



# TOWN OF HIGHLAND BEACH

## AGENDA MEMORANDUM

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**MEETING TYPE:** Planning Board Meeting

**MEETING DATE** March 9, 2023

**SUBMITTED BY:** Ingrid Allen, Town Planner, Building Department

**SUBJECT:** Discussion of proposed changes ("amendment concepts") to the Accessory Marine Facility and seawall regulations of the Town Code

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### SUMMARY:

At the February 7, 2023 Town Commission meeting, the Commission considered a discussion item pertaining to the recently held Accessory Marine-related Public Input Meetings including a summary of the public input received (see below) and next steps. Consensus from the Commission was to have the Planning Board review the proposed amendment concepts (noted below) and provide their recommendations to the Commission. Additional discussion from the Commission included:

- Proposed encroachments into the water may not work in narrow canals and therefore different zones may need to be recognized.

Lastly, the Commission emphasized that the process for the Board's review not be rushed. Therefore, this item will be a continuing item of discussion on the Board's meeting agendas during an approximate 8-12 month timeframe.

Note that the proposed "amendment concepts" were first introduced to the Town Commission on March 15, 2022. The Commission memorandum from this March meeting (attached) provides an introductory review and analysis of the amendment concepts. Note that after the March 15, 2022 meeting, an additional proposed change to the Town Code pertaining to a "maximum seawall height" was added to the list of amendment concepts. The latter concept was presented at the Public Input Meetings held in December 2022. Currently, the Town Code does not have a maximum seawall height requirement; however, Section 6-128 of the Town Code requires that all seawalls west of State Road A1A be at Base Flood Elevation or higher as provided by the FEMA FIRM maps.

### PROPOSED AMENDMENT CONCEPTS

- Maximum height for AMFs = BFE plus 7 feet.
- Exempt personal watercraft (PWC) lifts from the requirement that "in no case shall the lift be higher than the superstructure of the boat when lifted" OR remove requirement.

- Maximum seawall cap width = 3 feet; maximum seawall cap plus dock width = 8 feet.
- Encroachment into water at 25 feet or 25% of waterway width, whichever is less (measured from the shortest distance adjacent to property line).
- 10-foot side setback for all zoning districts. For lots < 100 feet in width, setback is 10% of width; however, setback cannot be less than 5 feet.
- Require a ladder for every 50 feet of dock.

**ADDITIONAL CONCEPT:**

- Maximum seawall height.

Summary of Public Input Meetings:

On December 5<sup>th</sup>, 7<sup>th</sup>, and 13<sup>th</sup>, 2022, the Town held Public Input Meetings regarding proposed changes (“amendment concepts”) to the Accessory Marine Facility and seawall regulations of the Town Code of Ordinances. An identical PowerPoint presentation was presented at each meeting which identified each amendment concept, any corresponding Town Code regulation that may apply to the concept, and a “no action” option. Staff prepared a comment sheet which was available at all three (3) meetings as well as on the Town’s website. Attached are the comment sheets received. In addition to the comment sheets, staff took notes of comments and concerns raised by residents in attendance at each meeting. These meeting comments are provided below by meeting date. The following meeting comment (*in italics*) required some additional research by staff which is provided in the table below:

*Look at other municipalities with direct Intracoastal Waterway (ICW), how do they handle encroachment* (Comment from December 5<sup>th</sup> meeting)? **Staff response:** The following table provides regulations applicable to other municipalities:

| City          | Dock Encroachment  | Boat Lift Encroachment  |
|---------------|--|---|
| Boca Raton    | <b>6 ft for canals and waterways less than 100 ft in width or 8 ft for canals and waterways 100 ft or more in width</b> (exclusive of pilings), measured from the property line, seawall or bulkhead, whichever is nearest to the waterway.        | <b>25% of width of canal or waterway or 20 ft</b> , whichever is less. For portions of a boat lift constructed beyond 20 percent of the width of a <b>canal</b> , only wood pilings may be utilized and no part of a boat lift structure shall extend beyond the face of the wood pilings nearest the canal center. |
| Pompano Beach | <b>5 ft for canals and waterways 50 ft in width or less for canals and waterways more than 50 ft in width, 8 ft (or 10% of width of canal and waterway, whichever is less)</b> , as measured from the property line or measurement reference line. | <b>20% of width of canal or waterway or 20 feet</b> , whichever is less, as measured from the property line or measurement reference line.  |

|              |   |  |
|--------------|---|--|
| Delray Beach | <b>5 ft into waterway, if no existing seawall</b> , measured from water's edge at mean low tide; <b>5 ft if existing or proposed seawall without batter piles</b> , measured from face of seawall; <b>7 ft if existing or proposed seawall with or without a seawall cap with batter piles</b> , measured from the face of seawall. | <b>20 ft into waterway</b> from the property line or seawall or bulkhead, whichever is nearer to the waterway. |
|--------------|---|--|

ft = feet

**December 5, 2022** (12 residents in attendance, does not include Town Commission or Planning Board members):

1. Look into FEMA preliminary maps, boat lift height should go up not down.
2. Consider seawall height range to accommodate existing (older) structures. For example, Fort Lauderdale has a range from 4 feet to 6 feet.
3. Consider measuring encroachment into the water from existing bulkhead line given some property lines are in the water.
4. Need clear process based on Army Corps of Engineers approval.
5. Support for 10 foot dock setback.
6. Look into provisions for in kind replacement of lifts.
7. Seawall verses property line, consider the one that leaves greater canal space to traverse.
8. Identify properties that may be disadvantaged when measuring encroachment into waterway from property line verses seawall.
9. Datum increase of 1.5 feet, maybe height should be increased by 1.5 feet.
10. Consideration for homes built before change to North American Vertical Datum (NAVD).
11. Support for personal watercraft (PWC) exemption.
12. Support for 10 foot setbacks
13. Byrd Beach property owners reject 25 foot setback.
14. Ladder requirement:
  - should be homeowner's choice.
  - one (1) ladder per waterfront property.

**December 7, 2022** (2 residents in attendance, does not include Town Commission or Planning Board members):

1. Facilities located within property line should be allowed.
2. Ladder requirement equals safety.

**December 13, 2022** (15 residents in attendance, does not include Town Commission or Planning Board members):

1. Floating docks create conflicts and should be addressed in amendment concepts.
2. Boat lift pilings to have 10-15 feet (30 feet maximum) setback, different than docks and davets.
3. No special exception approval by Planning Board if compliant with proposed concepts.
4. Provide setback for moored boats like Pompano Beach.
5. Proposed amendments to apply to structure as well as boat.

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6. Allow accessory marine facilities within the property line, when property line is in the water.
  7. Proposed Base Flood Elevation threshold should not apply to nonconforming structures.
  8. Have no special exception requirements if proposed thresholds are met.
  9. Grandfather existing accessory marine facilities to replace in kind (regardless of setback so long as structure was previously permitted and is not a safety hazard).
  10. Reduce speed in Intracoastal Waterway. Speed causing wake issue.
  11. Increase in seawall height should be mandated given sea level rise.
  12. If accessory marine facility is located within property line and property line is in waterway, it should not need to comply with any proposed encroachment threshold.
  13. Make the setback same for single-family and multi-family, not based on lot width.
  14. Consider for those developments that wish to replace a continuous dock, that the proposed 10 foot setback would not prevent a continuous dock from being reinstalled.

Note that on February 23, 2023, staff will present (at the request of the Bel Lido HOA president) the proposed amendment concepts at the Bel Lido HOA meeting. Any additional comment sheets received from this meeting will be provided to the Board.

For reference purposes, a brief history on hearings held (and other related matters) relating to proposed accessory marine facility amendments to the Town Code are provided below:

November 17, 2020 - Town Commission authorized Vice-Mayor Greg Babij to sponsor the review and propose any amendment(s) to the accessory marine structure ordinance provisions (motion carried 5-0).

March 15, 2022 – Town Commission considers introduction to proposed amendment concepts regarding the accessory marine facility provisions of the Town Code. Commission consensus was to establish a process for review of such amendment concepts to include public participation and review by the Planning Board.

April 19, 2022 – Town Commission provides direction in establishing a process for review of amendment concepts as follows:

1. Requests that the Planning Board watch the April 19, 2022 Town Commission discussion on such item (Number 10D).
2. Requests that the Planning Board physically observe the various canal/lot widths and existing accessory marine facilities including boat lifts located within the Town.
3. Create maps of the various waterway widths (including canal and lakes).
4. Once Board site observations are complete, staff is to send out notices to all waterfront property owners (west of State Road A1A) prior to the Planning Board meeting where the Board will discuss proposed amendment concepts as provided to the Town Commission on March 15, 2022.

May 12, 2022 – Planning Board considers the April 19, 2022 direction provided by the Town Commission regarding Board review process for proposed amendments to the Accessory Marine Facility regulations of the Town Code.

May 23-27, 2022 – Individual Board site observations, as noted above, are conducted via the Police Department's Marine Patrol Unit (for those Board members who do not have

access to a boat). Note five (5) of the seven (7) Board members conducted their observations on the Marine Patrol Unit vessel.

June 21, 2022 – Town Commission considers a discussion on a “review timeline” for proposed amendment concepts. Consensus from the Commission was to hold neighborhood meetings at the Town library in an effort to engage input from residents on the proposed changes, and that such meetings commence in October or November upon return of seasonal residents

August 16, 2022 - Town Commission considers a discussion on a “review timeline” for proposed amendment concepts. Consensus from the Commission is to hold three (3) evening meetings in early November 2022.

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#### **ATTACHMENTS:**

- March 15, 2022 Town Commission memorandum regarding introduction to proposed changes to Accessory Marine Facility regulations.
  - Comment sheets received regarding proposed amendment concepts.
  - Sign-in sheets from Public Input Meetings.
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#### **RECOMMENDATION:**

At the discretion of the Board.



# TOWN OF HIGHLAND BEACH AGENDA MEMORANDUM

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**MEETING TYPE:** Town Commission Meeting

**MEETING DATE** March 15, 2022

**SUBMITTED BY:** Ingrid Allen, Town Planner, Building Department

**SUBJECT:** Introduction to a proposed amendment to the Town Code of Ordinances regarding Accessory Marine Facilities.

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## SUMMARY:

Former Vice-Mayor, Greg Babij, is sponsoring an amendment to the Accessory Marine Facilities regulations found in Section 30-68(g) and (h) of the Town Code. This proposed amendment is further detailed in Mr. Babij's attached draft report (Attachment No. 1). Staff has prepared the following table which compares each proposed change with any current Town Code regulation that may apply:

| Proposed amendment   | Current Town Code regulation   |
|--|--|
| 1. Maximum height for accessory marine facilities at Base Flood Elevation (BFE) plus 7 feet.   | Town Code is silent on maximum height for accessory marine facilities; however, the definition of "boat lift" requires that in no case shall the lift be higher than the superstructure of the boat when lifted ( <b>Sec. 30-131</b> ).  |
| 2. Exempt personal watercraft (PWC) lifts (as defined in Sec. 30-131) from the requirement that "in no case shall the lift be higher than the superstructure of the boat when lifted" or remove requirement from Town Code. <i>Note that given the low profile of such PWCs, compliance is problematic unless a variance is sought by Applicant.</i> | Boat Lift is defined as "the bottom of the keel of any boat shall not be hoisted greater than one foot above the minimum seawall elevation. In no case shall the lift be higher than the superstructure of the boat when lifted." ( <b>Sec. 30-131</b> ).<br><br>Personal Watercraft lift (PWL) includes a mechanical/electrical device for lifting jet skis, canoes, kayaks or other small watercraft out of the water. ( <b>Sec. 30-131</b> ). |

| Proposed amendment  | Current Town Code regulation   |
|---|--|
| 3. Maximum seawall cap width of 3 feet and maximum 8 foot width for seawall cap plus dock, as measured from the property line.                              | In waterways not regulated by the U.S. Army Corps of Engineers, docks and mooring structures shall not extend into any waterway more than five (5) feet. In waterways regulated by the U.S. Army Corps of Engineers, docks and mooring structures may extend to that distance allowed by said agency ( <b>Sec. 30-68(g)a. and b.</b> ). <i>Note that USACE regulates Intracoastal Waterway, canals and lakes in Town.</i>  |
| 4. Encroachment into water is 25 ft or 25% of waterway width (measured from the shortest distance adjacent to property line) whichever is less.             | See No. 3 above.   |
| 5. 10 foot side setback for all zoning districts. For lots less than 100 feet in width, setback is 10% of width; however, setback cannot be less than 5 ft. | Single-family zoning districts: <b>25 foot</b> side setback. For lots with a width of 50 feet or more but less than 70 feet, <b>15 foot</b> side setback. For lots with less than fifty 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. Multi-family Zoning districts are exempt from side setback ( <b>Sec. 30-68(g)(6)d.</b> ) |
| 6. Require a ladder for every 50 feet of dock.  | Town Code is silent on ladders.  |

Note that at the September 10, 2020 Planning Board meeting, staff provided, at the request of the Planning Board Chair, a discussion item that included other municipal piling height limits. Given the proposed amendment to the Town Code includes a maximum height for accessory marine facilities, the Commission may find the discussion memorandum helpful in the review and consideration of this introduction item (Attachment No. 2). Staff has also prepared a table that lists recent Town boat lift requests and their corresponding piling height and extension into the waterway (Attachment No. 3). The table also compares the applicable extension requirements for both the Cities of Pompano Beach and Boca Raton.

The proposed amendment was reviewed by Applied Technology & Management, Inc. (ATM), a coastal and marine engineering consultant who has a Professional Services Agreement with the Town. A report was provided by Dr. Michael G. Jenkins, ATM's Coastal Engineering Principal (Attachment No. 4). Dr. Jenkins indicates under item No. 1 of his report, that the Town's requirement that all accessory marine facilities receive Planning Board approval (Sec. 30-68(g)) is not a common requirement and that Board approval is typically reserved for sites with special and unique circumstances. Note that Section 30-46 of the Town Code currently requires public notice for Planning Board hearings. Although not included in Mr. Babij's

proposed amendment, the Town Commission should be mindful that if Commission consideration is given to reserving Planning Board approval only for those sites with special and unique circumstances, public notice provisions and public comment would only then apply to such special and unique sites. Those accessory marine facility requests that are not special and unique sites would be administratively approved by staff so long as they are consistent with Town Code regulations.

For reference purposes, attached are the current regulations applicable to accessory marine facilities found in Section 30-68 (g) and (h) of the Town Code (Attachment No. 5).

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**FISCAL IMPACT:**

N/A

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**ATTACHMENTS:**

Attachment No. 1 – Draft report from Greg Babij

Attachment No. 2 - Planning Board discussion memorandum – September 10, 2020

Attachment No. 3 - Recent Town boat lift requests table

Attachment No. 4 - ATM report

Attachment No. 5 - Section 30-68 (g) and (h) Town Code of Ordinances

Ordinance Process flowchart

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**RECOMMENDATION:**

At the discretion of the Commission.