

**Ordinance 17-16**

**ORDINANCE AMENDING CHAPTER 26 ARTICLE I AND II IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE “SEAWALLS, DOCKS AND OTHER SHORELINE STRUCTURES,” AMENDING SECTION 26-41 “DEFINITIONS”, SECTION 26-45 “PERMITS REQUIRED”, SECTION 26-71 “DOCKS AND BOAT RAMPS” SECTION 26-72 “BOATLIFTS AND DAVITS”, SECTION 26-73 “FISHING PIERS AND OBSERVATION DECKS”, AND SECTION 26-74 “BOATHOUSES” TO PROVIDE MORE CLARITY ON WORK THAT CAN BE DONE WITHIN NATURAL AND ARTIFICIAL BODIES OF WATER AND ON CONSTRUCTION OF HANDRAILS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.**

WHEREAS, the Town Council (“the Council”) is the governing body in and for the Town of Fort Myers Beach, a municipal corporation in the State of Florida; and

WHEREAS, the purpose of this Ordinance is to amend the current regulations to provide clarity on existing regulations for docks, fishing piers, and observation decks;

WHEREAS, docks and other shoreline structures are regulated by Chapter 26, Article II, of the Land Development Code of the Town of Fort Myers Beach

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

Effective Date. This ordinance shall take effect immediately upon adoption by the Town Council

**IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

1. The proposed ordinance is in the best interests of the health, safety and welfare of the citizens, residents, visitors, and business owners of the Town of Fort Myers Beach.
2. The proposed ordinance will promote the safe enjoyment of the town's canal systems by residents and visitors.
3. If any section, subsection, sentence, clause, phrase or portion of this ordinance, or application hereof, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion or application shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion or application hereof.
4. The Council hereby recommends the following revision(s) to the proposed ordinance:

Sec. 26-41. - Definitions is amended as follows with added language underlined and redacted language struck- through.

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:

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

*Boat ramp* means an inclined and stabilized surface that extends into the water from the shore and upon which trailerable watercraft can be launched and retrieved.

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

*Director* means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee.

*Dock* means a structure designed primarily for the launching, retrieval, storage, or mooring of watercraft.

*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 slip and provides direct access to watercraft moored in the slip.

*Hazard to navigation* means a structure erected or under construction, or a moored watercraft, which obstructs the navigation of watercraft proceeding along a navigable channel or canal, or which 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* ), and earleaf acacia ( *Acacia auriculiformis* ).

*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. This term includes docks with a maximum access walkway length of 25 feet to a dock running parallel to the shoreline and adjacent to wetland vegetation.

*Marina* has the meaning provided in § 34-2 of this LDC.

*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.

*Multi-slip dock* means two or more docks which will provide vessel mooring slips to unrelated individuals, either for rent or for sale. A multi-slip dock is distinguished from a marina in that no commercial activity is associated with a multi-slip dock.

*Navigable channel* means the area within a natural or artificial waterbody that will allow passage of a watercraft drawing three feet of water at mean low-water.

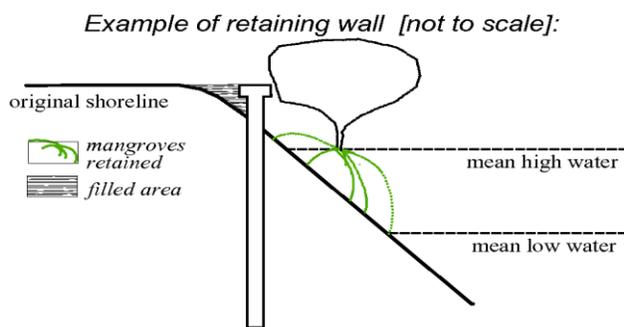
*Nonconforming marine structure* means any type of structure permitted by this chapter which was lawful prior to the adoption of any ordinance from which this chapter is derived, or the adoption of any revision or amendment to this chapter, but which fails, by reason of such adoption, revision, or amendment, to conform to specific requirements of this chapter.

*Private single-family dock* means a dock designed and intended to serve as an accessory use to an existing or proposed single-family dwelling unit.

*Retaining wall* means a vertical bulkhead constructed landward of the mean high-water line and landward of wetland vegetation to protect the shoreline from erosion.

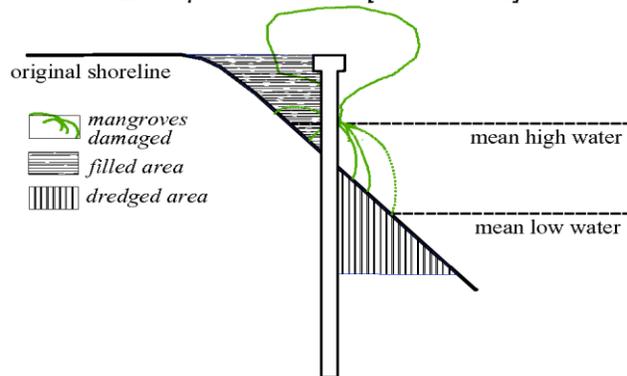
Riparian Property Line means the boundary lines of a property that extend out into a body of water to allow property owners to access the line of navigation of a body of water.

RipRap means the loose stone used to form a foundation for a breakwater or other structure. It may also be used at the base of seawalls to provide natural habitat for marine organisms and aid in preventing wave pressure damage to seawalls.



*Seawall* means a vertical bulkhead constructed seaward of the mean high-water line or seaward of the upper reaches of wetland vegetation.

Example of seawall [not to scale]:



*Slip* means that part of a structure and adjoining tie-up area designed to moor a single watercraft.

*Structure* refers to a water-oriented facility and includes any dock, boardwalk, floating dock, fishing pier, pier, wharf, observation deck, deck, platform, boathouse, mooring piling, riprap, revetment, seawall, bulkhead, retaining wall, jetty, platform, boat lift, davit, or boatramp, or any other obstacle, obstruction, or protrusion used primarily for the landing, launching, or mooring of watercraft, erosion control and shoreline stabilization, or for water-oriented activities.

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

*Tie-up area* means the water adjacent to a dock, boat ramp, boat lift, davit, or boathouse designed to be occupied by moored watercraft.

*Waterbody* means any artificial or natural depression in the surface of the earth that is inundated with daily tidal flows, and all adjacent wetlands as defined in § 14-293 of this LDC.

- (1) Artificial waterbodies are manmade canals and similar waterbodies that extend natural waterbodies into uplands.
- (2) Natural waterbodies include the Gulf of Mexico, Matanzas Pass, Estero Bay, Ostego Bay, Buccaneer Lagoon, and similar waterbodies that were created by natural geophysical forces.

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

*Work* 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 waterbody.

#### Sec. 26-45. - Permits ~~required~~ requirements

- (a) A permit is required prior to starting any work addressed by this article, except where explicitly stated otherwise.
- (b) Permit applications must be submitted to the director on an appropriate form containing the following:

- (1) The names, addresses and telephone numbers of the property owner(s);
  - (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, including waterbody and submerged lands, 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.
  - (7) ~~Copies of all necessary state and federal agency approvals.~~ In acquiring state permits homes beginning at Fairview Blvd. to Amberjack Dr. located within the existing Estero Bay Aquatic Preserve must build to aquatic preserve standards per Department of Environmental Protection Rulings; and
  - (8) The appropriate fee.
- (c) Work relating to commercial or multi-slip docks may require a development order in accordance with ch. 10 of this LDC and construction drawings sealed by a professional engineer or registered architect. All development order applications will be reviewed for compliance with this article.
  - (d) The director has the discretion to require construction drawings sealed by a professional engineer or registered architect and a sealed boundary or record survey identifying the property boundary or riparian extensions into the waterbody in relation to construction or work. The director also has the discretion to require submission of a sealed post-construction as-built survey certified to the town 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 replace an existing structure; however, ordinary minor repairs may be made without a permit to the extent allowed by § 6-111 of this code.
  - (g) The director can authorize minor design alterations 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.

Sec. 26-71. - Docks and boat ramps is amended as follows with added language underlined and redacted language as struck- through.

Docks and boat ramps will be permitted only in accordance with the following regulations:

(1) *Number of docks and slips.*

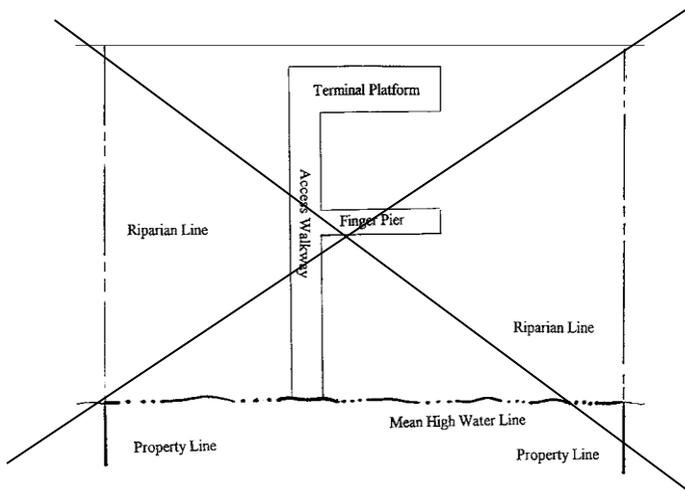
- a. No more than one, two-slip private single-family dock is permitted to extend from each lot ~~parcel~~ into a ~~natural~~ waterbody, except that a shared property line dock can be approved for up to four slips.
- b. Handrails may be required to prohibit the mooring of watercraft in any area not designated as a slip. Handrails must be permanently maintained. Handrails may include, but are not limited to rope, wood, or composite materials.

(2) *Length of docks.* No private single-family dock, including its tie-up area, may be permitted or constructed in a natural or artificial waterbody exceeding the following lengths:

- a. Twenty-five percent of the navigable channel width of an artificial canal,
- b. Up to a maximum of 200 feet in length without dock encroachment with an existing navigation channel; ~~or up to a maximum of 300 feet in length~~ if the director, in his sole discretion, finds that:
  - ~~1. The proposed dock has been approved by all applicable state and federal agencies;~~
  21. The increased length will not result in a hazard to navigation;
  32. The proposed dock is compatible with docks or other structures and uses on adjoining lots; and
  43. The increase in length will lessen the dock's impacts on seagrass beds or other marine resources.
- b. All measurements are from the mean high-water line seaward. Tie-up areas that are waterward of the dock will be deemed ten feet in width.

(3) *Maximum dimensions of docks.*

- a. Private single-family docks ~~in natural waterbodies~~ must comply with the following maximum dimensional requirements:
  1. Access walkway - Four feet wide;
  2. Terminal platform - 160 square feet;
  3. Finger piers - Three feet wide ~~The application of these regulations is illustrated in Figure 26-1.~~
- b. Single-family residential boat ramps cannot exceed 15 feet in width.



*Figure 26-1 Private Single-Family Structure Plan View*

(4) *Setbacks.*

- a. Multi-slip and marina docks, except boat davits, in or adjacent to natural waterbodies must be set back a minimum of 25 feet from all adjoining side lot lines.
- b. Private single-family docks in natural waterbodies must be set back from all adjoining side lot and side riparian lines as follows:
  1. Marginal docks - At least ten feet.
  2. All other docks - At least 25 feet.
- c. Private single-family docks in artificial waterbodies must be set back at least five feet from all adjoining side lot and side riparian lines.
- d. Side setback requirements for docks can be reduced if:
  1. Adjoining property owners propose a single dock for their joint use, or if they execute a written agreement in recordable form agreeing to a setback less than that required; and
  2. Placement of such dock(s) will not result in greater environmental impacts than compliance with the regulations set forth in this subsection.
- e. The director, in his discretion, may permit administrative deviations from the dock setbacks required by this subsection if the structure is located as close to the required setback as possible and:
  1. The width of the subject parcel is not wide enough to permit construction of a single-family dock perpendicular to the shoreline at the midpoint of the shoreline property line without a deviation; or
  2. If moving the structure closer to a property line than normally allowed would minimize damage to wetland vegetation or other environmental resources.

The director's decision under this subsection can be appealed through the procedure set forth in § 34-86 of this LDC or the applicant may seek a variance in accordance with § 34-87 of this LDC.

- f. All boat ramps must set back at least ten feet from all adjoining side lot and side riparian lines.

(5) *Location.*

- a. Docks, tie-up areas, and moored watercraft cannot be located in a manner that will create a hazard to navigation ~~in natural or artificial waterbodies.~~
- b. Boat ramps cannot be located in a manner that will result in a horizontal change in the mean high-water line.
- c. The director has the discretion to require reconfiguration of a proposed dock or boat ramp to reduce impacts to the riparian rights of adjacent properties.

(6) *Minimum water depths.*

- a. There must be a minimum depth of three feet below mean low-water for all slips on private single-family docks in natural waterbodies.
- b. Water depths adjacent to and within a multi-slip dock or a marina must ensure that a minimum one foot clearance is provided between the deepest draft of a vessel and the bottom at mean low-water or the top of marine resources (e.g., seagrasses).

(7) *Dock boxes.* Dock boxes on private single-family docks may not exceed three feet in height and 100 cubic feet in volume. Such dock boxes do not require building or marine facility permits.

Sec. 26-72. - Boat lifts and davits is amended as follows with added language underlined and redacted language as struck- through.

Boat lifts and davits will be permitted only in accordance with the following regulations:

- (1) All equipment and adjoining tie-up areas must meet the relevant locational and dimensional criteria for docks or boathouses.
- (2) All equipment must be structurally adequate to support expected loads.
- (3) Electrical connections and equipment are subject to permitting and inspections in accordance with ch. 6 of this code.
- (4) Fixed or flexible boat coverings must be built within or meet all requirements for boathouses (see § 26-74 of this chapter), or they must fit tightly around the boat they protect.

Sec. 26-73. - Fishing piers or observation decks is amended as follows with added language underlined and redacted language as struck- through.

Fishing piers or observation decks may be permitted in areas where water depth is insufficient for mooring. Fishing piers and observation decks must:

- (1) Be designed to prohibit watercraft mooring;
- (2) Be constructed to provide access walkways and terminal platforms at five feet above mean high-water;

- (3) Have rigid fixed handrails, including intermediate rails, installed around the perimeter of the structure including, but are not limited to wood, or composite materials; and
- (4) Have a "no boat mooring" sign placed facing the water on the terminal platform of the structure.

Sec. 26-74. - Boathouses is amended as follows with added language underlined and redacted language as struck- through.

The following regulations apply to boathouses associated with a private single-family residence. Only a single boathouse may be associated with each single-family residence for a parcel.

- (1) *Location.*
  - a. Boathouses must be constructed adjacent to or over a waterbody. Any boathouse constructed over land must be located, in its entirety, within 25 feet of the mean high-water line.
  - b. Boathouses may not be built over submerged bottoms containing areas of dense seagrasses or shellfish beds.
  - c. Boathouses, boat lifts, and davits designed with mooring inside the structure may not extend beyond 25 percent of the width of a navigable channel.
- (2) *Setbacks.* The minimum setbacks between boathouse pilings and side lot lines and riparian lot lines are as follows:
  - a. Natural waterbodies - 25 feet.
  - b. Artificial waterbodies - Ten feet. When a boathouse 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.
- (3) *Design criteria.*
  - a. *Maximum area.* A boathouse may not encompass more than 500 square feet of roofed area.
  - b. *Height.* 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.
  - c. *Permitted uses.*
    1. Use of a boathouse for living or fueling facilities is prohibited.
    2. 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.
  - d. *Decking.* 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.
  - e. *Enclosure.*

1. Boathouses located over a waterbody or adjacent to a natural waterbody must be open-sided. Safety rails 42 inches high or less are permitted.
  2. Boathouses located adjacent to an artificial waterbody must meet the following requirements:
    - (i) The boathouse must be open-sided if the proposed side setback is between ten and 25 feet.
    - (ii) The boathouse may be open-sided or enclosed with wood lattice or similar fencing materials if the side setback is 25 feet or more.
  - f. *Roof.* Boathouses shall have pitched roofs with a minimum slope of two vertical to 12 horizontal. Sundecks shall not be permitted on the roof of any boathouse.
  - g. *Wind load standards.* All boathouses must comply with the building code wind load standards as adopted in ch. 6 of this LDC.
- (4) *Amortization of certain nonconforming boathouses.* The size and location of boathouses have been regulated since the adoption of Lee County Ordinance No. 88-56. Some boathouses built prior to 1988 or expanded in violation of Ordinance No. 88-56 remain in existence. Such boathouses cannot be modified or rebuilt except when brought into compliance with current regulations, and all such boathouses must be modified into compliance with this section by January 1, 2004. No permits for repair or improvements will be issued except to bring the structure into compliance with this section.

The application of these regulations is illustrated in Figure 26-2 below:

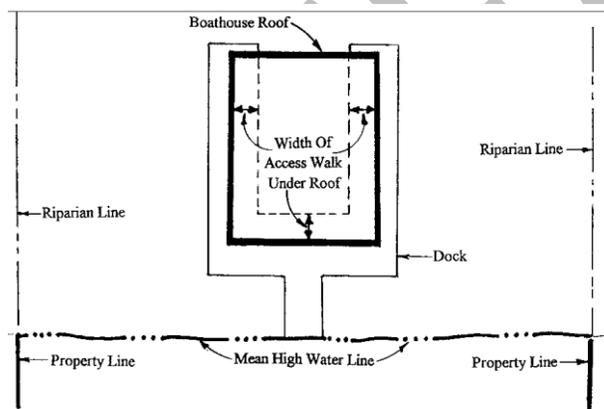


Figure 26-2 - Boathouse Plan Review

The foregoing Ordinance was adopted by the Town Council upon a motion by \_\_\_\_\_ and seconded by \_\_\_\_\_ and upon being put to a roll call vote, the result was as follows:

Dennis Boback, Mayor  
Anita Cereceda, Council Member

Tracey Gore, Vice Mayor  
Joanne Shamp, Council Member

Bruce Butcher, Council Member

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

By: \_\_\_\_\_  
Dennis C. Boback, Mayor

ATTEST:  
\_\_\_\_\_  
Michelle D. Mayher, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Peterson Law Group, Town Attorney

DEFEATED

DEFEATED