LEE COUNTY ORDINANCE NO. 23-22

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE, CHAPTERS 30 (SIGNS), 33 (PLANNING COMMUNITY REGULATIONS) AND 34 (ZONING); PERTAINING TO RELOCATION OF NONCONFORMING BILLBOARDS; UNIFORM CALCULATION OF BUILDING HEIGHT; EXCEPTIONS TO HEIGHT LIMITATIONS FOR THE PURPOSE OF RESILIENCY; PERMITTED SETBACK ENCROACHMENTS FOR EXTERIOR STAIRWAYS; PARKING REQUIREMENTS FOR RECONSTRUCTED BUILDINGS; ZONING APPLICATION REQUIREMENTS RELATED TO HOMEOWNERS' ASSOCIATIONS; ISSUES RELATED TO REBUILDING ON CAPTIVA ISLAND AND WITHIN SOUTH SEAS ISLAND RESORT; PROVIDING FOR MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

THE SPECIFIC LDC PROVISIONS THAT WILL BE AMENDED ARE: SEC. 30-55 (NONCONFORMING SIGNS); 33-1087 (MAXIMUM HEIGHT OF BUILDINGS AND STRUCTURES – GREATER PINE ISLAND); 33-1458 (BUILDING HEIGHT AND VERTICAL PLANE – MATLACHA RESIDENTIAL OVERLAY); 33-1611 (APPLICABILITY); 33-1614 (DEFINITIONS); 33-1627 (HEIGHT RESTRICTIONS ON CAPTIVA ISLAND); 34-2 (DEFINITIONS); 34-201 (APPLICATION REQUIREMENTS FOR PUBLIC HEARING AND ADMINISTRATIVE ACTIONS); 34-1805 (DENSITY LIMITATION FOR CAPTIVA ISLAND); 34-2011 (APPLICABILITY OF DIVISION); 34-2171 (MEASUREMENT); 34-2172 (EXCEPTIONS TO HEIGHT LIMITATIONS FOR RESILIENCY); 34-2174 (ADDITIONAL PERMITTED HEIGHT WHEN INCREASED SETBACKS PROVIDED); 34-2175 (HEIGHT LIMITATIONS FOR SPECIAL AREAS AND LEE PLAN LAND USE CATEGORIES); 34-2191 (MEASUREMENT; PERMITTED ENCROACHMENTS); APPENDIX I (PLANNING COMMUNITY AND REDEVELOPMENT OVERLAY DISTRICT BOUNDARIES AND LEGAL DESCRIPTIONS) MAP 18 (SOUTH SEAS ISLAND RESORT).

WHEREAS, Florida Statutes Section 125.01(1)(h) authorizes counties to establish, coordinate, and enforce zoning regulations necessary for the protection of the public; and,

WHEREAS, the Board of County Commissioners adopted the Lee County Comprehensive Plan (Lee Plan), as well as the Lee County Land Development Code (LDC) which contains regulations applicable to the development of land in Lee County; and,

WHEREAS, Goal 72 of the Lee Plan is to "Establish objectives and policies to help prevent and mitigate threats from natural disasters by reducing their potential impact on future development and responding efficiently to disasters and hazards after the fact;" and

WHEREAS, Objective 72.2 of the Lee Plan is to "Maintain land development regulations that reduce the vulnerability of development from the threats of natural and man-made hazards;" and

WHEREAS, the Land Development Code Advisory Committee (LDCAC) was created by the Board of County Commissioners to explore amendments to the LDC; and,

WHEREAS, the LDCAC has reviewed the proposed amendments to the LDC on April 14, 2023, and May 12, 2023, and recommended approval of the proposed amendments as modified; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on May 10, 2023, and recommended their adoption; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on May 22, 2023, and found them consistent with the Lee Plan, as indicated.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: AMENDMENT TO LDC CHAPTER 30

Sec. 30-55. - Nonconforming signs.

(a) *Status.* Every sign, erected before August 21, 1985, which was ~~a~~ permitted ~~legally existing sign~~ is deemed a legal nonconforming sign. A permitted sign means a sign that was constructed or is in place with a valid permit from the county. All nonconforming signs are subject to the provisions of this section. All existing signs that are not legal nonconforming signs must comply with the terms of this chapter.

(1) A nonconforming sign may not be enlarged or altered in a way which increases its nonconformity.

(2) Nothing in this section shall relieve the owner or user of a legal nonconforming sign or owner of the property on which the legal nonconforming sign is located from the provisions of this chapter regarding safety, maintenance and repair of signs. Any repair or refurbishing of a sign that exceeds 25 percent of the value of the sign in its preexisting state shall be considered as an act of placing a new sign and not an act of customary maintenance. It shall be the responsibility of the ~~permittee~~ applicant to provide the ~~division of community development~~ Department of Community Development with adequate proof of the cost of such work in the form of an itemized statement of the direct repair cost, whenever such information is requested by the ~~division~~ Department.

(3) If any nonconforming sign is destroyed to an extent of 50 percent or more of its assessed value at the time of destruction, the sign shall not be replaced or repaired, in part or in full, except upon full compliance with this chapter.

(4) A ~~replacement~~ nonconforming billboard structure may be ~~rebuilt~~ replaced in its ~~present~~ existing location provided that the structure is in compliance with the following conditions:

a. Pursuant to the application for replacement, two legal nonconforming billboard structures shall be removed in exchange for the right to reconstruct one replacement billboard structure.

b. One of the structures which is to be removed must be located on the same site as the replacement billboard structure. If only one structure is located on the site of the replacement ~~sign~~ billboard structure, another nonconforming billboard structure must be removed from another location within the unincorporated area of the county.

c. The replacement billboard structure must meet all current county height, size and setback requirements.

d. The land use category in which the replacement ~~sign~~ billboard structure is to be erected must be the less restrictive of the two land use categories where the two removed nonconforming billboard structures were located. If the land use category is the same for both nonconforming billboard structures, the replacement structure may be located at either site. For purposes of this section, the following hierarchy of land use categories should be used to determine the least restrictive land use categories, with the most appropriate categories listed in descending order:

1. Intensive ~~d~~Development, ~~i~~Industrial D~~d~~evelopment, ~~t~~Tradeport and ~~i~~Interchange areas;
2. Central ~~u~~Urban and ~~u~~Urban ~~c~~Community;
3. Suburban and ~~o~~Outlying ~~s~~Suburban;
4. Rural, ~~o~~Outer ~~i~~Islands and ~~d~~Density ~~r~~Reduction/~~g~~Groundwater ~~r~~Resources; and
5. ~~Environmentally critical areas (resource protection area and transitional zones)~~ Wetlands, Conservation Lands Wetlands and Conservation Lands Upland.

e. Upon approval of the application for replacement and completion of the conditions specified in this subsection, the replacement billboard structure shall be ~~deemed in conformance with this chapter~~ afforded the same privileges as a conforming billboard structure and may be replaced in its present location.

f. No replacement billboard structure may be located in the locations designated in section 30-183(1)b.

g. Relocation. A replacement billboard structure permitted by this subsection may be relocated once provided the proposed location is:

1. On non-residentially-zoned property and outside of the barrier islands and Pine Island unless the replacement billboard structure originates from the respective island;

2. In the same or a less restrictive land use category according to the hierarchy established in section 30-55(a)(4)d;

3. Located along an arterial street where billboards are permitted in accordance with section 30-183(1)b;

4. Meeting the billboard structure separation requirements established in section 30-183(2). Where no distance separation is specified, the minimum required separation will be 1,000 feet from any other billboard on the same side of the street. The minimum required separation will be 2,640 feet from another billboard relocated in accordance with this subsection.

5. Legally described; and

6. Supported by a narrative statement declaring that the current billboard location has become unsuitable and verification that the proposed location meets the requirements of this subsection and will not encroach upon the conforming status of other billboards in proximity.

(b) *Loss of legal nonconformity.*

(1) through (4) unchanged.

SECTION TWO: AMENDMENT TO LDC CHAPTER 33

Lee County Land Development Code Chapter 33 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 33 – PLANNING COMMUNITY REGULATIONS
ARTICLE III. – GREATER PINE ISLAND
DIVISION 6. – DESIGN STANDARDS

Sec. 33-1087. Maximum height of buildings and structures. (Greater Pine Island)

The height of buildings and structures are subject to the requirements of section 34-2175.

~~No building or structure may be erected or altered so that the peak of the roof exceeds 38 feet above the average grade of the lot in question or 45 feet above mean sea level, whichever is lower~~.

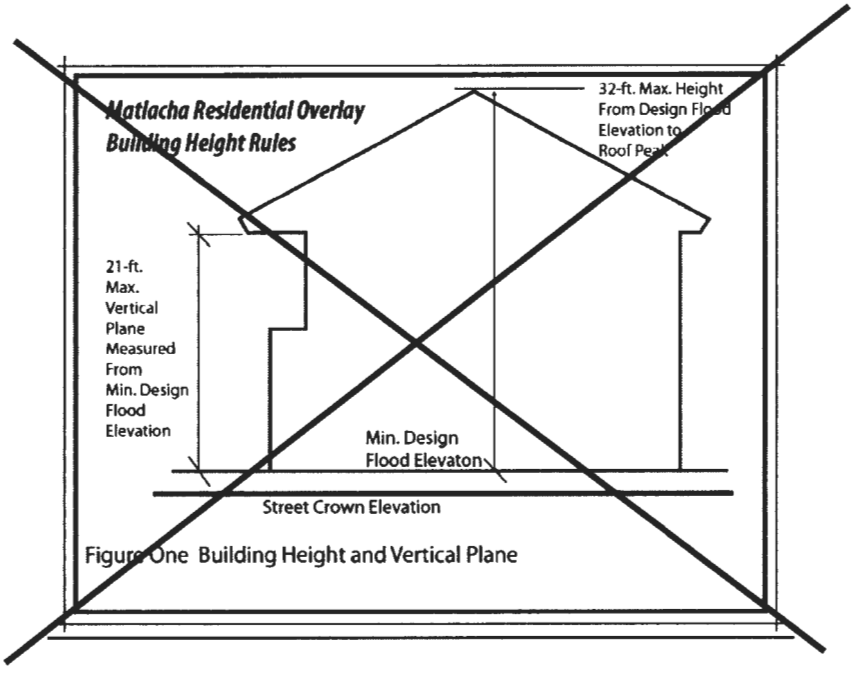
~~(a) The provisions of section 34-2171(a)(1) that allow the substitution of "minimum required flood elevation" for "average grade of the lot in question" do not apply to Greater Pine Island.~~
~~(b) The provisions of section 34-2174(a) that allow taller buildings in exchange for increased setbacks do not apply to Greater Pine Island.~~
~~(c) Structures without roofs will be measured to the highest point on the structure.~~
~~(d) No deviations from these height restrictions may be granted through the planned development process.~~
~~(e) Any variances from these height restrictions require all of the findings in section 34-145(b)(3), with the sole exception being where the relief is required to maintain or improve the health, safety, or welfare of the general public (not just the health, safety, or welfare of the owners, customers, occupants, or residents of the property in question).~~

ARTICLE VI. – MATLACHA RESIDENTIAL OVERLAY

DIVISION 2. – DEVELOPMENT STANDARDS AND SPECIFICATIONS

Sec. 33-1458. Building height and vertical plane.

The maximum vertical plane of a building may not exceed 21 feet, measured from the minimum design flood elevation (see Figure 1). The maximum building height of a building may not exceed 32 feet, as measured in accordance with section 34-2171 ~~from the design flood elevation to the roof peak~~. ~~See Figure 1~~.



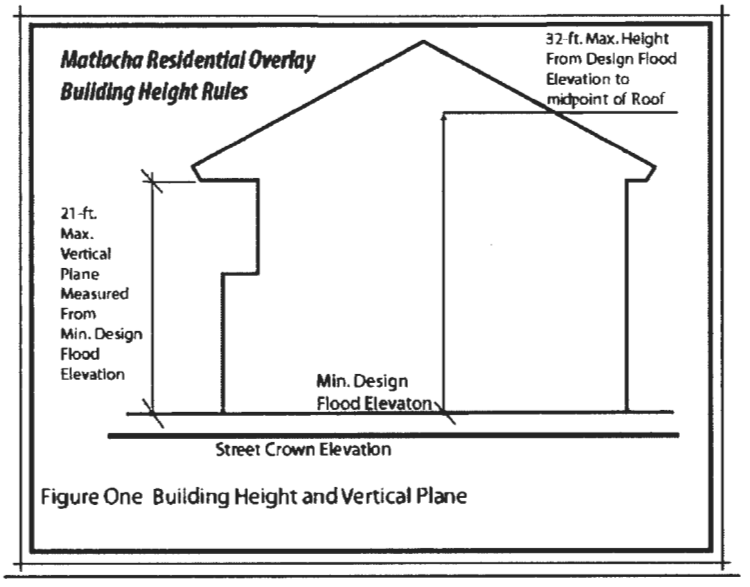


Figure 1 (Building Height and Vertical Plane)

ARTICLE IX. – CAPTIVA

DIVISION 3. – PROPERTY DEVELOPMENT REGULATIONS

Sec. 33-1611. Applicability.

(a) *Scope.* The provisions of article IX apply to development located on Captiva Island not specifically exempted under section 33-1613, "Existing development" below, as defined in Goal 23 of the Lee County Comprehensive Plan, but excluding Upper Captiva, Cayo Costa, Useppa, Buck Key, and Cabbage Key. This Article applies to development and redevelopment located on Captiva Island unless specifically stated otherwise.

(b) *Zoning.* This article applies to requests to rezone property on Captiva Island.

(c) *Development orders.* This article applies to development orders and limited review development orders described in sections 10-174(1), 10-174(2) and 10-174(4)a. that are requested on Captiva Island.

(d) *Demonstrating compliance.* Compliance with the standards set forth in this article must be demonstrated on the drawings or site development plans submitted in conjunction with an application for development order approval or with a building permit application if a development order is not required.

(e) Unless specifically provided herein, development within the area defined as South Seas Island Resort, as defined herein, is exempt from this article~~, so long as the development complies with the Administrative Interpretation, ADD2002-00098, adopted by the Board of County Commissioners in 2002~~.

Sec. 33-1614. – Definitions.

The following definitions are in addition to those set forth in other chapters of this LDC and are applicable to the provisions set forth in this article only. If, when construing the specific provisions contained in this article, these definitions conflict with definitions found elsewhere in this LDC, then the definitions set forth below will take precedence.

Beach furniture or equipment through *Roofline articulation* remain unchanged.

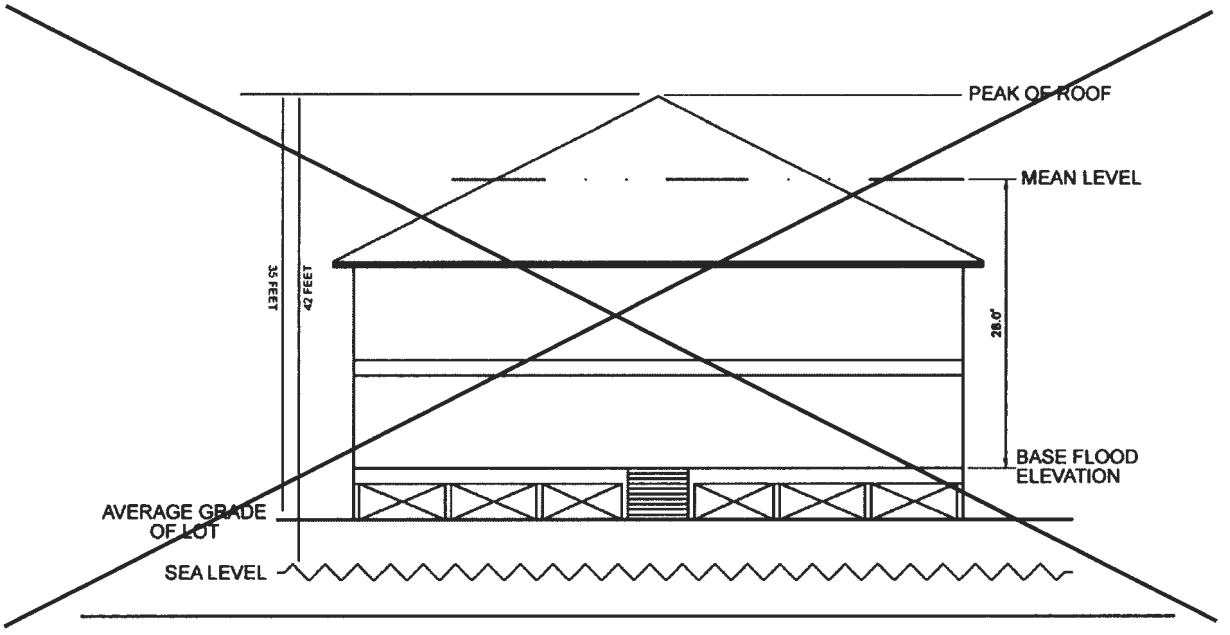
South Seas Island Resort means certain land generally lying north of Captiva Drive and bounded by the Gulf of Mexico, Red Fish Pass, and Pine Island Sound, commonly known as South Seas Island Resort, along with certain parcels lying south of and fronting Captiva Drive as depicted in Appendix I, Map 18.

Sec. 33-1627. Height restrictions on Captiva Island.

(a) The height of buildings and structures is subject to the requirements of section 34-2175. ~~may not exceed the least restrictive of the two following options:~~

~~(1) Thirty-five feet above the average grade of the lot in question or 42 feet above mean sea level measured to the peak of the roof, whichever is lower; or~~

~~(2) Twenty-eight feet above grade the lowest horizontal member at or below the lawful base flood elevation measured to the mean level between eaves and ridge in the case of gable, hip, and gambrel roofs.~~



~~If the lowest horizontal member is set above the base flood elevation, the 28-foot measurement will be measured starting from the base flood elevation. Notwithstanding the above height limitations, purely ornamental structural appurtenances and appurtenances necessary for mechanical or structural functions may extend an additional four feet above the roof peak or eight feet above the mean height level in the case of gable, hip, and gambrel roofs, whichever is lower, so long as these elements equal 20 percent or less of the total roof area.~~

(b) The existing telecommunications tower facility located in the maintenance and engineering area of South Seas Island Resort may be replaced to a height not to exceed 170 feet, provided the new facility makes space available to the county for emergency communications service coverage for Captiva, as well as co-location capability for wireless carriers desirous of serving Captiva. Destruction of mangroves to build or operate a tower or related tower facilities is prohibited. The telecommunication tower will be a monopole, unless public safety is compromised.

SECTION THREE: AMENDMENT TO LDC CHAPTER 34

CHAPTER 34. – ZONING

ARTICLE I. – IN GENERAL

Sec. 34-2. Definitions.

The following words, terms and phrases, when used in this chapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abutting property through building, conventional remain unchanged.

Building~~,~~ height ~~of~~ means the vertical distance of a building or structure measured in accordance with section 34-2171. ~~from grade to the highest point of the roof surface of a flat or Bermuda roof, to the deck line of a mansard roof, and to the mean height level between eaves and ridge of gable, hip and gambrel roofs. Where minimum floor elevations in floodprone areas have been established by law, the building height will be measured from required minimum floor elevations (see article VII, division 30, subdivision II, of this chapter).~~

Building official through intensity remain unchanged.

Island means any piece of land that is surrounded completely by a natural body or natural bodies of water. Islands created through excavation or dredging activity or lands otherwise surrounded by water as a result of human activity will not be considered islands.

ARTICLE II. – ADMINISTRATION

DIVISION 6. - APPLICATIONS

Sec. 34-201. Application requirements for public hearing and administrative actions.

(a) Initiation of application. An application for a rezoning, mine excavation planned development under chapter 12, special exception, or variance may be initiated by:

(1) A landowner, or his authorized agent, for his own property~~;~~. Where there is more than one owner, either legal or equitable, then all owners must jointly initiate the application or petition. ~~p~~Provided, however, that:

~~a. Except as provided in subsections (a)(1)b. and c. of this section, where there is more than one owner, either legal or equitable, then all owners must jointly initiate the application or petition.~~

~~1~~a. This does not mean that both a husband and wife must initiate the application on private real property which is owned by them.

~~2~~b. Where the property is subject to a land trust agreement, the trustee may initiate the application.

~~3~~c. Where the fee owner is a corporation, any duly authorized corporate official may initiate the application.

~~4~~d. Where the fee owner is a partnership, a general partner may initiate the application.

~~5~~e. Where the property is a condominium, timeshare condominium, or homeowners' association as defined and regulated in F.S. chs. 718, 720, and 721, respectively, an application or petition applicable to association property including but not limited to common elements, common area, or future development, may be initiated by the association's president, manager or equivalent when authorized by a resolution of the association's governing body or by previously recorded association documents. ~~Where the fee owner is an association, the association or its governing body may appoint an agent to initiate the application on behalf of the association~~.

f. In addition to the authorization required under subsection e, applications that include property that is individually owned by homeowners, condominium unit owners, or timeshare unit owners must be accompanied by a letter of opinion from a licensed Florida attorney, who must attest that he has examined the declaration of condominium, the bylaws of the condominium or homeowners' association documents, and all other relevant legal documents or timeshare documents, as applicable, and concluded that the act of applying or petitioning to the County violates none of the provisions therein, or any federal or state law regulating condominiums, timeshare plans, or homeowners associations, or the rights of any of the unit/homeowners owners, as derived from such documents

and laws, and that approval of the requested act by the County would violate no such rights.

~~b. Where the property is a condominium, or a timeshare condominium, or homeowners' association as defined and regulated in F.S. chs. 718, 720, and 721, respectively, an application or petition applicable to property owned by the Association, including but not limited to common elements, future buildings, or future development phases, may be initiated by the Association's President, Manager or equivalent when authorized by a Resolution of the Association's governing body or by previously recorded Condominium documents.~~

~~In addition, applications that include property that is individually owned by homeowners, condominium unit owners, or timeshare unit owners must be approved by no less than 75 percent of the total number of individual unit owners condominium unit owners, or by both the owners' association and no less than 75 percent of timeshare condominium unit owners.~~

~~1. For purposes of this subsection, each individually owned condominium unit within the condominium complex and each individually owned timeshare unit as defined by F.S. ch. 721 counts as one unit, regardless of the number of individuals who jointly own the unit.~~
~~2. In order to verify ownership, the applicants must furnish the County, as part of their application, a complete list of all unit owners, identified by unit number and timeshare period, as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants, who must verify the list and fact of notice by sworn affidavit.~~
~~3. So as to protect the legal rights of nonparticipating unit owners, the application must be accompanied by a letter of opinion from a licensed Florida attorney, who must attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents or timeshare documents, as applicable, and concluded that the act of applying or petitioning to the County violates none of the provisions therein, or any federal or state law regulating condominiums or timeshare plans, or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the County would violate no such rights.~~

~~c. Where the property is a Subdivision, an application or petition may be initiated by no less than 75 percent of the total number of lot or parcel owners and the homeowners' association, if applicable.~~

~~1. For purposes of this subsection, a subdivision is an area of property defined by a specific boundary in which lot divisions have been established on a plat that has been recorded in either a plat book or official records book whereby legal descriptions are referred to by lot or parcel number. This term may include any unit or phase of the subdivision and not the entire subdivision.~~
~~2. In order to verify ownership, the applicants must furnish the County, as part of their application, a complete list of all lot owners, identified by lot~~

~~number, along with proof that all lot owners who did not join in the application were given actual written notice thereof by the applicants, who must verify the list and fact of notice by sworn affidavit.~~

g. Where the application is applicable to property that is a subsequent phase or development tract located within a development, including but not limited to, a condominium, timeshare condominium, or homeowners' association as defined and regulated in F.S. chs. 718, 720, and 721, respectively, an application or petition may be initiated by the property owner(s) of the subsequent phase or development tract.

(2) The County, which for purposes of this section means the Board of County Commissioners.

(b) Abutting properties. All properties within a single application must be abutting unless the Director determines, in his or her sole discretion, that there is a rational relationship between the properties in question.

(c) Waivers. Upon written request, on a form prepared by the County, the Director may modify the submittal requirements where it can be demonstrated by the applicant that the submission will have no bearing on the review and processing of the application. The decision of the Director is discretionary and may not be appealed.

(d) Filing fee. All fees, in accordance with the County's External Fees and Charges Manual, must be paid in full at the time the application is submitted. No review of the application will commence until payment is received.

ARTICLE VII. – SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 19. – HOTELS AND MOTELS

Sec. 34-1805. - Density limitation for Captiva Island.

The permitted density for hotels and motels as set forth in this division will not apply to any hotel or motel units on Captiva Island. With the exception of the South Seas Island Resort, ~~T~~the maximum permitted density for hotels or motels on Captiva Island may not exceed three units per gross acre. The redevelopment of nonconforming hotels and motels on Captiva Island will be governed by the provisions of section 33-1628(b). That section will be interpreted to prohibit an increase in the number of rental units and to establish a maximum average unit size of 550 square feet.

DIVISION 26. – PARKING

Sec. 34-2011. Applicability of division.

(a) *New developments.* Residential and nonresidential uses must provide off-street parking spaces in accordance with the regulations in this division.

(b) *Existing developments.*

(1) Existing buildings and uses with existing off-street parking spaces may be modernized, altered or repaired without providing additional parking spaces, provided there is no increase in total floor area or capacity. ~~Buildings damaged in excess of 50 percent must comply with all applicable regulations.~~ Buildings which have been damaged by fire or other natural forces in excess of 50 percent and are reconstructed at (but not to exceed) the legally documented actual use, density, and intensity existing at the time of destruction must provide, no less than, the number of parking spaces existing prior to the date of destruction (if existing parking spaces are less than the amount of parking required under this Code). Any subsequent changes to the actual use or increases in density and intensity on the property will be required to provide additional parking spaces associated with the change of use or development increases. In calculating the required additional parking, the required additional spaces will be proportionate to the increase in density or intensity above the preexisting development intensities or densities.

(2) Existing buildings or uses enlarged in terms of floor area must provide additional parking spaces for the total floor area in accordance with this division.

(3) When the use of a building is changed to a use that is required to have more parking than exists, the additional parking must be provided.

(c) *Developments on islands without vehicular access to mainland.* Developments on islands where direct vehicular access to the mainland by bridge, causeway or street system is not available are exempt from this division.

DIVISION 30. – PROPERTY DEVELOPMENT REGULATIONS

SUBDIVISION II. - HEIGHT

Sec. 34-2171. Measurement.

(a) Except as provided in this subdivision, the height of a building or structure is measured as the vertical distance from grade* to the highest point of the roof surface of a flat ~~or Bermuda~~ roof, to the deck line of a mansard roof, and to the mean height level between eaves and ridge of gable, hip, shed, and gambrel roofs, and to the highest point of any other structure (excluding fences and walls).

* For purposes of this subdivision, grade is 12 inches above the average elevation of the street or streets abutting the property measured along the centerline of the streets, at the points of intersection of the streets with the side lot lines (as extended) and the midpoint of the lot frontage.

(b) ~~(1)~~ In areas within the Coastal Building Zone and other flood prone areas (as defined in Chapter 6 Articles III and IV of the LDC), height of a building is the vertical distance measured from ~~the minimum required flood elevation~~ the lowest minimum habitable floor elevation for which a building permit may be issued to the highest point of the roof surface of a flat ~~or Bermuda~~ roof, to the deck line of a mansard roof, or to the mean height level between the eaves and ridge of gable, hip, shed and gambrel roofs.

(c) ~~(2)~~ Fences, walls, and buffers are measured in accordance with section 34-1744 and section 10-416.

Sec. 34-2172. - Exceptions to height limitations for resiliency~~Reserved~~.

(a) Notwithstanding any other provision in this Code, buildings within a coastal high hazard area, as defined in section 6-479 ("V Zones"), or within a "Coastal A Zone," as defined by the Florida Building Code, may increase the height of the lowest minimum habitable floor for which a building permit may be issued by a maximum of four (4) feet and exceed the applicable height limitations established in this Code proportionally without deviation or variance approval from to provide for increased resiliency and protection from natural disasters.

(b) An increase in building height permitted herein is not subject to the requirements of section 34-2174.

(c) The provisions of this section do not apply to the Gasparilla Island Conservation District.

Sec. 34-2174. Additional permitted height when increased setbacks provided.

(a) Subject to conditions set forth in section 34-2175, any building or structure may be permitted to exceed the height limitations specified by the zoning district regulations in which the property is located provided every required street, side, waterbody, and rear setback is increased by one-half foot for every one foot by which the building or structure exceeds the specified height limitation.

(b) In zoning districts that do not specify a maximum height limitation, the increase to setbacks stated in this section will apply to all buildings or structures exceeding 35 feet in height.

~~(c) The height increases described in section 34-2174(a) and (b) may not be used in Greater Pine Island.~~

Sec. 34-2175. Height limitations for special areas and Lee Plan land use categories.

The following areas have special maximum height limitations applicable to all conventional and planned development districts:

(a) *Special areas.*

(1) *Upper Captiva Island.* The height of a building or structure may not exceed 35 feet ~~above grade (base flood elevation)~~. The provisions of section 34-2174(a) do not apply to Upper Captiva Island. No variance or deviation from this height restriction ~~35-foot height restriction~~ may be granted.

~~In addition to compliance with all applicable building codes (including Fire and Life Safety Codes), any building with two or more stories or levels must provide an exterior stairway from the uppermost levels (including "widow's walks" or observation decks) to the ground OR a one-hour fire rated interior means of egress from the uppermost levels (including "widow's walks" or observation decks) to the ground.~~

(2) *Captiva Island, except South Seas Island Resort.* ~~No~~ The height of a building or structure may not ~~be erected or altered so that the peak of the roof~~ exceeds 35 feet ~~above the average grade of the lot in question or 42 feet above mean sea level, whichever is lower~~. The provisions of section 34-2174(a) do not apply to Captiva Island. No variance or deviation from this height restriction may be granted; provided

however, one communication tower, not to exceed 170 feet in height, may be constructed in accord with section 33-1627 ~~Lee Plan Policy 23.2.3~~.

Notwithstanding the above height limitations, purely ornamental structural appurtenances and appurtenances necessary for mechanical or structural functions may extend ~~an additional four feet~~ above the roof peak ~~or eight feet above the mean height level in the case of gable, hip, and gambrel roofs, whichever is lower, so long as~~ provided that the total area dedicated to the exceedance of these elements, as measured by drawing a rectangle around the perimeter of the area(s) of the exceedances, equals 20 percent or less of the total roof area.

(3) *San Carlos Island.* The height of a building or structure may not exceed 35 feet, unless located within the Destination Resort Mixed Use Water Dependent (DRMUWD) future and use category. ~~above grade, except as provided for in section 34-2174. If seaward of the coastal construction control line, elevations may exceed the 35-foot limitation by three feet for nonconforming lots of record.~~

(4) *Gasparilla Island ~~c~~Conservation ~~d~~District.* No building or other structure may be erected or altered so that the peak of the roof is more than 38 feet above the average grade of the lot or parcel on which the building or structure is located, or is more than 42 feet above mean sea level, whichever is lower.

(5) *Greater Pine Island.* ~~See section 33-1087.~~ The height of a building or structure may not ~~be erected or altered so that the peak of the roof~~ exceeds ~~38~~ 33 feet ~~above grade~~.
   a. The provisions of section 34-2174(a) do not apply to Greater Pine Island.
   b. Structures without roofs will be measured to the highest point on the structure.
   c. No deviations from these height restrictions may be granted through the planned development process.
   d. Any variances from these height restrictions require all of the findings in section 34-145(b)(3), with the sole exception being where the relief is required to maintain or improve the health, safety, or welfare of the general public (not just the health, safety, or welfare of the owners, customers, occupants, or residents of the property in question).

(6) *Matlacha Residential Overlay.* See chapter 33, article VI.

~~(6)~~(7)*All other islands.* The height of a building or structure may not exceed 35 feet ~~above grade (base flood elevation)~~. Except as provided in subsections 34-2175(3)~~,~~ and (4), ~~and (5),~~ the provisions of section 34-2174(a) do not apply to islands. No variance or deviation from the 35-foot height restriction may be granted.

~~(7)~~(8) *Airport hazard areas ~~zone~~.* Height limitations for ~~the~~ airport hazard areas~~zone~~ are set forth in Article VI, Division 12~~article vi, division 10, subdivision III~~, of this chapter.

(b) *Lee Plan land use categories.* Except as otherwise provided herein, maximum building height is established by future land use category as follows:

TABLE 34-2175(b) MAXIMUM BUILDING HEIGHT BY FUTURE LAND USE CATEGORY		
Future Land Use Category	**Notes**	**Maximum Building Height**
Destination Resort Mixed Use Water Dependent		Per Lee Plan
Intensive Development		135 feet
Central Urban		
Urban Community		95 feet
Airport Lands	Note (1)	45 feet
Tradeport	Note (1)	
University Community		
University Village Interchange		
Commercial		75 feet
General Commercial Interchange		
General Interchange		
Industrial Commercial Interchange		
Industrial Development		
Industrial Interchange		
Density Reduction/Groundwater Resource		45 feet
Open Lands		
Outer Islands		
Outlying Suburban	Note (2)	
Public Facilities		
Rural	Note (2)	
Rural Community Preserve		
Sub-outlying Suburban	Note (2)	
Suburban	Note (2)	

Notes:

(1) With the consent of the Lee County Port Authority, the Board of County Commissioners may approve building heights up to 95 feet.

(2) Buildings may be as tall as 75 feet when the applicant demonstrates through a zoning action that the additional height is required to preserve ~~increase common open space for the purposes of preserving~~ environmentally sensitive land, ~~securing~~ secure areas of native vegetation and wildlife habitat, or ~~preserving~~ preserve historical, archaeological or scenic resources.

~~(1) *Intensive development and central urban land use categories.* Buildings may be as tall as 135 feet above minimum flood elevation with no more than 12 habitable stories.~~

~~(2) *Urban community land use category.* Buildings may be as tall as 95 feet above minimum flood elevation with no more than eight habitable stories.~~

~~(3) *Airport lands and tradeport land use categories.* Buildings may be as tall as 45 feet above minimum flood elevation with no more than three habitable stories. With the consent of the port authority, the Board of County Commissioners may approve building heights up to 95 feet above minimum flood elevation with no more than eight habitable stories.~~

~~(4) *Industrial interchange, industrial commercial interchange, general interchange and general commercial interchange land use categories.* Buildings may be as tall as 75 feet above minimum flood elevation with not more than six habitable stories.~~

~~(5) *Suburban, outlying suburban and rural land use categories.* Buildings may be as tall as 45 feet above minimum flood elevation with no more than three habitable stories, except that such buildings may be as tall as 75 feet above minimum flood elevation with no more than six habitable stories when the applicant demonstrates that the additional height is required to increase common open space for the purposes of preserving environmentally sensitive land, securing areas of native vegetation and wildlife habitat, or preserving historical, archaeological or scenic resources.~~

SUBDIVISION III. - Setbacks

Sec. 34-2191. Measurement; permitted encroachments.

Setbacks are measured from the property line to the nearest point of a building or structure. Encroachments into a required setback are permitted as provided below. Encroachments into easements are prohibited.

(1) *Wing walls.*

a. A wing wall which is part of a building may be permitted to encroach into a side or rear setback, provided that such encroachment is no higher than would be permitted for a fence or wall.

b. When measuring the setback for a wing wall, the setback shall be measured from the property line to the nearest point of the wing wall which meets the maximum height permitted for a fence or wall within the side or rear setback.

(2) *Overhangs.* An overhang which is part of a building may be permitted to encroach into any setback as long as the overhang does not extend more than three feet into the setback and does not permit any balcony, porch or living space to extend into the setback.

(3) *Shutters.* A shutter which is attached to a building may be permitted to encroach one foot into the setbacks.

(4) *Awnings and canopies.*

a. Awnings and canopies which are attached to a building may be permitted to encroach three feet into the setbacks, as long as their location does not interfere with traffic, ingress and egress, or life safety equipment.

b. For purposes of this section, awnings and canopies may be attached to a nonconforming building and shall not be considered an extension or enlargement of a nonconformity, as long as the building is properly zoned for its use and the conditions as set forth in this section are met.

(5) *Equipment ~~Pads~~/platforms.*

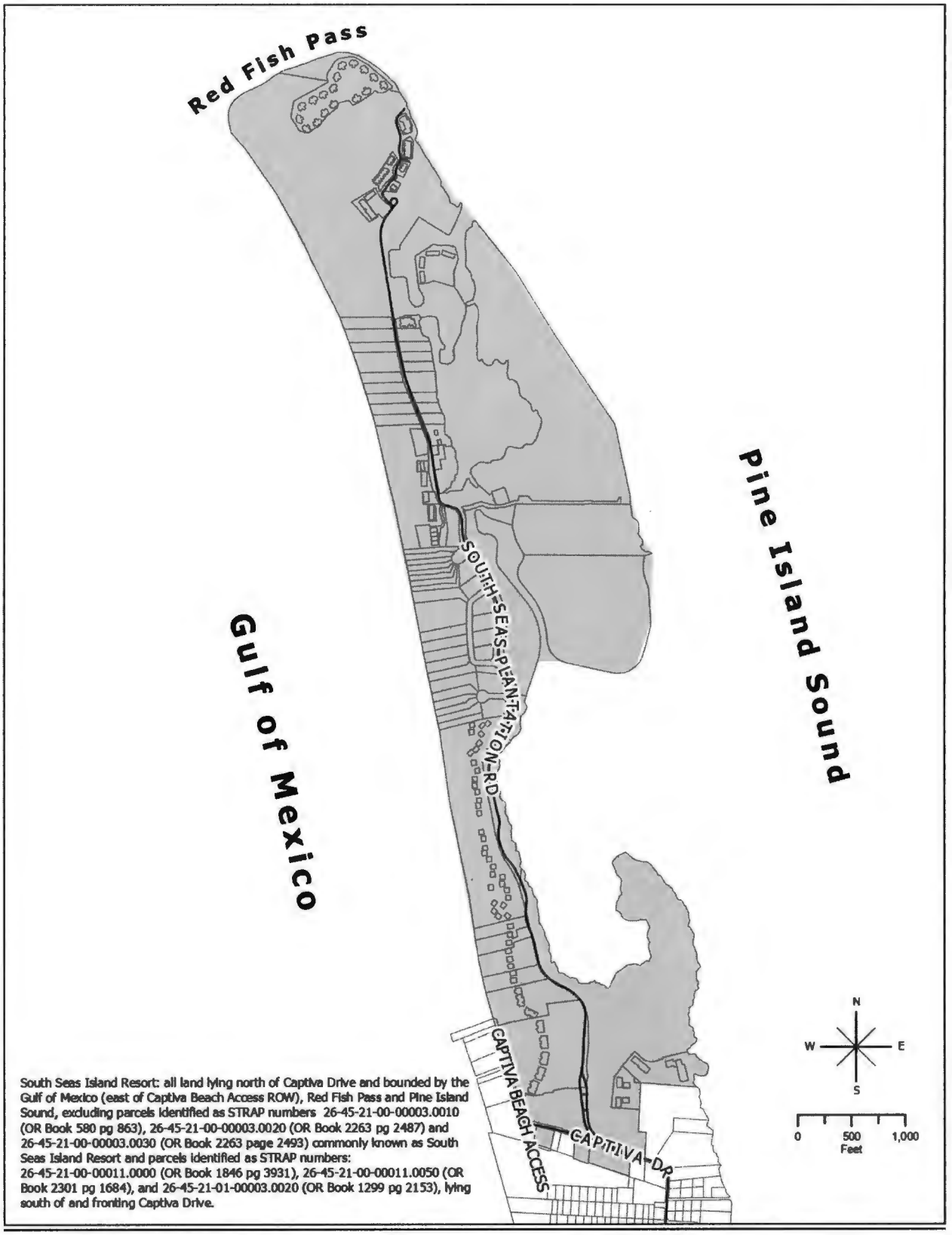
a. Equipment ~~pads/~~platforms, such as those for air conditioning and swimming pool equipment, may encroach up to three feet into side, rear or waterbody setbacks. The equipment ~~pad/~~platform may not interfere with ingress and egress, or through-access for life safety equipment.

b. Equipment ~~pads/~~platforms may be attached to a nonconforming building and will not be considered an extension or enlargement of a nonconformity as long as the building is properly zoned for its use and the requirements of section 34-2191(5)a. are met.

(6) *Exterior stairways.* Exterior stairways providing access to the main entrance of a dwelling unit or living unit may be permitted to encroach a maximum of three feet into a side setback, or a maximum of eight feet into a street setback, as long as its location does not interfere with traffic, ingress and egress, or life safety equipment.

APPENDIX I - PLANNING COMMUNITY AND REDEVELOPMENT OVERLAY DISTRICT BOUNDARIES AND LEGAL DESCRIPTIONS

Maps 3 through 17 remain unchanged



Map 18 – South Seas Island Resort

SECTION FOUR: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION FIVE: SEVERABILITY

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION SIX: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code. Sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section", "article," or other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

SECTION SEVEN: MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION EIGHT: EFFECTIVE DATE

Any provision of this ordinance that is subject to adoption of CPA2023-00004 amending Lee Plan Goal 23 and Policy 23.2.3 will take effect only after final adoption of CPA2023-00004, as applicable. The remainder of this ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. The provisions of this ordinance will apply to all projects or applications subject to the LDC unless the development order application for such project is complete or the zoning request is found sufficient before the effective date.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Commissioner Pendergrass made a motion to adopt the foregoing ordinance, seconded by Commissioner Sandelli. The vote was as follows:

Kevin Ruane	Nay
Cecil L Pendergrass	Aye
Raymond Sandelli	Aye
Brian Hamman	Aye
Mike Greenwell	Aye

DULY PASSED AND ADOPTED this 5th day of September, 2023.

ATTEST:
KEVIN C. KARNES
CLERK OF CIRCUIT COURT

BY: _____
Deputy Clerk

CHRIS JAGODZINSKI
DEPUTY CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Brian Hamman, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: _____
Office of the County Attorney

FLORIDA DEPARTMENT of STATE

RON DESANTIS
Governor

CORD BYRD
Secretary of State

September 11, 2023

Honorable Kevin Karnes
Clerk of the Circuit Courts
Lee County
Post Office Box 2469
Fort Myers, Florida 33902-2469

Attn: Chris Jagodzinski

Dear Kevin Karnes:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Lee County Ordinance No. 23-22, which was filed in this office on September 8, 2023.

Sincerely,

Anya Owens
Administrative Code and Register Director

ACO/wlh

RECEIVED
By Chris Jagodzinski at 10:14 am, Sep 11, 2023

FLORIDA COUNTY ORDINANCE DATA RETRIEVAL SYSTEM
CODRS CODING FORM

COUNTY: Lee **COUNTY ORDINANCE #:** 23-22

(e.g.,93-001)

PRIMARY KEYFIELD DESCRIPTOR: Zoning

SECONDARY KEYFIELD DESCRIPTOR: Planning

OTHER KEYFIELD DESCRIPTOR:

ORDINANCE DESCRIPTION: Amend Ch 30, 33, 34 LDC

(25 Characters Maximum Including Spaces)

ORDINANCES AMENDED: (List below the ordinances that are amended by this legislation. If more than two, list the most recent two.)

AMENDMENT #1: **AMENDMENT #2:**

ORDINANCES REPEALED: (List below the ordinances that are repealed by this legislation.)

REPEAL #1: ; **REPEAL #3:**

REPEAL #2: ; **REPEAL #4:**

(Others Repealed: List All That Apply):

(FOR OFFICE USE ONLY): **COUNTY CODE NUMBER:**

KEYFIELD 1 CODE: **KEYFIELD 2 CODE:**

KEYFIELD 3 CODE:

Rev. 09/11/02
CODING

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

VIA HAND DELIVERY

DATE: September 6, 2023

TO: Commissioner Brian Hamman
Chair, Board of County Commissioners

FROM: Amanda L. Swindle
Assistant County Attorney, Senior

RE: **Ordinance Amending LDC Chapters 30, 33 and 34, Amendment to Uniform Measurement of Building Height, Modifications to Promote Resiliency and Relocation of Nonconforming Billboards**
Ord. No. 23-22
Agenda Item Public Hearing #8, September 5, 2023

Attached, approved as to form, please find the original of the amendments to the Land Development Code adopted by the Board of County Commissioners on September 5, 2023. Kindly execute the ordinance at your earliest convenience and then forward to the Minutes Department for filing and transmittal to Tallahassee.

By copy of this memorandum to Eileen Gabrick, I request that a clerk attest to the Chair's signature on the attached ordinance and return the fully executed copy with all exhibits to my attention.

Insofar as State Statute mandates that the ordinance reach Tallahassee within ten (10) days of the adoption, please expedite the above request so that the ordinance arrives in Tallahassee no later than September 15, 2023.

Also attached please find the Data Retrieval form to accompany the ordinance when transmitted to the State.

Thank you for your prompt attention to this matter.

ALS/slk
Attachments

VIA EMAIL ONLY:
Laurel Chick, Manager, Internal Services
Samantha Westen, Executive Assistant
Rose Bahena, Administrative Specialist, Senior
Eileen Gabrick, Office Manager, Minutes Department
Erica Temerario, Legal Administrative Specialist (ordinance history)

2023 SEP -7 PM 4:41

Lee County
Southwest Florida

ITEM 8.
PUBLIC HEARING - 9:30 AM

AGENDA ITEM REPORT

DATE: September 5, 2023
DEPARTMENT: County Attorney
REQUESTER: Amanda Swindle
TITLE: Conduct Public Hearing to Adopt an Ordinance Amending LDC Chapters 30, 33 and 34

I. MOTION REQUESTED

Conduct public hearing to adopt an ordinance amending the Lee County Land Development Code, Chapters 30, 33 and 34 providing for a uniform measurement of building height, modifying development regulations to increase resiliency and reduce vulnerability to flooding and storm surge, addressing certain issues specific to Captiva and South Seas Island Resort, and allowing a one-time relocation of certain nonconforming billboards.

II. ITEM SUMMARY

Conduct public hearing to adopt amendments to Land Development Code (LDC) Chapters 30, 33, and 34 in response to certain issues that have been identified as regulatory constraints in rebuilding post Hurricane Ian, including a uniform measurement of building height, modifications to promote resiliency, and relocation of nonconforming billboards.

III. BACKGROUND AND IMPLICATIONS OF ACTION

A) Board Action and Other History

In the wake of the destruction of Hurricane Ian, and subsequent changes to FEMA National Flood Insurance Program (NFIP) requirements, constituents are facing regulatory constraints when seeking to build back pre-disaster habitable volume of buildings. This is due in part to a static method of measurement in some community planning areas, which establish the starting point for measurement of building height at the average grade of the lot in question, or sea level, rather than from the minimum required finished floor elevation required by the National Flood Insurance Program and the Florida Building Code. In addition, the point to which building height is measured varies depending on planning communities, with the most restrictive regulations measuring building heights to the peak of the roof or highest point of a building or structure. As minimum base flood elevations for buildings rise, these static regulations prove increasingly restrictive.

Certain Community Plan Area height regulations aim to establish assurance of vertical uniformity by creating height standards that cannot be deviated from though zoning action. Conversely, some unincorporated islands, including Upper Captiva, San Carlos Island and Matlacha Island, currently regulate building or structure height in a manner that evolves proportionately with changes in design flood elevation. The varying methods of measuring building height are difficult to administer and prove problematic because they do not provide consistency or reasonable certainty to property owners or design professionals.

In January of 2023, the Board directed staff to review and prepare amendments to existing County regulations addressing height, setbacks, and other development limitations that are potentially restricting residents' ability to rebuild their homes and businesses in a manner that reduces potential flooding threats, including to provisions of the Land Development Code applicable to the development of South Seas Resort. Based on this direction, staff has drafted a set of proposed amendments that aim to simplify administration for staff, provide for clarity and consistency for property owners and design professionals, and reduce the need for periodic modifications to building height regulations that may result from periodic changes to the Florida Building Code and FEMA National Flood Insurance Program (NFIP) requirements. If adopted, the proposed amendments will:

• Reorganize the Land Development Code to consolidate height regulations within an existing Land Development Code subdivision dedicated to regulating height. This reorganization eliminates duplicative and sometimes conflicting language and centralizes height regulations for ease of administration and clarity to the public.

• Establish a consistent method of measuring building height in floodprone areas. The proposed amendments require building height to be measured at the lowest habitable floor elevation for which a building permit may be issued, and ending a certain point based on the style of roof or structure.

• Establish a consistent method of measuring building height for property that is not within a special flood hazard area in accordance with LDC Section 6-514, which commences at 12 inches above the crown of the adjacent road(s).

• Update the maximum height permitted within the future land use categories established by the Lee Plan.

• Establish a permitted setback encroachment standard of seven feet for exterior stairways.

The draft regulations also include modifications and clarifications regarding:

• Parking requirements for buildings that are reconstructed in accordance with existing build-back provisions.

• Captiva Island and South Seas Resort.

• Application requirements for zoning actions to codify current Department practice.

Also included in the proposed ordinance are amendments to the LDC regarding the one-time relocation of a nonconforming billboard. The draft amendments, if approved, will permit a one-time relocation of a rebuilt billboard provided that (1) the recipient location is not an island where the billboard did not originate; (2) the proposed recipient location abuts an arterial road that is not otherwise restricted from billboard structures (LDC Section 30-183(1)(b)); and (3) the proposed recipient location is not residentially zoned and in the same or less restrictive future land use category as the rebuilt billboard's current location. These amendments were directed by the BoCC on March 21, 2023.

The LDCAC has reviewed the proposed amendments to the LDC on May 10, 2023, and recommended approval of the proposed amendments as modified.

The Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code regarding billboards on March 9, 2022, and recommended their adoption.

The Local Planning Agency reviewed the proposed amendments on May 22, 2023, and found them consistent with the Lee Plan.

This item is a continued item from the BoCC's June 20, 2023 meeting. At that meeting, the BoCC elected to continue this item to allow for the solicitation of public input. Staff conducted a series of public meetings on Captiva, Sanibel, and Pine Island, as well as in downtown Fort Myers, to present the proposed amendments to the public and receive public input. Staff will present a summary of public input received during these meetings to the BoCC at a workshop on August 29, 2023.

B) Policy Issues

C) BoCC Goals

D) Analysis

E) Options

IV. FINANCIAL INFORMATION

A)	Current year dollar amount of item:	No funding is required.
B)	Is this item approved in the current budget?	N/A
C)	Is this a revenue or expense item?	N/A
D)	Is this Discretionary or Mandatory?	N/A
E)	Will this item impact future budgets? If yes, please include reasons in III(D) above.	No
F)	Fund: Program: Project: Account Strings:	
G)	Fund Type?	N/A
H)	Comments:	

V. RECOMMENDATION

Approve

VI. TIMING/IMPLEMENTATION

VII. FOLLOW UP

ATTACHMENTS:

Description	Upload Date	Type
Proposed Ordinance	8/15/2023	Ordinance
FAIS Form	8/15/2023	Backup Material
PowerPoint Land Development Code Amendments	8/29/2023	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
County Attorney	Fraser, Andrea	Approved	8/25/2023 - 11:55 AM
Budget Services	Henkel, Anne	Approved	8/25/2023 - 1:35 PM

Budget Services	Winton, Peter	Approved	8/28/2023 - 9:13 AM
County Attorney	Swindle, Amanda	Approved	8/28/2023 - 10:46 AM
County Manager	Mora, Marc	Approved	8/28/2023 - 1:46 PM