



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

BOARD OF ADJUSTMENT STAFF REPORT

227 Palm Trail

| Meeting | File No. | Application Type |
|----------------------------|----------|--|
| July 18, 2024 | 2024-131 | Variance |
| Property Owner & Applicant | | Agent |
| Thomas & Laura Speno | | Matthew H. Scott, Esq. for Greenspoon Marder LLP |

Request

Consideration of two variance requests from Section 7.9.7(C) and 7.9.11(A) of the Land Development Regulations (LDR), to allow a finger pier to extend 32.3 feet from the bulkhead into the Intracoastal Waterway, whereas a maximum of 25 feet is allowed, and to allow a boatlift in the raised position to be located 37 feet, one inch from the bulkhead, whereas a maximum of 20 feet is allowed.

General Data

Location: 227 Palm Trail

PCN: 12-43-46-16-09-000-0100

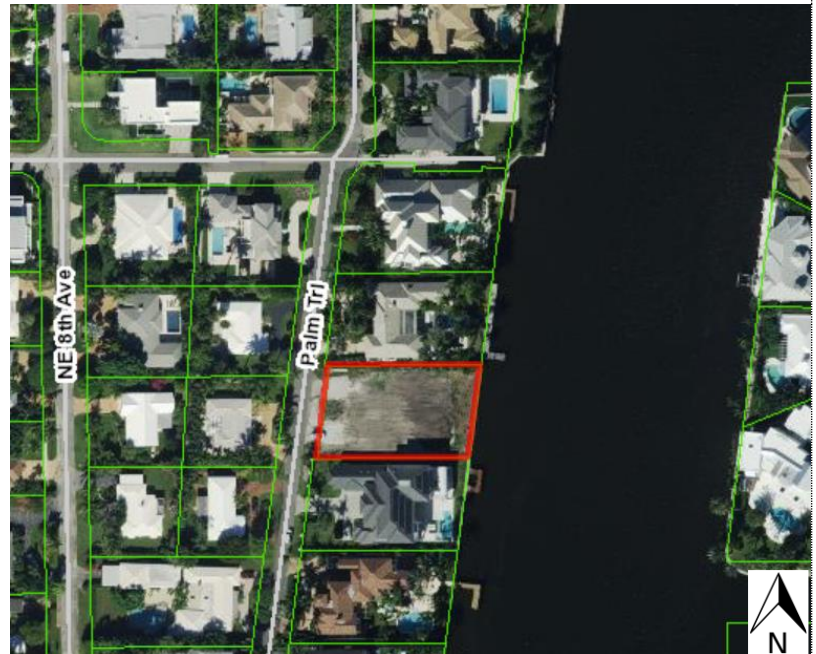
Property Size: 0.4120 Acres

Land Use Designation: Medium Density (MD)

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

Adjacent Zoning and Uses:

- North, South and West: R-1-AA
- East: Intracoastal Waterway



Background

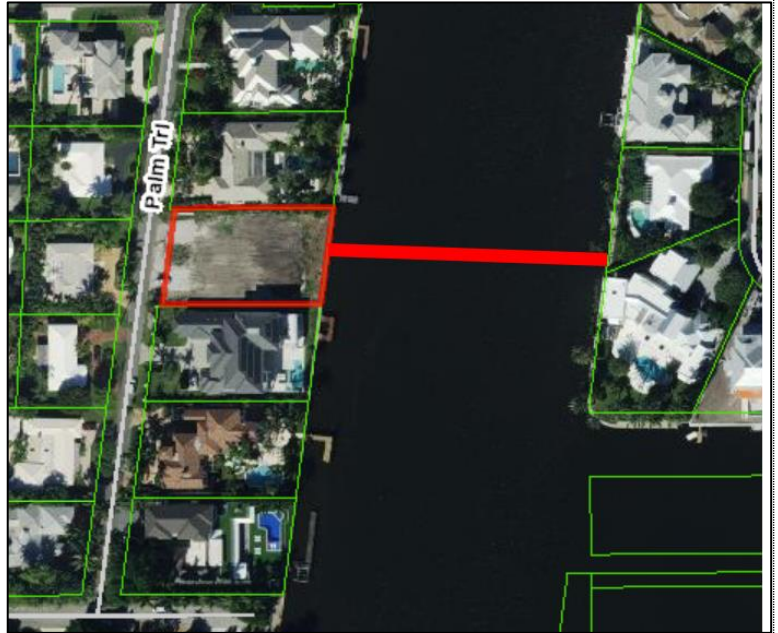
The property is located between NE 3rd Street and NE 2nd Street and is identified as Lot 10, Runnymede subdivision, according to the map of the plat thereof as recorded in Plat Book 23, Page 71, Public Records of Palm Beach County, Florida. The subject property is within the Palm Trail Neighborhood. The original Plat of Runnymede recorded in 1950, indicates that Palm Trail was initially designated as NE 9th Avenue.

The original ca. 1961 single-family residence was recently demolished, and a new single-family residence is currently under construction (Permit No. 21-201516). At the BOA meeting of January 18, 2024, the Board considered two variance requests to the Standards of Approval in LDR Section 7.9.7(C), to allow a finger pier to extend from the seawall 33 feet, three inches, whereas the extension is limited to a maximum of 25 feet; and Section 7.9.11(A), to allow a boatlift in the raised position to extend 38 feet, one

inch from the seawall, whereas the extension is limited to a maximum of 20 feet. Each of the requests was denied. It is important to note that while the subject request is similar to the denied requests, the LDR does not specifically prohibit that a similar, but modified request be submitted.

Given the location of the property and consideration of the improvements within the Intracoastal Waterway, it is important to note that Florida State Statute 253 Section 141 defines riparian rights as “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.”

The “Riparian rights” may give the landowner the right to navigate a boat through the water; however, the landowner, should consider the impact on adjacent properties with regard to the installation of a dock, finger pier, and boatlifts to avoid obstructing their waterfront view. The proposed finger pier and boat lift are proposed to be located adjacent to and within the Intracoastal Waterway, which spans approximately 300 feet in width.



UPDATE

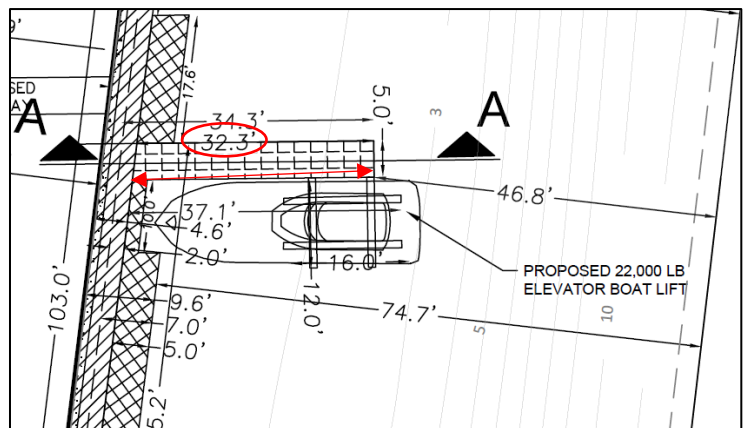
This request was previously noticed for the June 6, 2024 BOA meeting. At the beginning of the meeting and prior to any presentations, the applicant requested a continuance of the item to the July 18, 2024 meeting. The noted basis of the request was to review information provided by a neighbor regarding the request. The request has not been amended from the request noticed and analyzed by Staff for the June 6, 2024 meeting, and no additional or new information has been provided by the applicant. Other than this update, the Staff Report remains the same as previously provided. Given that the item was continued to a date certain, no additional public notice was required.

Request

The subject consideration is for two variance requests to the Standards of Approval in the LDR as applicable to finger piers and boat lifts. The request differs from the prior request as the measurement that each of the proposed encroachments extends beyond the maximum allowed has been reduced: the finger pier length has been reduced by one foot, and the proposed location of the boat lift has also been reduced by one foot. Further, the placement of the finger pier has been set in an additional five feet from the north, for a total of 27.6 feet, whereas the prior location was set in 22.6 feet.

Finger Piers

Pursuant to **LDR Section 7.9.8, Finger Piers: Standards for approval**, the conditions for installation and location of finger piers shall be the same as specified for dolphins. Pursuant to **LDR Section 7.9.7(C), Dolphins: Standards for approval**, for waterways greater than 100 feet in width, the maximum distance a dolphin may be installed up to 25 feet from the extended property line or seawall or bulkhead, with preference whichever is nearer to the waterway. In this specific case, the seawall represents the nearer element. The proposed finger pier extends past the maximum 25-foot limitation to a length of 32 feet, three inches to reach the mean low water range of two to three feet. The requested extension is intended to provide for safe boat mooring and navigation, preventing potential beaching and hull damage.

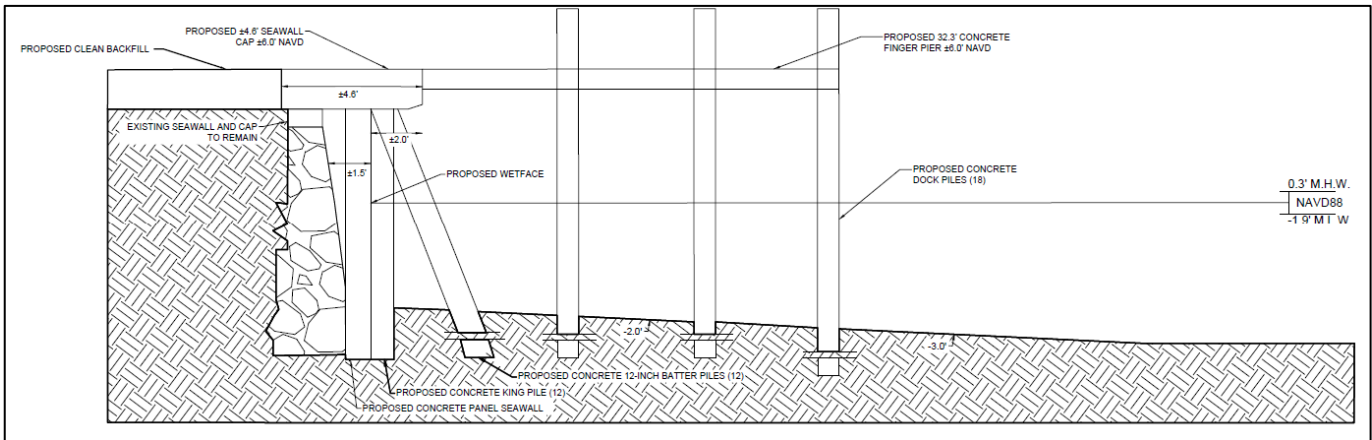


Boat Lifts

Pursuant to **LDR Section 7.9.11(A), Boat Lifts: 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. The applicant is requesting approval to allow the boat lift to extend 37 feet, one inch into the waterway. As with the finger pier location, the provided exhibit illustrates the boat lift would also be located within the mean low water range of two to three feet. The requested extension of the boat lift from the maximum of 20 feet from the seawall to 37 feet, one inch is necessary if the finger pier extension is granted, and to safely moor the boat and minimize potential damage to the vessel from the mean low tide.

Additionally, LDR Section 7.9.11(B), specifies that *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.* The single boat lift proposed meets the setback requirement; the side-interior setback is a minimum of 10 feet, whereas the boat lift, which places the boat in an east/west position, will be located approximately 32.5 feet from the north property line, and approximately 55.2 feet from the south property line. The boat lift illustrated is specified as a 22,000 lb elevator boat lift; a larger lift, which encroaches further into the Intracoastal Waterway, or any other location for the lift will require additional review and approval.

It's essential to note that the City of Delray Beach requires approval from the Army Corp of Engineers for such requests; approval (attached) was obtained on August 31, 2023, and is valid until March 14, 2026 (seawall, cap, and piles) and March 28, 2028 (dock and boat lift). The approval allows for the installation of a 103-linear foot concrete seawall with 18 inches of the existing 4.6-inch cap, 12 concrete 12- inch king piles and 12 concrete 12-inch batter piles, installation of a 325 SF concrete marginal dock with 8 concrete 12-inch dock piles, a 38.8 foot by 5-foot finger pier with 10 piles and a 22,000 LB. elevator boat lift. The approval letter also specifies that the most waterward edge of an authorized project shall be no closer than 43.5 feet from the near design edge of the federal channel; the edge of the finger pier is noted at 46.8 feet from the edge of the Intracoastal Waterway, which meets and exceeds the requirement. See graphic illustrating all components, including the seawall, dock, finger pier, and boat lift.



It is also important to note that the Army Corps of Engineers approval letter illustrates the boat lift location along the north side of the finger pier, while the subject request illustrates the boat lift along the south side. The applicant may need to obtain further approval with the Army Corps of Engineers for this modified placement.

The applicant's justification (attached) indicates that the proposed dimensions and locations for the finger pier and boat lift are necessary to properly moor a boat primarily given the shallow water depth. A Bathymetric Survey has also been provided and is included with the attachments' the survey illustrates the mean low water levels adjacent to the property.

Variance Review and Analysis

Finger Pier

Pursuant to **LDR Section 2.1.7(E)(1)(c)(4), Board of Adjustment: Duties, powers, and responsibility**, the Board hereby has the authority to grant variances and hear appeals from the following: *Docks, Dolphins, Finger Piers, and Boat Lifts, Article 7.9, for single-family or duplex structures.*

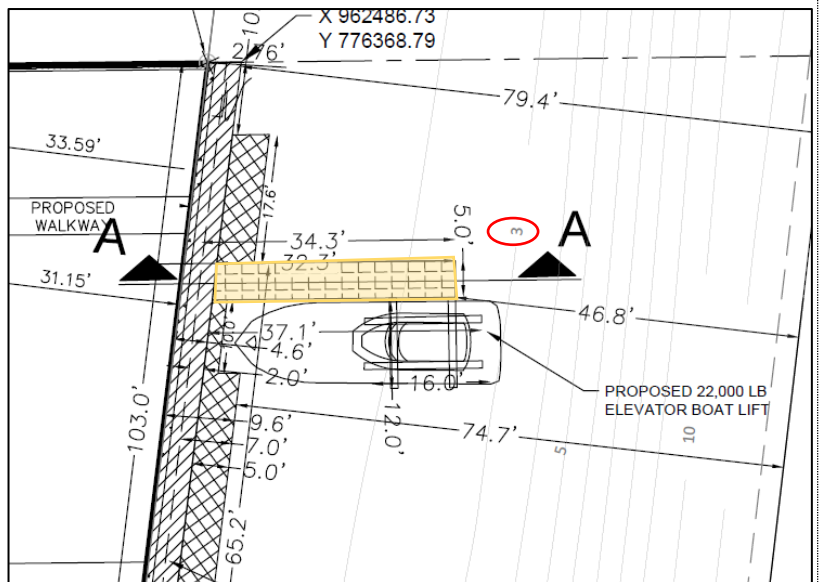
The requested relief is from Article 7.9 Standards of Approval, Docks, Dolphins, Finger Piers, and Boatlifts.

Pursuant to **LDR Section 2.4.11(A), Relief: Variances**, a variance is a departure from the dimensional or numeric requirements of these land development regulations where such variance will not be contrary to the public interest and where, owing to the existing conditions peculiar to the property and not the result of the actions of the landowner, a literal enforcement of the regulations would result in unnecessary and undue hardship.

Pursuant to **LDR Section 2.4.11(A)(5) (a-f), Variance 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);*
- (b) *That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning;*
- (c) *That the special conditions and circumstances have not resulted from 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;*
- (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,*
- (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.*

In consideration of the criteria listed above, the Board should consider whether special conditions or circumstances exist relative to the property, and if the requested variance for the finger pier to extend further into the waterway is a result of actions by the applicant, and if the granting of the request would deprive the applicant of rights commonly enjoyed by other properties subject to the same finger pier regulations. While each request shall be considered on a case by case basis, the Standards of Approval in LDR Section 7.9., Docks, Dolphins, Finger Piers and Boatlifts, variances have become more commonly requested due to waterfront property owners buying larger vessels, thereby requiring deeper depth at the low water levels along the Intracoastal Waterway. Given the overall width of the waterway, the granting of the variance is not anticipated to conflict with or be detrimental to the



existing neighborhood, as there is sufficient navigable room within the Intracoastal Waterway, and therefore, would not impede the neighbors utilizing the waterway or the general public. Further, the Intent of LDR Section 7.9.1 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.*”

The Army Corps of Engineers has jurisdiction over improvements within the Intracoastal Waterway, and as previously stated, approval has been granted for the proposed depth. As such, there is a determination that the request would not be injurious to the neighborhood nor detrimental to the public welfare (i.e. other users of the waterway). Further, the proposed location of the finger pier is set in from the side property lines. The setback from the north is a total of 27.6 feet, which exceeds the minimum 10-foot setback, and is five feet more than the prior request. The resulting placement of the finger pier is intended to minimize impacts on the adjacent neighbors and their water views.

While the boat lift could be attached to the dock in a parallel location, thereby likely eliminating the need for a variance for the finger pier; however, parallel docks are more commonly utilized in narrower water channels. The need to extend the finger pier further than the LDR allows is to accommodate the boat lift perpendicular to the property to allow for safer mooring of the boat in deeper water. The shallow area of the Intracoastal Waterway is not the result of the applicant. The width of the lot exceeds the minimum and allows for the finger pier and boat lift to be set significantly away from neighboring properties and allows for a wide viewshed to remain.

Boat Lift

Pursuant to **LDR Section 2.1.7(E)(1)(c)(4), Board of Adjustment: Duties, powers, and responsibility**, the Board hereby has the authority to grant variances and hear appeals from the following: *Docks, Dolphins, Finger Piers, and Boat Lifts, Article 7.9, for single-family or duplex structures.*

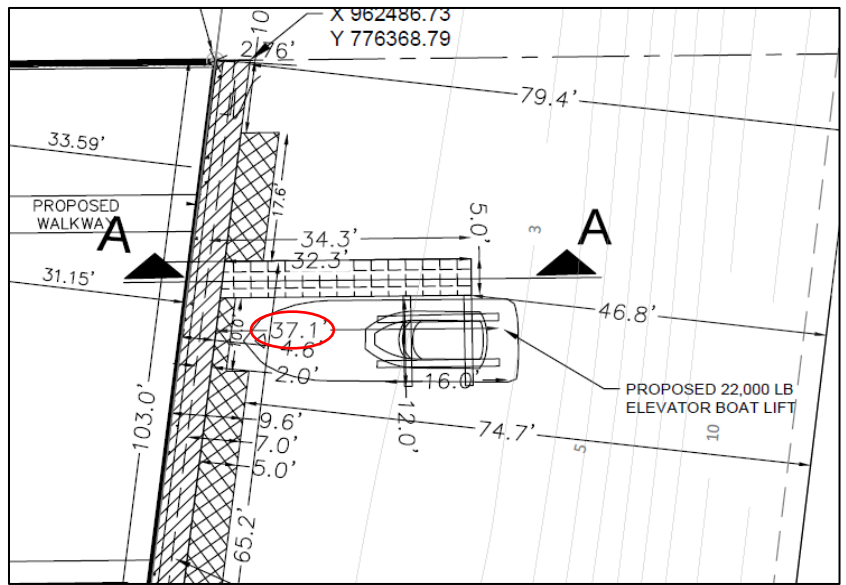
The requested relief is from Article 7.9 Standards of Approval, Docks, Dolphins, Finger Piers, and Boatlifts.

Pursuant to **LDR Section 2.4.11(A), Relief: Variances**, a variance is a departure from the dimensional or numeric requirements of these land development regulations where such variance will not be contrary to the public interest and where, owing to the existing conditions peculiar to the property and not the result of the actions of the landowner, a literal enforcement of the regulations would result in unnecessary and undue hardship.

Pursuant to **LDR Section 2.4.11(A)(5) (a-f), Variance 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);*
- (b) *That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning;*
- (c) *That the special conditions and circumstances have not resulted from 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;*
- (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,*
- (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.*

In consideration of the criteria listed above, the Board should consider whether special conditions or circumstances exist relative to the property, and if the requested variance for the boatlift to extend further into the waterway is a result of actions by the applicant, and if the granting of the request would deprive the applicant of rights commonly enjoyed by other properties subject to the same boat lift regulations. While each request shall be considered on a case by case basis, the Standards of Approval in LDR Section 7.9., Docks, Dolphins, Finger Piers and Boatlifts, variances for such installations have become more commonly requested due to waterfront property owners buying larger vessels, thereby requiring deeper depth at the low water levels along the Intracoastal Waterway and Water Basins. Given the overall width of the waterway, the granting of the variance is not anticipated to conflict with or be detrimental to the existing neighborhood, as sufficient navigable room within the Intracoastal Waterway remains, and the boat lift would not impede on the neighbors utilizing the waterway or the general public. Further, the Intent of LDR Section 7.9.1 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.”



The Army Corps of Engineers has jurisdiction over improvements within the Intracoastal Waterway, and as previously stated, approval has been granted for the proposed depth. As such, there is a determination that the request would not be injurious to the neighborhood nor detrimental to the public welfare (i.e. other users of the waterway). Further, the proposed location of the boat lift on the south side of the finger pier will assist in minimizing impacts to the neighbor to the north and their water views.

While the boat lift could be attached to the dock in a parallel location, thereby likely eliminating the need for a variance for the finger pier; however, parallel docks are more commonly utilized in narrower water channels. The need to extend the finger pier further than the LDR allows is to accommodate the boat lift perpendicular to the property to allow for safer mooring of the boat in deeper water. The shallow area of the Intracoastal Waterway is not the result of the applicant. The width of the lot exceeds the minimum and allows for the finger pier and boat lift to be set significantly away from neighboring properties and allows for a wide viewshed to remain.

Optional Board Actions

Finger Pier

- A. Move **approval** of the Variance request for **227 Palm Trail** (2024-131) from LDR Section 7.9.7(C), to allow a finger pier to extend 32.3 feet from the bulkhead into the Intracoastal Waterway, whereas a maximum of 25 feet is allowed, by finding that the request is consistent with the findings set forth in LDR Section 2.4.11(A)(5)(a-f).
- B. Move **denial** of the Variance request for **227 Palm Trail** (2024-131) from LDR Section 7.9.7 (C) to allow a finger pier to extend 32.3 feet from the bulkhead into the Intracoastal Waterway, whereas a maximum of 25 feet is allowed, by finding that the request is not consistent with the findings set forth in LDR Section 2.4.11(A)(5)(a-f).
- C. Move to **continue with direction**.

Boat Lift

- A. Move **approval** of the Variance request for **227 Palm Trail** (2024-131) from LDR Section 7.9.11(A), to allow a boatlift in the raised position to be located 37 feet, one inch from the bulkhead, whereas a maximum of 20 feet is allowed, by finding that the request is consistent with the findings set forth in LDR Section 2.4.11(A)(5)(a-f),
- B. Move **denial** of the Variance request for **227 Palm Trail** (2024-131) from LDR Section 7.9.11(A), to allow a boatlift in the raised position to be located 37 feet, one inch from the bulkhead, whereas a maximum of 20 feet is allowed, by finding that the request is not consistent with the findings set forth in LDR Section 2.4.11(A)(5)(a-f).
- C. Move to **continue with direction**.

Public Notice

Pursuant to **LDR Section 2.6.3(G)**, Notice in accordance with Section 2.6.2 (A), (B), (C), and (D) shall be provided prior to a Public Hearing.

| LDR section | Date Posted |
|---|--------------------|
| 2.6.3(G) - Written notice provided to property owners within 500 feet | May 24, 2024 |
| 2.6.3(G) - Notice posted on the City's web page at least ten days prior | May 24, 2024 |
| 2.6.3(G) - Notice posted at City Hall | May 24, 2024 |
| 2.6.3(G) - Placard Notice | May 24, 2024 |