



ORDINANCE NO. 452

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA, TO UPDATE THE ZONING REGULATIONS TO PROVIDE CLARITY IN THE MEASUREMENT OF BUILDING HEIGHTS BY AMENDING SECTION 82-1 DEFINITIONS; AMENDING SECTION 82-244 RESIDENTIAL DISTRICT; AMENDING SECTION 82-303 BUILDING HEIGHT AND AMENDING SECTION 82-323 BUILDING HEIGHT; PROVIDING FOR SEVERABILITY, THE REPEAL OF ALL CONFLICTING ORDINANCES, CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Sewall's Point, was chartered by the Florida Legislature in 1957; and

WHEREAS, the Town of Sewall's Point, adopted Land Development Regulations in 1978; and

WHEREAS, the Town of Sewall's Point is updating its Code relating to Building Heights to provide clarity and flexibility of building design;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF SEWALL'S POINT, FLORIDA THAT:

Section 1. The foregoing recitals are hereby fully incorporated herein by reference as legislative findings of the Town Commission of the Town of Sewall's Point.

Section 2.

Sec. 82-1. Definitions.

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:

Accessory use, as applied to a use or structure, means customarily subordinate or incidental to, and on the premises of, such use or structure. In buildings restricted to residential use, customary family hobby areas and workshops not utilized for compensation shall be deemed accessory uses.

Air conditioning pad means a concrete slab or other device employed to support any air conditioning system, placed on the finished grade of a lot or otherwise projecting from an exterior wall of any structure.

Alterations, as applied to a building or structure, means a change or rearrangement in the structural parts or in the exit facilities or an enlargement thereof, whether by extending on a side or by increasing in height, or the moving from one location or position to another.

Appurtenance means any personal property located on and incidental to the principal property that does not meet the definition of a structure as defined in this chapter and therefore not subject to setback requirements. Examples are, but not limited to arbors, lawn sculptures, statues or other moveable decorative yard ornaments not exceeding seven feet in height and five feet in width.

Area, lot means the total area within the property lines, excluding external streets.

Building means any structure, either temporary or permanent, except a fence or as otherwise provided in this definition, used or built for the enclosure or shelter of persons, vehicles, goods, merchandise, equipment, materials or property generally.

Building, accessory means any detached building with or without a roof intended for shelter, housing or enclosure constructed permanently on the ground or which is attached to something permanently located on the ground having a roof and intended to be used for sheltering people, animals, property or business activity and is located on the same zoning lot as the principal building and principal use.

Building, front line of means the line of that face of the building nearest the front line of the lot. The front line of a waterfront or riverfront lot shall be the line abutting the street serving the lot, and the lot bounded by water shall be considered the rear line.

Building line means the line established by law, beyond which a building shall not extend, except as specifically provided in the chapter. The building line is also referred to in this chapter as the "setback line."

Court means an unoccupied open space, other than a yard, which is bounded on three or more sides by walls in excess of three feet in height, at least one but not more than three of which are the walls of a building.

Coverage means the percentage of the plot or lot area covered by the building area.

Dwelling means one or more rooms arranged, designed or intended to be occupied as living quarters for human habitation, and including permanent provisions for living, sleeping, eating, cooking and sanitation. No boat, houseboat, watercraft, recreational vehicle or any other vehicle shall be considered a dwelling.

Dwelling, accessory means any detached dwelling, whether designed for, utilized or occupied as a complete housekeeping unit or solely designed as sleeping quarters.

Dwelling, one-family detached means a house designed for and accommodating but a single family.

Equipment pad means any structure or enclosures constructed of any materials intended to house or support any piece of equipment located permanently on a property such as, but not limited to, air conditioners, swimming pool pumps and heaters, well and irrigation pumps, water softeners, etc., with the exception of stand-by generator equipment that is intended for temporary emergency back up electrical service specified in section 82-277.

Fair market value means the most probable price a property should bring in a competitive and open market under all conditions requisite to a fair sale when both the buyer and seller each act prudently and knowledgeably, or a appraiser's value from a certified appraiser licensed by the State of Florida.

Family means one or more natural persons related by blood, adoption, marriage, or guardianship, living and cooking together as a single-housekeeping unit, exclusive of household servants, but not exceeding two adult natural persons living and cooking together as a single-housekeeping unit though not related by blood, adoption, marriage, or guardianship. A "person" as defined in the context of a family includes any natural adult person, as well as his or her spouse, lineal ancestors, lineal descendants, children, foster children placed in a lawful foster family home, as well as any dependents of an adult occupant who are related to that occupant by blood, marriage, adoption or guardianship. Temporary gratuitous guests shall also be included in the definition of a family.

Fence means any barrier constructed to mark a boundary or for means of protection, confinement, privacy, or decoration.

First floor means the floor that is at, or closest below the maximum elevation for the lowest habitable floor.

Floor area means the area of a floor and is calculated by measuring the exterior building dimensions under roof, including floor penetration areas for circulation and shaft areas that connect one floor to another.

Floor area, living means that normally air-conditioned floor area, within any dwelling, made usable for human habitation with the following exceptions:

- (a) Any utility room or storage space that is not accessible from within the principal structure.
- (b) Garages and car ports (air-conditioned or non air-conditioned).

Freeboard means the additional height, expressed as a factor of safety in feet, above a flood level for purposes of floodplain management. Freeboard tends to compensate for many unknown factors, such as wave action, bridge openings and hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected frequency flood and floodway conditions. Freeboard in the Town of Sewall's Point is the sum of the FEMA elevation requirements plus one foot required by the Florida Building Code plus three feet required by the Town.

Garage, private means an enclosed space for the storage of one or more motor vehicles, provided that no business occupation or service is conducted for profit therein.

Grade, established means the elevation of the centerline of the streets as officially established by the town authorities.

Grade, finished means the completed surfaces of lawns, walks and roads brought to grades as shown on official plans or designs relating thereto.

Greenhouse means a structure constructed, in part, with glass, plastic or other transparent or translucent material designed for and/or utilized for the growing of plants and flowers.

Hedge means a fence or boundary formed by a row of shrubs or low trees planted close together, or a thicket when planted as a fence or boundary.

Height, building means the vertical distance from the average natural grade to the highest point of a roof, with the exception of 82-421. When a building is located within a special flood hazard area having a designated base flood elevation on the Flood Insurance Rate Map (FIRM), the height shall be measured from the required freeboard to the highest point of the roof.

House, guest means an accessory building for the housing of nonpaying guests, whether designed for, utilized or occupied as a complete housekeeping unit or solely designed as sleeping quarters.

Impermeable area means the sum total of the ground surface area of a lot not permitting the percolation of water through the pores, interstices, etc., including but not limited to the ground floor area of buildings, structures, pools, patios, porches, driveways, walkways, and other concrete, asphalt or permanent surfacing. This definition shall not pertain to wood decks or pavers set in sand.

Line, street means the dividing line between the street right-of-way line and the lot.

Lot included the words "plot" or "parcel." A lot is a clearly defined piece of land of sufficient area and dimensions to meet minimum zoning requirements for width, depth, area, use and coverage, and to provide such yards and other open spaces as are required by this chapter for a lot in the district in which such land is situated, and having its principal frontage on a public street or on such other means of access as may be determined in accordance with the provisions of law to be adequate as a condition to the issuance of a building permit for a building on such land.

Lot, corner means a parcel of land at the junction of and fronting on two or more intersecting streets.

Lot, depth of means the depth of the lot measured along a straight line running equidistant from the primary side lot lines or extensions thereof.

Lot, interior means a lot other than a corner lot.

Lot lines means the platted lines bounding a lot.

Lot, riverfront means a lot which:

- (1) Touches or abuts on the waters of either the St. Lucie River or the Indian River; and
- (2) Has a body of water extending more than 400 feet on any radius from the waterfront lot line of the riverfront lot.

Lot, waterfront means all lots touching the waters of bays, canals or straits other than a lot defined as a riverfront lot.

Lot, width of means the average width of the lot measured between the side lot lines at a right angle to its depth.

Medical marijuana means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.

Medical marijuana dispensary means a facility that is operated by an organization or business holding all necessary licenses and permits from which marijuana, cannabis, cannabis-based products, or cannabis plants are delivered, purchased, possessed, or dispensed for medical purposes and operated in accordance with all local state and federal laws.

Medical marijuana treatment center means an entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their caregivers and is registered by the State of Florida Department of Health.

Medical marijuana treatment center dispensing facility means a facility that is owned by, operated by or affiliated with a medical marijuana treatment center holding all necessary licenses and permits from which medical marijuana is delivered, purchased, possessed, or dispensed for medical purposes.

Nonconforming building means a building lawfully in existence on the effective date of the ordinance from which this chapter is derived that does not conform to the regulations subsequently adopted in this chapter for the zoning district in which the building or structure is situated.

Nonconforming land means a parcel of land lawfully in existence on the effective date of the ordinance from which this chapter is derived that does not conform to the regulations subsequently adopted in this chapter for the zoning district in which the land is situated.

Nonconforming use means use lawfully in existence on the effective date of the ordinance from which this chapter is derived that does not conform to the regulations subsequently adopted in this chapter for the zoning district in which the land is situated.

Nonconforming structure means a structure lawfully in existence on the effective date of the ordinance from which this chapter is derived that does not conform to the regulations subsequently adopted in this chapter for the zoning district in which the building or structure is situated.

Open space means an unoccupied space, open to the sky, on the same lot with the building.

Parking space, commercial (B-1, B2 and PS districts) means an off-street space available for the parking of one motor vehicles and having an area of not less than 200 square feet, exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to a street.

Parking space, residential (R-1 district) means an off-street space for the parking of one motor vehicles and having an area of not less than 200 square feet, which may include driveways.

Patio means an open space which is bounded on all sides by the walls of a building.

Person means any individual, group of persons, firm, corporation, association, organization, business trust, estate, trust and any governmental agency; except that the words "natural person" shall mean only a single human being.

Pool structure means a structure, whether screened in whole or in part, or enclosed in which or in part by material other than insect screening, surrounding or enclosing (in whole or in part) a pool or wading pool.

Poolside structure means cabanas, dressing rooms and serving bars and any other structure used in conjunction with a pool.

Retaining wall (upland) means a structure more than ten feet upland of the mean high water mark normally made of stone, concrete, wood or other synthetic materials designed and constructed to resist the lateral pressure of soil when there is a manmade or natural change in ground elevations that exceeds the angle of repose of the soil. Standard-type (gravity, piling, cantilever, or anchored) retaining walls are considered structures that are not required to meet setbacks.

Seawall means a protective structure normally of stone, concrete, wood or other synthetic materials that extends from shore into the water to protect a shoreline from erosion.

Shoreline vegetation means any of the Florida native species found adjacent to the St. Lucie River Estuary and Indian River Lagoon that include, but are not limited to: Mangrove (Red, Black and White), Seagrass, Groundsel Tree, Elderberry, Dahoon Holly, Jamaican Dogwood, Cord Grass, Florida Gama Grass, Leather Fern and Yaupon Holly.

Single-family dwelling means a single residential building, house, structure or premises, or part thereof, intended or designed for occupancy by a single family.

Staff quarters structure means an accessory building for the housing of staff, help or employees, whether designed for, utilized or occupied as a complete housekeeping unit or solely designed as sleeping quarters only.

Story means the space in a building between two adjacent floor levels or between a floor and the roof (one story high, two stories high).

Street means a public way which affords the principal means of access to abutting properties.

Structure means anything constructed or erected, the use of which requires permanent location on the ground or attached to something having permanent location on the ground and shall include equipment pads, antennas, sheds, docks and piers or other structures. Driveways, retaining walls, sidewalks, docks, stairs, dock stair landings, utility poles, fences, walls used as fences shall not be considered as structures for setback purposes under the conditions set forth herein for the purpose of this chapter. In addition, any concrete, asphalt or other permanent surfacing placed upon a lot, such as but not limited to a patio, appurtenances or a pool decks adjacent to a swimming pool, with the

exception of equipment pads shall not be considered a structure for the purpose of this chapter or for the purpose of determining setback lines, subject to the limitations set forth in subsections 82-423(1) and (2).

Structure, accessory means any detached structure constructed or erected the use of which requires permanent location on the ground or which is attached to something permanently located on the ground and is located on the same zoning lot as the principal building and principal use. Detached driveways, sidewalks, utility poles, fences, and walls used as fences shall not be considered as accessory structures for the purpose of determining setback lines. However, any concrete, asphalt or other permanent surfacing placed upon a lot, such as but not limited to a patio (including pavers set in sand), or an apron adjacent to a swimming pool, shall not be considered a structure for the purpose of this chapter and for the purpose of determining setback lines.

Substantial improvement means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the fair market value of the primary structure minus the land value and any accessory structures, either before the repair or improvement is started, or, if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not however, include either:

- (1) Any project for improvement of a structure so as to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to ensure safe living conditions; or
- (2) Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

Temporary gratuitous guest means any natural person occasionally visiting a housekeeping unit for a period of time not to exceed a total of 30 days within a 90-day period.

Temporary structure means anything constructed or erected, the design of which or intended use of which is other than longterm, indefinite life design or use.

Terrace means an unoccupied open space which is contiguous to and bounded on at least one but not more than two sides by the walls of a building. It may be bounded on one or more of the other sides by a wall or similar enclosure having a height of three feet or less.

Use means the specific purpose for which land or a building is designed, arranged, or intended or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

Use, accessory means a use which is subordinate or incidental to the principal use on the property or which is located on a contiguous property when a unity of title has been recorded and which may be with or without any building or structure on the property.

Use, principal means a main and foremost use of improved or unimproved property, such use established on the property and which may be with or without any building or structure on the property.

Yard means an unoccupied space open to the sky, on the same lot with a building or structure.

Yard, front means an open unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot. The depth of the front yard shall be measured between the front line of the building and the street line.

Yard, rear means an open, unoccupied space on the same lot with a main building, extending the width of the lot and situated between the rear line of the lot and the rear line of the building projected to the sideline of the lot. The depth of the rear yard shall be measured between the rear line of the lot and the rear line of the building.

Yard, side means an open unoccupied space on the same lot with the building situated between the building and the side line of the lot and extending from the front yard and to the rear yard. Any line not a rear line or front line shall be deemed a side line.

Section 3.

Sec. 82-244. Residential district [RI districts.]

Floor elevation and building height limits.

- (1) *Survey.* Before the appropriate town official may issue a development permit, a development permit applicant must provide the building department with a boundary and topographic survey signed and sealed by an appropriately licensed professional demonstrating that the proposed new construction or substantial improvement meets the requirements of this section. Survey shall be prepared in accordance with chapter 80 of this Code titled, "surveys and drawings".
- (2) Building Height is limited to 30 feet and two-stories, except as provided by Sect. 82-421.
- (3) Building Height shall be measured as the vertical distance from the average natural grade to the highest point of the roof. When a building is located within a special flood hazard area having a designated base flood elevation on the flood insurance rate map (FIRM), the height shall be measured from the required freeboard to the highest point of the roof.

Section 4.

Sec. 82-303. Building height.

- 1) No building in the B-1 district shall be erected to a height in excess of 30 feet, except as provided by Sec. 82-421.
- 2) Building Height shall be measured as the vertical distance from the average natural grade to the highest point of the roof. When a building is located within a special flood hazard area having a designated base flood elevation on the flood insurance rate map (FIRM), the height shall be measured from the required freeboard to the highest point of the roof.

3) Violations of this section shall be a Class D violation, punishable as set forth in chapter 18.

Section 5.

Sec. 82-323. Building height.

- 1) No building in the B-2 district shall be erected to a height in excess of 30 feet, except as provided by Sec. 82-421.
- 2) Building Height shall be measured as the vertical distance from the average natural grade to the highest point of the roof. When a building is located within a special flood hazard area having a designated base flood elevation on the flood insurance rate map (FIRM), the height shall be measured from the required freeboard to the highest point of the roof.
- 3) Violations of this section shall be a Class D violation, punishable as set forth in chapter 18.

Section 6. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 7. Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 8. Codification. The sections of the ordinance may be made a part of the Town Code of Laws and 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 9. Effective Date. This ordinance shall take effect immediately upon adoption.

Commissioner Campo offered the Ordinance for its first, reading and moved its adoption.

The motion was seconded by Vice Mayor Kurzman, and upon being put to a vote, the vote was:

	<u>AYE</u>	<u>NAY</u>
JOHN TOMPECK, MAYOR	<u>✓</u>	<u> </u>
DAVE KURZMAN, VICE MAYOR	<u>✓</u>	<u> </u>
JAMES W. CAMPO, COMMISSIONER	<u>✓</u>	<u> </u>
FRANK FENDER, COMMISSIONER	<u> </u>	<u>✓</u>
KAIJA MAYFIELD, COMMISSIONER	<u> </u>	<u>✓</u>


Passed first reading at the Regular Meeting of the Town Commission held on the 18th day of July, 2023.

Vice Mayor Kurzman offered the Ordinance for its second reading and moved its adoption. The motion was seconded by Commissioner Campo, and upon being put to a vote, the vote was:


	<u>AYE</u>	<u>NAY</u>
JOHN TOMPECK, MAYOR	<u>✓</u>	<u> </u>
DAVE KURZMAN, VICE MAYOR	<u>✓</u>	<u> </u>
JAMES W. CAMPO, COMMISSIONER	<u>✓</u>	<u> </u>
FRANK FENDER, COMMISSIONER	<u> </u>	<u>✓</u>
KAIJA MAYFIELD, COMMISSIONER	<u>✓</u>	<u> </u>

Passed second reading at the Regular Meeting of the Town Commission held on the 15th day of August, 2023. The Mayor thereupon declared this Ordinance approved and adopted by the Town Commission on this 15th day of August, 2023.


TOWN OF SEWALL'S POINT, FLORIDA


John Tompeck, Mayor

ATTEST:


April Stoncius, CMC, Town Clerk
(TOWN SEAL)

Approved as to form and legal sufficiency:


Glen J. Torcivia, Town Attorney
Florida Bar No. 343374

