



Government
L A W G R O U P

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VARIANCE JUSTIFICATION STATEMENT

942 Evergreen Drive – Boat Lift

The Applicants, Troy Gagliardi and Denise Cook, property owners of the above address, seek a variance to Sections 7.9.11 (A & B) for a boat lift that they legally had approved and permitted by the City of Delray Beach. On January 31, 2023, the Applicants received General Violation Notice GV-23-0000-1615 to inform them that the boat lift they recently had installed violated the Code with respect to the location of the boat on the lift. The Code prevents the vessel on the lift from extending 20' in the waterway from the bulkhead and 10' from the property line.

The Applicants filed the appropriate applications and permits for its dock renovation and boat lift in early June 2022. After review by the City and conversations with the City's Building Official, they resubmitted their applicaiton on June 14, 2022. The plans and permits were approved by the City's Engineering Department on August 1, 2022; the Planning and Zoning Department of August 2, 2022, and the Building Department on August 4, 2022. The boat lift was constructed in strict accordance with the permits submitted and approved and the permit was approved on November 30, 2022. Based on a review of the approved plans, it appears that the applications were approved erroneously by the City, in violation of the Code. The Applicants followed the City's process to the letter, received the necessary approvals and was still cited for the above referenced Code violations. Upon a complaint made by the Applicants' neighbor, the City realized its mistake and tried to disapprove the permits on January 3, 2023.

CRITERIA FOR VARIANCE APPROVAL

- 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 special condition that exists is the erroneous City approval that the Applicant's relied on to construct the boat lift in its existing location. There was discussion between the Applicant and Staff wherein the Applicant changed its initial plans to the version that was submitted and approved. The City admitted its mistake by revising the approved plans to disapproved on January 3, 2023; without any notification to the Applicant.

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

The Applicant relied on the City's erroneous approval to their detriment. The Applicant followed the application process for its dock renovations and boat lift, like every other City applicant. The Applicant submitted fees and revisions accordingly to the City and regularly communicated with City Staff to ensure that there were no issues with its permits. The City reviewed the applications multiple times, yet no one noticed the Code conflict. The approved site plan does not show a violation of Sec. 7.9.11(A), which prevents the boat on the lift extending more than 20' from the bulkhead in the waterway.

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

The special condition and circumstance do not result from the Applicant's actions.

- 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;

No special privilege will be conferred onto the Applicant with approval of the variance. Not approving the variance will require the Applicant to remove the boat lift that was permitted and approved by the City, at its sole expense. They did everything right, but still get punished.

- 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,

This is minimum variance necessary to permit the installed and approved boat lift at its current location.

- 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.

The variance sought is not injurious to the neighborhood, as the violation occurs only when the boat is on the lift and out of the water. Further, the intrusion into the invisible "side setback" that extends into the waterway is not apparent from the street.