

LEE COUNTY ORDINANCE NO. 22-24

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE (LDC), CHAPTERS 26 AND 34 RELATING TO DOCK AND SHORELINE STRUCTURES; PERTAINING TO MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

THE SPECIFIC LDC PROVISIONS THAT WILL BE AMENDED ARE: SEC. 26-41 (DEFINITIONS); SEC. 26-42 (VIOLATIONS AND PENALTIES); SEC. 26-45 (PERMITS REQUIRED); SEC. 26-46 (VARIANCES); SEC. 26-47 (EXEMPTION FROM SETBACK REQUIREMENT); SEC. 26-48 (NONCONFORMING STRUCTURES); SEC. 26-71 (DOCKING FACILITIES AND BOAT RAMPS); SEC. 26-73 (FISHING PIERS, OBSERVATION DECKS OR KAYAK/CANOE STRUCTURES); SEC. 26-74 (BOATHOUSES); SEC. 26-75 (SEAWALLS, RETAINING WALLS AND RIPRAP REVETMENT); SEC. 26-77 (TURBIDITY; PROTECTION OF VEGETATION); SEC. 26-78 (MARINA DESIGN AND LOCATION); SEC. 26-80 (TRANSFER OF (WATERCRAFT) SLIP CREDITS (TSC)); SEC. 26-115 (DISCHARGE OF WASTE MATERIAL PROHIBITED); SEC. 26-116 (MARINA SANITATION FACILITIES); SEC. 34-145 (FUNCTIONS AND AUTHORITY); SEC. 34-202 (SUBMITTAL REQUIREMENTS FOR APPLICATIONS REQUIRING PUBLIC HEARING).

WHEREAS, Florida Statutes Section 125.01(1)(h) authorizes counties to establish, coordinate, and enforce zoning regulations necessary for the protection of the public; and,

WHEREAS, the Board of County Commissioners adopted the Lee County Land Development Code which contains regulations applicable to the development of land in Lee County; and,

WHEREAS, the Board of County Commissioners of Lee County, Florida, has adopted a comprehensive Land Development Code (LDC); and,

WHEREAS, Goal 4 of the Lee County Comprehensive Land Use Plan (Lee Plan) states: Pursue or maintain land development regulations which protect the public health, safety and welfare, encourage creative site designs and balance development with service availability and protection of natural resources; and,

WHEREAS, the Land Development Code Advisory Committee (LDCAC) was created by the Board of County Commissioners to explore amendments to the LDC; and,

WHEREAS, the LDCAC has reviewed the proposed amendments to the LDC on April 8, 2022, and recommended approval of the proposed amendments as modified; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on May 11, 2022 and recommended their adoption; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on April 25, 2022, and found them consistent with the Lee Plan, as indicated.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

## **SECTION ONE: AMENDMENT TO LDC CHAPTER 26**

Lee County Land Development Code Chapter 26 is amended as follows with strike through identifying deleted text and underline identifying new text.

### **CHAPTER 26 – MARINE FACILITIES, STRUCTURES AND EQUIPMENT**

#### **ARTICLE II. – DOCK AND SHORELINE STRUCTURES**

##### **DIVISION 1. – GENERALLY**

###### **Sec. 26-41. – Definitions.**

The following words, terms and phrases, when used in this article, will have the following meanings unless the context clearly indicates a different meaning:

*Access walkway* means the portion of a structure that allows access to a docking facility or terminal platform.

*Areas of special concern (ASC)* means those areas as identified and described in the Manatee Protection Plan.

*Benthic Species Survey Assessment* means an assessment of the animals and plants that live on or in the bottom of a body of water conducted between April 1 and October 31. Supporting data are in the form of but are not limited to: benthic habitat species maps that depict the topography, photos, acoustic surveys, and an analysis of sedimentary samples beneath the body of water that provide data sufficient to determine the presence of shellfish and seagrass beds.

*Boat* means a vehicle or vessel designed for operation as a watercraft propelled by sail or one or more electric or internal combustion engines. For the purposes of the

Manatee Protection Plan, non-mechanically powered ~~canoes and kayaks~~ paddlecrafts are not covered by this definition. See also *Vessel* or *Watercraft*.

*Boat facility* means a public or private structure or operation where boats are moored or launched, including commercial, recreational and residential marinas, and ~~boatramps~~ boat ramps.

*Boathouse* means a roofed structure constructed over or adjacent to water to provide a covered mooring or storage place for watercraft.

~~Boatramp~~ Boat ramp means a structure, man-made or altered natural feature, or an inclined and stabilized surface extending into the water from the shore, which facilitates the launching and landing of boats into a waterbody or from which trailered watercraft can be launched and retrieved.

*Director* means the director of the department of community development, or his successor or designee, except when otherwise stated.

*Ditch* means a manmade trench or canal that was built for a non-navigational purpose. (See Federal Register 33 CFR 329.24 for definition of navigable waterways.)

*Docking facility* means a water-oriented structure designed primarily for the launching, retrieval, storage or mooring of watercraft.

*Dock pavilion* means an open-sided roofed structure located completely over dock decking.

~~*Egress and ingress* means, for the purposes of the Manatee Protection Plan, a continuous pathway of deep water that vessels would most likely travel between a facility and a marked channel.~~

*Exterior property line* means the side lot line or riparian property line separating two or more lots or parcels under common ownership from the adjoining lots or parcels under separate ownership.

*Finger pier* means a dock landing that branches from an access walkway or terminal platform to form a watercraft slip and provide direct access to watercraft moored in the slip.

*Hazard to navigation* means a watercraft or structure erected, under construction or moored that obstructs the navigation of watercraft proceeding along a navigable channel or obstructs reasonable riparian access to adjacent properties.

*Invasive exotic vegetation* means Australian pine (*Casuarina spp.*), Brazilian pepper (*Schinus terebinthifolius*), paper or punk tree (*Melaleuca quinquenervia*), beach

naupaka (*Scaevola frutescens* or *Scaevola taccada*), ~~and earleaf acacia (*Acacia auriculiformis*)~~ and those additional species listed in section 10-420(h).

*Lawfully* has the same meaning as set forth in section 34-2.

*Linear shoreline* means the mean high water line in tidally influenced areas and the ordinary high water line along ~~waterways-waterbodies~~ that are not tidally influenced. This definition does not apply to shorelines artificially created after October 24, 1989 through dredge and fill activities (such as boat basins or canals). Shorelines artificially created before October 24, 1989 must have been permitted in accordance with the regulations in effect at that time. Shoreline along man-made ditches (such as mosquito control, flood control ditches, etc.) will not qualify as linear shoreline, regardless of the date of construction unless verifiable documentation of regular navigational use prior to July 1, 2004 exists. For purposes of Manatee Protection Plan, linear shoreline will be calculated using survey quality aerial photographs or by accurate field survey. The calculation of linear shoreline for purposes of Ch. 26 is based upon shoreline owned or legally controlled by the property owner.

*Littoral zone* means the shallow-water region of a waterbody where sunlight penetrates to the bottom.

*Manatee Protection Plan* means the Lee County Manatee Protection Plan, dated June 17, 2004, approved by the Board of County Commissioners on June 29, 2004, as it may be amended from time to time.

*Mangrove* means any specimen of the species black mangrove (*Avicennia germinans*), white mangrove (*Laguncularia racemosa*), or red mangrove (*Rhizophora mangle*).

*Marginal dock* means a dock that runs parallel and adjacent to the shoreline and no more than 10 feet waterward from the shoreline or seawall, bulkhead or revetment. This term includes docks with a ~~maximum access walkway length of 25 feet~~ to a 10-foot-wide dock running parallel to the shoreline and adjacent to wetland vegetation.

*Marina* has the meaning provided in section 34-2.

*Mean high water* means the average height of the high waters over a 19-year period. For shorter periods of observation, "mean high water" means the average height of the high waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean 19-year value.

*Mean high-water line* means the intersection of the tidal plane of mean high water with the shore.

*Mean low water* means the average height of the low waters over a 19-year period. For shorter periods of observation, "mean low water" means the average height

of the low waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean 19-year value.

*Mean low-water line* means the intersection of the tidal plane of mean low water with the shore.

*MFSE* means the marine facilities siting element of Lee County's Manatee Protection Plan.

*Mooring area* means the portion of a docking facility used for the mooring of watercraft.

~~*Multi-slip docking facility* has the meaning provided in section 34-2~~ means one or more docks that provide multiple vessel mooring slips to unrelated individuals, either for rent or for sale, or as an on-site private recreation facility as defined in section 34-2. A multi-slip docking facility is distinguished from a marina in that it has no commercial activity associated with it, including boat rentals or those uses or activities listed under transportation services group I (see Section 34-622(c)(53)). The term "multi-slip docking facility" does not include boat ramps or a shared docking facility in accordance with Section 26-71(h).

*Navigable channel* means the area within a natural waterbody that has a minimum of three feet of water depth at mean low water. In artificial waterbodies, the navigable channel is measured from mean high waterline to mean high waterline, except for instances where mangroves are present. Where mangroves are present, the navigable channel is measured from the most waterward root system of the mangroves to the mean high waterline or the most waterward root system of mangroves adjoining the waterline on the opposite side of the navigable channel. Where vertical seawalls are present, the measurement will be made from the most waterward face of the seawall, not including the seawall cap.

~~*Open water* means, for the purposes of the Manatee Protection Plan, wide water bodies or water adjacent to passes. Charlotte Harbor is defined as the southern limit of the Charlotte Aquatic Preserve line north to the Lee County line, and Pine Island Sound is defined as the northern limit of the Pine Island Sound Aquatic Preserve line at the north end of the Sound, south to Redfish Pass. Gulf Passes, for the purposes of the Manatee Protection Plan, include Matanzas Pass, Captiva Pass, Redfish Pass, Boca Grande, Big Hickory Pass, Big Carlos Pass, Blind Pass, Hurricane Pass and New Pass.~~

*Paddlecraft* means any type of non-motorized canoe, kayak, paddleboard, or other similar vessel manually powered by its occupants.

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

*Public service marina* means a marina that generally leases wet storage to the general public on a first come, first serve basis, and also offers services such as the provision of supplies, sewage pump-out, repair of boats and wet or dry storage.

*Retaining wall* means a vertical bulkhead constructed landward of the mean high water line and wetland vegetation.

*Single-family dock* means a fixed or floating structure, including moorings, used for berthing buoyant vessels, that is an accessory use to an existing or proposed single-family residence, with no more than two boat slips per residence when located in a ~~natural waterbody~~waterway. Notwithstanding, a shared single-family dock approved in accordance with this code may contain up to four boat slips. A single-family dock may contain additional slips as provided in Section 26-71(a).

*Slip or watercraft-slip* means a space designed for the mooring or storage of a single watercraft, regardless of size, which includes wet or dry slips, anchorage, beached or blocked, hoist, parked on trailers, open or covered racks, seawall or the number of parking spaces for ~~boat ramps~~boat ramps. Mooring or storage of paddlecrafts are not considered wet or dry slips. Piers authorized only for fishing or observation are not considered wet slips.

*Structure* refers to any water-oriented facility and includes, without limitation, any dock, boardwalk, floating dock, fishing pier, wharf, observation deck, deck, platform, boathouse, mooring piling, riprap, revetment, seawall, bulkhead, retaining wall, jetty, groin, geotextile tube, boat lift, davit or ~~boat ramp~~boat ramp, or any other obstacle, obstruction or protrusion used primarily for the landing, launching or storage of watercraft, erosion control and shoreline stabilization, or for water-oriented activities.

Seagrass means Submerged-submerged aquatic vegetation (SAV) means including fresh, saline (seagrass)-or brackish submerged vegetation that may be used by manatees for food.

*Terminal platform* means the part of a docking facility connected to and generally wider than the access walkway that is used both for securing and loading a vessel.

*Vessel* means a motor-propelled or artificially propelled vehicle and every other description of boat, watercraft, barge and airboat (other than a seaplane), used or capable of use as a means of transportation on the water, ~~including jet skis~~. See Boat or Watercraft.

~~*Warm water refuge* means known areas of warm water discharge, deep water or natural springs where manatees aggregate in the wintertime for thermoregulation. Known or recognized warm water refuges are listed in the Manatee Protection Plan.~~

*Waterbody* means all artificial and natural bodies of water, as those terms are defined in section 34-2, and all adjacent wetlands, as defined in section 14-292.

*Watercraft* means any vehicle designed for transporting persons or property on, in or through water. See *Boat* or *Vessel*.

*Waterway* means any bay, river, lake, canal or artificial or natural body of water traversable by watercraft to navigable waters of the United States, including the Gulf of Mexico.

*Work* means and includes, but is not limited to, all dredging or disposal of dredge material, excavation, filling, construction, erection or installation, or any addition to or modification of a structure on ~~a waterway~~any waterbody.

**Sec. 26-42. – Violations and penalties.**

- (a) Any person doing work in violation of this article or any approval or permit issued in accordance with this article is subject to prosecution through the county code enforcement process, described in chapter 2, article VII. Any affected party, including the county, may seek a civil injunction to enjoin work ~~on a structure~~ conducted in violation of this article, in addition to or in lieu of initiating or pursuing code enforcement action.
- (b) Each day work continues ~~on any structure~~ without the appropriate permits constitutes a separate offense.

**Sec. 26-45. – Permits required.**

- (a) A permit is required prior to starting any work addressed by this article.
- (b) Permit applications must be submitted in writing on an appropriate form to the Department of Community Development, and contain the following:
  - (1) The names, addresses, and telephone numbers of the property owners;
  - (2) The name, address and telephone number of the property owner's agent, if applicable
  - (3) Written authorization from the property owner to the agent, if applicable;
  - (4) The property street address;
  - (5) The property STRAP number;
  - (6) A site plan, showing the following:
    - a. The proposed location of the work relative to riparian property lines;~~and~~

- b. Dimensions and side setbacks of all proposed structures or work;
  - c. The proposed location and quantity of watercraft slips; and
  - d. The width of the abutting navigable channel or artificial waterbody.
- (7) ~~Copies of all necessary state and federal agency permits, unless a submerged lands lease is required from the state department of environmental protection, in which case county approval is required first; and~~
- (7) A watercraft-slip determination in accordance with the Manatee Protection Plan, where applicable; and
- (8) A fee, as established in the applicable county administrative code.
- (c) Work relating to industrial, commercial or multi-family projects may require a development order in accordance with Chapter 10 and construction drawings sealed by a professional engineer (P.E.) or registered architect. All development order applications will be reviewed for compliance with this article.
- (d) The director has the discretion to require:
- (1) Construction drawings sealed by an appropriately qualified professional engineer, or registered architect;
  - (2) A boundary or record survey, including labeled delineation of riparian lines, sealed by a professional surveyor and mapper (PSM) identifying the property boundary or riparian extensions into the waterbody in relation to construction or work. The survey submitted to meet this criteria must be certified to Lee County; and
  - (3) A post-construction as-built survey, sealed by a PSM and certified to the county, prior to issuance of a certificate of completion for any permit under this section.
- (e) The director may conduct on-site inspections to determine if the proposed work or structure meets the required minimum standards.
- (f) A permit is required to repair or replace an existing structure. The director has the discretionary authority to exempt minor repairs.

- (g) The director can authorize minor design alteration necessary to comply with the Americans with Disabilities Act.
- (h) Permit approvals granted under this section will be based upon the information submitted by the applicant. An approval under this section does not constitute a legal opinion regarding the riparian rights boundaries of the subject property or adjacent property; and, may not be used to substantiate a claim of right to encroach into another property owner's riparian rights area.
- (i) Issuance of a permit for new construction, reconfiguration or the repair of an existing structure that changes the configuration in a manner not consistent with the terms and conditions of the Manatee Protection Plan is prohibited.

**Sec. 26-46. – Variances and Special Exceptions.**

- (a) Variances from the requirements of this article may be requested in accordance with section 34-145(b).
- (b) Requests for variances involving historic resources, as defined in chapter 22, may be obtained in accordance with sections 22-173 and 22-174.
- (c) Specified departures from the standards contained in section 26-74 may be requested through the special exception approval process in accordance with section 34-145(c). A permit authorizing development approved by special exception may not be issued prior to the issuance of a building permit for a principal structure. The principal structure must be either existing or concurrently constructed with any approved departure from the standard regulations contained herein.

**Sec. 26-47. – Exemption from setback requirement.**

Any structure permitted under this article will not be subject to the 25-foot waterbody setback requirements from a bay, canal or other waterbody set out established in chapter 34.

**Sec. 26-48. – Nonconforming structures.**

A nonconforming structure may be repaired, replaced or altered if the size, dimensions and location of the structure is and will remain in compliance with existing all other applicable regulations, including the Manatee Protection Plan and section 26-75(b)(4) (regarding seawalls). Nonconforming structures may be altered, if in the opinion of the director, the proposed work will not cause an increase in the nonconformity.

## DIVISION 2. - LOCATION AND DESIGN

### Sec. 26-71. – Docking facilities and boat ramps.

Docking facilities will be permitted in accordance with the following regulations:

(a) *Number of slips.*

- (1) ~~No more than one private single-family watercraft mooring dock with two slips is permitted in natural waterbodies~~ Single-family docks containing more than two slips must comply with the Manatee Protection Plan Boat Facility Siting Criteria.
- (2) A shared property line dock can be permitted for up to four slips with a joint use agreement in compliance with section 26-71(g)(h).
- (3) Handrails may be required to prohibit the mooring of watercraft in any area not designated as a watercraft slip. Handrails must be permanently maintained. Handrails for a private single-family or joint use watercraft mooring dock may be waived if:
  - a. A review of the property's location, docking facility design and Notice of Code Violation (NOV) case history does not warrant concern of future violation of approved watercraft slip count.
  - b. The plans provided clearly demonstrate the mooring location(s) and quantity of watercraft slips.
  - c. The absence of handrails does not contravene other local, state or federal building regulations.
  - d. The Director's decision is discretionary in nature and may not be appealed pursuant to section 34-145(a). Subsequent notice of code violation for non-compliance with the approved watercraft slip count or location may only be abated through the issuance of a building permit for the construction of handrails.
- (4) ~~Determination of non-single-family slips must be in compliance with the Manatee Protection Plan as defined by section 26-41 and 26-79.~~

(b) *Length of docks.* No ~~private single-family dock~~, including mooring area, may be permitted or constructed in a natural or artificial waterbody to exceed any of the following lengths ~~as measured from the mean high water line seaward~~:

(1) 200 feet as measured from the mean high water line seaward;

(2) 25 percent of the navigable channel width. ~~In artificial waterbodies, the navigable channel is measured from mean high waterline to mean high waterline.~~ Watercraft mooring areas that are waterward of the dock will be deemed 10 feet in width; or

(3) Up to 300 feet, if the director, in his sole discretion, finds that: A dock, including mooring area, may be permitted to exceed 200 feet at the director's discretion. The applicant must provide the following documentation in support of such a request:

a. ~~The proposed dock has been approved by all~~ All applicable state and federal agencies issued permits;

b. Site plans demonstrating:

1. The increased length will not extend beyond 25 percent of the navigable channel width and does not result in a hazard to navigation;

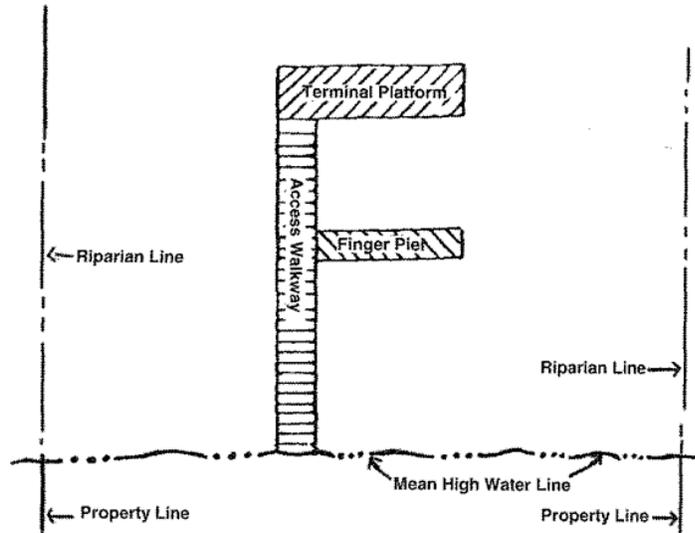
2. ~~e.~~ The proposed dock is compatible with docks or other structures and uses on adjoining adjacent lots; and

3. ~~d.~~ A benthic species survey assessment, as defined in section 26-41 of this Chapter, conducted between April 1 and October 31, demonstrating the increase in length will not adversely impact The increase in length will lessen the dock's impacts on seagrass beds or other marine resources.

(c) *Maximum dimensions.*

(1) Docking facilities in ~~natural waterbodies~~ state designated aquatic preserves must comply with the following maximum dimensional requirements:

Figure 26-1  
Private Single-Family Structure  
Plan View



Private Single-Family Structure	
Access walkway	4 feet wide
Terminal platform	160 square feet
Finger piers	3 feet wide

The application of these regulations is illustrated in Figure 26-1, Private Single-Family Structure Plan View.

- (2) The director has the discretion to permit a dock of greater dimensions than allowed by this subsection if:
  - a. The primary access to the property is by watercraft;
  - b. No reasonable alternative access exists; and
  - c. The increase in the dock dimensions is the minimum necessary to meet the needs of the property owner; and
  - d. The applicant provides a benthic survey assessing the aquatic habitat, conducted between April 1 and October 31, accompanied by a site plan depicting appropriately permitted below dock and/or shoreline vegetation enhancement measures.
- (3) Single-family residential boat ramps cannot exceed 15 feet in width.

(d) *Setbacks.*

- (1) All multi-slip and marina docking facilities, except boat davits, in or adjacent to natural waterbodies must be set back a minimum of 25 feet from all adjoining side lot lines.
- (2) All private single-family docking facilities in natural waterbodies must be set back from all adjoining side lot and side riparian lines as follows:
  - a. Marginal docks—No less than 10 feet.
  - b. All other docks on lots with 65 linear feet of shoreline or greater—No less than 25 feet.
  - c. Boat lifts and mooring pilings on lots with 65 linear feet of shoreline or greater—No less than 10 feet.
  - d. All other docks, boat lifts and mooring pilings on lots with less than 65 linear feet of shoreline—No less than 10 feet.
- (3) Side setback requirements can be reduced if:
  - a. Adjoining property owners execute a written agreement in recordable form, agreeing to a setback less than that required or to a zero setback; and
  - b. Placement of the dock in accordance with the setback agreement will not result in greater environmental impacts than compliance with the regulations set forth in this subsection.
- (4) The Director, in the Director's discretion, may permit administrative deviations from the setbacks required by this subsection if the facility is located as close to the required setback as possible and:
  - a. The width of the subject parcel is not wide enough to permit construction of a single-family docking facility, perpendicular to the shoreline at the midpoint of the shoreline property line, without a deviation; or
  - b. Construction of the structure outside the setback area will not cause or will minimize damage to wetland vegetation or other environmental resources or will not cause greater damage than will occur if the deviation is not granted.

- (5) All boat ramps must ~~setback~~ set back ten feet from all adjoining side lot and side riparian lines.
- (e) *Location.*
- (1) ~~Docking structures~~ Structures and watercrafts in natural or artificial waterbodies that create a hazard to navigation are prohibited.
  - (2) Boat ramps located in a manner that will result in a change in the mean high water line are prohibited.
  - (3) Docks located at the end of a canal ~~may require a survey sealed by a PSM depicting the riparian area. The dock must be designed to allow for adequate ingress/egress~~ access and mooring within the subject property's riparian area.
- (f) *Minimum water depths.*
- (1) *Single-family docking facilities.* There must be a minimum depth of three feet mean low water for all watercraft slips on private single-family docking facilities in natural waterbodies.
  - (2) *Water depths adjacent to and within a multi-slip docking facility or a marina.* Except when a reduced water depth for a public service marina has been approved by variance and vessel draft restrictions considered, there must be a minimum depth of one foot clearance between the deepest draft of a vessel (with the engine in the down position) and an unvegetated bottom or the top of submerged aquatic vegetation (e.g. seagrasses) at mean low water, with a minimum water depth of at least four feet within mooring areas, turning basins, and egress and ingress ~~and egress~~ pathways. Multi-slip docking facilities that do not require review under the Manatee Protection Plan may be located in a minimum water depth of at least three feet mean low water within mooring areas, turning basins, and egress and ingress pathways. The hearing examiner may grant a variance to the minimum water depth for a ~~pubic~~ public service marina in accordance with section 34-145(b), only upon finding the request is consistent with the other provisions of Manatee Protection Plan.
- (g) *Interest in land to support residential dock/facility approval.* In order to obtain a permit for a residential dock and related facilities, the property owner/applicant must have a recorded right to access the water meeting the following criteria:

- (1) A deed describing the residential lot with at least one boundary being the ~~waterway~~ waterbody along which the dock facility is proposed. The lot described must be a buildable lot with sufficient square footage to meet county requirements except as provided in section 34-1173(a)(2)d; OR
- (2) A recorded easement granting access to the waterbody for purposes of constructing and using a dock/facility meeting the following criteria.
  - a. The easement must be over land contiguous to the residential lot such that an extension of the side lot lines will allow access to the water beyond the rear lot line;
  - b. The easement must be for the benefit of a residential lot that is a buildable lot under county regulations; and
  - c. The easement must be necessary to gain access to the waterbody over and through waterway buffer and maintenance areas required for development approval under chapter 10.
- (h) *Joint use agreements.* Adjacent property owners seeking approval for a shared docking facility must submit a draft joint use agreement to ~~Environmental Sciences~~ with a permit application. The agreement must be reviewed and approved by the County Attorney's office prior to permit issuance, and must:
  - (1) Identify each party by name, including mailing address. The parties must be the owners of the property abutting each other that will benefit from the dock facility.
  - (2) Identify the physical location of the subject parcels, including STRAP numbers, a legal description and accompanying sketch.
  - (3) Identify the specific location of the docking facilities including: the name of the waterbody, the dimensions of the facilities, and the dimensions of the land that will be used in conjunction with the facilities.
  - (4) Provide, as an attachment to the agreement, a detailed sketch of the facility identifying the various docking facilities, subject property boundaries and the upland area intended to be encumbered by the normal use of these facilities. This sketch must be consistent with the statements made to comply with section 26-71(h)(3).

- (5) Specifically identify those areas that will be the subject of access easements to provide access (~~ingress/egress~~) to the docking facilities from each of the benefitted parcels. Depending on the facilities and parties involved, these easements may be reciprocal in nature. The easements must be specifically granted to each party named in the agreement and must run with the land (i.e. be part of the title to the primary residential parcel) in perpetuity. Grant of dock easement rights to parcels that do not abut the docking facility parcel is prohibited.
- (6) Provide, as an attachment, a sketch prepared by a registered PSM, based on the legal description and identifying the access easements granted.
- (7) Indicate who will be responsible for the cost of construction and maintaining the facilities. This can be accomplished by inclusion of cost sharing provisions.
- (8) Indicate that the parties understand and agree to abide by all applicable Federal, State and local regulations pertaining to the construction, maintenance and use of the facilities.
- (9) ~~Be submitted as a draft to Environmental Sciences for review by staff and the County Attorney's Office prior to recording.~~
- (10) Be recorded in the public records at the applicant's cost. In order to satisfy the minimum recording requirements imposed by the Florida Statutes, there must be two witnesses to each party's signature and each party must acknowledge the agreement before a notary public. Additional requirements can be found in F.S. § 695.26. A copy of the recorded agreement or a document identifying the recording information must be submitted to the County prior to permit issuance.

**Sec. 26-73. – Fishing piers, observation decks or ~~kayak/canoe paddlecraft~~ structures.**

Fishing piers, observation decks or ~~kayak/canoe paddlecraft~~ structures may be permitted in areas where water depth is insufficient for watercraft mooring. ~~Kayak/canoe Paddlecraft~~ structures are for ~~use with launch and retrieval of non-motorized watercraft vessels~~. Fishing piers, observation decks and ~~kayak/canoe paddlecraft~~ structures must meet the following criteria.

- (1) *Design.* The design and construction must:
  - a. Prohibit watercraft mooring;

- b. Provide access walkways and terminal platforms at five feet above mean high water; except that the terminal end of a ~~kayak/canoe-paddlecraft~~ structure used for launching ~~kayaks/canoes-paddlecrafts~~ may be constructed lower than five feet above mean high water;
  - c. Provide fixed handrails, including intermediate rails, installed around the perimeter of the structure, except for the terminal end of a ~~kayak/canoe-paddlecraft~~ structure;
  - d. Include a "no boat mooring" sign placed facing the water on the terminal platform of the structure; and
  - e. Be set back from all adjoining side lot and riparian lines no less than 25 feet on natural water bodies. In manmade waterbodies, no setback is required.
- (2) *Dimensions.* The design and construction must:
- a. Provide access walkways that do not exceed a total of four feet in width in natural water bodies.
  - b. Not extend waterward more than 200 feet from the mean high waterline.
  - c. Not exceed 260 square feet for the terminal platform for fishing piers or observation decks;
  - d. Not exceed 160 square feet for the terminal platform for ~~kayak/canoe-paddlecraft~~ structures; and
  - e. Not extend waterward more than 25 percent of the navigable channel width.

**Sec. 26-74. – Boathouses and Dock Pavilions.**

The following regulations apply to all boathouses and dock pavilions associated with private single-family residential uses, except where specifically superseded by other provisions of this article:

- (a) *Location.*
  - (1) Boathouses must be constructed adjacent to or over a waterway. Any boathouse constructed over land must be located, in its entirety, within 25 feet of the mean high water line.

- (2) Boathouses over submerged bottoms containing areas of dense seagrasses or shellfish beds are prohibited.
  - (3) Boathouses, boat lifts and davits designed with mooring inside the structure may not extend beyond 25 percent of the width of a navigable channel.
  - (4) Dock pavilions may be constructed over docks that conform to the provisions of this chapter and may include overhangs projecting no further than 24 inches waterward, provided such extension does not result in exceedance of 25 percent of the width of the navigable channel.
- (b) *Setbacks.* The minimum setbacks for boathouses and dock pavilions as measured from side lot lines and riparian lot lines to the nearest point of the structural beam of the boathouse roof are as follows:
- (1) Natural waterbodies—25 feet.
  - (2) Artificial waterbodies—10 feet.
  - (3) Side and riparian setback requirements can be reduced if:
    - i. Adjoining property owners execute a written agreement in recordable form, agreeing to a setback less than that required but not less than 10 feet in natural waterbodies or not less than 5 feet in artificial waterbodies; and
    - ii. Placement of the boathouse or dock pavilion in accordance with the setback agreement will not result in greater environmental impacts than compliance with the regulations set forth in this subsection.

When a boathouse or dock pavilion is constructed on or adjacent to two or more adjoining lots under common ownership and control, the setbacks will be measured from the exterior property lines.

- (c) *Design criteria.*
- (1) *Maximum area.*
    - i. A boathouse may not encompass more than 500 square feet of roofed area-, except where two boathouses are permitted on an individual property, one boathouse exceeding 500 square feet in roofed area, up to 1,000 square feet, may be

constructed in lieu of two individual boathouses. No more than 1,000 square feet of roofed area may be permitted on an individual property unless approved by special exception in accordance with section 26-46(c)

- ii. A maximum of one dock pavilion may be permitted on a single family property in lieu of one boathouse and may not encompass more than 250 square feet of roofed area over decking, except where a shared-use docking facility is permitted the dock pavilion may not exceed 300 square feet.

(2) *Height.*

- i. The maximum height of a boathouse is 20 feet above mean high water, as measured from mean high water to the highest point of the boathouse. A special exception may be requested in accordance with section 26-46(c) for a boathouse height up to 35 feet above mean high water.
- ii. The maximum height of a dock pavilion is 20 feet above mean high water, as measured from mean high water to the highest point of the dock pavilion; or 12 feet above the grade of the dock to the highest point of the dock pavilion, whichever is lower. The roof of a dock pavilion is prohibited from containing an upper-story deck or guardrails.

(3) *Permitted uses.*

- a. Use of a boathouse or dock pavilion for living or fueling facilities is prohibited.
- b. Up to 25 percent of the total roofed area of a boathouse can be used for storage of items that relate directly to the use and maintenance of watercraft. Items that do not relate directly to the use and maintenance of watercraft may not be stored in a boathouse, except as provided below.
- c. A seating area in conjunction with a boathouse not exceeding the permissible decking area in subsection (4) of this section.
- d. A dock pavilion is limited to a seating area.

(4) *~~Decking~~Boathouse decking.*

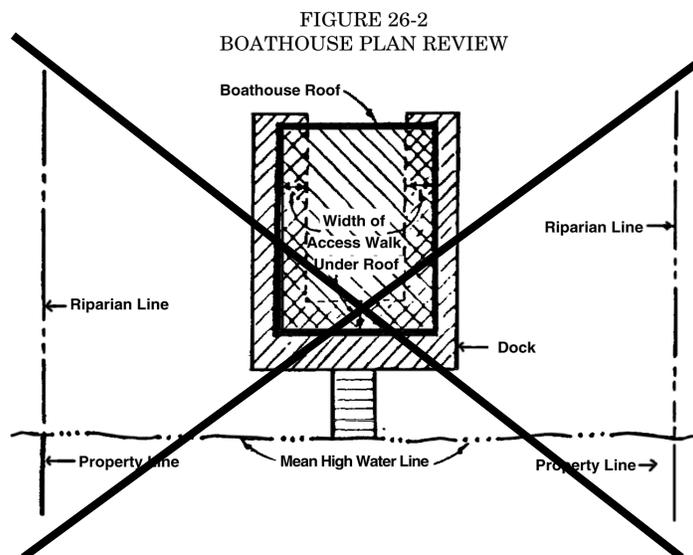
- a. Access walkways not exceeding four feet in width are permitted in the area under the roof of a boathouse located over water. ~~Additional decking in the area under the roof of a boathouse is prohibited.~~
- b. A seating area may be included in the area under the roof of a boathouse provided that the seating area is no greater than 25 percent of the boathouse roofed area.

(5) *Enclosure.*

- a. Boathouses located over a waterbody or adjacent to a natural waterbody must be open-sided. Safety rails 42 inches high or less are permitted.
- b. Boathouses located adjacent to an artificial waterbody must meet the following requirements:
  - 1. The boathouse must be open-sided if the proposed side setback is between ten and 25 feet.
  - 2. The boathouse may be open-sided or enclosed with wood lattice, chainlink fencing or other open-mesh fencing materials if the side setback is 25 feet or more.
- c. Dock pavilions must be completely open-sided.

(6) *Wind load standards.* All boathouses and dock pavilions must comply with the building code wind load standards as adopted in chapter 6.

The application of the regulations is illustrated in Figure 26-2, Boathouse Plan Review.



**Sec. 26-75. – Seawalls, retaining walls and riprap revetment.**

- (a) *Seawalls on artificial waterbodies and retaining walls.*
- (1) Seawalls may be permitted in an artificial canal with a minimum of 50 percent of the bank having seawalls, or for a linear distance less than 300 feet where both adjoining properties have seawalls. A new or replacement seawall must be installed in line with the existing seawall alignment or adjoining seawalls and placed no greater than one foot waterward of an existing seawall. Until the backfill area is stabilized, silt fence or sod must be placed immediately landward of the seawall cap to minimize erosion into the water.
  - (2) ~~Except where it conflicts with state or federal regulations, Riprap~~ riprap rock or other similar approved material must be placed waterward along no less than 50 percent of the linear length of a new or replacement seawall. This riprap is not required where it would interfere with designated watercraft tie-up areas. The rock must be placed a minimum of three feet in height above the bottom, waterward of the seawall, or up to the mean high water line. The rock must be ~~a an minimum~~ average size of 12 inches in diameter.
- (b) *Seawalls on natural waterbodies.*
- (1) The Lee Plan through Objective ~~405.1~~101.4 and Policy ~~405.1.3~~101.4.2, regulates hardened structures along the natural shoreline.
  - (2) New or expanded seawalls are not allowed along natural waterbodies, including the Gulf of Mexico.
  - (3) Other hardened structures, including but not limited to geotextile tubes, groin, fencing and other similar structures, may be permitted along natural waterbodies, except along the Gulf of Mexico.
  - (4) Lawfully existing seawalls along natural waterbodies may be maintained or repaired and may be replaced with the same type structure, built to the same dimensions and in the same location as the previously existing structure.
- (c) *Retaining walls.* Retaining walls must be setback a minimum of five feet from the mean high water line or landward of any wetland vegetation.
- (d) *Riprap revetment.*
- (1) Riprap must be located and placed so as not to damage or interfere with the growth of wetland vegetation.

- (2) Material used for riprap should be sized properly for intended use, be ~~a~~an ~~minimum~~ average of 12 inches in diameter, and installed on top of filter fabric or equivalent material to prevent erosion of subgrade. Riprap must be clean and free of debris deemed harmful to the environment and public safety.
- (3) Mangroves or other approved wetland vegetation must be planted three feet on center in compliance with section 26-77(b)(2) for added shoreline stabilization and ecological benefit within the riprap. Other wetland mitigation techniques may be considered in lieu of vegetation planting. No vegetation planting is required for riprap revetments constructed in artificial upland canals with a minimum of 50 percent of the bank having seawalls, or for a linear distance less than 300 feet where both adjoining properties have seawalls.

**Sec. 26-77. – Turbidity; protection of vegetation.**

- (a) *Turbidity.* All structures must be placed so as to provide the least possible impact to seagrass, aquatic, or wetland vegetation. During work that will generate turbidity, turbidity screens must be installed and properly maintained until turbidity levels are reduced to normal (ambient) levels.
- (b) *Protection of vegetation.*
  - (1) *Permit conditions.* Conditions for the protection of shoreline vegetation can be placed on permits issued in accordance with this article. The conditions can include: the method of designating and protecting ~~mangroves~~ vegetation to remain after construction; and replacement planting for ~~mangroves~~ vegetation removed due to construction.
  - (2) *Mangrove replacement and plantings.*
    - a. For each mangrove removed due to construction, three mangroves must be replanted at an alternate location on the subject property. If planting on the subject property is not appropriate, alternative forms of mitigation, such as payment into a mitigation bank, may be allowed.
    - b. Mangrove plantings must be container grown, no less than one year old, eight inches in height and have a guaranteed 80 percent survivability rate for at least a five-year period. Mangrove plantings must be planted three feet on center. Mangrove replanting is required if the 80 percent survivability rate is not attained.

(3) *Mangrove removal.*

- a. Mangrove removal in conjunction with construction of riprap revetments, seawalls, or retaining walls along natural waterbodies is prohibited.
- b. Mangrove removal necessary for access walkway construction is limited to the minimum extent necessary to gain access to the dock facility. To the greatest extent possible, the access must be located to:
  1. Use existing natural openings;
  2. Use areas infested with invasive exotic vegetation;
  3. Avoid larger mangroves; and
  4. Provide a maximum width of four feet and a maximum height of eight feet above the level of the walkway base.

**Sec. 26-78. – Marina design and location.**

Marina locations must be consistent with Lee Plan Objective ~~428.5~~128.4 and all of its implementing policies, including the Manatee Protection Plan and Lee County Administrative Code 13-21. Marinas must be designed and constructed in a manner consistent with Lee Plan Objective ~~428.6~~128.5 and all of its implementing policies.

**Sec. 26-80. – Transfer of (watercraft) slip credits (TSC).**

- (a) *Transfer of slips.* The Manatee Protection Plan provides for the transfer of (watercraft) slips when certain requirements are satisfied. Transfer of watercraft slip credits established in accordance with the Manatee Protection Plan to and from single-family docks is prohibited.
- (b) *Director responsible.* The director of the division of natural resources, or his designee, will be responsible for approving the number of slips that may be recognized or transferred. The director, or his designee, will also be responsible for approving all transfers.
- (c) *Credits from shorelines with legally existing docks.* The Manatee Protection Plan contains provisions that may give credit for the removal of legally existing docks.

- (d) *Procedural rules for creating transfer (watercraft) slip credit under the Lee County Manatee Protection Plan.* Lee County Administrative Code Section 13-21 has been adopted to supplement and implement the transfer of (watercraft) slips pursuant to the provisions of the Manatee Protection Plan.

### **ARTICLE III. - MARINE SANITATION**

#### **Sec. 26-115. – Discharge of waste material prohibited.**

It is unlawful for any person to discharge or permit or control or command to discharge any raw sewage, garbage, trash or other waste material into the waters of ~~the county~~Unincorporated Lee County.

#### **Sec. 26-116. – Marina sanitation facilities.**

- (a) ~~Marinas that provide mooring of boats for live-aboard purposes with installed onboard sewer systems not designed and approved for overboard discharge~~ Class II marinas, as defined in section 26-112, must have:
  - (1) Public restrooms with facilities for sewage disposal and bathing.
  - (2) A county approved sewage disposal system to accommodate pump out by all live-aboard vessels.
- (b) Overboard disposal of refuse is prohibited.
- (c) All garbage must be collected at least once a week and transported in covered vehicles or covered containers. Burning of refuse in the marina is prohibited.

### **SECTION TWO: AMENDMENT TO LDC CHAPTER 34**

Lee County Land Development Code Chapter 34 is amended as follows with strike through identifying deleted text and underline identifying new text.

### **CHAPTER 34 – ZONING**

#### **ARTICLE II. – ADMINISTRATION**

#### **DIVISION 4. – HEARING EXAMINER**

#### **Sec. 34-145. – Functions and authority.**

*Subsection (c)(3)(e) is added as follows:*

- e. In the case of specified departures from the standard dock and shore regulations in Chapter 26, the Hearing Examiner must also find, or conclude a finding that the proposed development is in compliance with the Manatee Protection Plan.

## **DIVISION 6. - APPLICATIONS**

### **Sec. 34-202. – Submittal requirements for applications requiring public hearing.**

*Subsection (b)(5)d.4 is added as follows:*

4. Dock and shoreline structures. Dimensioned plan view of the structure(s) subject to the request, scaled architectural elevations demonstrating the proposed height above mean high water and a benthic species survey assessment as defined in Section 26-41.

## **SECTION THREE: CONFLICTS OF LAW**

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

## **SECTION FOUR: SEVERABILITY**

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

## **SECTION FIVE: CODIFICATION AND SCRIVENER'S ERRORS**

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code. Sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section," "article," or other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

**SECTION SIX: MODIFICATION**

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

**SECTION SEVEN: EFFECTIVE DATE**

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. The provisions of this ordinance will apply to all projects or applications subject to the LDC unless the development order application for such project is complete or the zoning request is found sufficient before the effective date.

Commissioner Hamman made a motion to adopt the foregoing ordinance, seconded by Commissioner Ruane. The vote was as follows:

Kevin Ruane	Aye
Cecil L Pendergrass	Aye
Raymond Sandelli	Aye
Brian Hamman	Aye
Mike Greenwell	Aye

DULY PASSED AND ADOPTED this 6<sup>th</sup> day of September 2022.

ATTEST:  
KEVIN C. KARNES, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
Cecil L Pendergrass, Chair

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

By: \_\_\_\_\_  
Office of the County Attorney