

ORDINANCE NO. 991

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 23 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED ZONING AND PLANNING; AMENDING SECTION 23-12 ENTITLED GENERAL PROVISIONS TO MODIFY SUB-SECTION 23-12(6)(a) RELATED TO THE ALLOWABLE HEIGHT OF DOCKS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Bay Harbor Islands adopted the first Zoning and Planning Code for the community in June 1957; and

WHEREAS, the Town Council periodically studies various land development trends and issues and amends the Zoning and Planning Code accordingly; and

WHEREAS, much of the existing land development in the Town was constructed prior to the enactment of the Zoning and Planning Code, including the installation of seawalls in the late 1940's; and

WHEREAS, the Town has adopted standards for the construction of docks, mooring piles and seawalls in the waterways adjoining the east and west islands; and

WHEREAS, the original land elevations, portions of seawalls and public infrastructure and many habitable structures existing in the Town are lower than current agency standards, which causes occasional flooding problems; and

WHEREAS, over the years FEMA and/or other regulatory agencies increased the minimum elevation requirements for physical improvements, including ground floor elevations for structures, which frequently causes significant grade changes between a newer habitable structure and the older seawalls, docks, roadways and public infrastructure; and

WHEREAS, portions of the original seawalls and some boat docks, while meeting the engineering design criteria when built in the late 1940's, do not adequately protect adjoining upland properties from the effects, singularly or in combination, of occasional high tides or wave action caused by storm winds or boats within Biscayne Bay or allow for safe or convenient access from boat docks to uplands; and

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WHEREAS, the primary environmental permitting agencies - the US Corp of Army Engineers and the Miami-Dade County, regulate where and to what extent boat docks and mooring piles may be placed to minimize environmental damage; and

WHEREAS, the Town Council held duly advertised public meetings to consider the proposed modifications to the Town's Zoning and Planning Code.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA:

Section 1: That the Town of Bay Harbor Islands Zoning and Planning Code is hereby amended to amend Section 23-12 entitled "General Provisions" to modify subsection 23-12(6)(a) related to the allowable design standards for boat docks, as more fully set forth in the attached Exhibit "A", and by reference are made a part hereof.

Section 2. That the Town of Bay Harbor Islands Zoning and Planning Code is hereby amended to amend 23-12 entitled "General Provisions" to modify subsection to amend subsection 23-12(10) to add additional Code provisions for seawalls as more fully set forth in the attached Exhibit "A", and by reference are made a part hereof.

Section 3: That if any section, paragraph, sentence or word of this Ordinance or the application thereof to any person or circumstance is held invalid, that the invalidity shall not affect the other sections, paragraphs, sentences, words or application of this Ordinance.

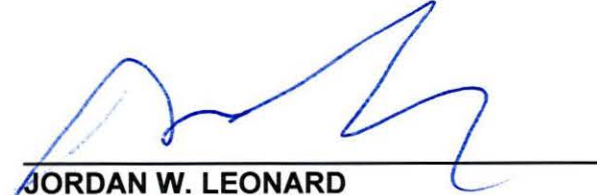
Section 4: That it is the intention of the Town Council of the Town of Bay Harbor Islands, and it is therefore ordained, that the provisions of the Ordinance shall become and be made a part of the Town of Bay Harbor Islands' Code of Ordinances, that sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5: That all Ordinances, parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 6: That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

PASSED on First Reading this 13th day of June, 2016.

PASSED AND ADOPTED on Second Reading this 8th day of August, 2016.



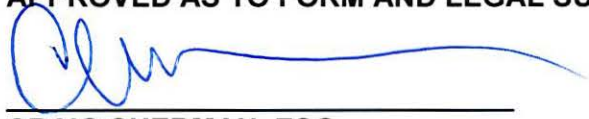
JORDAN W. LEONARD
Mayor

ATTEST:



MARLENE SIEGEL
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:



CRAIG SHERMAN, ESQ.
Town Attorney

EXHIBIT A
Amendments to the Town of Bay Harbor Islands
Zoning and Planning Code – Chapter 23

Sec. 23-12. General provisions.

- (6) (a) No boathouse or dock building shall be erected on or adjoining any of the lots in the town, but a dock extending such as distance from the line of the outside face of the seawall cap of the waterfront lots as may be approved by the town manager may be permitted, provided:
- (i) No deck of any dock shall be higher than the existing height of the seawall cap, or a retaining wall attached directly to the seawall cap, or a retaining wall abutting the seawall; provided, however, if a property has a deck and/or walkway in the adjacent yard and wishes to carry the same material across the seawall cap onto the dock so that there is an unbroken appearance between the deck and/or walkway and dock with respect to materials, the dock may be higher than the seawall cap, but not to exceed 42 inches 6.5 feet above Mean Sea Level (MSL), ~~subject to approval of the planning and zoning board~~;
 - (ii) No dock or deck constructed within the town shall bear any weight upon the seawall or seawall cap unless structural calculations (including vertical and lateral) are presented to the town by a licensed professional engineer. The engineer shall certify that the additional loading (including vertical and lateral) presented by the proposed dock is within the design loading calculations of the seawall;
 - (iii) No dock shall extend more than 25 feet beyond the outside face of the seawall cap, except as provided hereinafter;
 - (iv) As to those docks projecting into the Bay Harbor Waterway between the east island and the west island, none shall extend more than 15 feet beyond the outside face of the seawall cap. This restriction specifically applies to lots one through 12 in block two; lots one through 32 in block three; and lots one through 28 and lots 96 through 104 in block 23.
 - (v) No dock which extends more than eight feet beyond the outside face of the seawall cap shall have a width of more than four feet, and shall have no obstructions to such width such as storage bins, benches, etc.;
 - (vi) No cover shall be permitted to be erected in connection with any dock;
 - (vii) No part of any dock shall be placed nearer than ten feet to a line formed by the projection of the sidelines of the dock;
 - (viii) No boat landing, dock or pier shall be constructed until the plans and specifications therefore shall have been approved in writing by the town manager, and
 - (ix) No portion of any vessel shall extend more than 30 feet beyond the outside face of the seawall cap in the Bay Harbor Waterway.

- (x) Notwithstanding the above provisions as related to the allowable projection of docks from the outside face of a seawall, because of shifting underwater land elevations and/or environmental characteristics in Biscayne Bay and the Bay Harbor Waterway, the Miami-Dade Department of Environmental Resource Management (DERM) may require alterations to the above stated criteria. Any variation from the above criteria shall require an owner to request and receive a variance from the town council prior to any construction commencing on a dock structure. Such variances shall be on a case-by-case basis, the application shall be accompanied by an environmental assessment from DERM of the waterway adjacent to the subject property, and any town approval shall be limited to the minimal variation of the criteria necessary to meet the unique environmental characteristics of the site.
- (xi) The minimum height of a dock surface (top) extending seaward of a seawall shall be at least 5 feet above Mean Sea Level (MSL), unless otherwise approved by the applicable regulatory agency (Miami-Dade DERM / US Corp of Army Engineers). ~~The highest dock surface shall not exceed 12 inches above the adjoining seawall cap, unless otherwise approved by the Town Council.~~
- (b) Boat lifts and/or davits shall be permitted to be constructed and/or installed on or upon adjoining waterfront properties, subject to the following provisions:
- (i) Boat lifts and/or davits: Any device used to raise and/or lower a boat, or other water vehicle to and/or from the surface of the water.
- (ii) Boat lifts and/or davits shall not be constructed nor installed in such a manner which would allow any portion of the boat lift or davit or watercraft lifted or suspended from same to be any closer than ten feet to a line formed by the projection of the side property lines of the lot.
- (iii) No portion of a boat lift or davit shall extend more than 25 feet beyond the outside face of the seawall cap.
- (iv) No boat lift or davit shall be constructed or installed with any attachment or fastening to the seawall or seawall cap. Boat lifts and davits shall be structurally self-supporting and not dependent upon the seawall or seawall cap for structural integrity.
- (v) No cover or canopy shall be permitted to be erected in connection with any boat lift or davit.
- (vi) No boat lift or davit shall be constructed or installed until the plans and specifications therefore shall have been approved in writing by the town manager.
- (7) No boat canal or other waterway shall be dug or excavated into any of the waterfront lots. No ramp for aircraft shall be built without the approval in writing of the town. The town shall have the right to regulate the size and types of boats, yachts, or vessels which may be moored to any dock or mooring along the waters adjacent to the town, regardless of the location.
- (8) No mooring piles shall be placed more than 40 feet beyond the outside face of the seawall cap of any lot, provided however, no mooring piles shall be placed more than 30 feet beyond the outside face of the seawall cap of any lot on the

Bay Harbor Waterway between the east and west island, and no mooring pile shall be nearer than seven and one-half feet to a line formed by the projection of the side lot lines to the lot. Notwithstanding the above provisions, because of shifting underwater land elevations and/or environmental characteristics in Biscayne Bay and the Bay Harbor Waterway, the Miami-Dade Department of Environmental Resource Management (DERM) may require alterations to the above stated criteria. Any variation from the above criteria shall require an owner to request and receive a variance from the town council prior to any construction commencing on a dock structure. Such variances shall be on a case-by-case basis, the application shall be accompanied by an environmental assessment from DERM of the waterway adjacent to the subject property, and any town approval shall be limited to the minimal variation of the criteria necessary to meet the unique environmental characteristics of the site.

- (9) No lot or parcel shall be increased in size by filling in the waters on which it abuts.
- (10) No seawall shall be erected, constructed or repaired in the town or adjacent thereto unless and until its location, design, materials, structures, strength, etc. shall have been approved in writing by the town.
 - (a) Seawall permit for use of municipal seawall. Any person needing to access a municipal seawall shall first obtain a permit and register with the town. In addition to a permit fee, the town might require the posting of a bond.
 - (b) Damaging municipal seawall. Any person injuring or damaging a municipal seawall shall be liable and shall immediately reimburse the town in an amount equal to the cost of repairing such damage or injury. The town shall have a specific lien on any vessel and its equipment that shall damage a municipal seawall due to the negligence in its operation or handling.
 - (c) Height of seawalls. The elevation at the top of any seawall cap shall be 5.50 feet above Mean Sea Level (MSL). Notwithstanding the above, the following properties that experience more frequent and turbulent wave action from Biscayne Bay may elect to raise the top of a seawall cap to 6.0 feet above MSL: Lots 11 through 29 of Block 2; Lots 1 through 4 of Block 3; Lots 1 through 5 of Block 4; Lots 29 through 95 of Block 23; and Tracts C through F, as denoted on the plat of "Bay Harbor Island" according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the public records of Miami-Dade County.
 - (d) Design, construction of seawalls. All seawalls shall be designed and certified by a registered engineer and constructed by a licensed contractor.
 - (e) Completion of construction, approval. Seawalls, when completed and backfilled to grade shall be plumb and the coping straight before its final acceptance and release of bond by the Town.
 - (f) Extension of seawall into waterways. No part of any seawall, including slabs, may extend beyond any lot line into any waterway. Piles and the cap beam may encroach into the adjoining waterway, if approved by the Town and regulatory agency having jurisdiction.
 - (g) Construction methods. Seawalls shall be constructed of reinforced concrete, with a cap beam and supported on concrete pilings driven to bedrock. Seawalls shall penetrate into the soil at least 2 feet. No rip-rap

shall be permitted in place of a seawall; however, rip-rap may be installed adjoining a seawall if approved by the Town and regulatory agencies having jurisdiction. If a seawall is replaced all existing tie backs shall be removed. Property owners are encouraged to remove failed tie backs when possible due to frequent system failures and damage caused on upland lands.

- (h) Non-conforming Seawalls - Existing seawalls and construction methods other than specified herein shall be allowed to remain as non-conforming structures and may continue to be repaired. Property owners are strongly encouraged to reconstruct and/or raise older low elevation seawalls to the heights specified in subsection (c) above and remove failed tie back systems as opportunities occur to increase flood protection and safeguard properties.
- (11) It shall be unlawful and a public nuisance for any property owner in the town to permit, or fail to repair or reconstruct, any failed seawall upon his property. It is further declared unlawful and a public nuisance for any property owner to fail to remove from his property or an adjacent body of water the debris and rubble of any failed seawall.