

ORDINANCE 18-13

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, RELATING TO BOAT DOCKING FACILITIES; MAKING FINDINGS; REVISING SECTION 54-101 OF THE CODE OF ORDINANCES OF THE CITY OF MARCO ISLAND, RELATING TO DEFINITIONS; REVISING SECTION 54-115, RELATING TO ENCROACHMENTS INTO THE RIPARIAN SIDE SETBACK; REVISING LANGUAGE; PROVIDING FOR SEVERABILITY/ INTERPRETATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, this Ordinance is intended to permit encroachments into riparian side setbacks adjacent to waterfront properties; and

WHEREAS, although this Ordinance does not amend the Land Development code, it does amend a development-related regulatory provision in the City Code of Ordinances or what is known as a "land development regulation"; and

WHEREAS, Section 163.3174(4)(c), Florida Statutes, provides:

(4) The local planning agency shall have the general responsibility for the conduct of the comprehensive planning program. Specifically, the local planning agency shall:

* * *

(c) Review proposed land development regulations, land development codes, or amendments thereto, and make recommendations to the governing body as to the consistency of the proposal with the adopted comprehensive plan, or element or portion thereof, when the local planning agency is serving as the land development regulation commission or the local government requires review by both the local planning agency and the land development regulation commission.

(emphasis added); and

WHEREAS, Section 163.3194(2) and (3)(a), Florida Statutes, provides:

(2) After a comprehensive plan for the area, or element or portion thereof, is adopted by the governing body, no land development regulation, land development code, or amendment thereto shall be adopted by the governing body until such regulation, code, or amendment has been referred either to the local planning agency or to a separate land

development regulation commission created pursuant to local ordinance, or to both, for review and recommendation as to the relationship of such proposal to the adopted comprehensive plan, or element or portion thereof. Said recommendation shall be made within a reasonable time, but no later than within 2 months after the time of reference. If a recommendation is not made within the time provided, then the governing body may act on the adoption.

(3)(a) A development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities, and other aspects of development permitted by such order or regulation are compatible with and further the objectives, policies, land uses, and densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

(emphasis added); and

WHEREAS, as required by Sections 163.3174(4)(c) and 163.3194(2) and (3)(a), set forth above, the City's Local Planning Agency must review this Ordinance to determine consistency with the Comprehensive Plan; and

WHEREAS, pursuant to Section 38-40(1), City Code of Ordinances, the Planning Board serves as the City's Local Planning Agency and Land Development Regulation Commission; and

WHEREAS, Goal 1 of the Comprehensive Plan Future Land Use Plan provides:

GOAL: TO ENHANCE MARCO ISLAND'S QUALITY OF LIFE, ENVIRONMENTAL QUALITY, AND TROPICAL SMALL TOWN AND RESORT CHARACTER BY MANAGING GROWTH AND ASSURING A STABLE RESIDENTIAL COMMUNITY WITH SUFFICIENT BUSINESSES TO SERVE THE NEEDS OF RESIDENTS AND VISITORS.

WHEREAS, Goal 1 and Objective 2.3 of the Conservation and coastal Management Element of the Comprehensive Plan provide:

GOAL 1: TO CONTINUE TO PROTECT, PROMOTE, AND ENHANCE THE COASTAL AND NATURAL RESOURCES IN AND AROUND THE MARCO ISLAND COMMUNITY THROUGH PRUDENT MANAGEMENT, PUBLIC EDUCATION, APPROPRIATE REGULATIONS AND

ENFORCEMENT, AND ACTIVE PARTNERSHIPS WITH ALL OTHER INTERESTED PARTIES.

Objective 2.3: Ensure that during the review of any commercial or multi-family project abutting the community's shoreline that resources are prudently utilized to support existing and future water-dependent and water-related uses that will promote public access, public awareness of shoreline issues, and sound environmental design; and

WHEREAS, the Planning Board, sitting as the Local Planning Agency and Land Development Regulation Commission, finds that this Ordinance will protect, promote, and enhance coastal resources through prudent boat docking management, will prudently allow a regulatory system for boat docking facilities on water related uses, and assist in providing for proper residential development adjacent to waterfront areas; and

WHEREAS, this Ordinance is consistent with the Comprehensive Plan and Goal 1 of the Future Land Use Element and Goal 1 and Objective 2.3 of the Conservation and Coastal Management Element in particular; and

WHEREAS, the City Council adopts the findings of the Planning Board, also sitting as the City's Local Planning Agency.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:

SECTION 1. Recitals. Each and all of the foregoing recitals be and the same are hereby incorporated into this Ordinance as if specifically set forth herein.

SECTION 2. Amendment and Adoption. That section 54-101 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 54-101. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

Boatlift means any mechanical structure, including a davit, capable of lifting or raising a vessel clear of the water.

Director means the director of the city department having authority over the implementation and administration of the land development code as determined and appointed from time to time by the city manager.

Live-aboard vessel shall have the same meaning as used in F.S. § 327.02, as may be subsequently modified or amended from time to time.

* * *

Nautical garage is defined in section 30-10 of this Code.

Newspaper of general circulation is defined in section 30-10 of this Code.

Personal watercraft (PWC) means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of power and which is designed to be operated by a person sitting, standing or kneeling on, rather than the conventional manner of sitting or standing inside the vessel.

Personal watercraft (PWC) lift means any mechanical structure capable of lifting or raising a PWC clear of the water.

Rendered. See "Rendition."

Rendition means the issuance of a written order, including approval, approval with conditions, or denial of a determination by the city council, planning board, director, or other administrative official, effective upon the date of signing by the authorized city official of such order or final letter of determination *and* its filing in the records of the city council or planning board, or said director or other administrative official.

Riparian line means an imaginary line beginning at the point at which property lines intersect the mean high water line of a waterway and continuing into the waterway indefinitely. The purpose of the riparian line, as employed by this article, is to provide a point of reference from which to measure setbacks for docking facilities. Riparian lines shall be established according to the following unless contradicted or approved by the state board of trustees of the internal improvement trust fund:

(1) Lots at the end or side end of a waterway with a regular shoreline are established by a line extending from the corner of an end lot and side end lot into the waterway bisecting equidistantly the angle created by the two intersecting lots.

(2) Riparian lines for all other lots should be established by generally accepted methods, taking into consideration the configuration of the shoreline, and allowing for the equitable apportionment of riparian rights. Included, but not limited to, are lines drawn perpendicular to the shoreline for regular (linear) shorelines, or lines drawn perpendicular to the centerline (thread) of the waterway, or perpendicular to the line of deep water (line of navigability or edge of navigable channel) as appropriate for irregular shorelines. No boat docking facility shall be constructed so as to encroach upon the riparian rights of other property owners.

* * *

SECTION 3. Amendment and Adoption. That section 54-115 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 54-115. - Boat dock extensions, protrusion or encroachment into the riparian setback.

(a) Property owners may request a boat dock extension, protrusion or encroachment into the riparian setback to provide for additional length or protrusion beyond the respective distances specified in section 54-111.

(b) General requirements.

(1) Petitioner must demonstrate justification for extension, protrusion or encroachment into the riparian setback requested and/or special conditions relative to the subject property, in addition to compliance with applicable review criteria.

(2) Notice of public hearing(s) shall be provided to all property owners within 300 feet of the subject petition. In the case of residential, multifamily, commercial, PUD and/or DRI extension requests, the petitioner shall be responsible for, and bear such costs for, all public notification requirements, including newspaper advertisements in a newspaper of general circulation and mailing by first class U.S. mail of public notices to all property owners within 300 feet. Proof of advertising and mailing shall be presented to city staff prior to placing the subject boat dock extension on the planning board and city council agendas.

(3) Required public hearing(s) will not be scheduled until the boat dock extension, protrusion or encroachment into the riparian setback application package has been deemed by staff to be complete. The following items must be included with a boat dock extension, protrusion or encroachment into the riparian setback petition submittal:

a. Completed application, including signed and notarized owner/agent affidavit.

b. A site plan, drawn to scale, illustrating each of the following:

1. Location map.
2. Lot dimensions of subject property.
3. Riparian line(s).
4. Required boat docking facility setbacks.
5. Configuration and dimensions of proposed boat docking facility, including decking, boatlifts, boat mooring areas, etc.
6. Configuration and dimensions of existing boat docking facility, including decking, boatlifts, boat mooring area, etc., if applicable.
7. Configuration and dimensions of existing boat docking facilities on adjacent properties.

8. Water depth survey, completed by a professional Florida engineer, licensed marine contractor, registered surveyor, or other person deemed to be qualified by the community development director or his designee, using the format attached to the application form provided by the city, if relative to the boat dock extension request.

c. Permit number and certificate of completion date for the original construction of any existing boat docking facility, if applicable.

d. Resolution number and date of previous boat dock extension, protrusion or encroachment into the riparian setback if applicable.

e. Receipt of application fee.

(c) An approval of a boat dock encroachment into the riparian setback, extension, protrusion, or extension, shall be issued in the form of a resolution. In the event a resolution approving a boat dock extension incorporates a site plan, said site

plan shall be binding upon the property. Any deviation from the approved site plan shall require petitioner to make application for a boat dock encroachment into the riparian setback, protrusion, or extension.

(d) Additional length, or protrusion, or encroachment into the riparian setback, beyond the respective distances specified in section 54-111 ~~of this article~~ for boat docking facilities located in any single-family district shall require public notice and a hearing by the planning board, after which the planning board shall render a final decision.

(e) Additional length, or protrusion, or encroachment into the riparian setback beyond the respective distances specified in section 54-111 ~~of this article~~ for boat docking facilities in any multifamily, commercial, PUD, or development of regional impact DRI district shall ~~be~~ require public notice and a hearing by the planning board and the city council ~~acting as the board of zoning appeals~~. The planning board shall consider the application and make a recommendation to the city council ~~board of zoning appeals~~ for approval, approval with conditions, or denial based upon the criteria set forth herein. The city council ~~board of zoning appeals~~ shall consider the application and recommendation from the planning board and shall make a final decision for approval, approval with conditions, or denial based on the criteria set forth herein.

(f) The planning board and city council, ~~acting as the board of zoning appeals,~~ shall base its decision for approval, approval with conditions, or denial, on the following criteria:

(1) Whether or not the proposed boat docking facility meets the other standards set forth in this article.

(2) Whether or not the water depth where the proposed vessel(s) is to be located is sufficient (as a general guide, four feet mean low water is deemed to be sufficient) to allow for safe mooring of the vessel, thereby necessitating the extension, protrusion, or encroachment requested.

(3) Whether there are special conditions related to the subject property or waterway which justify the proposed dimensions and location of the proposed boat docking facility.

(4) Whether or not the proposed boat docking facility and moored vessel(s) protrude greater than twenty-five 25 percent (25%) of the width of the navigable waterway, and whether or not a minimum of fifty 50 percent (50%) of the waterway width between boat docking facilities and moored vessel(s) on the opposite side of the waterway is maintained in order to ensure reasonable waterway width for navigation. This requirement shall only be applicable for extension or protrusion requests.

(5) Whether or not the proposed boat docking facility is of the minimum dimensions necessary in order to adequately secure the moored vessel while providing reasonable access to the boat for routine maintenance without the use of excessive deck area.

(6) Whether or not the proposed boat docking facility is of minimal dimensions and located to minimize the impact of view to the channel by surrounding property owners.

(7) Whether or not the proposed vessel(s) are in excess of fifty 50 percent (50%) of the length of the water frontage on the subject property such that the extension of the boat docking facility may adversely impact the view to the channel by surrounding property owners. In the case of multifamily developments and public marinas,

the ~~fifty~~ 50 percent (50%) provision may be exceeded. This requirement shall only be applicable for extension or protrusion requests.

(8) Whether or not the proposed location and design of the boat docking facility and moored vessel(s) in combination is such that it may infringe upon the use of neighboring properties, including any existing boat docking facilities.

(9) Whether or not the seagrasses are located within 200 feet of the proposed boat docking facility.

(10) Whether or not the proposed dock is subject to the manatee protection requirements set forth in section 54-117.

(g) ~~The planning board and city council acting as the board of zoning appeals~~ may impose conditions upon the approval of an extension, protrusion, or encroachment request which it deems necessary to accomplish the purposes of this article and to protect the safety and welfare of the public. Such conditions may include, but are not limited to, requiring greater side yard setback(s), additional reflectors, reflectors larger than four (4) inches, or prohibiting or restricting the amount of decking on the boat docking facility.

(h) As to any boat dock extension, protrusion, or encroachment into the riparian setback, petition upon which the planning board takes action, any affected property owner may appeal such final action to the city council board of zoning appeals. ~~The city council board of zoning appeals~~ may affirm, affirm with conditions, reverse or reverse with conditions the action of the planning board. Such appeal shall be filed with the city manager within ~~fourteen (14)~~ 14 days of the rendition of the planning board's final decision and said appeal shall be noticed for public hearing with the city council ~~acting as the board of zoning appeals~~ pursuant to the procedures and applicable fees set forth in the land development code. Any appeal to a decision made by the city council shall be quasi-judicial in nature and shall be a de novo application. ~~acting as the board of zoning appeals must be made to the circuit court.~~

(i) Changes and/or amendments to existing boat dock extension approvals only may be approved administratively if the proposed changes do not increase the protrusion into the waterway beyond provisions set forth in subsection 54-111(a), and/or increase the encroachment into the side yard setback beyond the provisions set forth in subsection 54-111(b).

(j) All boat dock extension, protrusion, or riparian setback encroachment, approvals shall be consistent with all regulations contained in chapter 30 of the land development code and the City of Marco Island Comprehensive Plan.

(k) In the event of a conflict between chapter 30 of the land development code or comprehensive plan and chapter 54, the regulations and standards contained in chapter 30 of the land development code shall prevail.

(l) In the event of a conflict between the comprehensive plan and chapter 54, the regulations and standards contained in comprehensive plan shall prevail.

SECTION 4. Severability/Interpretation.

(a) If any term, section, clause, sentence or phrase of this Ordinance is for any reason held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the other or remaining terms, sections, clauses, sentences, or phrases portions of this Ordinance, and this Ordinance

shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

(b) In interpreting this Ordinance, underlined words indicate additions to existing text, and ~~stricken through~~ words include deletions from existing text. Asterisks (* * *) indicate a deletion from the Ordinance of text, which continues to exist in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

SECTION 5. Effective Date. This Ordinance shall be effective immediately upon adoption by the City Council on second reading.


ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 4th day of September 2018.

ATTEST:



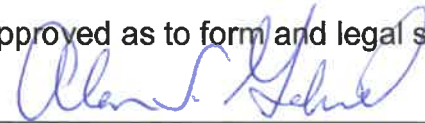
Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 

Jared Grifoni, Chairman

Approved as to form and legal sufficiency:



Alan L. Gabriel, City Attorney