

**ORDINANCE 17-02**

**AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, RELATING TO BOAT DOCKING FACILITIES; MAKING FINDINGS; REVISING SECTION 30-10, CITY CODE, RELATING TO THE DEFINITION OF "NAVIGABLE WATERWAY" "NAUTICAL GARAGE"; PROVIDING A NAUTICAL GARAGE CONDITIONAL USE IN THE RSF RESIDENTIAL SINGLE-FAMILY ZONING DISTRICT AND AMENDING SECTION 30-84, CITY CODE; REVISING SECTION 54-101, CITY CODE, RELATING TO THE DEFINITION OF "BOAT DOCKING FACILITY" AND PROVIDING FOR DEFINITIONS OF "SINGLE-FAMILY RESIDENTIAL ZONING DISTRICT"; REVISING AND CLARIFYING SECTION 54-110 RELATING TO BOAT DOCKING FACILITIES AS AN ACCESSORY USE IN CERTAIN ZONING DISTRICTS; REVISING SECTION 54-111, CITY CODE, RELATING TO DIMENSIONAL STANDARDS AND PERMITTING A NAUTICAL GARAGE AS PART OF A SINGLE-FAMILY RESIDENTIAL PRINCIPAL STRUCTURE IN THE RSF RESIDENTIAL SINGLE FAMILY DISTRICT; AMENDING SECTION 54-116 RELATING TO PERMITTING NAUTICAL GARAGES BY CONDITIONAL USE; PROVIDING FOR SEVERABILITY/ INTERPRETATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, this Ordinance provides for the permitting as a conditional use of a type of boat docking facility known as a cut-in boat slip which will permit a boat slip to be built entirely within a parcel of land, and be an integral part of a single-family residential dwelling;

**WHEREAS**, as required by Section 30-62(8)a., Code of Ordinances of the City of Marco Island, Florida, given that the City of Marco Island is a waterfront residential community, the Planning Board has found that the need and justification for this Ordinance is to permit improved boat docking opportunities for certain waterfront single-family residential dwellings;

**WHEREAS**, Objective 1.7 of the Future Land Use ("FLU") Element of the Comprehensive Plan states:

Objective 1.7: The City will enforce existing and future Land Development regulations to eliminate and/or reduce uses of land inconsistent with the Future Land Use Map and the community's character.

**WHEREAS**, this Ordinance is consistent with Objective 1.7 of the FLU Element, because this Ordinance requires the continued use of lands in a manner consistent with the Comprehensive Plan;

**WHEREAS**, Objective 1.8 and Policies 1.8.3.1, 1.8.3.2, 2.1.4, and 2.2.1 of the Conservation & Coastal Management Element of the Comprehensive Plan state:

Objective 1.8: Ensure identified and potential wetlands are protected from unlawful, intrusive actions which could result in environmental damage or degradation.

Policy 1.8.3.1: Any proposed development or redevelopment project that contains a jurisdictional wetland (one acre or more) area shall be required to obtain all Federal and State permits, prior to the issuance of a City building permit, and comply fully with all terms and conditions of such approved permit(s), including on and off-site mitigation, if applicable.

Policy 1.8.3.2: Any proposed development or redevelopment project that contains nonjurisdictional [*sic*] wetlands (less than one acre) area shall be required to comply with all applicable non-City processes prior to the issuance of a City building permit.

Policy 2.1.4: Proposed development and re-development projects seaward of the Coastal Construction Control Line may be permitted provided it complies with this Comprehensive Plan and all state and local permitting requirements.

Policy 2.2.1: The City of Marco Island will continue to cooperate with County, State and Federal entities responsible for regulation and enforcement of activities associated with the protection and enhancement of mangrove, estuarine, beach, bay, river and wetland systems.

**WHEREAS**, this Ordinance is consistent with Objective 1.8 and Policies 1.8.3.1, 1.8.3.2, 2.1.4, and 2.2.1 of the Conservation & Coastal Management Element, because any installation of a boat docking facility boat slip cut-in must be coordinated with and comply with all federal and state requirements and permits, including, but not limited to the requirements and permits of the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers;

**WHEREAS**, as required by Section 30-62(8)b., Code of Ordinances of the City of Marco Island, Florida, the Planning Board, also sitting as the City's Local Planning Agency, has also found that this Ordinance is consistent with the City of Marco Island Comprehensive Plan and in particular Future Land Use Element Objective 1.7 and the Conservation & Coastal Management Element Objective 1.8 and Policies 1.8.3.1, 1.8.3.2, 2.1.4, and 2.2.1;

**WHEREAS**, the Planning Board has found that this Ordinance will promote the public health, safety, and welfare by improving boat docking opportunities; and

**WHEREAS**, the City Council adopts the findings of the Planning Board, also sitting as the City's Local Planning Agency.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA:**

**SECTION 1. Recitals.** Each and all of the foregoing recitals be and the same are hereby incorporated in this Ordinance as if specifically set forth herein.

**SECTION 2. Amendment and Adoption.** That section 30-10 of the Code of Ordinance, Marco Island, Florida, is hereby amended to read as follows:

**Sec. 30-10. – Definitions.**

\* \* \*

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

\* \* \*

*Native vegetation* means native Southern Floridian species as determined by accepted valid scientific references.

Nautical garage means that portion of a cut-in boat slip or boat basin which is enclosed by a portion of a single-family residence which also acts as a garage for boats. A nautical garage is connected to an adjacent waterway by a cut-in boat slip. A nautical garage must also meet all requirements of section 54-111 of this code.

*Navigable waterway* means any salt or brackish body of water, whether natural or manmade, which is tidal in nature, and is wide enough, deep enough, or free enough from obstructions to be traveled on by vessels and is connected to another navigable waterway. A navigable waterway does not include any portion of a cut-in boat slip created on a privately owned residential property; provided that said cut-in slip will comply with all federal and state requirements and permits, including, but not limited to the requirements and permits of the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers.

\* \* \*

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

**Sec. 30-84. - Conditional uses.**

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

(1) Churches and houses of worship.

(2) Schools, public and private.

(3) Guesthouses.

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

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

(4) Childcare centers and adult day care centers.

(5) Group care facilities (category I and II) as defined in the land development code.

(6) Nautical garages which meets the following requirements:

a. The nautical garage shall consist of a single cut-in boat slip;

b. The nautical garage and cut-in boat slip does not extend into the side yard and front yard setbacks established for residential single-family waterfront homes pursuant to section 30-85(a) of this code. Seawalls constructed within the above referenced side yard setback will not have any structure, including deadmen and tiebacks below grade or within six (6) foot platted utility easements;

c. The nautical garage is located beneath the primary structure of the principal residence. Notwithstanding anything contained in this code to the contrary, no portion of the nautical garage structure shall be within the residential single-family principal structure rear yard setback dimensional standard set forth in section 30-85(a), however the cut-in boat slip may be within the rear yard setback;

d. The nautical garage and cut-in boat slip complies with all federal and state requirements and permits, including, but not limited to the requirements and permits of the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers; provided, that required federal and state permits need not be obtained prior to issuance of the conditional use but must be obtained before commencement of development of the nautical garage and boat slip cut-in, as required by Florida law;

e. A flushing analysis, utilizing generally accepted hydrodynamic models, of the potential impact of the nautical garage and cut-in boat slip has been performed pursuant to the guidelines of the Florida Department of Environmental Protections (FDEP), requirements of the Florida Statutes, and a water quality certification under the Clean Water Act, 33 U.S.C. s. 1341, has been obtained. The flushing analysis shall demonstrate that flushing of the boat slip cut-in or boat basin meets FDEP standards and, requirements of Florida Statutes and the Clean Water Act;

f. The nautical garage and cut-in boat slip meets the requirements of section 30-64(3) of this code, with section 30-64(3)b., to also include navigable ingress and egress from the adjacent waterway(s) and section 30-64(3)d. to include the number of, proximity to and location of the proposed nautical garage and cut-in boat slip to other docking facilities, including other nautical garages and their net impact on the adjacent canals and waterways. All other attributes of the property, relating to compatibility with adjacent properties and waterways, shall be considered including but not limited to the size of facility, massing, bulk, engineering of the seawall to assure stability; and

g. The construction of a nautical garage prohibits the property owner's ability to construct any additional boat lifts, docks, or boat docking facilities with the exception of a marginal dock. In the case of property with a nautical garage and a cut-in boat slip, a lift shall not be permitted as part of a marginal dock. All boats docked in the cut-in slip shall be moored totally within the nautical garage.

**SECTION 4. Amendment and Adoption.** That section 54-101 of the Code of Ordinance, Marco Island, Florida, is hereby amended to read as follows:

**Sec. 54-101. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Associated infrastructure* means seawalls, revetments, caps, support piles, whalers, riprap, and like physical improvements which supports a boat dock facility in conjunction with the upland host property.

*Boat cover* means a portable or fixed aluminum, PVC, galvanized or similar structure which is attached to a dock or boatlift and which structure is covered with canvas, vinyl, aluminum or similar materials and utilized for protecting a vessel over or contiguous to navigable water. A boat cover shall not be considered or qualify as a boathouse and shall not be installed, repaired or reconstructed. A covering, commonly referred to as a mooring cover, which is fixed to the vessel for the purpose of protecting the vessel shall not be considered a boat cover.

*Boat docking facility* means any structure, whether fixed in position or floating, constructed on or over a waterway for the primary purpose of mooring a boat and that provides access to a vessel from the adjacent upland property. This includes docks, walkways, piers, boatlifts, personal watercraft lifts, davits, mooring piles, dolphins, boathouses, nautical garages and associated cut-in boat slips/boat basins from any water

body in single-family residential zoning district properties and the like. A walkway immediately adjacent to or as part of a nautical garage in the rear yard setback across the cut-in boat slip/boat basin associated with the nautical garage is permitted as an encroachment into the rear yard setback provided no part of the walkway exceeds thirty (30) inches above grade of the land within the rear yard setback.

*Boathouse* means a structure with a roof which is constructed of palm fronds, cedar shakes, or the same material and color of the principal structure on the property, accessory use to a residential structure over or contiguous to navigable water, open on all sides and providing covered protection to a boat and accessories customary thereto.

\* \* \*

*Mooring cover assist system* means a cantilevered structure with a mono-rail track to support the full weight of a tailored mooring cover as it is removed or installed on a vessel. The assist's mooring cover is attached directly to the vessel when in the covered position but may also be mechanically connected to the underside of the overhead mono-rail track so that the mooring cover is ready to be removed or installed on a vessel utilizing the assist.

*Multifamily residential zoning district* means any real property located within the residential multiple family-6 (RMF-6) zoning district as described in section 30-101 et seq. of this code, the residential multiple family-12 (RMF-12) zoning district as described in section 30-121 et seq., the residential multiple family-16 (RMF-16) zoning district as described in 30-141 et seq., the residential tourist (R-T) zoning district as described in section 30-161 et seq., or the portion of the planned unit development zoning district set forth in section 30-381 et seq. devoted to multiple-family residential development.

*Nautical garage* is defined in section 30-10 of this code.

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

\* \* \*

*Setback* means a line marking the minimum open space distance between a property line, right-of-way line, bulkhead line, shoreline, seawall, mean high water mark, access easement line, or other defined location, whichever is most restrictive, and the beginning point of a required yard or the buildable area.

*Single-family residential zoning district* means the zoning district devoted primarily to single-family dwelling housing in the RSF 2, RSF 3, and RSF 4 zoning districts, all as set forth in section 30-81 through 30-89 of this code, or the portion of the planned unit development zoning district set forth in section 30-381 et seq. devoted to single-family residential dwelling development.

*Sovereign submerged lands* shall have the same meaning as used in F.A.C. § 18-21.003, as may be subsequently modified or amended from time to time.

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**SECTION 5. Amendment and Adoption.** That section 54-110 of the Code of Ordinance, Marco Island, Florida, is hereby amended to read as follows:

**Sec. 54-110. - Permitted accessory use.**

Boat docking facility(s) shall be permitted as an accessory use on any waterway lot in any single-family residential zoning district, except as otherwise provided, subject to the criteria set forth in this article. Boat docking facility(s) shall be permitted as an accessory use on any waterway lot in any multifamily residential zoning district subject to the criteria set forth in this article. Boat docking facility(s) shall be permitted as an accessory use on any waterway lot in any commercial zoning district for which the boat dock facility is customary and incidental to the established principle use of the property. All boat docking facilities are subject to, and shall comply with, all federal and state requirements and permits, including but not limited to the requirements and permits of the state department of environmental protection, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency.

**SECTION 6. Amendment and Adoption.** That section 54-111 of the Code of Ordinance, Marco Island, Florida, is hereby amended to read as follows:

**Sec. 54-111. - Dimensional standards and other standards.**

(a) *Protrusion limitations for boat docking facilities.*

(1) On waterfront lots located on waterways which are 100 feet or greater in width the combination of a boat docking facility and moored vessel(s) shall not protrude more than 30 feet into the waterway, provided the combination of a boat docking facility and moored vessel(s) does not protrude more than 25 percent of the platted width of the waterway in order to ensure reasonable width for navigation. The protrusion of boat docking facilities, which are located at the intersection of two waterways or in areas where the waterway widens may in cases exceed 25 feet but not more than 30 feet into the waterway. Boat docking facilities located at the end of a canal shall not protrude more than 25 percent of the platted width of the waterway. See Exhibits One and Three.

\* \* \*

(11) If the platted width of a waterway is unclear from available information, a waterfront property owner may, at the waterfront property owner's expense, provide a survey, which is dated no later than three months from the date of the waterfront property owner's boat dock extension application, to staff as additional information regarding the actual width of the waterway.

(12) On a platted lot within a single-family residential zoning district, no more than one nautical garage with a cut-in boat slip is permitted. The construction of a nautical garage prohibits the property owner's ability to construct any additional boat lifts, docks, or boat docking facilities with the exception of a marginal dock as described in section 54-101. In the case of property with a nautical garage and a cut-in boat slip, a lift shall not be permitted as part of a marginal dock. All other boat storage is to be contained within the nautical garage.

(b) Side yard setback requirements for boat docking facilities and swivel PWC lifts. ~~Side yard setback requirements for boat docking facilities and swivel PWC lifts:~~

(1) Boat docking facilities shall have side yard setbacks equivalent to 15 percent of the seawall length, as measured along the waterfront and from each applicable riparian line.

- a. The minimum required setback shall be 7.5 feet.
- b. The maximum required setback shall be 15 feet.

\* \* \*

(c) Height. Height:

(1) The decking on a dock may not exceed 12 inches in height above the seawall cap. Railings and fish cleaning tables may not exceed 48 inches in height above the decking of a dock. The railing may be no more than 25 percent opaque in any ten-foot increment.

(2) Mooring piles and dolphins may not exceed 12 feet in height above mean high water.

(3) Boatlifts and pilings used to anchor a boatlift shall not exceed 12 feet in height above mean high water.

(4) Davits located on a boat docking facility shall not exceed 12 feet in height above the decking of a dock. Davits located on land shall not exceed 15 feet in height above the seawall.

(5) Seawall support pilings may not exceed four feet in height above the seawall cap.

(d) Nautical garages. Notwithstanding anything contained herein to the contrary, a nautical garage shall contain a cut-in boat slip no greater than thirty (30) feet in width and is permitted on a single-family residential dwelling lot in the residential single family (RSF) zoning district as a conditional use; provided, that: (i) the cut-in boat slip

does not extend into the side yard and front yard setbacks established for residential single family waterfront homes pursuant to section 30-85(a) of this code; (ii) any boat docked in a boat docking facility cut-in boat slip is located entirely beneath the primary structure of the principal residence; and (iii) the cut-in boat slip complies with all federal and state requirements and permits, including, but not limited to the requirements and permits of the Florida Department of Environmental Protection and the U.S. Army Corps of Engineers. Notwithstanding anything contained in this code to the contrary, no portion of the nautical garage shall be within the residential single-family principal structure rear yard setback dimensional standard set forth in section 30-85(a). However, the cut-in boat slip may be within the rear setback.

**SECTION 7. Amendment and Adoption.** That section 54-116 of the Code of Ordinance, Marco Island, Florida, is hereby amended to read as follows:

**Sec. 54-116. - Boathouses.**

(a) The city shall not permit the construction of new boathouses, boat covers, gazebos, or similar covered structures extending over navigable waterways in any zoning district. The city may approve through the conditional use process, where authorized, nautical garages with cut-in boat slips.

\* \* \*

**SECTION 8. Reaffirmation of Approval of Nautical Garage.**

(a) On September 9, 2015, Res. No. 15-63 was approved by City Council permitting a nautical garage at 1791 Barbados Avenue, subject to certain plans submitted for review at the time of application. To the extent that said approval is not inconsistent with this Ordinance, the approval of Res. No. 15-63 be and the same is hereby reaffirmed by this Ordinance.

(b) On November 4, 2016, Application CU 16-003413 was approved by the City's Planning Board permitting a nautical garage at 1208 Orange Ct. on real property described as Lot 2, Block 128, Marco Beach Unit 4, according to the plat thereof, as recorded in Plat Book 6, Pages 32-37, Public Records of Collier County, Florida, subject to the plans submitted for review at the time of application. To the extent that said approval is not inconsistent with this Ordinance, the approval of Application CU 16-003413 by the Planning Board be and the same is hereby reaffirmed by this Ordinance, and the application may move forward to the City Council for consideration as a conditional use.

**SECTION 9. Severability/Interpretation.**

(a) If any term, section, clause, sentence or phrase of this Ordinance is for any reason

held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the other or remaining terms, sections, clauses, sentences, or phrases portions of this Ordinance, and this Ordinance shall be read and/or applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did not exist.

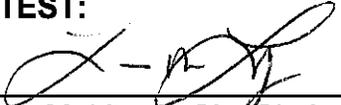
(b) That in interpreting this Ordinance, underlined words indicate additions to existing text, and ~~stricken-through~~ words include deletions from existing text. Asterisks (\* \* \*) indicate a deletion from the Ordinance of text, which exists in the Code of Ordinances. It is intended that the text in the Code of Ordinances denoted by the asterisks and not set forth in this Ordinance shall remain unchanged from the language existing prior to adoption of this Ordinance.

(c) Sections 2. through 7. of this Ordinance shall be codified. Sections 1. and 8. through 10. of this Ordinance shall not be codified.

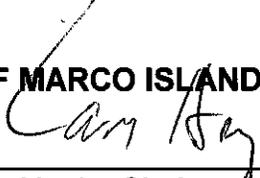
**SECTION 10. Effective Date.** This Ordinance shall be effective immediately upon adoption by the City Council on second reading.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 7<sup>th</sup> day of August 2017.

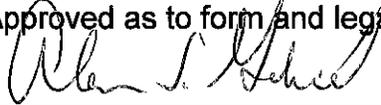
ATTEST:

  
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Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By:   
\_\_\_\_\_  
Larry Honig, Chairman

Approved as to form and legal sufficiency:

  
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Alan L. Gabriel, City Attorney