

ORDINANCE NO. 99- 25

AN ORDINANCE TO BE KNOWN AS THE CITY OF MARCO ISLAND CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS ORDINANCE; SETTING FORTH FINDINGS AND PURPOSE; SETTING FORTH TITLE AND CITATION; SETTING FORTH APPLICABILITY; PROVIDING DEFINITIONS; ESTABLISHING THE CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS COMPOSITION; PROVIDING MEMBERSHIP APPOINTMENT AND TERMS OF MEMBERS; PROVIDING FOR ORGANIZATION; SETTING FORTH THE POWERS OF THE CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS; PROVIDING FOR A SCHEDULE OF FEES; PROVIDING FOR NOTICE AND HEARING OF APPEALS; PROVIDING FOR DECISIONS RENDERED BY THE BOARD; PROVIDING FOR REMEDIES FOR AGGRIEVED PARTIES; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; PROVIDING FOR PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the Constitution of the State of Florida and Chapter 166 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, the City Council for the City of Marco Island desires to provide for a Construction Board of Adjustment and Appeals to hear appeals of decisions and interpretations of the building official and consider variances of the technical codes and the floodplain management ordinance.

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

SECTION ONE: FINDINGS AND PURPOSE.

The City Council for the City of Marco Island, Florida (hereinafter the "Council") does hereby make the following findings:

1. It is the intent and purpose of this Ordinance to promote, protect and improve the health, safety and welfare of the Citizens of Marco Island, and to provide a forum for aggrieved parties, by authorizing the creation of a construction board of adjustment and appeals, with authority to hear appeals of decisions and interpretations of the building official and

consider variances of the technical codes and the floodplain management ordinance.

2. The purpose and function of such construction board of adjustment and appeals is to provide an equitable, expeditious, effective and inexpensive method to appeal the decisions and interpretation of the building official and to consider variances of the technical codes and floodplain management ordinance.

3. It is in the best interest of the citizens of Marco Island to create such a construction board of adjustment and appeals.

SECTION TWO: TITLE AND CITATION.

This Ordinance shall be known and may be cited as the "City of Marco Island Construction Board of Adjustment and Appeals Ordinance."

SECTION THREE: APPLICABILITY.

This Ordinance shall apply within the territorial limits of the City of Marco Island.

SECTION FOUR: DEFINITIONS.

1. "Building Official" means the authorized agent or employee of the City whose duty it is to enforce and interpret the construction codes of the City of Marco Island.

2. "Construction Board" means the City of Marco Island Construction Board of Adjustment and Appeals.

3. "Council" means the City Council which is the local governing body in and for the City of Marco Island, Florida.

4. "City Attorney" means the legal counsel to the Council.

5. "Person" means an individual, association, firm, partnership, corporation, or other legal entity recognized under the laws of the State of Florida.

6. "Secretary of the Board" shall mean the building official who shall make a detailed record of all of the Construction Board's proceedings, which shall set forth the reasons for Construction Board's decision, the vote

of each member, the absence of a member and any failure of a member to vote.

7. "Technical Codes" means those construction related codes adopted by the City of Marco Island through Ordinance No. 98-16, as amended, and floodplain management per Ordinance No. 98-18, as amended.

8. "Variance" means the ability of the Construction Board to vary the application of any provision of the technical codes to any particular case, when, in the opinion of the Construction Board, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of the technical codes or public interest.

SECTION FIVE: COMPOSITION; APPOINTMENT AND TERMS OF MEMBERS.

1. The Council shall appoint one seven (7) member Construction Board. All members of the Construction Board shall be permanent residents and electors of the City of Marco Island and shall serve without compensation. Members may be reimbursed for such travel, mileage and per diem expenses as may be authorized, in advance, by Council.

2. The procedures to solicit and appoint members to the Construction Board shall be consistent with procedures found in Section 5, of Ordinance 99-11.

3. The appointment of members to the Construction Board shall be made on the basis of knowledge and experience in the technical codes, and should include, whenever possible, an architect, an engineer, two general contractors, two subcontractors, and a businessperson.

4. The initial terms of appointment for members shall be as follows:

- a) Two (2) members appointed for a term of one (1) year.
- b) Two (2) members appointed for a term of two (2) years.
- c) Two (2) members appointed for a term of three (3) years.
- d) One (1) member appointed for a term of four (4) years.

5. In the event any member's term expires during the pendency of any appeal which has not reached conclusion by a final vote, such member's expired term shall be extended for the limited time and limited purpose of presiding over such particular appeal until conclusion and final vote.

6. After initial appointments, all appointments shall be made for a term of four (4) years. Re-appointment to the Construction Board, attendance requirements, and vacancies shall be addressed in a manner consistent with procedures established by City Ordinance 99-11.

SECTION SIX: ORGANIZATION.

1. At the first meeting of the Construction Board, the members shall elect a Chairman and Vice-Chairman, who shall be voting members, from among the members of the Construction Board. The terms of the Chairman and Vice-Chairman shall be one (1) year.

2. A simple majority of the Construction Board shall constitute a quorum. In varying any provision of those construction related codes adopted by the City of Marco Island through Ordinance 98-16, as amended, (technical codes) or floodplain management per Ordinance 98-18, as amended, the affirmative vote of the majority present, but not less than three affirmative votes, shall be required. In modifying a decision of the building official, not less than four affirmative votes of the Construction Board shall be required.

3. The Construction Board shall establish rules and regulations for its own procedures, as they deem necessary to carry out the duties of the Construction Board in accordance with the provisions and intent of this Ordinance. The Construction Board shall consult Ordinance No. 99-11 for guidance in developing Rules of Procedures.

4. The Council shall provide such clerical and administrative personnel and legal services as may be reasonably required for the proper performance of its duties.

5. The Construction Board secretary (building official) shall provide to the Council written quarterly reports of the activities of the Construction Board, which report shall delineate the name of the appeal/interpretation heard for the quarter, the date of hearing, and the resolution of the appeal/interpretation.

SECTION SEVEN: POWERS OF THE CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS.

The Construction Board of Adjustment and Appeals shall have the power to hear appeals of decisions and interpretations of the building official and consider variances of construction related codes adopted by the City of Marco Island through Ordinance 98-16, as amended (technical codes) and floodplain management per Ordinance 98-18, as amended.

1. Appealing a decision of the building official. The owner of a building, structure or service system, or his duly authorized agent, may appeal a decision of the building official to the Construction Board whenever any one of the following conditions are claimed to exist:

- a) The building official rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure or service system.
- b) The provisions of the technical codes or floodplain management ordinance do not apply to a specific case.
- c) That an equally good or more desirable form of installation can be employed in any specific case.
- d) The true intent and meaning of the technical codes, floodplain management ordinance, or any of the regulations thereunder have been misconstrued or incorrectly interpreted.

2. Variances. The Construction Board, when so appealed to and after a hearing, may vary the application of any provision of those construction related codes adopted by the City of Marco Island through Ordinance 98-16, as amended (technical codes) or floodplain management per Ordinance 98-18, as amended, to any particular case, when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of Ordinance 98-16, as amended (technical codes), Ordinance 98-18, as amended, floodplain management, or the public interest, and also finds all of the following:

- a) That special conditions and circumstances exist which are peculiar to the building, structure or service system involved and which are not applicable to others.
- b) That the special conditions and circumstances do not result from the action or inaction of the applicant.

- c) That granting the variance requested will not confer on the applicant any special privilege that is denied by the technical codes to other buildings, structures or service system.
- d) That the variance granted is the minimum variance that will make possible the reasonable use of the building, structure or service system.
- e) That the grant of the variance will be in harmony with the general intent and purpose of those construction related codes adopted by the City of Marco Island through Ordinance 98-16, as amended (technical codes) or floodplain management per Ordinance 98-18, as amended, and will not be detrimental to the public health, safety and general welfare.

Conditions of the variance. In granting the variance, the Construction Board may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed or both. In addition, the Construction Board may prescribe appropriate conditions and safeguards in conformity with those construction related codes adopted by the City of Marco Island through Ordinance 98-16, as amended (technical codes) or floodplain management per Ordinance 98-18, as amended. Violation of the conditions of a variance shall be deemed a violation of this Ordinance.

SECTION EIGHT: SCHEDULE OF FEES.

City Council shall establish, by resolution, a schedule of fees for the filing of appeals, variances and interpretations before the Marco Island Construction Board of Adjustments and Appeals. City Council may change, delete, or add to the listed fees by resolution.

SECTION NINE: NOTICE OF APPEAL.

A notice of appeal shall be in writing and filed within thirty (30) calendar days after the decision is rendered by the building official. Appeals shall be in a form acceptable to the building official.

The Construction Board shall meet as necessary at the call of the Chairman. The Chairman shall call for a meeting within thirty (30) calendar days after a notice of appeal has been received and found to be in an acceptable form by the building official.

The building official shall be responsible for promptly notifying the applicant, by certified mail, of the date, time and location of the meeting at which the appeal will be heard. The building official will prepare an agenda and a report summarizing the appeal and all pertinent support material. The agenda and staff report is to be made available to Construction Board members and the applicant no later than seven (7) days prior to the meeting date. Applicants who elect to prepare and provide a written report should deliver such report at least ten (10) days prior to the meeting date.

The building official is responsible to ensuring that the meeting is sufficiently noticed in a newspaper of general circulation at least fourteen (14) days prior to the meeting date, and further that notice of the meeting is posted at the office of the building official and at City Hall.

In the case of a building, structure or service system which, in the opinion of the building official, is unsafe, unsanitary or dangerous, the building official may, in his order, limit the time for such appeals to a shorter period.

SECTION TEN: DECISIONS RENDERED BY THE CONSTRUCTION BOARD.

The Construction Board of Adjustment and Appeals shall, in every case, reach a decision without unreasonable or unnecessary delay. Each decision of the Construction Board shall also include the reasons for the decision. If a decision of the Construction Board reverses or modifies a refusal, order, or disallowance of the building official or varies the application of any provision of the technical codes, the building official shall immediately take action in accordance with such decision. Every decision shall be promptly filed in writing in the office of the building official and shall be open to public inspection. A certified copy of the decision shall be sent by mail or otherwise to the applicant and a copy shall be kept publicly posted in the office of the building official for two (2) weeks after filing. Every decision of the Construction Board shall be final.

The building official shall act as secretary of the Construction Board and shall make a detailed record of all of its proceedings, which shall set forth the reasons for its decision, the vote of each member, the absence of a member and any failure of a member to vote.

SECTION ELEVEN: REMEDIES FOR AGGRIEVED PARTIES.

Every decision of the Construction Board of Adjustment and Appeals shall be final, subject however to such remedy as any aggrieved party might have at law or in equity.

SECTION TWELVE:INCORPORATION, CONFLICT AND SEVERABILITY.

1. It is the intention of the City Council and it is hereby ordained that the provision of this Ordinance shall become and be made a 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.

2. 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.

3. 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 THIRTEEN: PENALTIES FOR VIOLATION.

1. Pursuant to Section 162.22 Florida Statutes, a person found to be in violation of this Ordinance may be charged a fine, not to exceed \$500.00, and may be sentenced to a definite term of imprisonment, not to exceed sixty days.

2. Violations of this Ordinance may also be prosecuted before the Marco Island Code Enforcement Board.

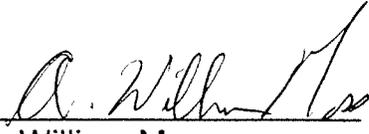
SECTION FOURTEEN: EFFECTIVE DATE.

This Ordinance shall take effect on December 6, 1999.

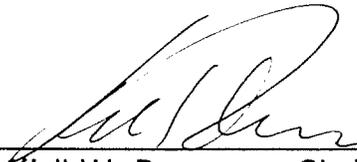
Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida, this 6th day of December, 1999.

Attest:

CITY OF MARCO ISLAND, FLORIDA

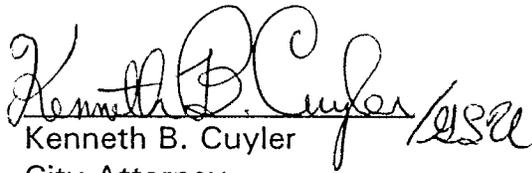


A. William Moss
City Manager/City Clerk

By: 

Kjell W. Pettersen, Chairman

Approved as to form and
Legal sufficiency:



Kenneth B. Cuyler
City Attorney