



Gary Dunay

Bonnie Miskel

Scott Backman

Eric Coffman

Hope Calhoun

Dwayne Dickerson

Ele Zachariades

Matthew H. Scott

Christina Bilenki

Lauren G. Odom

Nicole Jaeger

Rachael Bond Palmer

**Jeffrey & Lynn Nestor
335 SE 7th Ave.
Boatlift Variance Narrative**

Jeffrey & Lynn Nestor (“Applicant”) are the owners of a 0.24 acre parcel with an address of 335 SE 7th Ave., in the City of Delray Beach (“Property”). Located on the east side of SE 7th Ave., the Property backs up to the Intracoastal Waterway. The Property is located within the R-1-AA zoning district, with a land use designation of LD (Low Density 0-5 du/acre) on the City’s Future Land Use Map. The Property is developed with a single-family home and an existing L-shaped dock. The Applicant is proposing to remove the portion of the existing dock running parallel to the Property and add a boat lift to the existing dock. The boat lift will be positioned adjacent to the existing dock so that the structures will not extend any further into the Intracoastal Waterway than the existing dock. As a result, the proposed boat lift will extend twenty nine feet (29’) into the waterway, consistent with the existing dock.

In order to construct the boat lift, Applicant is requesting a variance from Section 7.9.11(A) to allow the boatlift to extend more than twenty feet (20’) into the waterway, for a total of twenty nine feet (29’). Section 2.4.7(A)(5) of the City Code sets forth the criteria for variance requests. As explained in detail below, this application with the attached plans, surveys, study, and justification satisfy the criteria for the requested variances. Each of these criteria are listed below in bold, with Applicant’s response provided under each:

a) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings subject to the same zoning (The matter of economic hardship shall not constitute a basis for the granting of a variance).

Special conditions and circumstances exist which are peculiar to the Property that are not generally applicable to other properties within the same zoning district. The existing dock on the Property extends 30’ into the Intracoastal Waterway. Applicant is proposing to make repairs to the existing dock, removing the walkway that runs parallel to the Property line and replacing it with a boat lift. By doing so, the proposed boat lift will not extend any further into the Intracoastal Waterway than the structures that exist today. The resulting boat lift added adjacent to the existing dock will result in a total extension of twenty nine feet (29’) into the Intracoastal Waterway and has been determined to be the minimum of what is required to allow the Applicant to safely navigate a boat onto the proposed boat lift. There are special circumstances that are peculiar to the Property, as this particular area

of the Intracoastal becomes incredibly shallow closer to the rock wall near the property line and does not provide the needed depth for safe operation and use of the boat lift. This results in a beach-like condition for adjacent to the rubble rock wall much of the time. As part of this application, Petitioner has provided a Hydrographic Survey that demonstrates the mean low water (MLW) levels adjacent to the Property. As such, placing the boatlift any closer to the property line would not allow the Applicant the depths needed to safely navigate and dock a boat and would beach the boat, causing significant damage. Considering the foregoing, the Property's unique and peculiar circumstances necessitate the variance request for the length the boat lift will extend out into the Intracoastal Waterway.

b) That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning.

Literal interpretation of the Code in this instance would deprive the Applicant of rights that are commonly enjoyed by other property owners within the same zoning district. As stated above, constructing a boat lift in accordance with the Code requirements would not allow the Applicant the ability to safely navigate a boat into the boatlift, as demonstrated through the hydrographic survey included with this application. This is due to the shallow depths of the water nearer to the rock wall and property line. Not granting the variance request would deprive the Applicant of the ability to have a boat lift that will allow the safe docking of a boat, a right that adjacent neighbors and other surrounding properties within the same zoning district have and enjoy.

c) That the special conditions and circumstances have not resulted from actions of the applicant.

The special and unique conditions associated with the Property are not attributable to the actions of the Applicant. The variance request to allow the boatlift to extend twenty nine feet (29') into the Intracoastal Waterway (consistent with the existing structures) is created by the existing conditions in the Waterway, with the waters being too shallow for the safe operation of the boat lift closer to the property line. This is not a condition created by the actions of the Applicant.

d) That granting the variance will not confer onto the applicant any special privilege that is denied to other lands, structures, and buildings under the same zoning. Neither the permitted, nor nonconforming use, of neighborhood lands, structures, or buildings under the same zoning shall be considered grounds for the issuance of a variance.

Granting the variance will not confer any special privilege to the Applicant that is denied to other property owners in the same zoning district. The right to safely navigate and dock a boat is one that is commonly enjoyed by other property owners within the same zoning district and surrounding area.

- e) **That the reasons set forth in the variance petition justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.**

The variance requested is the minimum necessary for the applicant to make reasonable use of the Property. Allowing the boatlift to extend twenty nine feet (29') out into the Intracoastal Waterway, and consistent with existing structures, rather than 20' is the minimum needed to allow the safe operation of the boat lift. The water depth is too shallow moving closer to the property for the boat lift to operate correctly and safely, as demonstrated through the hydrographic survey. Furthermore, the Applicant is removing the portion of the existing dock running parallel to the Property in order to ensure the proposed structures will not extend further into the Intracoastal Waterway than which exists today (if the Applicant were to keep the existing dock and request a boatlift to extend 15' beyond the dock). This design creates a request for the minimum variance needed to make possible the reasonable use of the Property.

- f) **That the granting of the variance will be in harmony with the general purpose and intent of existing regulations, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.**

Granting the variance request will not be detrimental to the public welfare or injurious to the property or improvements within the same district or the surrounding neighborhood. The request will allow for the Applicant to enjoy the same rights commonly enjoyed by other property owners in the same district and surrounding neighborhood with a design that will allow a boat to safely navigate into and out of the boat lift. In addition to creating conditions for safe boating activities, the proposal will have a positive effect on property values. Further, the proposed boat lift will not extend further into the Intracoastal Waterway than the existing structures, thereby creating no additional impacts to surrounding parcels. AS such, the variance is in harmony with the general purpose and intent of the regulations and will not be injurious or otherwise detrimental to the neighborhood or public welfare.