



# DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

## BOARD OF ADJUSTMENT STAFF REPORT

### 942 Evergreen Drive

Meeting	File No.	Application Type
September 7, 2023	2023-228-VAR-BOA	Variance
Property Owner	Applicant	Agent
Troy Gagliardi & Desiree Cook	Troy Gagliardi & Desiree Cook	Neil Schiller

### Request

Consideration of a variance request from Section 7.9.11 (A) and (B) of the Land Development Regulations (LDR), to allow a boatlift to project more than 20 feet into the waterway from the seawall and to allow a boatlift to be located so that the vessel in its raised position extends closer than 10 feet to the adjacent (west) property line.

### General Data

**Location:** 942 Evergreen Drive, Tropic Isles

**PCN:** 12-43-46-28-03-000-2720

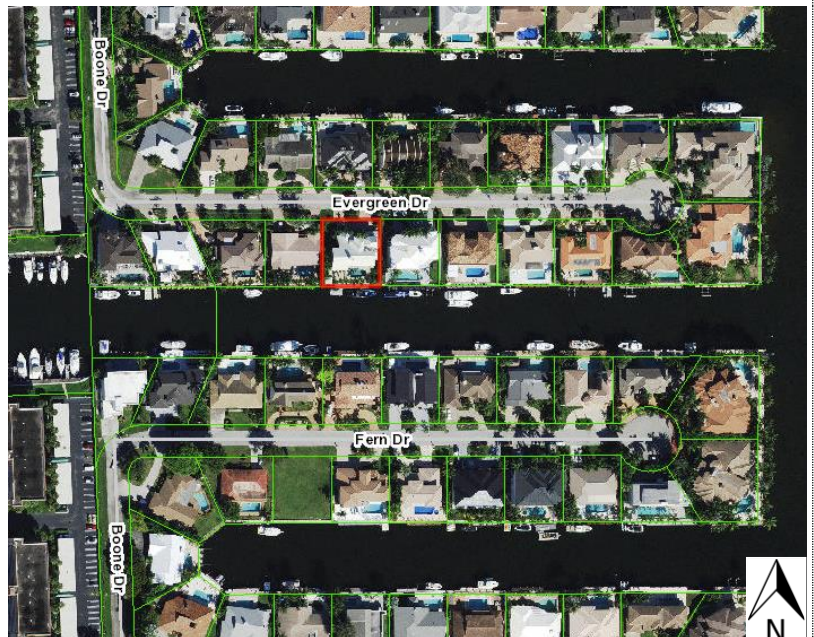
**Land Use Designation:** Low Density, 0-5 du/ac (LD)

**Zoning District:** Residential Single Family R-1-AA-B

**Existing Land Use:** Single-family Residential

### Adjacent Zoning and Uses:

- **North:** Residential Single Family R-1-AA-B
- **East & West:** Residential Single Family R-1-AA-B
- **South:** Residential Single Family R-1-AA-B



### Background

Article 7.9 of the Land Development Regulations (LDR) sets forth the regulations for Docks, Dolphins, Finger Piers, and Boat Lifts.

**LDR Section 7.9.1 Intent**, states, “the intent of this Article is to permit construction in and upon certain waterways of docks, dolphins, finger piers, and boat lifts which do not cause a hazardous interference with navigation, endanger life or property, or deny the public reasonable visual access to public waterways. These regulations shall be applicable only to residentially zoned property and shall exclude commercial-boating and related facilities.”

The following LDR sections apply to this application:

**LDR Section 7.9.5. - Standards for Approval.**

*A dock may be permitted subject to the following conditions:*

- (A) *Dock projection into a waterway, exclusive of dock pilings, shall be designed by one of the following methods:*
  - (1) *If no existing seawall: Five feet as measured from the water's edge at mean low tide.*
  - (2) *If existing or proposed seawall without batter piles: Five feet as measured from the face of the seawall.*
  - (3) *If existing or proposed seawall with or without a seawall cap with batter piles: Seven feet as measured from the face of the seawall.*
- (B) *Only one fixed dock is permitted per lot. The dock shall not extend any closer than ten feet to the property line of adjacent property or the distance established for the side yard setback, whichever is greater.*
- (C) *At least one ladder extending from the dock surface to two feet below the mean low waterline shall be provided for each dock.*
- (D) *Floating docks shall be allowed and must be permitted and permanently attached to a fixed dock, finger pier, mooring pilings, or seawall.*
- (E) *Docks attached to a seawall may be constructed at an elevation less than the elevation of the seawall, but shall not exceed the maximum seawall elevation in Section 7.1.7.*

**LDR Section 7.9.6. - Additional Requirements Where Over 50 Feet in Aggregate Length.**

*A dock or combination of docks serving the same property and exceeding 50 feet in aggregate length shall be provided with the following facilities:*

- (A) *At least one sewage pumpout connected to the city sanitary system.*
- (B) *One potable water hose bib and one electrical outlet for each 25 feet of dock length or major fraction (over 50 percent) thereof or for each boat where the design of the dock, finger piers, or dolphins clearly indicates a specific number of boats to be moved.*
- (C) *At least one ladder for each 50 feet of dock length or major fraction (over 50%) thereof extending from the dock surface to two feet below the mean low waterline. Where two or more docks serve the same property, at least one ladder shall be provided for each dock.*

**LDR Section 7.9.11 Standards for approval, sets forth the standards for approval for boat lifts.**

*A boat lift may be permitted subject to the following conditions:*

- (A) *The boat lift in a raised position shall not extend more than 20 feet into the waterway from the property line or seawall or bulkhead, whichever is nearer to the waterway.*
- (B) *When plot frontage exists along a body of water, only one boat lift is permitted. The boat lift shall be located so that the vessel in its raised position lift shall not extend any closer to the adjacent property line than ten feet or the building side setback, whichever is greater.*

**Vessel Size**

It is important to note, compliance with the provisions of the LDR for boat lifts depends largely upon the size of the vessel chosen by the property owner. The setback for structures in general is the side setback established by the zoning district in LDR Section 4.3.4 "Base District Standards" or 10 feet, whichever is larger. For 942 Evergreen Drive, the standard is 10 feet. The boat lift position also has the stipulation that the "vessel in the upright position" will be at least 10 feet from the adjacent property line. A boat lift that is set back 15 feet from the adjacent property line may be in compliance with a vessel 20 feet in length but may be out of compliance for a larger vessel.

Building Application (22-203195)

On March 24, 2022, a building permit application (22-203195) was submitted by JM Properties of West Palm Beach, on behalf of Troy Gagliardi, the property owner of 942 Evergreen Drive. The “Description of Proposed Improvements” section of the building permit application requests information on the “Description of the proposed work (New Construction, Addition, Interior/Exterior Alteration, Windows/Doors, etc.). The applicant filled the description as, “*remove and install new dock*”.

The initial application proposed to rebuild the dock in the previous dock’s location. The previous dock provided “approximately” 19 feet of setback to the adjacent property to the west and “approximately” 21 feet to the adjacent property to the east.

Since the initial dock in the application appeared to exceed 50 feet in length, the provisions of LDR Section 7.9.6 applied, and building permit comments were issued on April 26, 2022. The comments included the need for a ladder, sewage pump out, electrical outlets, etc., as well as a request for electrical contractor information and approval from the Florida Department of Environmental Protection (FDEP). All applications for docks, finger piers, boat lifts, etc. require review by the FDEP for a determination of exemption from permitting through FDEP, which is required if the proposed improvements affect issues under state or federal purview, such as submerged state-owned lands or federally protected wetlands, etc.

In response, on June 14, 2022, the applicant submitted new plans, which clearly indicated the dock was exactly 50 feet long, eliminating the need for compliance with LDR Section 7.9.6. The updated drawings also repositioned the new dock, providing a 10-foot setback from the adjacent property to the west and a 30-foot setback to the adjacent property to the east. The position of the dock was then in compliance with the City LDR. The resubmittal did not include a written response to the comments issued, which would have included any changes to the request, particularly any new improvements added to the overall permit application, such as a boat lift or specific electrical information.

On June 26, 2022, the applicant provided a review by FDEP to 1) replace the dock in the exact footprint and 2) install a pile-supported boatlift. While the proposed dock is not the exact footprint of the previous dock, since the new dock footprint covered slightly less area, the City did not require an updated letter from FDEP. Details for the boat lift were included in the FDEP approval request. Those details show a lift that is set back 19 feet from the western property line and projects 20 feet into the water; a “walk around” was not on the FDEP plan. The lift position in the FDEP drawings would allow for a boat of a certain size to be lifted and remain in compliance with the LDR, provided the vessel did not overhang the lift more than 9 feet to the west. In this case, the issue is the installed boat lift is set back only 10 feet from the western property line and extends more than 20 feet into the water; therefore, the requirements of the LDR are not in compliance and the boat cannot be lifted without violating the code.

On August 5, 2022, the permit to “remove and install new dock” was issued since it was deemed compliant with the LDR requirements. While the boatlift was shown in the permit drawings (setback only 10 feet from the property line and a 20-foot extension in the second submission), the boat lift was not reviewed or inspected, which would have included an electrical inspection. The inspections on the dock (framing and pile capacity log) were conducted, with the final inspection occurring on December 1, 2022.

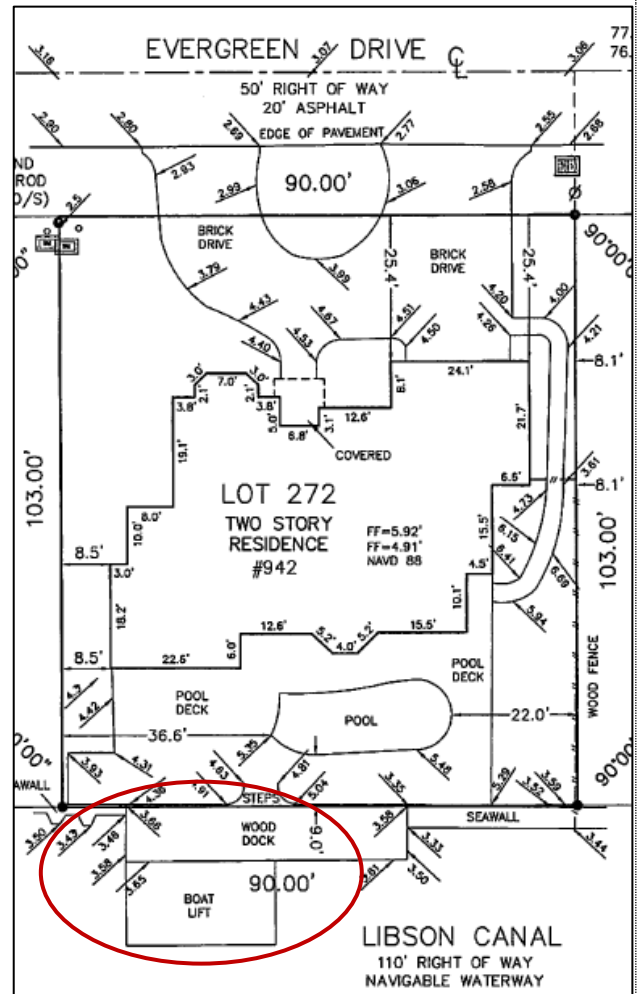
The City received a complaint that the vessel in the upright position on the boat lift was too close to the adjoining property. Upon inspection of the property, Code Violation # 23-00001615 was issued on January 31, 2023, citing the LDR provisions for boat lifts and directing the property owner to submit for permit for the boat lift.





Given the encroachment of the boat in the raised position and the extension of the boat lift, a variance request to modify the applicable regulations was required. The applicant initially provided an incomplete variance application submittal in May. In response, Staff requested numerous required application items, including an updated survey clearly demarcating the location and size of the installed boat lift, specifically its location related to the western property line. The variance application was deemed complete on July 14, 2023, with the official submittal, including the "Boundary Survey," provided on August 8, 2023.

The application indicates the request is to encroach "by about 6 feet" into the side setback, leaving a 4-ft. setback. Upon review of the application and survey details, it was noticed that the Boundary Survey (shown to the right) did not include the boatlift dimensions. Measuring the boundary survey suggests the lift projects approximately 25 feet, but without dimensions provided by the applicant on the survey, it is difficult to ascertain. Rather than issue another set of sufficiency comments, the Director of Development Services has moved the application to the Board to avoid any further delay in resolving the issue. In an abundance of caution, the variance request is advertised for both issues.



#### Variance Review and Analysis

Pursuant to **LDR Section 7.9.4(B), Modification of standards for approval; appeals**, should the Building Official recommend against any request for modification of the standards for approval as set forth herein, the applicant shall have the right to appeal that decision of the Building Official to the Board of Adjustment, by filing a written request to the City Manager within ten days after the decision of the building Official. The Board of Adjustment shall conduct a hearing on the appeal at a regular or special board of Adjustment meeting and shall render a decision within a reasonable time after the hearing.

Pursuant to **LDR Section 2.4.7(A)(5)(a) through (f), Variances: Findings**, the following findings must be made prior to the approval of a variance:

- 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).

The lot width of 90 feet is more than sufficient to place the boat lift, including a vessel in the upright position wholly in compliance with the LDR. The only reason the applicant is not moving the boat lift is economic cost, which is expressly not a basis for granting a variance. Regarding the projection of the boat lift beyond the allowed 20 feet, the applicant has not indicated that there are any special conditions or circumstances that are peculiar to the land, structure, or building involved that would cause the boat lift to extend past 20 feet. The intent for the limitation is to ensure, particularly in finger canals where there are homeowners on each side of the water, that each property owner can equally navigate the water without impeding the navigable rights of others.

The image below depicts the vessel in the upright position extending beyond the 10-ft. side setback limitation (red dashed line). The lot has additional space available to center the boat in front of the property in compliance with the setback provisions. The image also shows the “walk around” that was added to the boat lift (yellow oval) and not shown in the details submitted. The person in the image is standing on the adjacent property.



- 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, positioning the boatlift in compliance with both the side setback provisions and the limit of 20 feet of projection into the waterway, would allow for the provision of a boat lift on the property, given the 90-ft. wide lot and would not deprive the applicant of a right. The 20-foot extension limitation is intended to ensure that there is sufficient navigable area by all other properties, on both sides of the finger canal, that are subject to the same requirements.

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

The applicant installed the boat lift under the assumption it was part of the permit to “remove and install new dock.” Meanwhile, the application was not revised by the applicant to also include the boat lift under the “Description of Proposed Improvements” and the requisite electrical permit application, to motorize the boat lift, was also not provided. The City issued the permit without questioning the boat lift position on the permit application as the permit application was specifically for the removal and installation of the dock. However, these actions do not create a special circumstance that justifies a variance, rather than correcting the position of the lift.

- 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.***

Allowing the boat lift to remain in the position, infringing the vessel into the adjacent property owners’ viewshed would be a special privilege that would not be allowed for other lots with the same zoning district and lot width. Further, if the neighboring property was allowed to encroach a vessel in a similar manner, navigability could become an issue. For this reason, the current regulations require that at least 20 feet is provided between vessels.

- 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; and,***

The application does not provide dimensions to demonstrate the exact variance amount needed, or if the proposed 6-ft. encroachment includes the “walk around” installed. The applicant’s justification statement is that the variance has to be approved because the permit for the removal and installation of the new dock was issued. However, the issuance of a permit does not entitle any applicant to violate the LDR; the relevant findings still have to be met.

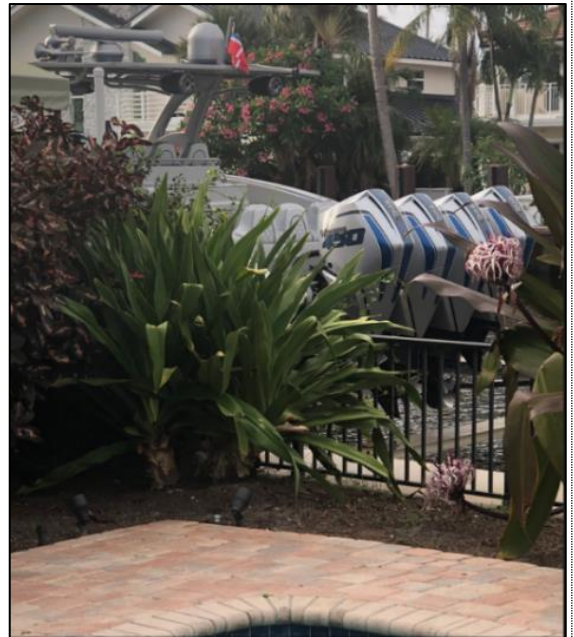
The City’s code is clear on this in **LDR 2.4.6(B)(4), Conditions of the permit:**

*“The Building Official shall act upon an application for a permit with plans as filed, or as amended, without unreasonable or unnecessary delay. A **permit issued** shall be construed to be a license to proceed with the work and **shall not be construed as authority to violate, cancel, alter or set aside any of the provisions of this code, nor shall such issuance of a permit prevent the Building Official from thereafter requiring a correction of errors in plans or in construction, or violations of this code...**”*

- 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 would impact the harmony and general purpose of Article 7.9 by violating the neighbor’s right to “*reasonable visual access to public waterways*”. The adjoining property owner to the west, Mr. Wayne Waller, provided the image to the right to demonstrate the visual impact of the large vessel in the upright position on the lift in its current location. Again, it’s important to be mindful that the setback is also related to the vessel size. Further, this encroachment could affect navigability for Mr. Waller received the same variance for a vessel on a boat lift.

If the board cannot make positive findings on every standard, the variance request must be denied. It is important to note that the request at hand appears inconsistent with the plan that was presented to and approved by FDEP. As a result, the request cannot be approved until there is either a confirmation that the boat lift, in its installed location, is consistent with the FDEP approval, or has been approved by FDEP for the modified location.



## Optional Board Actions

### LDR Section 7.9.11(A), Projection into Waterway

- A. Move **approval** of the Variance request for **942 Evergreen Drive** (2023-228) from LDR Section 7.9.11 (A) to allow a boatlift to project more than 20 feet into the waterway from the seawall, by finding that the request is consistent with the findings set forth in LDR Section 2.4.7(A)(5).
- B. Move **denial** of the Variance request for **942 Evergreen Drive** (2023-228) from LDR Section 7.9.11 (A) to allow a boatlift to project more than 20 feet into the waterway from the seawall, by finding that the request is not consistent with the findings set forth in LDR Section 2.4.7(A)(5).
- C. Move to **continue with direction**.

### LDR Section 7.9.11(B), Distance from Property Line

- A. Move **approval** of the Variance request for **942 Evergreen Drive** (2023-228) from LDR Section 7.9.11(B) to allow a boatlift to be located so that the vessel in its raised position extends up to 6 feet to the adjacent property line, by finding that the request is consistent with the findings set forth in LDR Section 2.4.7(A)(5).
- B. Move **denial** of the Variance request for **942 Evergreen Drive** (2023-228) from LDR Section 7.9.11(B) to allow a boatlift to be located so that the vessel in its raised position extends up to 6 feet to the adjacent property line, by finding that the request is not consistent with the findings set forth in LDR Section 2.4.7(A)(5).
- C. Move to **continue with direction**.

## Public Notice

Pursuant to **LDR Section 2.4.2 (B)(1)(f)**, the City shall provide notice of the public hearing in accordance with Section 2.4.2(B)(1)(j) (i), (ii), and (iv) for variances before the Board of Adjustment.

LDR section	Date Posted
2.4.2 (B)(1)(j)(i) - Written notice provided to property owners within 500 feet	August 25, 2023
2.4.2 (B)(1)(j)(ii) - Notice posted on the City's web page at least ten days prior	August 28, 2023
2.4.2 (B)(1)(j)(iv) - Notice posted at City Hall	August 28, 2023