

CITY OF MARCO ISLAND

ORDINANCE 02 -03

AN ORDINANCE TO ESTABLISH NEW COASTAL CONSTRUCTION SETBACK LINE VARIANCE REGULATIONS TO SUPSEDE, SUPPLEMENT AND/OR REPLACE REGULATIONS FOUND IN THE COLLIER COUNTY LAND DEVELOPMENT CODE (ORDINANCE 91-102, AS AMENDED), AND CURRENTLY APPLICABLE TO COASTAL CONSTRUCTION ON MARCO ISLAND; ESTABLISHING INTENT AND PURPOSE; PROVIDING FOR TITLE AND CITATION; PROVIDING FOR THE ESTABLISHMENT OF SETBACK LINES; PROVIDING FOR PROHIBITED ACTIVITIES; PROVIDING FOR VARIANCES; PROVIDING FOR VARIANCE PROCEDURES; PROVIDING FOR EXEMPTIONS; PROVIDING FOR PERMITS; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, state law requires municipalities to adopt Land Development Regulations within one year of Comprehensive Plan adoption; and

WHEREAS, the Marco Island Planning Board, as the Local Planning Agency, has conducted all required public hearings related to this ordinance, and has forwarded this ordinance to City Council with a recommendation of approval.

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

SECTION ONE: PURPOSE AND INTENT

The purpose of this ordinance is to ensure that construction activities desired to occur beyond the established coastal construction setback line are thoroughly reviewed and permitted in accordance with the regulations contained herein. The intent of the ordinance is to limit approval of variances related to coastal construction activities to those found consistent with the provisions of this ordinance and the Comprehensive Plan.

SECTION TWO: TITLE AND CITATION

This ordinance shall be known and may be cited as the "Coastal Construction Setback Line Variance Regulations."

SECTION THREE: ESTABLISHMENT OF SETBACK LINES

1. The coastal construction setback line shall be that coastal construction setback line established by the department of natural resources of the State of Florida pursuant to F.S. § 161.053 and recorded in Coastal Setback Line Book 1, pages 1 through 12 inclusive, recorded October 31, 1974, as Clerk's Instrument No. 365665 of the public records of Collier County, Florida.
2. Setback lines established under this ordinance shall be reviewed upon petition of affected riparian upland owners. The Marco Island Board of Zoning Appeals shall decide, after due public notice and hearing, whether a change in the setback line is justified, and shall notify the petitioner in writing. The present setback lines are presumed to be correct, and no change in setback lines shall be made except upon an affirmation showing by petitioner that any construction line established hereunder is a minimum of 150 feet landward of the mean high-water line or 75 feet landward of the vegetation line whichever is greater; and that the general public health, safety and welfare is preserved, upland properties protected, and beach and sand dune erosion controlled.

SECTION FOUR: PROHIBITED ACTIVITIES

It shall be unlawful for any person, firm, corporation, or agency, public or private, to construct, reconstruct, or change existing structures, make any excavation, remove any beach material or otherwise alter existing ground elevations seaward of the coastal construction setback line, except as hereinafter provided.

SECTION FIVE: VARIANCES

Variances may be granted upon the finding of one of the following:

1. If in the immediate contiguous or adjacent area a "number of existing structures" have established a reasonably continuous and uniform construction line closer to the line of mean high water than the line as herein established, and if said existing structures have not been unduly

affected by erosion, a proposed structure may be permitted along such line if such proposed structure is also approved by the Board of Zoning Appeals.

2. Certain activities that may temporarily alter ground elevations such as artificial beach nourishment projects, excavation or maintenance dredging of inlet channels may be permitted seaward of the coastal construction setback line if said activity is in compliance with the City of Marco Island Comprehensive Plan, conservation and coastal management element, and also approved by the Board of Zoning Appeals.
3. In the event of conflict or uncertainty in the applicable location of the CCSL, the Board of Zoning Appeals may grant a variance to resolve the conflict or uncertainty. However prior to rendering a decision the petitioner shall provide the Board with a current, written opinion from the State of Florida Department of Environmental Protection as to the advisability of granting the relief sought.

SECTION SIX: PROCEDURES FOR OBTAINING VARIANCES

1. A written petition requesting a variance from the established setback line shall be filed with the City Manager or his designee along with a completed coastal setback line variance form and required fee. The petition include:
 - a. A narrative description of petitioner's property with scaled maps and exhibits; and
 - b. A description of the established setback line and the portion of the line which petitioner wishes to be varied; and
 - c. The justification upon which the petitioner relies for the granting of the variances, to include compliance with the city's Comprehensive Plan, conservation and coastal management element.
2. The Board of Zoning Appeals shall within 60 days of the filing of the petition, hold a noticed public hearing. Due public notice shall mean at least 15 days' notice of the time and place of such hearing published one time in a newspaper of general circulation. The City Manager reserves the right to forward any variance petition to the Marco Island Planning Board to conduct a public hearing and render a recommendation prior to submittal to the Board of Zoning Appeals.

- 3 The City Manager or designee shall notify petitioner in writing of the decision rendered by the Board of Zoning Appeals within 15 days of the public hearing.
4. Any person aggrieved by a decision of the Board of Zoning Appeals granting or denying a variance may apply to circuit court for judicial relief within 30 days after rendition of the decision by the Board of Zoning Appeals. Review in the circuit court shall be by petition for a writ of certiorari and shall be governed by this Florida Appellate Rules.

SECTION SEVEN: EXEMPTIONS

Exemptions shall be reviewed administratively for compliance with applicable city codes, and shall not be heard by the Board of Zoning Appeals. Exemptions to this ordinance shall include:

1. The removal of any plant defined as exotic vegetation by city code.
2. Any modification, maintenance, or repair, to any existing structure within limits of the existing foundation or footprint, which does not require, involve, or include any additions to, or repair or modifications of, the existing foundation of that structure, except those modifications required by code, excluding additions or enclosure added, constructed, or installed below the first dwelling floor or lowest deck of the existing structure.
3. Any structures(s) such as beach umbrellas and beach furniture that do not constitute fixed structure(s), do not require a building permit, weigh less than 100 pounds and upon review by the community development director or his designee is/are determined not to present an actual or potential threat to the beach and the dune system and adjacent properties. This exemption shall not be effective during sea turtle nesting season (May 1—October 31) unless the structures are moved daily from the beach.

SECTION EIGHT: PERMITS

The following activities seaward of the coastal construction setback line shall not require a hearing by the Board of Zoning Appeals, but shall require a coastal construction setback line permit. Such permit shall be reviewed and approved administratively by the community development director or designee. The appropriate fee shall be submitted with permit application.

1. Construction of dune walkover with a maximum width of six feet, when a Florida Department of Environmental Protection (FDEP) permit has been obtained.
2. The repair or reconstruction of an existing beach vendor hut or kiosk so long as the repair or reconstruction takes place within the confines of the existing structures' footprint.
3. The construction of a new beach vendor hut or kiosk, not to exceed 120 square feet, and when a Florida Department of Environmental Protection (FDEP) permit has been obtained.
4. Creation, restoration, re-vegetation or repair of the dune or other natural area seaward of the CCSL on an individual parcel of land, when a Florida Department of Environmental Protection (FDEP) permit has been obtained and the following criteria have been met:
 - a. Sand used must be compatible in color and grain size to existing sand.
 - b. Plants utilized shall be 100 percent native coastal species.
 - c. Restoration plans shall be designed by an individual with expertise in the area of environmental sciences, natural resource management or landscape architecture. Academic credentials shall be a bachelors or higher degree. Professional experience may be substituted for academic credentials on a year for year basis, provided at least two years professional experience are in the State of Florida.

SECTION NINE: INCORPORATION, CONFLICT AND SEVERABILITY

- [A] It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this Ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article" or other appropriate word.
- [B] All sections or parts of sections of the Code of Laws and Ordinances of Collier County, Florida, all Collier County ordinances or parts of ordinances, and all Collier County resolutions or parts of resolutions made applicable by the City Charter in conflict herewith are hereby repealed to the extent of such conflict.

[C] If any word, phrase, clause, subsection or section of this Ordinance is for any reason held unconstitutional or invalid by any court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of this Ordinance.

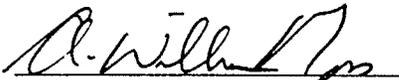
SECTION TEN: EFFECTIVE DATE

This Ordinance shall take effect immediately upon adoption by the Marco Island City Council.

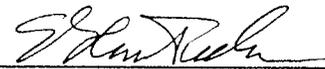
Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 7th day of January, 2002.

Attest:

CITY OF MARCO ISLAND, FLORIDA

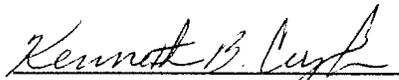


A. William Moss
City Manager/City Clerk

By: 

E. Glenn Tucker, Chairman

Approved as to form and
Legal sufficiency:



Kenneth B. Cuyler
City Attorney