

ORDINANCE 18-09

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, RELATING TO LAND DEVELOPMENT; MAKING FINDINGS; AMENDING SECTION 30-10 BY ADOPTING NEW AND AMENDING AND REPEALING EXISTING DEFINITIONS; REVISING SECTION 30-84 RELATING TO RSF CONDITIONAL USES; REVISING SECTION 30-85 RELATING TO SHEDS IN THE RSF RESIDENTIAL SINGLE-FAMILY ZONING DISTRICT; AMENDING SECTION 30-86 REVISING RSF RESIDENTIAL SINGLE FAMILY ZONING DISTRICT SUPPLEMENTAL STANDARDS; AMENDING SECTION 30-88, RELATING TO GARAGE STRUCTURAL AND SITE DESIGNS IN THE RSF RESIDENTIAL SINGLE FAMILY ZONING DISTRICT; AMENDING SECTIONS 30-286, 30-306, AND 30-326 RELATING TO FENCES IN THE CON CONSERVATION, P PUBLIC, AND CF COMMUNITY FACILITY ZONING DISTRICTS; CREATING NEW SECTION 30-674.1; PROVIDING FOR SITE PLAN WITH A DEVIATION; AMENDING SECTION 30-1002 RELATING TO ACCESSORY BUILDINGS AND STRUCTURES; AMENDING THE WATERFRONT LOT REAR SETBACK FOR POOL SCREEN ENCLOSURES IN ONE AND TWO-FAMILY HOMES; AMENDING SECTION 30-1004 TO PROVIDE SETBACKS FOR LP GAS TANKS, AND GROUND MOUNTED MECHANICAL EQUIPMENT; REVISING SECTION 30-1009 RELATING TO FENCES AND CHAIN LINK FENCES; PROVIDING FOR SEVERABILITY/INTERPRETATION; AND PROVIDING AN EFFECTIVE DATE.

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, 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, Section 30-62(3)d.2., Code of Ordinances of the City of Marco Island, Florida, provides:

(3) *Other proposed amendments.* When pertaining to other proposed amendments of these zoning regulations, the planning board shall consider and study:

* * *

2. The relationship of the proposed amendment to the purposes and objectives of the city's comprehensive plan, with appropriate consideration as to whether the proposed change will further the purposes of these zoning regulations and other city codes, regulations, and actions designed to implement the growth management plan.

(emphasis added); and

WHEREAS, the Comprehensive Plan includes few goals, objectives, or policies which specifically relate to this Ordinance; and

WHEREAS, Future Land Use Element Policy 1.1.6 provides;

Policy 1.1.6: The adopted Land Development Code regulations shall be consistent with the Future Land Use designations and in furtherance of the objective of maintaining a net density of less than four (4) units per acre; and

WHEREAS, this Ordinance is consistent with Future Land Use Element Policy 1.1.6 because the Ordinance maintains and furthers existing Comprehensive Plan goals, objectives, and policies; and

WHEREAS, Future Land Use Element Objective 1.5 provides:

Objective 1.5: The City shall continue to allow essential public facilities and services in all zoning districts to ensure such facilities and/or services can be accommodated and that adopted level-of-service standards are maintained.

WHEREAS, Sections 30-286, 30-306, 30-326, and 30-1009 will allow adequate security fencing for governmentally owned public utilities, thereby furthering and ensuring the provision for essential public services, and this Ordinance is therefore consistent with Future Land Use Element Objective 1.5; and

WHEREAS, Future Land Use Element Policy 1.7.2 provides:

The City will continue to thoroughly and thoroughly [sic] review and revise, as necessary, the list of permitted uses within zoning districts contained in the adopted Land Development Code.

WHEREAS, this Ordinance in Section 30-84, after thoroughly and thoughtfully reviewed has proposed adding recreational vehicles compatible garages in the RSF Residential Single-Family zoning district as a conditional use; and

WHEREAS, Section 30-84 is consistent with the Future Land Use Element Policy 1.7.2; and

WHEREAS, this Ordinance is consistent with the Florida's Community Planning Act, s. 163.3161, *et seq.*, Florida Statutes, and in particular s. 163.3181(1), Florida Statutes, which encourages local governments "to provide effective public participation in the comprehensive planning process and to provide real property owners with notice of all official actions which will regulate the use of their property."; and

WHEREAS, this Ordinance is consistent with the Community Planning Act; and

WHEREAS, the Planning Board, sitting as the City's Local Planning Agency, has determined that the relationship of this Ordinance with the Comprehensive Plan is that it furthers the goals of the Community Planning Act and is consistent with the City of Marco Island Comprehensive Plan; and

WHEREAS, Section 30-62(3)d., Code of Ordinances of the City of Marco Island, Florida, requires that the Planning Board determine the need and justification for a Land Development Code ("LDC") amendment; and

WHEREAS, the justification for this Ordinance is to provide clearer development standards aimed at protecting and preserving developed areas, especially the RSF Residential Single-Family zoning district; and

WHEREAS, the need for this Ordinance is to accommodate certain development standards and use with development trends in the community while protecting the community character of the City; and

WHEREAS, the Planning Board has found that, as a result of the foregoing, this Ordinance will promote the public health, safety, aesthetics, and welfare of the community; 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 30-10 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-10. - Definitions.

* * *

(c) *Definitions enumerated.* The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

Development agreement has the meaning contemplated in chapter 38, article III, of this code of ordinances.

Development order means any order, permit, determination, or action granting, denying, or granting with conditions an application for any ~~final local development order, building permit, temporary use permit, temporary construction and development permit, sign permit, spot survey, electrical permit, plumbing permit, occupational license, boat~~

~~dock permit, HVAC permit, right-of-way permit, construction approval for infrastructure (including water, sewer, grading, paving), approved development of regional impact (DRI), zoning ordinance amendment, comprehensive plan amendment, flood variance, coastal construction control line variance, vegetation removal permits, site development plan approval, subdivision approval (including plats, plans, variances, and amendments), rezoning, PUD amendment, certification, conditional use (provisional use), variance, or any other official action of the city having the effect of permitting development as defined in this code. see s. 163.3164, Florida Statutes.~~

Development permit includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land, including but not limited to any building permit, temporary use permit, temporary construction and development permit, sign permit, spot survey, electrical permit, plumbing permit, occupational license, boat dock permit, HVAC permit, right-of-way permit, construction approval for infrastructure (including water, sewer, grading, paving), approved development of regional impact (DRI), zoning ordinance amendment, flood variance, coastal construction control line variance, vegetation removal permit, site development plan approval, site improvement plan approval, subdivision approval (including plats, plans, variances, and amendments), rezoning, PUD amendment, certification, conditional use, or variance. see s. 163.3164, Florida Statutes.

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.

Diseased tree means a tree which is degenerated or damaged to the point where the death of the tree is imminent or to the point where the tree poses a significant hazard to the general public.

* * *

Landscaping, cultivated means any landscaping that is installed, planted, sown, improved by labor, etc., and that is not naturally occurring.

LDC means this land development code.

Level of service (LOS) means an indicator of the extent or degree of service provided by, or proposed to be provided by, a public facility based on and related to the operational characteristics of the public facility, as adopted in the comprehensive plan. LOS shall indicate the capacity per unit of demand for each public facility. (See article X, Concurrency Management.)

* * *

Navigable waterway means any salt or brackish body of water, whether natural or manmade, which is tidal in nature, and is wide enough, deep enough, or free enough from obstructions to be traveled on by vessels and is connected to another navigable waterway. A navigable waterway does not include any portion of a cut-in boat slip created on a privately owned residential property; provided that said cut-in slip will comply with all federal and state

requirements and permits, including, but not limited to the requirements and permits of the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers.

~~NGVD means National Geodetic Vertical Datum, 1929, as established by NOAA, which is adjusted and published from time to time. The most current adjustment shall apply with respect to this code.~~

Nightclub means a commercial eating or drinking establishment where a dance floor and music is provided. The term nightclub may include a bar, restaurant, cocktail lounge, cabaret, or similar establishment.

* * *

Removal means to cut down, dig up, destroy, effectively destroy, or the unlicensed relocation of any tree.

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.

Replatted parent parcel means the resubdivision of a recorded parcel of land through a replat, to divide the original platted parcel into multiple parcels of land.

* * *

SECTION 3. Amendment and Adoption. That section 30-84 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-84. - Conditional uses.

The following uses are permissible as conditional uses in all the residential single-family residential districts (RSF), subject to the standards and procedures established in the LDC:

- (1) Churches and houses of worship.
- (2) Schools, public and private.
- (3) Guesthouses.

a. Underlying lot(s) must total one acre (43,560 square feet) or more. The living area of a guesthouse shall not be larger than 40 percent of the air-conditioned, enclosed living area (excluding garages, carports, patios, porches, utility areas and the like) of the principal dwelling.

b. A guesthouse shall not be used for commercial purposes, including leasing or renting. Similarly, if a main residence is leased rented, a guesthouse may not be occupied by the property owner.

- (4) Childcare centers and adult day care centers.
- (5) Group care facilities (category I and II) as defined in the land development code.
- (6) Nautical garages which meets the following requirements:

- a. The nautical garage shall consist of a single cut-in boat slip;
- b. The nautical garage and cut-in boat slip does not extend into the side yard and front yard setbacks established for residential single-family waterfront homes pursuant to section 30-85(a) of this code. Seawalls constructed within the above referenced side yard setback will not have any structure, including deadmen and tiebacks below grade or within six (6) foot platted utility easements;
- c. The nautical garage is located beneath the primary structure of the principal residence. Notwithstanding anything contained in this code to the contrary, no portion of the nautical garage structure shall be within the residential single-family principal structure rear yard setback dimensional standard set forth in section 30-85(a), however the cut-in boat slip may be within the rear yard setback;
- d. The nautical garage and cut-in boat slip complies with all federal and state requirements and permits, including, but not limited to the requirements and permits of the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers; provided, that required federal and state permits need not be obtained prior to issuance of the conditional use but must be obtained before commencement of development of the nautical garage and boat slip cut-in, as required by Florida law;
- e. A flushing analysis, utilizing generally accepted hydrodynamic models, of the potential impact of the nautical garage and cut-in boat slip has been performed pursuant to the guidelines of the Florida Department of Environmental Protections (FDEP), requirements of the Florida Statutes, and a water quality certification under the Clean Water Act, 33 U.S.C. s. 1341, has been obtained. The flushing analysis shall demonstrate that flushing of the boat slip cut-in or boat basin meets FDEP standards and, requirements of Florida Statutes and the Clean Water Act;
- f. The nautical garage and cut-in boat slip meets the requirements of section 30-64(3) of this code, with section 30-64(3)b., to also include navigable ingress and egress from the adjacent waterway(s) and section 30-64(3)d. to include the number of, proximity to and location of the proposed nautical garage and cut-in boat slip to other docking facilities, including other nautical garages and their net impact on the adjacent canals and waterways. All other attributes of the property, relating to compatibility with adjacent properties and waterways, shall be considered including but not limited to the size of facility, massing, bulk, engineering of the seawall to assure stability; and
- e. The construction of a nautical garage prohibits the property owner's ability to construct any additional boat lifts, docks, or boat docking facilities with the exception of a marginal dock. In the case of property with a nautical garage and a cut-in boat slip, a lift shall not be permitted as part of a marginal dock. All boats docked in the cut-in slip shall be moored totally within the nautical garage.

(7) Recreational vehicle compatible garage as part of the home structure. At the time of conditional use approval, a concept plan must be submitted by the applicant that depicts the garage door width and height based on the size of the recreational vehicle. The concept plan height and width measurements shall be a condition of the approved conditional use.

SECTION 4. Amendment and Adoption. That section 30-85(b) of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-85. - Dimensional standards and regulations.

* * *

(b) *Accessory structure setbacks.*

(1) Accessory Pursuant to the land development code, accessory structures must be constructed simultaneously with or following the construction of the principal structure.

(2) Freestanding utility storage structures of any type or material are prohibited.

(3) Utility storage structures (sheds) shall be physically attached to, and architecturally integrated into the principal structure. Such attachment may be located below the base flood elevation if devoted solely to storage use.

SECTION 5. Amendment and Adoption. That section 30-86(b) of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-86. - Supplemental standards and regulations.

* * *

(b) *Exceptions to required yards.* Exceptions to required yards are set forth in section 30-1004(a). Every part of every required yard shall be open and unobstructed from 30 inches above the general ground level of the graded lot upward, except as listed below. Such exceptions, when utilized in yards where recorded easements exist, are allowed with the explicit understanding that any structural improvement(s) or vegetation located within a recorded easement are subject to removal, at the owner's sole expense, when authorized entities must enter upon such easement area to repair, improve, reconstruct or make such lawful improvements as deemed necessary.

(1) ~~Sills and other architectural and design treatments shall not project over 12 inches into a required yard.~~

(2) ~~Moveable awnings shall not project over three feet into a required yard.~~

(3) ~~Window-mounted air-conditioning units, chimneys, fireplaces, bay windows, or pilasters shall not project over two feet into a required yard.~~

(4) ~~Wall-mounted, cube mounted, or cantilevered air conditioning units shall not project over two feet into a required side or four feet into the rear yard. Units permitted prior to January 1, 2002, shall not project over four feet into a required side or rear yard.~~

(5) ~~Fire escapes and balconies that are unroofed and unenclosed shall not project over three feet into a required side or rear yard. Staircases shall not project over four feet into any required yard.~~

(6) ~~Hoods, canopies, or roof overhangs shall not project over three feet into a required yard.~~

(7) ~~Fences, walls, privacy walls, vegetative materials, hedges, pool equipment and pad-mounted air conditioners are permitted in required yards, subject to conditions contained herein.~~

(8) ~~Cornices, eaves, or gutters shall not project over three feet into a required yard.~~

- ~~(9) Satellite dishes having a diameter of 18 inches or less which are attached to the principal structure shall not project over three feet into a required side or rear yard.~~
~~(10) Generators shall not project more than four feet into any required yard.~~

* * *

SECTION 6. Amendment and Adoption. That section 30-88 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-88. - Structural and site design guidelines.

Recommended design guidelines have been established to help owners, architects, landscape architects, and builders to become active participants in the development of the community, by encouraging design quality, and by promoting architectural and site design elements that complement and enhance the surrounding built environment. The city shall review and approve all applicable projects for consistency with the following minimum standards. However, in any event, the city may return ~~for revisions~~ building plans for revisions where in the city's judgment, the massing, architectural style, roofline, or other features, or site elements are inconsistent with the intent and purpose of these guidelines.

An appeal may be brought within thirty (30) ~~30~~ days from rendition by the department to the city planning board for recommendation to city council for those cases that cannot be resolved at staff level. Staff shall describe the areas of concern, inconsistencies, and/or departure(s) from this article.

Fees for this appeal process are outlined in the city fees schedule for the appeal of administrative decision.

* * *

(5) Garages.

a. To further emphasize the subordinate role of the garage area to the total structural mass, one of the following shall be required:

1. The width of the garage door(s) shall not exceed ~~45~~ forty-five percent (45%) of the front facing façade. The measurement of the forty-five percent (45%) shall be based on the distance, in linear feet, of the front facing façade;

2. The garage shall be a side-loading garage; ~~or~~

3. The garage shall be setback or set forward a minimum of two (2) ~~at least five feet behind or in front of the plane of the front facade; or~~

4. No garage door shall exceed ten (10) feet above grade.

b. To further enhance street appeal, windows on the garage wall facing the street and extra thick (16-inch) walls at the garage opening are encouraged, but not required for building plan approval.

c. Garages for recreational vehicles shall be granted by conditional use in the RSF zoning district. Garage door height and width shall be determined as part of the conditional use process.

* * *

SECTION 7. Amendment and Adoption. That section 30-286 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-286. - Supplemental standards.

- (a) *Communications towers.* As required in the land development code.
- (b) *Off-street parking.* As required in the land development code.
- (c) *Signage:* As required in the land development code.
- (d) *Fencing.* Coated chain-link fencing is permitted for public parks, public school athletic fields, and governmentally owned utility structures, as provided in section 30-1009(g).

[DRAFTER's COMMENT: This section applies to the CON Conservation zoning district.]

SECTION 8. Amendment and Adoption. That section 30-306 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-306. - Supplemental standards.

- (a) *Maximum off-street parking.* As required in the land development code; provided, however, that the community development director may determine that the required number of spaces is excessive for a specific use based upon an analysis of factors including but not limited to: the number of employees; square footage of the proposed facilities versus those areas in-tented for public use; and customer parking. Landscaping equivalent to a type a buffer shall be substituted in lieu of paved parking with said areas reserved for future parking should the board of county commissioners find that the spaces are needed.
- (b) *Lighting.* Per the city outdoor lighting ordinance.
- (c) *Signs.* As required in the land development code.
- (d) *Fencing.* Coated chain-link fencing is permitted for public parks, public school athletic fields, and governmentally owned utility structures, as provided in section 30-1009(g).

[DRAFTER's COMMENT: This section applies to the P Public Use zoning district.]

SECTION 9. Amendment and Adoption. That section 30-326 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-326. - Supplemental standards.

- (a) *Minimum off-street parking and off-street loading.* As required in the land development code.
- (b) *Landscaping.* As required in the land development code.
- (c) *Lighting.* Per the city outdoor lighting ordinance.
- (d) *Signs.* As required in the land development code.
- (d) *Fencing.* Coated chain-link fencing is permitted for public parks, public school athletic fields, and governmentally owned utility structures, as provided in section 30-1009(g).

[DRAFTER's COMMENT: This section applies to the CF Community Facility zoning district.]

SECTION 10. Amendment and Adoption. That the Code of Ordinances, City of Marco Island, Florida, is hereby amended by adding a section, to be numbered 30-674.1, which section reads as follows:

Sec. 30-674.1 – Redevelopment projects; Site plan with deviations.

(a) Purpose. A site plan with deviations shall provide a means for a redevelopment project to seek dimensional deviations, architectural deviations, and deviations from site features, such as but not limited to, landscaping, parking, and buffers, from the standards established in the LDC when the passing of time has rendered certain existing buildings, structures/infrastructure or site features nonconforming. Structural height deviations are prohibited pursuant to a site plan with deviations as provided by this section.

(b) Applicability. A site plan with deviations may be requested for the redevelopment of a site which meets the criteria for development requiring a site development plan, site development plan amendment, or a site improvement plan, as established in section 30-672. Except for the requested deviations, the site development plan or site improvement plan shall comply with LDC section 30-673. For purposes of this section, "redevelopment" shall mean the renovation, restoration, or remodeling of a building or structure, or required infrastructure, in whole or in part, where the existing buildings, structures, or infrastructure were legally built and installed.

(c) Application. The process and submittal requirements for a site plan with deviations for redevelopment projects application shall be as set forth herein.

(1) Requested deviations shall be clearly delineated and justified in the petition. Project enhancements to offset or minimize the deviations shall be a requirement and be clearly stated. Requested deviations shall include, dependent upon the deviation requested, architectural plans, landscaping plans, and a development site survey. No application shall be deemed to be complete until payment of an application fee as set from time to time by resolution of the city council. All applications shall be made upon a form developed by the director.

(2) Architectural plans subject to the provisions of LDC section 30-674(2) shall submit architectural drawings that are signed and sealed by a licensed architect registered in the State of Florida. The architectural drawings shall be certified to and for reliance by the city.

(3) The site construction plans shall be signed and sealed by the applicant's professional engineer, licensed to practice in the State of Florida. The construction drawings shall be certified to and for reliance by the city.

(4) The landscaping plans must meet to the requirements and standards of LDC section 30-674(3). The landscape plans shall be signed and sealed by the applicant's landscape architect registered in the State of Florida and shall be certified to and for reliance by the city.

(5) The survey shall be signed and sealed by the applicant's professional surveyor and mapper, registered in the State of Florida. The survey shall be certified to and for reliance by the city.

(d) Staff review and recommendation. Based upon evaluation of the factors set forth in LDC section 30-674, the director, or said director's designee, shall prepare a report containing review findings and a recommendation of approval, approval with conditions, or denial. In the event that denial is recommended, the report shall state the reason for denial with citations to appropriate statutes, administrative rules, code provisions, case law, or other legal authority.

(e) Conduct of city council and planning board hearings. Hearings shall be conducted as set forth in LDC section 30-62(e).

(f) Public hearing. The planning board shall hold at least one public quasi-judicial hearing to review the proposed site plan with deviations and forward its recommendation to the City Council.

(1) Review. The planning board shall hear the petition following receipt of the staff report and application. At the public hearing, the planning board shall consider the applicant's justification for the requested deviations, the staff report, the standards of approval, and any other relevant testimony and evidence.

(2) Public Notice. Notice of the planning board hearing shall be given as provided in LDC section 30-62(f)(1), (2), and (3)a. Notice of the city council hearing shall be given as provided in LDC section 30-62(f)(1), (2), and (3)b.3.

(3) Decision. The planning board shall render a decision to approve, approve with conditions, or deny the requested deviations and forward its recommendation to the city council. If approved, or approved with conditions, the decision shall specifically note the deviations and the basis for their approval. A decision by the city council shall be rendered by resolution of the city council.

(g) Standards for approval. The petition shall be reviewed to determine that it meets each of the following standards:

(1) Land uses and densities within the development shall be consistent with the permitted and approved conditional uses in the zoning district.

(2) The proposed development must be consistent with the comprehensive plan.

(3) The development shall have a beneficial effect both upon the area in which it is proposed to be established and upon the city as a whole.

(4) The total land area within the development, and the area devoted to each functional portion of the development, shall be adequate to serve its intended purpose.

(5) Streets, egress and ingress, utilities, drainage facilities, recreation areas, sizes and yards, architectural features, vehicular parking and loading facilities, sight distances, landscaping, and buffers, shall be appropriate for the use involved and shall meet all LDC requirements.

(6) Visual character of the project shall be equal to, or better, in quality than that required by the development standards for the zoning district. The visual character of the project shall be better in quality than the existing project before redevelopment and after it was first permitted.

(7) Areas proposed for common ownership shall be subject to a reliable and continuing maintenance guarantee.

(8) Deviations shall be clearly delineated in the petition and shall be the minimum required to achieve the goals of the project and comply with these standards.

(9) The applicant has provided enhancements to the development.

(10) Approval of the deviation will not have an adverse effect on adjacent properties.

(h) Timeframe. Time limits for site plans will be pursuant to LDC section 30-679.

SECTION 11. Amendment and Adoption. That section 30-1002 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-1002. - Accessory buildings and structures.

(a) Accessory buildings and structures must be constructed simultaneously with or following the construction of the principal structure and shall conform to the following setbacks and building separations. In those cases where the coastal construction control line is involved, the coastal construction control line will apply.

* * *

**Accessory Structure Setbacks
(Waterfront lots and golf course lots)**

| | Accessory Structure | Front | Rear | Side | Structure to Structure (if detached) |
|----|---|-------|-----------------------------------|------------------|--------------------------------------|
| 1. | Parking garage or carport (single-family) | SPS | SPS | SPS | 10 feet |
| 2. | One-story parking structures and/or carports (multifamily and commercial) | SPS | SPS | SPS | 10 feet |
| 3. | Multistory parking structures (multifamily and commercial) | SPS | SPS | SPS | 1/1* |
| 4. | Swimming pool and/or screen enclosure (one-and two-family) | SPS | $\frac{15}{10}$ feet ² | SPS | N |
| 5. | Swimming pool (multifamily and commercial) | SPS | 20 feet | 15 Feet | N |
| 6. | Tennis courts, private (one-and two-family) | SPS | 15 feet | SPS ₃ | 10 feet |
| 7. | Tennis courts (multifamily and commercial) | SPS | 35 feet | 15 feet | 20 feet |

| | | | | | |
|-----|---|-----|---------|-----|---------|
| 8. | Utility storage structures, not in single-family residential zoning districts | SPS | SPS | SPS | 10 feet |
| 9. | Chickee, barbeque areas | SPS | 10 feet | SPS | N |
| 10. | Attached screen porch | SPS | SPS | SPS | N/A |
| 11. | Unlisted accessory | SPS | SPS | SPS | 10 feet |

N = None, N/A = Not applicable, NP = Structure allowed in rear yard only. May be located on pad at ground level, but not mounted on roof, SPS = Calculated same as principal structure.

1 1/foot of accessory height = 1/foot of building separation.

2 Swimming pool decks with an AE flood zone may be constructed to a maximum height not to exceed either the adopted or recommended (best available data) finished floor elevation for the property, with a maximum of four feet of stem wall exposure, with the rear setback of ten feet. Swimming pool decks within a VE flood zone may be constructed to a maximum of seven feet above the seawall with a maximum of four feet of stem wall exposure, with the rear setback of ten feet. Swimming pool decks in either an AE or VE flood zone which exceed the maximum heights permitted herein shall conform to a rear setback of 25 feet.

3 Lighting is prohibited at all tennis court facilities located within single-family residential zoning districts. An opaque landscape hedge shall be planted between a tennis court facility and a side or rear yard property line of different ownership. The landscaping shall be maintained at a minimum of four feet in height and a maximum of six feet in height and shall be provided along the entire length of the tennis court facility.

* * *

SECTION 12. Amendment and Adoption. That section 30-1004(a) of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-1004. - Setback encroachments.

(a) *Setback encroachments.* Every part of every required yard shall be open and unobstructed from 30 inches above the general ground level of the graded lot upward except as listed below. Such exceptions, when utilized in yards where recorded easements exist, are allowed with the explicit understanding that any structural improvement(s) or vegetation located within a recorded easement are subject to removal, at the owner's sole expense, when authorized entities must enter upon such easement area to repair, improve, reconstruct or make such lawful improvements as deemed necessary.

(1) Sills and other architectural and design treatments shall not project over 12 inches into a required yard.

(2) Moveable awnings shall not project over three feet into a required yard.

(3) Window-mounted air-conditioning units, chimneys, fireplaces, bay windows, or pilasters shall not project over two feet into a required yard.

~~(4) Wall-mounted, cube-mounted, or cantilevered air-conditioning units shall not project over two feet into a required side yard or four feet into the rear yard. Units permitted prior to January 1, 2002 shall not project over four feet into a required side or rear yard.~~

(4) Ground-mounted, wall-mounted, pad-mounted, cube-mounted, or cantilevered generators, swimming pool equipment, air-conditioning units, above-ground LP gas tanks, and any other mounted mechanical equipment shall not project more than four feet into any required yard.

(5) Fire escapes, stairways, and balconies which are unroofed and unenclosed shall not project over five feet into a required side or rear yard of a multiple-family dwelling, hotel or motel.

(6) Fire escapes and balconies that are unroofed and unenclosed shall not project over three feet into a required side or rear yard of a single-family residential dwelling. Staircases shall not project over four feet into any required yard of a single-family residential dwelling.

(7) Hoods, canopies, or roof overhangs shall not project over three feet into a required yard.

(8) Cornices, eaves or gutters shall not project over three feet into a required yard.

(9) Satellite dishes having a diameter of 18 inches or less which are attached to the principle structure shall not project over three feet into a required side or rear yard.

* * *

SECTION 13. Amendment and Adoption. That section 30-1009 of the Code of Ordinances, City of Marco Island, Florida, is hereby amended to read as follows:

Sec. 30-1009. – Fences and walls.

(a) *Fences in zoning districts.* Fences or walls shall be allowed in all zoning districts subject to the restrictions set forth below:

(b) *Residential districts.* For the purposes of this section, residential districts shall include: RSF residential single-family; RMF-6, RMF-12, and RMF-16 residential multiple-family; RT residential tourist; and residential increments of PUD residential planned unit development districts. Except as otherwise permitted herein, fences ~~Fences~~ and walls shall be subject to the following:

(1) Fences or privacy walls placed within required yards shall be limited to six feet in height except that no fence placed between the front building line and the front property line of lots or parcels less than 1.25 acres in size shall be greater than four feet in height.

(2) Fences or walls placed within the required rear yard of waterfront lots one acre or less in size shall be limited to four feet in height.

(3) Corner lots shall maintain sight distance triangle areas. Fences and walls are prohibited within these areas.

(4) Up to four six-foot entry posts may be incorporated as part of an approved fence in the front yard(s).

(5) Fences and walls shall be constructed of conventional building materials such as, but not limited to concrete block, brick, wood, decorative iron or steel.

(6) Coated chain-link fencing shall only be allowed in side yards and in rear yards. Coated chain-link fencing and/or chain link fencing is prohibited in front yards. Refer to article VIII for chain link fence criteria within commercial zoning districts.

(7) Fences and walls shall be constructed to present the finished side of the fence or wall to the adjoining lot or any abutting right-of-way.

(8) Barbed wire, razor wire, spire tips, sharp objects, or electrically charged fences shall be prohibited, except that the board of zoning appeals may allow the use of barbed wire in conjunction with chainlink fencing where it finds a security or hazard exists such as a utility substation, sewage treatment plant, or similar use.

(c) *Agricultural districts.* For the purpose of this section, agricultural districts shall include: A agricultural and CON conservation districts. Except as otherwise permitted herein, fences ~~Fences~~ and walls within agricultural districts shall be subject to the same fencing provisions as for residential districts.

(d) *Commercial districts.* For the purpose of this section, commercial districts shall include: C-1/T, C-2, C-3, C-4, C-5, P public use district; and commercial parcels of PUD planned unit developments. Except as otherwise permitted herein, fences ~~Fences~~ or walls shall be allowed subject to the following. Fences or walls in commercial districts shall be limited to eight (8) feet in height and shall be permitted subject to the following conditions:

(1) All fencing located in a front yard shall not be located within the required landscape buffer. All fencing located adjacent to an alley right-of-way may encroach five feet into the required landscape buffer.

(2) Fencing located adjacent to a right-of-way shall provide all code required landscaping along the side facing the right-of-way (~~fifty~~ 50 percent (50%)) if located along alley right-of-way).

(3) Except as otherwise permitted herein, chain ~~Chain~~ link fencing is prohibited in all commercial zoning districts except within the Elkcam Circle zoning overlay as specified in article VIII.

(4) Split rail fencing shall be allowed within a landscape buffer as an embellishment.

(5) Razor wire, spire tips, sharp objects or electrically charged fences shall be prohibited.

(e) *Fencing generally.*

(1) All fences and walls shall be of sound construction and shall not detract from the public health, safety and welfare of the general public.

(2) All fences and walls shall be maintained in a manner that will not detract from the neighborhood or community.

(3) No fence or wall within any district shall block the view of passing motorists or pedestrians so as to constitute a hazard.

(4) Fences and walls shall be constructed of conventional building materials such as, but not limited to concrete block, brick, wood, decorative iron or steel, and chain link. Coated chain link and chain link fencing is prohibited in the front yards of residential zoning districts, and all commercial zoning districts except as specified above.

(5) Fences and walls shall be constructed to present the finished side of the fence or wall to the adjoining lot or any abutting right-of-way. Where due to the presence of an existing fence or wall or continuous landscape hedge on the adjoining parcel, this provision may be administratively waived where said request has been requested in writing.

(6) When determined to be beneficial to the health, safety, and welfare of the public, the City Manager or designee may waive height limitations of fences and walls in all districts.

(7) Existing ground levels shall not be altered for the purpose of increasing the height of a proposed wall or fence.

(f) *Fence height measurement for all districts.* The height of a fence or wall located outside of the building line shall be measure from the ground level at the fence location. However, if the ~~community development~~ director determines that ground levels have been altered so as to provide for a higher fence, the ~~community development~~ director shall determine the ground level for the purposes of measuring the fence height. In determining whether the ground level has been altered for the purposes of increasing the height of the fence, the ~~community development~~ director may consider, but is not limited to consideration of, the following facts:

(1) General ground elevation of the entire lot.

(2) In case of a lot with varying ground elevations, the average elevation over the length of the fence, and at points in the vicinity of the fence.

(3) The ground elevation on both sides of the fence. In measuring the fence height, the ground elevation on the side of the fence location that is at the lowest elevation shall be used as a point from which the fence height is to be measured.

(4) Fences or walls shall be permitted principal uses; however a fence or wall shall not, in any way, constitute a use or structure, which permits, requires and/or provides for any accessory uses and/or structures.

(g) Fencing for public parks, public school athletic fields, and governmentally owned utility structures. Coated chain-link fencing is permitted for public parks, public school athletic fields, and governmentally owned utility structures.

SECTION 14. 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.

(c) Drafter's comments as set forth herein shall not be codified.

(d) The City Clerk is directed to insert the Ordinance No. and the effective date of this Ordinance in Section 12. of this Ordinance.

SECTION 15. 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 on this 21st day of May 2018.

ATTEST:



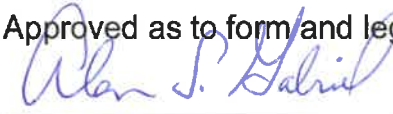
Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 

Jared Grifoni, Chairman

Approved as to form and legal sufficiency:



Alan L. Gabriel, City Attorney