



Board of Adjustment

STAFF REPORT

DEVELOPMENT SERVICES DEPARTMENT

100 NW 1ST AVENUE, DELRAY BEACH, FLORIDA 33444

PLANNING & ZONING DIVISION: (561) 243-7040 • BUILDING DIVISION: (561) 243-7200

Board of Adjustment

Meeting: April 7, 2022

File No.: 2022-070 VAR-BOA

Application Type: 335 SE 7th Avenue

Item Before the Board

Variance request to allow the boat lift in the raised position to extend more than 20 feet into the waterway from the property line or seawall or bulkhead, whichever is nearer to the waterway. The proposal is to remove a portion of the existing dock running parallel to the property and add a boat lift to the existing dock that extends twenty-nine feet into the waterway in the raised position.

General Data:

Applicant/Agent: Ele Zachariades Esq. and Christina Bilenki Esq.

Location: 335 SE 7th Avenue

PCN: 12-43-46-16-C7-000-0030

Property Size: 0.24 Acres

LUM: LD (Low Density)

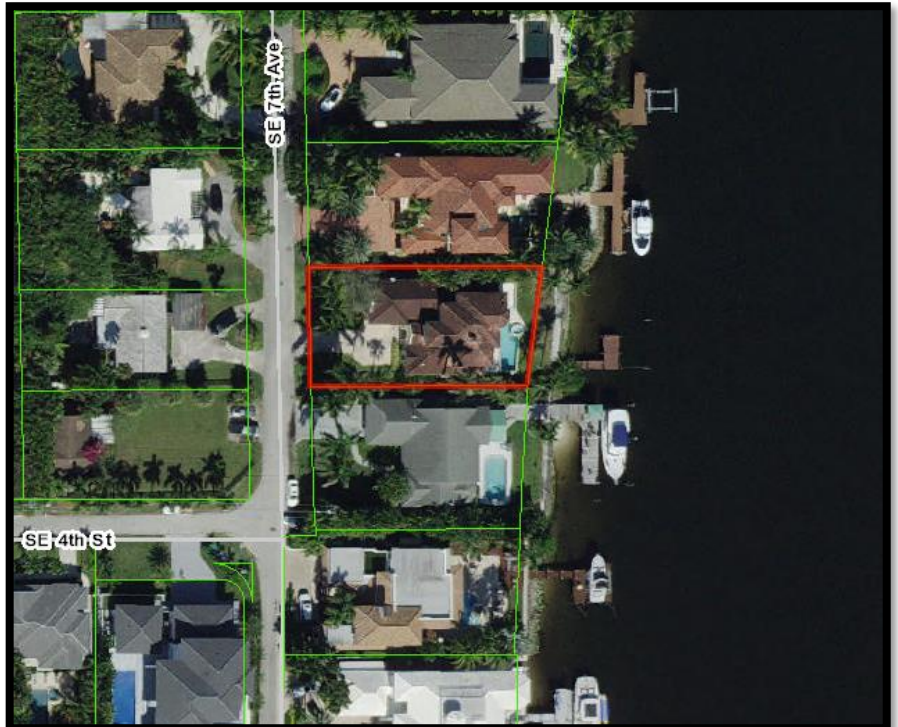
Zoning: R-1-AA (Single Family Residential)

Adjacent Zoning:

- R-1-AA (North)
- R1-AA (West)
- R-1-AA (South)
- Intra Coastal Waterway (East)

Existing Land Use: Single Family Home

Proposed Land Use: Single Family Home



Optional Board Motions for Action Items:

1. Move to **continue with direction**.
2. Move **approval** of the variance request for **335 SE 7th Avenue** (2022-070 VAR-BOA) from LDR Section 7.9.11(A), to allow a boat lift to extend nine feet beyond the 20 foot maximum distance permitted into the waterway, by finding that the request is consistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).
3. Move **denial** of the variance request for **335 SE 7th Avenue** (2022-070-VAR-BOA) from LDR Section 7.9.11(A), to allow a boat lift to extend nine feet beyond the 20 foot maximum distance permitted into the waterway, by finding that the request is inconsistent with the findings set forth in the Land Development Regulations Section 2.4.7(A)(5).

Background:

The property consists of Lot III, Replat of Rieske, according to the map or plat thereof, as recorded in Plat Book 72, page 42, of the Public Records of Palm Beach County, Florida.

Project Planner:

Jennifer Buca, Planner
buca@mydelraybeach.cpm
561-243-7138

Review Dates:

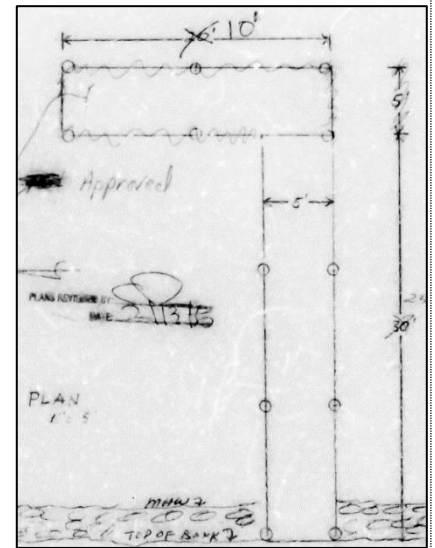
BOA Board:
April 7, 2022

Attachments:

1. Site Plans
2. Justification Narrative
3. Hydrographic Survey
4. pictures



The property is located within the Single-Family Residential zoning district (R-1-AA) with a Land Use Designation (LUM) of Medium Density (MD). In 2004, an L-shaped dock was permitted and (04-90660) approved to install a five foot by ten-foot dock, five foot by twenty-five-foot access ramp and two dolphin piers. The proposal is to remove a portion of the existing dock running parallel to the property and add a boat lift to the existing dock that extends twenty-nine feet into the waterway in the raised position. Pursuant to LDR Section 7.9.11(A) Standards for approval; 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. On August 24, 2021, a building permit was denied for the approval of a boatlift.



Variance Analysis:

The subject request is for relief to allow the boatlift to extend twenty-nine feet into the waterway where twenty feet is allowed pursuant to LDR Section 7.9.11(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. The applicant's justification letter is attached.

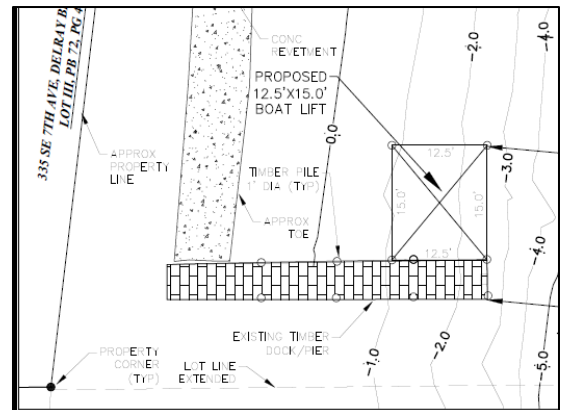
Pursuant to **LDR Section 2.2.4(D)(4) and (c)**, the Board of Adjustment has the authority to grant variances and hear appeals from the provisions of the General Development Standards (Article 4.3).

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

Pursuant to **LDR Section 7.9.5(B)** 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.

- 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 proposal consists of repairing the existing dock, remove the five-foot by ten finger pier and construct a boat lift. As a result of the proposed addition of the boat lift, it will extend twenty-nine feet into the waterway where only 20 feet is allowed pursuant to LDR Section 7.9.11(A); a boatlift in a raised position shall not extend more than twenty feet into the waterway from the property line or bulkhead, whichever is nearer to the waterway. In addition, LDR Section 7.9.11(B) states the boatlift shall not extend any closer than ten feet to the adjacent properties. The proposed boatlift is ten feet from each adjacent property. The Hydrographic Survey depicted in the photo on your right identifies that the mean low water (MLW) levels adjacent to the riprap which is thirteen feet from the property line is at 0.0. The proposed boatlift at MLW is at 2.0. Therefore, if the boatlift were to be placed any closer to the property line, the boat would not be able to navigate and dock safely in the depths of the water.





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

The requirements for 7.9.11(A) are applied city wide. The Hydrographic survey demonstrates that the mean low water is extremely low during low tide. The water remains low thirty-four feet out into the Intracoastal Waterway which makes it difficult to navigate a boat safely.



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

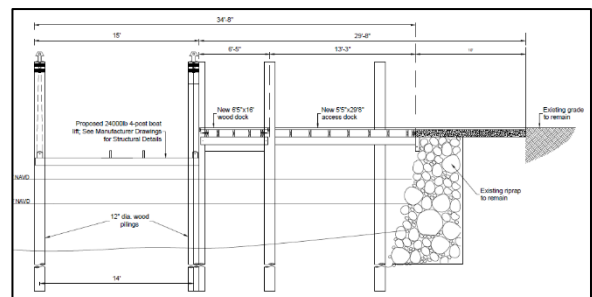
The capability to dock a boat at your residence is not a necessity, but a privilege. However, the actions are not the direct result of the applicant. The property owner purchased the property in 2015 with the dock and dolphin. The homeowner is proposing to repair the dolphin, remove the dock and add the boatlift. The original dolphin extended twenty-five feet into the waterway from the riprap with a five-foot dock. The new dock is proposed at sixteen feet six inches and the boat lift is twelve feet six inches for a total of twenty-nine feet. The Hydrographic survey demonstrates that the boatlift in the upright position at twenty-nine feet and at mean low tide is two feet in depth.

- 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.

Each variance submitted is to be reviewed and stand on its own. The City of Delray Beach has many different areas of land that have waterfront property that front the Intracoastal Waterway. There are properties with more than 100 feet of waterway such as 333 Palm Trail which was approved for a variance in 2009 for a boatlift to extend an additional seven feet into the waterway. In 2011, two variances were denied allowing the boatlift to extend approximately five feet into the waterway and for the side setback encroaching into the adjacent properties. In these, cases it was at the end of a finger canal in the Intracoastal Waterway. The riparian rights pursuant to Florida State Statue 253 Section 141 are "legal rights incident to lands bound by navigable waters. They are rights of ingress, egress, boating, bathing, and fishing. They are defined as the land to which the owner holds the title must extend to the ordinary high watermark of the navigable water for the riparian rights to attach.

- 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 proposal is to remove a portion of the dolphin and the dock running parallel with the property. The dolphin will be repaired at sixteen feet six inches which is less than the original dolphin at twenty-five feet. The boatlift will be constructed at twelve feet six inches. The new proposed dolphin and dock is a total of twenty-nine feet which is one foot less than what was existing. The applicant has demonstrated through the Hydrographic survey that the water is very shallow. At the mean low tide, the boat lift in its upright position is at two feet.



- 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 request for the construction of the boatlift will not disrupt the general function of the neighborhood. There are many existing dolphins, docks, and boat lifts along this section of navigable water. There is ample room for riparian rights for ingress, egress and to navigate the boat into the intracoastal waterway. The proposed boatlift will not be a detriment to the public welfare nor will it affect the neighborhood. Given the location of the property on the Intracoastal Waterway, extension of the dock will not impede access to adjacent properties.



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	March 25, 2022
2.4.2 (B)(1)(j)(ii) - Notice posted on the City's web page at least ten days prior	March 25, 2022
2.4.2 (B)(1)(j)(iv) - Notice posted at City Hall	March 25, 2022