

ORDINANCE NO. 2024-

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF HIGHLAND BEACH, FLORIDA, AMENDING CHAPTER 6, "BUILDINGS AND STRUCTURES," OF THE TOWN CODE OF ORDINANCES BY AMENDING SECTION 6-128, "APPROVAL REQUIRED FOR BULKHEADS, SEAWALLS, RETAINING WALLS; REQUIRED NOTIFICATION OF ABUTTING PROPERTY OWNERS," TO PROVIDE A MAXIMUM SEAWALL CAP AND DOCK WIDTH; AMENDING CHAPTER 30, "ZONING," BY AMENDING SECTION 30-68, "SUPPLEMENTAL DISTRICT REGULATIONS," TO PROVIDE A MAXIMUM HEIGHT FOR BOAT LIFTS, A MAXIMUM EXTENSION FOR ACCESSORY MARINE FACILITIES INTO CANALS AND LAKES, A MAXIMUM SEAWALL CAP AND DOCK WIDTH, AND LADDER REGULATIONS AND AMENDING SECTION 30-131, "DEFINITION OF TERMS," TO PROVIDE DEFINITIONS THAT PERTAIN TO ACCESSORY MARINE FACILITIES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT; PROVIDING FOR SEVERABILITY AND CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Highland Beach, Florida, is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, on November 17, 2020, the Town Commission authorized Vice-Mayor Greg Babij to sponsor a review and propose any amendment(s) to the accessory marine structure ordinance provisions; and

WHEREAS, on March 15, 2022, the Town Commission considered an introduction to proposed amendment concepts regarding the accessory marine facility provisions of the Town Code; and

WHEREAS, on April 19, 2022, the Town Commission provided direction in establishing a process for review of the amendment concepts; and

WHEREAS, on June 21, 2022 and August 16, 2022, the Town Commission considered a discussion on a review timeline for the proposed amendment concepts and agreed to hold three (3) evening meetings at the Town Library in an effort to engage input from residents; and

WHEREAS, on December 5, 7, and 13, 2022, Public Input Meetings were held on the proposed amendment concepts to the accessory marine facility and seawall regulations of the Town Code of Ordinances; and

WHEREAS, on February 7, 2023, the Town Commission agreed to have the Planning Board review the proposed amendment concepts and provide their recommendations to the Town Commission; and

WHEREAS, on September 21 and October 12, 2023, the Planning Board provided their recommendations on the proposed amendment concepts to the Town Commission; and

WHEREAS, on April 2, 2024, the Town Commission agreed to move forward with five (5) of the seven (7) amendment concepts, and directed staff to draft an Ordinance accordingly; and

WHEREAS, the Town Commission of the Town of Highland Beach has determined that the amendment to the Code of Ordinances is in the best interest of the Town of Highland Beach;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF HIGHLAND BEACH, FLORIDA that:

SECTION 1. The foregoing facts and recitations contained in the preamble to this Ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

SECTION 2. The Town Commission hereby amends Chapter 6 “Buildings and Structures,” Article V “Seawalls; Bulkheads; Retaining Walls,” Section 6-128 “Approval required for bulkheads, seawalls, retaining walls; required notification of abutting property owners” to read as follows (additional language underlined and deleted language ~~stricken through~~):

Sec. 6-128. - Approval required for bulkheads, seawalls, retaining walls; required notification of abutting property owners.

(a) No bulkhead, seawall, or retaining wall shall be erected or constructed in any water, canal or lake, or on land abutting thereon, within the limits of the town, unless plans and specifications have been submitted to and approved by all federal, state and county agencies with jurisdiction over such construction activities, the planning board and the town consulting engineer, with a copy of such plans and specifications being filed with the town. The planning board shall review applications under this section as special exceptions.

(b) All seawalls west of State Road A1A shall be at base flood elevation (BFE) or higher as provided by the FEMA FIRM maps. The maximum combined seawall cap and dock width shall

not exceed eight (8) feet as provided in Section 30-68(g)(6)b. All seawalls on the Intracoastal Waterway and the Atlantic Ocean shall, at the discretion of the town engineer, have rip rap at the base to dissipate the wave energy and to protect the berm.

SECTION 3. The Town Commission hereby amends Chapter 30 "Zoning Code," Article IV "Zoning Districts," Section 30-68 "Supplemental district regulations" to read as follows (additional language underlined and deleted language ~~stricken through~~):

Sec. 30-68. – Supplemental district regulations.

(g) *Accessory marine facilities:*

(1) *Accessory use.* Accessory marine facilities, including docks, piers, launching facilities, boat basins, freestanding pilings and lifting and mooring devices, are permitted as accessory uses in all residential zoning districts. Accessory marine facilities shall be reviewed as special exceptions by the planning board which shall be the final authority on all applications unless the accessory marine facility is part of a site plan submittal or other application requiring town commission approval as provided for in section 30-36.

a. Accessory marine facilities shall not be used for commercial purposes.

b. Accessory marine facilities shall be used only by residents or their guests, and shall not be rented or leased to nonresidents or any other person other than owners or residents of the principal dwelling or dwellings. For the purpose of this section, the term guest shall mean a person or persons residing in a dwelling unit for a limited period of time, not to exceed a period of sixty (60) days within one calendar year, at the invitation of the owner or resident of the dwelling.

c. Accessory marine facilities shall not be a hazard to navigation.

(2) *Boat basins.* Boat basins are allowed in all zoning districts and reviewed by a special exception, subject to the additional standards listed below:

a. The edge of any improvements associated with a boat basin shall be located at least twenty-five (25) feet from side property lines.

b. The total length of improvements associated with a boat basin shall not exceed one-third (33.3%) of the length of the property line in which the basin is located.

c. Not more than twenty-five (25) percent of any boat moored in a boat basin may extend waterward of property line in which the basin is located.

d. The town, at the expense of the applicant, may utilize appropriate marine, engineering, construction, and related professionals to review all aspects of such application. Such professionals shall be utilized to ensure compliance with the requirements herein, to ensure a proposed basin will not be a hazard to navigation, and to ensure a proposed boat basin will not pose a potential hazard, via erosion or other action, to the stability of neighboring properties.

(3) *Lifting devices.* The installation of lifting devices or other means of securing boats (but not a boat dock) is allowed in all zoning districts. The maximum height for lifting devices shall be at base flood elevation (BFE), as provided by the FEMA FIRM maps, plus eight (8) feet. Lifting device height shall be measured to the top of the lift structure including mechanical equipment. In addition to the requirements for a special exception, the planning board must also find that the lifting device will provide adequate protection of neighboring property and that there is no infringement of standard navigational practices.

(4) *Boats and setbacks.* When moored, any portion of a boat shall not extend beyond any property line, as extended waterward.

(5) *Enclosures.* Accessory marine facilities shall not be enclosed with walls, roofs, or any other structures or improvements.

(6) *Installation.* Accessory marine facilities shall comply with the installation standards listed below:

a. In waterways ~~not~~ regulated by the U.S. Army Corps of Engineers or other governmental regulatory agency, docks and mooring ~~facilities structures~~ shall not extend into the water more than twenty-five feet (25') or twenty-five percent (25%) of the waterway width, whichever is less (excludes docks and mooring facilities located along the Intracoastal Waterway), measured from the wet face of the seawall or bulkhead ~~not extend into any waterway more than five (5) feet.~~

b. ~~In waterways regulated by the U.S. Army Corps of Engineers,~~ The maximum combined seawall cap and dock width shall not exceed eight (8) feet. ~~docks and mooring structures may extend to that distance allowed by said agency.~~

c. Measurement of the width or length of a dock, as applicable, shall be made from the property line.

d. Marine facilities shall comply with the side yard setbacks listed below.

1. Single-family zoning districts: Twenty-five (25) feet; provided, however, the side yard setback shall be fifteen (15) feet for any single-family lot with a lot width of fifty (50) feet or more but less than seventy (70) feet. For those lots with less than fifty (50) feet abutting the water, the planning board may grant a special exception for the installation of a seawall mounted davit type lifting device (but not a dock structure) after being satisfied as to the protection of neighboring property and no infringement of standard navigation practices.

2. Multifamily zoning districts: Five (5) feet, measured from the perimeter property lines. In multifamily residential zoning districts, marine facilities shall be exempt from side yard setback requirements for all interior lot lines.

(7) *Perpendicular docking.* Unless otherwise provided herein, boats shall not be moored or docked perpendicular to the property at which they are located.

a. A boat moored at the landward end of a canal constructed for boat docking purposes may be moored perpendicular to the property line, provided such mooring does not impede the navigation of adjacent property owners.

b. A boat moored in the Intracoastal Waterway may be moored perpendicular to the property line, subject to approval by the U.S. Army Corps of Engineers.

c. A request for perpendicular docking of a boat in a canal shall be considered as a special exception by the planning board. Applications for development order approval of perpendicular docking of boats shall be subject to all standards applicable to a special exception request, and the additional criteria contained herein:

1. Location of docks, docked boats, and relation to side setbacks shall be established by the waterward extension of property lines.

2. Perpendicular docking of boats shall not interfere with navigation of other boats within the affected canal, and will not be a hazard to navigation.

3. Perpendicular docking of boats shall comply with all setbacks required for accessory marine facilities.

4. Docks or accessory mooring facilities approved by the planning board for perpendicular docking of boats may exceed the maximum extension into a waterway allowed for accessory marine facilities.

5. The building official or designee, or planning board may request evidence, prepared by a recognized marine expert, demonstrating the following:

i. Proposed perpendicular docking and related accessory marine facilities will not reasonably deny or otherwise limit the ability of abutting or adjacent property owners to construct accessory marine facilities;

ii. Proposed perpendicular docking and related accessory marine facilities will not reasonably deny or otherwise limit the normal ability of abutting or adjacent property owners to moor, maneuver, use or otherwise move a boat; and

iii. Proposed perpendicular docking and related accessory marine facilities will not deny reasonable visual access of abutting property owners to public waterways.

(8) Ladders are permitted on docks, seawalls, finger piers or other mooring facilities.

(h) *Dolphins, freestanding pilings, boat lifts, docks, and moorings:*

(1) Installation. In order to be installed, dolphins, freestanding pilings, boat lifts, docks, and moorings (collectively "mooring facilities") shall comply with all standards listed below:

a. The installation shall be subject to special exception approval by the planning board at an advertised public hearing.

b. The mooring facilities will be located in a canal or waterway at least eighty (80) feet in width.

c. The mooring facilities will not create a hazardous interference with navigation, endanger life or property, or deny the public reasonable visual access to public waterways.

d. Construction of all mooring facilities shall require a building permit.

(2) Public notice. In addition to the requirements of section 30-46, written notice must be provided by first class mail to owners of property abutting the canal and located within five hundred (500) feet, as measured from both property lines along the canal bank, of the property in question.

(3) Documentation. The building official or designee, or planning board may, in the exercise of their discretion, request evidence, prepared by a recognized marine expert, demonstrating the proposed mooring facilities will not be a hazard to navigation and will not deny reasonable visual access to public waterways.

(4) Adjacent property. Installation of the mooring facilities shall not cause a hazardous interference with navigation, endanger life or property, or deny the adjacent property owners or public reasonable visual access to the public waterway.

(5) Navigation. Installation of such mooring facilities shall not infringe upon standard navigational practices that are or may be used by abutting property owners.

(6) Floating docks. Floating docks are permitted, subject to conformance with all zoning code requirements herein and compliance with all applicable building codes.

SECTION 4. The Town Commission hereby amends Chapter 30 "Zoning Code," Article VIII "Definitions," Section 30-131 "Definitions of terms" to read as follows (additional language underlined and deleted language stricken through):

Sec. 30-131. – Definitions of terms.

Boat lifts means the bottom of the keel of any boat shall not be hoisted greater than one foot above the existing ~~minimum~~ seawall elevation. In no case shall the lift be higher than the superstructure of the boat when lifted except for personal watercraft including jet skis.

Dolphin pilings means that the dolphin piling shall be marine grade wood pilings with a minimum butt diameter of twelve (12) inches. Concrete pile is prohibited. Dolphin pilings shall not extend into the water more than ~~A maximum of~~ twenty-five (25') feet or twenty-five percent (25%) ~~thirty (30) percent~~ of the waterway canal width, whichever is less (excluding such pilings located along the Intracoastal Waterway), ~~shall be allowed~~, measured from the wet face of the seawall or bulkhead property line. Setback shall be no further than the primary structures side yard setback. The minimum height shall be six (6) feet above mean high water (MHW) and the maximum shall be eight (8) feet above MHW. All pilings shall have a reflective tape no more than two (2) inches below the top of the piling and should be four (4) inches in width of the complete circumference.

SECTION 5. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 6. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 7. Codification. Section 2 of the Ordinance shall be made a part of the Town Code of Ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "division," or any other appropriate word.

SECTION 8. Effective Date. This Ordinance shall be effective immediately upon adoption at second reading and shall only apply prospectively.

The forgoing Ordinance was moved by _____, seconded by _____ and upon being put to the vote, the vote was as follows:

| VOTES: | YES | NO |
|---------------------------------|------------|-----------|
| Mayor Natasha Moore | _____ | _____ |
| Vice Mayor David Stern | _____ | _____ |
| Commissioner Evalyn David | _____ | _____ |
| Commissioner Donald Peters | _____ | _____ |
| Commissioner Judith M. Goldberg | _____ | _____ |

PASSED on first reading at the Regular Commission meeting held on this _____ day of _____, 2024.

The forgoing Ordinance was moved by _____, seconded by _____ and upon being put to the vote, the vote was as follows:

| VOTES: | YES | NO |
|---------------------------------|------------|-----------|
| Mayor Natasha Moore | _____ | _____ |
| Vice Mayor David Stern | _____ | _____ |
| Commissioner Evalyn David | _____ | _____ |
| Commissioner Donald Peters | _____ | _____ |
| Commissioner Judith M. Goldberg | _____ | _____ |

PASSED AND ADOPTED on second and final reading at the Regular Commission meeting held on the _____ day of _____, 2024.

ATTEST: _____
Natasha Moore, Mayor

REVIEWED FOR LEGAL SUFFICIENCY

Lanelda Gaskins, MMC
Town Clerk

Leonard G. Rubin, Town Attorney
Town of Highland Beach