

**ORDINANCE NO. 01-07-07**

**AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING SECTION 9.5-4 "DEFINITIONS," SECTION 9.5-281 "MINIMUM YARDS," SECTION 9.5-286 "SHORELINE SETBACK," AND SECTION 9.5-233 "VARIANCES;" DELETING SECTION 9.5-288 "BULKHEADS, SEAWALLS, RIPRAP AND FENCES;" AND ESTABLISHING A NEW SECTION 9.5-288 "SHORELINE DEVELOPMENT CRITERIA," OF THE CITY CODE, AUTHORIZING ACCESSORY USES IN REAR, SIDE AND SHORELINE SETBACKS SUBJECT TO COMPLIANCE WITH MINIMUM STORMWATER MANAGEMENT CRITERIA AS A CONDITION OF DEVELOPMENT; PROVIDING FOR SEVERABILITY, THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE, FOR INCLUSION IN THE CODE, FOR THE TRANSMITTAL OF THIS ORDINANCE TO THE STATE DEPARTMENT OF COMMUNITY AFFAIRS, AND PROVIDING FOR AN EFFECTIVE DATE UPON THE APPROVAL OF THIS ORDINANCE BY THE STATE DEPARTMENT OF COMMUNITY AFFAIRS.**

**WHEREAS**, the City of Marathon, Florida (the "City") is located within the Florida Keys Area of Critical State Concern (the "FKACSC"), as established pursuant to Chapter 380, *Florida Statutes*; and

**WHEREAS**, Section 380.552, *Florida Statutes*, establishes Principles for Guiding Development in the FKACSC; and

**WHEREAS**, the Principles for Guiding Development provide that the Comprehensive Plan (the "Plan") and Land Development Regulations (the "LDRs") of the City shall protect its upland, shoreline and marine resources, its near shore waters, and the maximum well being of its residents through sound economic development; and

**WHEREAS**, the Plan went into effect in January, 1996; and

**WHEREAS**, a significant percentage of the existing structures within the City were developed prior to the effective date of the Plan, and are therefore, in non-compliance with the Plan and LDRs concerning stormwater management; and

**WHEREAS**, the lack of proper stormwater management within the City has resulted in near shore water quality problems; and

**WHEREAS**, the quality of City's near shore waters is critical to the City's economic well being as a result of the significant role they have on the area's tourism; and

**WHEREAS**, allowing development of accessory structure and uses within the shoreline and disturbed wetland setbacks, while simultaneously requiring compliance with the Plan and LDRs concerning stormwater management furthers the Principles for Guiding Development in the FKACSC; and

**WHEREAS**, pursuant to Section 163.3174, *Florida Statutes*, and Section 9.5-22 of the LDRs, the City's Planning Commission sitting as the Local Planning Agency has publicly considered the amendments to the LDRs set forth in this Ordinance (the "Amendments") at a properly noticed public hearing and recommended to the City Council the adoption of the Amendments; and

**WHEREAS**, in accordance with Sections 163.3184 and 166.041, *Florida Statutes*, public notice has been given of the public hearings for the proposed adoption of this Ordinance amending the LDRs; and

**WHEREAS**, the City Council finds the adoption of the Amendments is in the best interest of the City and complies with applicable State laws and rules.

\* \* \*

**Section 3. Minimum Yards.** Section 9.5-281 of the City Code is hereby amended to read as follows:

**Sec. 9.5-281. Minimum Yards.**

(a) Except as provided in Sections 9.5-266 of Division 3 and 9.5-282 of this Division and Section 9.5-309 of this Chapter, no structure or land shall be developed, used or occupied except in accordance with the bulk regulations set out in the following table. Side yards indicated set forth the minimum single yard and the total side yards required. The first number is the minimum for any single side yard where only one (1) side yard exists; where there are two (2) side yards, the first number is the required side yard for one (1) of the two (2) side yards. The second number is the minimum combined total of both side yards (where there are two (2) side yards).

<i>Land Use District Land Use</i>	<i>Front Yard (ft.)</i>	<i>Side Yard (ft.)</i>	<i>Rear Yard (ft.)</i>
Urban Commercial	15	10/15	10
Urban Residential:			
<i>Land Use District Land Use</i>	<i>Front Yard (ft.)</i>	<i>Side Yard (ft.)</i>	<i>Rear Yard (ft.)</i>
Attached Residential	15	10/15	10
Detached Residential			
Urban Residential Mobile Home:			
Detached Residential	10/ <u>15</u> *	10/ <del>20</del> <u>15</u> *	10/ <u>15</u> *
Mobile Homes	10/ <u>15</u> *	10/ <del>20</del> <u>15</u> *	10/ <u>15</u> *
Urban Residential Mobile Home-	10/ <u>15</u> *	10/ <del>20</del> <u>15</u> *	10/ <u>15</u> *

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<sup>1</sup> / Additions to existing text are shown by underline, deletions are shown as ~~strike through~~.

**WHEREAS**, the City Council desires to allow accessory uses within the yard and shoreline setbacks subject to compliance with minimum stormwater management criteria as a condition of development; and

**WHEREAS**, the City Council finds that enactment of this Ordinance furthers the objectives, goals, and policies of the City’s Comprehensive Plan and the Principles for Guiding development of the FKACSC.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA AS FOLLOWS:<sup>1</sup>**

**Section 1.**     **Recitals.** The above recitals are true, correct, and incorporated herein by this reference.

**Section 2.**     **Definitions.** Section 9.5-4 of the City Code is hereby amended to read as follows:

**Sec. 9.5-4. Definitions**

\* \* \*

Altered shoreline means a shoreline directly located along a dredged canal, basin, and channel, or a shoreline that has been filled or vertically bulkheaded to such a degree that the original natural slope landward of the water is no longer present.

Disturbed wetlands means any wetlands that are classified as “non-red-flagged” wetlands as determined by a Keys Wetlands Evaluation Procedure (“KEYWEP”) analysis.

Unaltered shoreline means a shoreline directly located natural non-dredged waterways and open water and has a sloping profile typical of the original natural conditions of the shoreline even though fill or riprap may be present.

Limited				
Sub Urban Commercial:				
Hotel	25	10/15	10	
Other	25	10/15	10	
Urban Residential Limited:				
Detached Residential	25	10/15	10	
Attached Residential	--	--	--	
Other	25	10/15	10	
Sparsely Settled:				
Detached Residential	25	10/15	15	
Attached Residential	25	N/A	15	
Other	25	10/15	10	
Offshore	25	10/15	20	
Native	25	10/15	20	
Mainland Native	25	10/15	20	
Improved Subdivisions		25	10/15	20
Destination Resort	50	20/35	30	
Commercial Fishing (all districts):				
Detached Residential	25	10/15	20	
Attached Residential	25	---	20	
Other	25	10/15	20	
Mixed Use:	25	10/15	20	
Detached Residential	25	10/15	20	
		<i>Front</i>	<i>Side</i>	<i>Rear</i>
<i>Land Use District</i>		<i>Yard</i>	<i>Yard</i>	<i>Yard</i>
<i>Land Use</i>		<i>(ft.)</i>	<i>(ft.)</i>	<i>(ft.)</i>
Attached Residential	25	N/A	20	
Other	15	10/15	10	
Light Industry:	25	10/15	25	
Maritime Industry	25	10/15	25	
Military Area	25	5/20	20	

Airport	200	200	200
Park and Refuge	50	50	50

\*Applies to new construction only.

(b) An exception to the front and side yard setback requirement shall be allowed for driveways which may include a turn around area, walkways not to exceed five (5) feet wide and landscape features such as, but not limited to, decorative fountains and landscape lighting, subject to compliance with the open space criteria set forth in the Plan and this Chapter. Any new impervious area shall also comply with the stormwater management criteria set forth in the Plan and this Chapter.

(c) For landlocked parcels an exception to the rear yard, setback requirement shall be allowed for detached accessory structures, which are allowed within the rear yard setback. These structures are subject to the following conditions, criteria and restrictions:

- (1) The entire parcel must be brought into compliance with the stormwater management criteria set forth in the Plan and this Chapter;
- (2) All accessory structures within the rear yard setback must maintain a minimum five (5) foot setback from each property line within the rear yard setback;
- (3) Stormwater and pollutant runoff shall be directed and maintained on-site through the use of native vegetation; berms and swales;
- (4) The accessory structures shall be located such that all bufferyard landscaping required pursuant to Sections 9.5-375 through 9.5-379 of the City Code is installed and maintained; and

(5) In no event shall the total, combined area of all structures within the rear yard setback result in a violation of the applicable open space requirement set forth in Section 9.5-343 of this Chapter.

(d) For established residential uses in I, MU, SC, UC, DR, RV, CFA and CFSD Land Use Districts, a special approval by the City Manager or designee is required for any application for a development permit for such accessory structures within the rear yard setback. This approval procedure shall incorporate, among other criteria, requirements that such approval:

- (1) Is consistent with any densities, intensities and use of the Land Use District;
- (2) Furthers the purposes of this Section;
- (3) Is consistent with the general standards applicable to all such uses and structures;
- (4) Is consistent with the community character of the surrounding area;
- (5) Does not interfere with residential or public recreational uses on adjacent uplands;
- (6) Complies with the restrictions contained in this Section; and
- (7) Is for the use of the upland resident only.

(e) The City Manager or designee may approve designs that address unique circumstances such as odd shaped lots, even if such designs are inconsistent with the above standards. Such approval may be granted only upon the City Manager or designee's written finding that the proposed design furthers the purpose of this Section and the objectives, goals, and policies of the Plan. Only the minimum possible deviation from the above standards will be allowed in order to address the unique circumstances.

(f) For commercial uses or public uses, the City may approve deviations from the requirements of this Section as part of a minor or major conditional use permit. Such approval may include additional structures or square footage of structures or uses. Such additional uses include, but are not limited to, pedestrian walkways, public facilities, monuments, statues or informational kiosks.

(g) All non-conforming structures lawfully existing within the rear yard setback may be rebuilt in the same footprint provided that there will be no adverse impacts on stormwater runoff.

(h) Notwithstanding any of the provisions of this subsection, a minimum vegetated setback of twenty (20) feet shall be maintained as an open space buffer adjacent to all types of wetlands. If the setback area is scarified, the setback must be planted in native vegetation double the density of a class “D” landscape bufferyard utilizing planting material suitable for the habitat.

(1) No structures shall be permitted within the wetland setback other than utility pilings, and pile supported walkways, docks, and piers.

(2) The wetland setback required by this subsection shall not apply to tidally influenced mangrove fringes occurring along shorelines.

**Section 4. Shoreline Setback.** Section 9.5-286 of the City Code is hereby amended to read as follows:

**Sec. 9.5-286. Shoreline Setback.**

(a) All principal structures shall be setback twenty (20) feet, as measured from mean high water line (“MHWL”) for lawfully altered shorelines. All principal structures shall be setback thirty (30) feet, as measured from the landward extent of the mangroves, for parcels on open water where the original slope landward of the water has been significantly altered by filling, but a mangrove fringe exists that is contiguous from side lot line to side lot line and is at least ten (10)



feet wide at the root zone. All principal structures shall be setback fifty (50) feet, as measured from the MHWL or the landward extent of the mangroves whichever is further landward, for unaltered and unlawfully altered shorelines. An exception to the shoreline setback requirement shall be allowed for detached accessory structures. These structures are subject to the development criteria and restrictions contained in this Section and the Shoreline Development Criteria, as set forth in Section 9.5-288 of the City Code.

(1) All permissible accessory structures within the shoreline setback other than docks docking facilities, utility pilings, fences, boat ramps, boat slips, boat shelters, seawalls, retaining walls, riprap, bulkheads, walkways, water observation platforms and water observation walkways must maintain a twenty (20) foot setback from the MHWL or the landward extent of the mangroves, whichever is further landward, on all unaltered shorelines.

(2) All permissible accessory structures within the shoreline setback other than docks docking facilities, utility pilings, fences, seawalls, retaining walls, riprap, walkways, water observation platforms and water observation walkways must maintain a ten (10) foot setback from the landward extent of the mangroves on all significantly filled shorelines on open water with a contiguous mangrove fringe.

(3) Pools, spas and any enclosed structure over six (6) feet tall shall be set back ten (10) feet from MHWL along lawfully altered shorelines.

(4) A minimum five (5) foot side yard setback shall be maintained for all structures within the shoreline setback area except for docks, sea walls, bulkheads, retaining walls, riprap, fences, boat ramps, boat shelters, fish cleaning tables, or similar structures.

**Section 5. Shoreline Development Criteria.** Existing Section 9.5-288 “Bulkheads, Seawalls, Riprap and Fences” is hereby repealed, and a new Section 9.5-288 of the City Code is hereby established to read as follows:

**Sec. 9.5-288. Shoreline and Submerged Lands Development Criteria.**

(a) The purpose of this Section is to allow for reasonable access and use between the land and water, provide secure boat storage, assure good water quality, provide a consistent community character, protect structures from the effects of long-term sea level rise, protect beaches and shores from erosion, avoid adverse impacts on navigation, and protect marine and terrestrial natural resources.

(b) All development within the shoreline setback and submerged lands is subject to the following conditions, criteria and restrictions:

(1) The entire parcel must be brought into compliance with the stormwater management criteria set forth in the Plan and this Chapter;

(2) All accessory structures within the shoreline setback area must maintain a minimum five (5) foot setback from each property line within the rear yard setback;

(3) Stormwater and pollutant runoff shall be directed and maintained on-site through the use of native vegetation; berms and swales;

(4) The accessory structures shall be located such that all bufferyard landscaping required pursuant to Sections 9.5-375 through 9.5-379 of the City Code is installed and maintained; and

(5) In no event shall the total, combined area of all structures within the rear yard setback result in a violation of the applicable open space requirement set forth in Section 9.5-343 of this Chapter;

(6) The height of the accessory structure shall be reasonable for the type of structure proposed, but in no event shall an accessory structure in the shoreline setback exceed the maximum height limitations set forth in the City Code.

(7) All development shall be placed, located, designed, constructed, and mitigated in conformance with the applicable rules, regulations and Code provisions of the Army Corp of Engineers (“ACOE”), the Florida Department of Environmental Protection (“FDEP”), and the City. Approvals or exemption letters by the ACOE and FDEP shall accompany all City development applications for any proposed development in the shoreline setback and submerged lands.

(c) An administrative long dock variance may be granted by the City Manager or designee to allow the minimum relaxation of the length restriction set forth in the Plan as is necessary to comply with ACOE and FDEP dock regulations, and provide the upland owner with access to adequate water depths specified for docking facilities. An administrative long dock variance shall only be granted based on a written determination by the City Manager or designee that the proposed dock will be consistent with the community character of the surrounding area; will not interfere with public recreational uses in or on adjacent waters; and will pose no navigational or safety hazard. Before issuance of the long dock variance, the City Manager or his designee shall give the applicant notice of the City’s intent to issue the long deck variance. Thereafter, in accordance with the provisions of Section 9.5-45(d) of the Code, the applicant shall provide notice to adjacent property owners of the City’s intent to issue the long dock variance. Within thirty-five (35) days of the date of the publishing of the notice of intent, a public hearing on the long dock variance may be requested in writing to the City Manager or his designee, by the applicant, an adjacent property owner or an aggrieved or adversely affected property owner located

within three hundred (300) feet of the property that is subject to the long dock variance. If a public hearing is requested, in accordance with the provisions of Section 9.5521(e) of the Code, the City shall schedule a public hearing of the Planning Commission. The provisions of Article XII of this Chapter shall govern any such hearing, and the person requesting the public hearing shall be responsible for providing notice of the hearing in accordance with the provisions of Section 9.5-45(a) of the Code. The City Manager or his designee shall issue the long dock variance if a public hearing is not requested in accordance with this subsection.

(d) Special approvals:

(1) For structures serving commercial uses, public uses, more than three dwelling units, or designed for mooring four (4) or more vessels the City may approve deviations from the requirements of this Section as part of a minor or major conditional use permit. Such approval may include additional structures or square footage of structures or uses. Such additional uses are, but not limited to, waterfront dining areas, pedestrian walkways, public facilities, monuments or statues, informational kiosks, and water-dependent marina uses. Any such development shall make adequate provision for a water quality monitoring program for a period of five (5) years after the completion of the development and as a condition of development shall provide stormwater runoff controls for the entire site pursuant to the stormwater management standards of the Plan and this Chapter. The approval procedure shall incorporate, among other criteria, requirements that such approval:

- a. Is consistent with the densities, intensities and permitted uses of the applicable land use district;
- b. Furthers the purposes of this Section;

- c. Is consistent with the general standards applicable to all such uses and structures;
- d. Is consistent with the surrounding community character;
- e. Does not interfere with public recreational uses in or on adjacent waters or uplands; and
- f. Does not pose a navigational hazard.

(2) For structures serving three or fewer dwelling units, the City Manager or designee may approve designs that address unique circumstances such as odd shaped lots or shorelines, even if such designs are inconsistent with the above standards. Such approval may be granted only upon the City Manager or designee's written finding that the proposed design furthers the purpose of this Section and the objectives, goals and policies of the Plan. Only the minimum possible deviation from the above standards will be allowed in order to address the unique circumstances.

(4) All non-conforming structures lawfully existing within the shoreline setback along manmade canals, channels, or basins, or serving three or fewer dwelling units on any shoreline, may be rebuilt in the same footprint provided that there will be no adverse impacts on stormwater runoff, navigation or turtle nesting habitat and the entire parcel is brought into compliance with the stormwater management standards of the Plan and this Chapter.

(5) Notwithstanding the provisions above, no development other than pile supported docks and walkways designed to minimize adverse impacts on marine turtles shall be allowed within fifty (50) feet of any portion of any beach berm

complex which is known to be or is a potential nesting area for marine turtles. All such development shall comply with Chapter 13, Article 4 of the Code.

(6) Any such dock or walkway shall be designed to the following criteria to minimize adverse impacts on marine turtles.

a. The structure shall have a minimum horizontal distance of four (4) feet between pilings or other upright members;

b. The structure shall have a minimum clearance of two (2) feet above grade; and

c. If stairs or a ramp with less than the minimum two (2) feet clearance above grade is required, such stairs or ramp shall be enclosed with vertical barriers no more than two (2) inches apart.

**Section 6. Variances.** Section 9.5-523 of the City Code is hereby amended to read as follows:

**Sec. 9.5-523. Variances**

\* \* \*

(b) ~~Variances may be granted from the open spaces ratio requirements of sections 9.5-267 and 9.5-269 according to the standards and procedures set forth in subsection e and f of this section.~~ However, no variance shall be granted under this Section if such variance would result in an open space ratio less than that required by Section 9.5.343 of the City Code.

**Section 7. Repeal of Conflicting Provisions.** Any Code or Ordinance provision inconsistent or in conflict with this Ordinance is hereby repealed.

**Section 8. Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall be held to be invalid or

unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 9. Inclusion in the Code.** It is the intention of the City Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of Marathon, Florida; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 10. Approval by the State Department of Community Affairs.** The provisions of this Ordinance constitute a "land development regulation" as State law defines that term. Accordingly, the City Clerk is authorized to forward a copy of this Ordinance to the Department of Community Affairs for approval pursuant to Sections 380.05(6) and (11), *Florida Statutes*.

**Section 11. Effective Date.** This Ordinance shall be effective immediately upon approval by the State Department of Community Affairs of the corresponding text amendment to the City Comprehensive Plan, pursuant to Chapters 163 and 380, *Florida Statutes*.

The foregoing Ordinance as offered by Councilmember Bartus, who moved for its adoption. This motion was seconded by Councilmember Johnson, and upon being put to a vote, the vote was as follows:

Mayor Robert Miller	<u>Yes</u>
Vice Mayor John Bartus	<u>Yes</u>
Councilman Frank Greenman	<u>Yes</u>
Councilman Jon Johnson	<u>Yes</u>
Councilman Randy Mearns	<u>Yes</u>

PASSED on first reading this 22<sup>nd</sup> day of May, 2001.

The foregoing Ordinance as offered by Councilmember BARTUS,  
who moved for its adoption. This motion was seconded by Councilmember  
JOHNSON, and upon being put to a vote, the vote was as follows:

Mayor Robert Miller	<u>yes</u>
Vice Mayor John Bartus	<u>yes</u>
Councilman Frank Greenman	<u>Absent</u>
Councilman Jon Johnson	<u>yes</u>
Councilman Randy Mearns	<u>yes</u>


PASSED AND ADOPTED on second reading this 10<sup>th</sup> day of July, 2001.

  
ROBERT MILLER, MAYOR

ATTEST:

Katherine V. Selchan  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

  
CITY ATTORNEY

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