.A.
LPA Attorney

By: _____
Michelle Mayher
Town Clerk

EXHIBIT "A"

Sec. 34-1173. Development regulations.

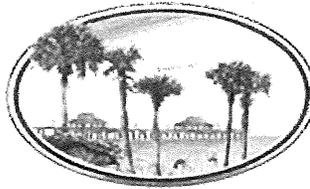
(a) Unless specifically indicated to the contrary, accessory uses and related buildings and structures that are customarily recognized as clearly incidental and subordinate to the principal use of the property are permitted by right when located on the same lot or parcel and in the same zoning category as the principal use, provided that:

- (1) Uses that are listed separately on Table 34-1 of this code, such as drive-throughs and automobile fuel pumps, are not accessory uses and are permitted only in zoning districts where they are explicitly identified in Tables 34-1 and 34-2. However, this limitation does not apply to uses that are explicitly listed in the definitions of residential, commercial, or resort accessory uses.
- (2) All uses, buildings, and structures must comply with all applicable development regulations and building codes.
- (3) Accessory buildings or structures may be built concurrently with a principal building or structure but, except as provided herein, no accessory use, building, or structure shall be commenced, erected, placed, or moved onto a lot or parcel prior to the principal use, building, or structure. Exceptions are as follows:
 - a. Fences or walls when in compliance with division 17 of this article.
 - b. Seawalls or retaining walls (see § 26-43(a)).
 - c. Docks accessory to residential uses (see § 26-43(a)). Only permitted if the lot meets the minimum lot size and dimensions required for a principal use.

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- (1) Any accessory building or structure which is structurally a part of the principal building shall comply in all respects with the regulations for a principal building.
- (2) Any accessory building or structure not structurally made a part of the principal building shall comply with the location requirements set forth in § 34-1174.

(c) ***Height.*** Accessory structures shall comply with the height limitations for principal structures, provided, however, that in no event shall an accessory structure exceed the height of a principal structure located on the same lot or parcel. For swimming pools, whether the swimming pool is attached to the principal structure as part of the principal structure or is a freestanding accessory structure, the height of the swimming pool and swimming pool deck shall be no higher than the height of the crown of the adjacent roadway.



**FORT MYERS BEACH
LOCAL PLANNING AGENCY (LPA)
MINUTES**

Town Hall – Council Chambers
2523 Estero Boulevard
Fort Myers Beach, Florida
Tuesday, November 12, 2013

I. CALL TO ORDER

Meeting was called to order at 9:01 a.m. by Chair Zuba; other members present:

Chuck Bodenhafer
Al Durrett
John Kakatsch
Jane Plummer
Joanne Shamp
James Steele
Hank Zuba

LPA Attorney: Marilyn Miller
Staff Present: Walter Fluegel, Community Development Director
Leslee Dulmer, Zoning Coordinator
Josh Overmyer, Planning Coordinator

II. PLEDGE OF ALLEGIANCE

III. INVOCATION

IV. MINUTES

A. Minutes of October 8, 2013

MOTION: Ms. Shamp moved to approve the Minutes for October 8, 2013; second by Mr. Bodenhafer.

Vice Chair Shamp requested her comments on Page 5 be changed to: “Vice Chair Shamp explained the basis for her agreement with the concept of an overlay; how she viewed all short-term and long-term rentals as ‘sleeping units’; her belief that noise levels ~~needed~~ should not be elevated ~~to be consistent~~; commented on the compatibility of communities cited in the Review of Various Noise and Entertainment Regulations for other communities and the hours of entertainment, and supported noise measurement from the property line...”

Motion maker and second agreed with the amendment.

VOTE: Motion approved, 7-0.

V. PUBLIC HEARING

A. DCI2012-0003 Lighthouse Resort CPD Amendment

Chair Zuba opened the Public Hearing.

LPA Attorney Miller swore in the witnesses.

Attorney Beverly Grady, authorized agent for Lighthouse Resort, Inc., explained how when the Applicant appeared before Town Council that it was realized there was an additional deviation that needed to come back to the LPA. She requested an additional deviation from LDC Sec. 30-154(a), the requirement for illumination of letters through an opaque background to allow the existing internally illuminated signs to remain (Signs A, B, C, & D). She requested approval of the Applicant’s request and staff’s recommendation.

Town Attorney Miller pointed out that under the Town’s current sign ordinance back-lit signs were not permitted; and that staff was recommending approval. She suggested the LPA might want to consider limiting it to these particular signs and if the signs were replaced, that the back-lit sign would no longer be permitted.

Planning Coordinator Overmyer noted the Town Attorney’s suggestion was included in the staff memo as a recommended condition of approval.

Planning Coordinator Overmyer presented comments for DCI2012-0003 Lighthouse Resort CPD Amendment (Sign Deviations), deviation from LDC Sec. 30-154(a), the requirement for illumination of letters through an opaque background to allow the existing internally illuminated signs to remain on behalf of the Town of Fort Myers Beach. He reviewed the deviation requested:

- Deviation #17 – relief from LDC Sec. 34-154(a) for internal illumination of the sign faces to remain as existing, where they would otherwise be required to emit light only from the letters and symbols of the sign face; staff recommended **approval** of this deviation.

Vice Chair Shamp did not feel the request was for a *de minimis* variance, and questioned why staff did not recommend that the Applicant “*block out the background and allow light to shine through the letters and the symbols*”.

Planning Coordinator Overmyer explained how the Applicant’s request was for a deviation and not a variance.

Chair Zuba questioned if approval would set precedent.

Planning Coordinator Overmyer noted the subject property was a CPD; and that the Town Council had approved all the other requested deviations for the subject property.

Community Development Director Fluegel described what he believed could be one other instance where this had been allowed (i.e. variance at the Beach Theater).

Discussion was held concerning the Applicant’s spot-lit and back-lit signage; and problems with lighting shining up.

Mr. Kolar, Applicant, stated if any of the subject signage had lights shining up that he would make sure that was fixed and change them to lights shining downward on the sign.

Public Comment opened.

No speakers.

Public Comment closed.

Vice Chair Shamp discussed her belief that the request was not the *de minimis*.

Ms. Plummer noted the existing signage was part of a CPD.

Town Attorney Miller pointed out the original CPD did not address signage.

Ms. Grady indicated that the original CPD did not depict the height, the area or the back-lit situation, just the location.

MOTION: Vice Chair Shamp moved that the LPA recommended denial of the Applicant’s request; second by Mr. Kakatsch.

VOTE: Motion denied; 2-5. Messrs. Bodenhafer, Durrett, Steele, and Zuba and Ms. Plummer dissenting.

MOTION: Mr. Steele moved that the LPA recommend approval of the Applicant's request with Condition #18 made by staff; second Mr. Bodenhafer.

VOTE: Motion approved; 5-2. Vice Chair Shamp and Mr. Kakatsch dissenting.

B. Houseboat, LLC

Chair Zuba opened the Public Hearing.

- i. REZ2013-0001
- ii. SEZ2013-0005
- iii. VAR2013-0006

Town Attorney Miller reported she received a communication requesting a continuance of the case.

John Richard, Applicant, requested a continuance to January 14, 2014.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Vice Chair Shamp moved that the LPA approve the Applicant's request to continue the hearing on REZ2013-0001, SEZ2013-0005, and VAR2013-0006 to a date certain of the LPA meeting of January 14, 2014; second Ms. Plummer.

Mr. Steele questioned the Applicant as to why he requested a continuance.

Mr. Richard explained the basis for his request as it pertained to zoning issues.

Discussion was held regarding conventional zoning, CPDs, and master concept plans.

VOTE: Motion approved; 7-0.

C. Rusty's Shipwreck

Chair Zuba opened the Public Hearing.

- i. REZ2013-0002
- ii. SEZ2013-0006
- iii. VAR2013-0007

John Richard, Applicant, requested a continuance to January 14, 2014.

Public Comment opened.

No speakers.

Public Comment closed.

MOTION: Ms. Plummer moved that the LPA approve the Applicant's request to continue the hearing on REZ2013-0002, SEZ2013-0006, and VAR2013-0007 to a date certain of the LPA meeting of January 14, 2014; second Mr. Steele.

VOTE: Motion approved; 7-0.

D. Ordinance 13-XX

AN ORDINANCE AMENDING CHAPTER 34, ARTICLE IV, DIVISION 2, IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, "ACCESSORY USES, BUILDINGS, AND STRUCTURES;" AMENDING SECTION 34-1173, "DEVELOPMENT REGULATIONS;" ADDING A NEW SUBSECTION (3), "HEIGHT" TO PROVIDE THAT ACCESSORY STRUCTURES MUST COMPLY WITH THE HEIGHT LIMITATIONS FOR PRINCIPAL STRUCTURES AND PROVIDING THAT SWIMMING POOLS AND SWIMMING POOL DECKS CANNOT BE HIGHER THAN THE CROWN OF THE ADJACENT ROADWAY, PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Town Attorney Miller described how the Town Council had discussed and taken action on the issue of elevated pools. She reported the Council had approved that no building permits for elevated pools would be issued at this time, and if a person sought an elevated pool permit they would appear before Town Council on a case-by-case basis to request approval. She reviewed the proposed ordinance which was similar to Sanibel's ordinance; and noted how it would prohibit elevated pools until such time when Council had time to review and make a decision on the matter.

Discussion was held concerning the proposed ordinance; 25' waterway setbacks; FEMA regulations; accessory uses and principal structures; 'zoning in progress'; exceptions for certain accessory structures (i.e. non-roofed structures); swimming pools-at-grade; and setbacks for seawalled, artificial, and natural bodies of water properties as they related to elevated pools.

Community Development Director Fluegel reported Town Council would discuss further the topic of elevated pools at a Work Session on November 18th. He explained how staff presented the issue to Council on August 5, 2013, and discussed '*elevated scale*' and view corridors.

Discussion continued regarding the proposed ordinance and FEMA standards related to pools.

Town Attorney suggested the LPA could make a recommendation to Town Council that they consider elevated pools and take into consideration view corridors.

MOTION: Mr. Bodenhafer moved to approve the amendment as written; second by Mr. Kakatsch.

Ms. Plummer questioned if the proposed ordinance included patios, porches, and similar structures.

Community Development Director Fluegel explained if a permit was submitted with a substantially elevated deck, staff would probably request that the application go forward to Council for interpretation.

Discussion was held concerning attached and detached accessory structures; and accessory structures accessible from the house.

Town Attorney Miller suggested changing the proposed ordinance to include “*swimming pools, patios, or decks*”.

Discussion continued regarding attached and detached accessory structures and setback requirements.

VOTE: Motion approved; 7-0.

Public Comment opened.

Robin Thurston, 1010 Estero, questioned if they would be on an upcoming LPA agenda.

Community Development Director Fluegel reviewed the status of the working group for the matter of outdoor displays; and estimated that the topic may come before the LPA in January or February.

Public Comment closed.

Mr. Steele questioned a 90-day delay as it pertained to permits for outdoor displays.

Community Development Director Fluegel discussed his belief that the outdoor display permit was extended to January 1st; and would probably have to go back before Council.

VI. LPA MEMBER ITEMS AND REPORTS

Vice Chair Champ – thanked Mr. Durrett, vendors, and people at Santini Plaza for the Paint the Beach event.

Mr. Durrett – hoped the Friends of the Arts would be able to do more similar events in the future.

Mr. Kakatsch – no items or report.

Mr. Bodenhafer – concurred with Vice Chair Champ.

Mr. Steele – no items or report.

Ms. Plummer - no items or report.

Chair Zuba – questioned the status of the flood insurance matter and the Biggert-Waters NFIP Reform Act and how the LPA could address the issue.

Community Development Director Fluegel discussed staff's concerns regarding flood insurance issues such as but not limited to rates, community rating system, 50% Rule, etc. He noted that staff thought it might be worth investigating an incentive elevation program, and would be interested in having a working session with the LPA.

Discussion was held concerning flood insurance issues; and consensus approved staff to schedule a working session for the LPA on the matter.

Discussion was held regarding who should attend the work session; and staff would check on the availability of Council Chambers for next Tuesday.

Discussion continued regarding FEMA regulations, flood insurance, and home insurance rates.

Consensus approved to change the Work Session from next week to December 3rd.

VII. LPA ATTORNEY ITEMS

LPA Attorney Miller – no items or report.

VIII. COMMUNITY DEVELOPMENT DIRECTOR ITEMS

Community Development Director Fluegel - no items or report.

IX. LPA ACTION ITEM LIST REVIEW

No discussion.

X. ITEMS FOR NEXT MONTH'S AGENDA

No discussion.

XI. PUBLIC COMMENT

None – discussed earlier in the meeting.

XII. ADJOURNMENT

MOTION: Motion by Mr. Kakatsch, seconded by Mr. Steele to adjourn.

VOTE: Motion approved, 7-0.

Meeting adjourned at 10:10 a.m.

Adopted _____ With/Without changes. Motion by _____

Vote: _____

Signature

End of document.

DRAFT

RESOLUTION OF THE TOWN COUNCIL OF THE
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 13-26

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ACKNOWLEDGING THAT THE DEPARTMENT OF COMMUNITY DEVELOPMENT, AT THE DIRECTION OF TOWN COUNCIL, IS DEVELOPING PROPOSED LAND USE REGULATIONS RELATING TO THE PROHIBITION OF ELEVATED SWIMMING POOLS AND THAT SUCH PROPOSED ORDINANCE IS BEING DRAFTED AND WILL BE PROMPTLY SUBMITTED TO THE TOWN LOCAL PLANNING AGENCY (LPA) FOR ITS CONSIDERATION AND RECOMMENDATION; DIRECTING THAT THE LPA PROVIDE RECOMMENDATIONS, AFTER ITS DUE CONSIDERATION, WITH REGARD TO SUCH PROPOSED LAND USE AND DEVELOPMENT REGULATIONS; DECLARING THAT THE DEVELOPMENT OF SUCH REGULATIONS AND THE ZONING PROCESS RELATED THERETO CONSTITUTES "ZONING IN PROGRESS;" DIRECTING THAT PERMITS FOR ELEVATED SWIMMING POOLS NOT BE ISSUED UNTIL THE "ZONING IN PROGRESS" HAS BEEN COMPLETED BY FINAL CONSIDERATION OF SUCH PROPOSED LAND USE AND DEVELOPMENT REGULATIONS BY TOWN COUNCIL; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council has directed that the Department of Community Development develop proposed land use regulations addressing the regulation or prohibition of elevated swimming pools; and

WHEREAS, the Department of Community Development is in the process of preparing a proposed Ordinance addressing elevated swimming pools; and

WHEREAS, the proposed ordinance will be considered by the Town's LPA as required by the Town's land development code; and

WHEREAS, no final consideration or decision can be made by the Town Council except through the legally required and publicly advertised zoning consideration process; and

WHEREAS, the Town Council finds that the issuance of any permits for the construction of elevated swimming pools during this "zoning in progress" is detrimental to the best interests of the citizens of the Town of Fort Myers Beach.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The Town Council hereby determines that it is appropriate and in the best interest of the citizens of the Town of Fort Myers Beach to study, consider and development land use regulation to address and/or prohibit the construction of elevated swimming pools within the Town of Fort Myers Beach. Until such time as the Town Council has an opportunity to consider the proposed land use regulations and the recommendations of staff and the LPA, the issuance of building permits for the construction of elevated swimming pools shall be prohibited.

Section 2. The Town Council hereby declares that the process currently in effect with regard to the development and consideration of land use regulations relating to elevated swimming pools constitutes "zoning in progress."

Section 3. In the event that any person or entity is denied a Development Order, Building Permit or other Town approval as a direct result of the prohibition set forth above, such person or entity may appeal such denial to Town Council. The fee for such appeal is hereby waived. For any appeal that is filed, the City Council shall consider same in a properly noticed meeting and, after due consideration, may authorize the approval of a building permit for an elevated pool upon a finding that such approval is not contrary to the long term goals of this Resolution and is not disadvantageous to the health, safety and welfare of the general public.

Section 4. It is the Town Council's position that this "zoning in progress" constitutes a priority and the timely preparation and processing of proposed land use regulations relating to elevated swimming pools shall be considered a priority by Town Staff and the LPA.

Section 5. Effective Date. This resolution is effective immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Andre and seconded by Council Member List and upon being put to a vote, the result was as follows:

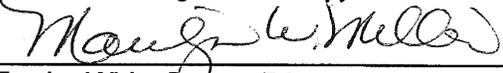
| | |
|----------------------------|-----|
| Alan Mandel, Mayor | aye |
| Joe Kosinski, Vice Mayor | aye |
| Jo List, Councilmember | aye |
| Dan Andre, Councilmember | aye |
| Bob Raymond, Councilmember | aye |

DULY PASSED AND ADOPTED THIS 21st DAY OF OCTOBER, 2013, BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH

By: 
Alan Mandel, Mayor

ATTEST:
By: 
Michelle D. Mayher, Town Clerk

Approved as to legal sufficiency:

By: 
Fowler White Boggs, PA