

**MINUTES  
BOARD OF ADJUSTMENT  
CITY OF DELRAY BEACH**

**MEETING DATE:** September 7, 2023

**MEETING PLACE:** City Commission Chambers

**1. CALL TO ORDER**

The meeting was called to order by Robert Cohen, Chair, at 5:06 p.m.

**2. ROLL CALL**

A quorum was present.

**Members present:** Robert Cohen, Chair; Mike Miles, Vice Chair; Brenda Cullinan, 2<sup>nd</sup> Vice Chair; William Schloesser, Alek Hayes, and Vlad Dumitrescu.

**Members absent:** None

**Staff Present:** William Bennett, Assistant City Attorney; Anthea Gianniotis, Development Services Director; Jennifer Buce, Planner; and Diane Miller, Board Secretary.

**3. APPROVAL OF AGENDA**

**Motion** to approve the agenda of September 7, 2023, was made by Brenda Cullinan and seconded by Alek Hayes.

**MOTION CARRIED 6-0**

**4. MINUTES**

**Motion** to approve minutes for August 3, 2023, was made by Brenda Cullinan and seconded by Mike Miles.

**MOTION CARRIED 6-0**

**5. SWEARING IN OF THE PUBLIC**

Robert Cohen read the quasi-judicial rules for the City of Delray Beach and Ms. Miller swore in all who wished to give testimony.

**6. COMMENTS FROM THE PUBLIC**

None

**NOTE:** Comments on items that are NOT on the Agenda will be taken immediately prior to Public Hearing Items. Speakers will be limited to 3 minutes.

**7. Quasi-Judicial Hearing Items**

**A. 942 Evergreen Drive (2023-228):** 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.

Applicant/Property Owner: Troy Gagliardi & Desiree Cook

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

Authorized Agent: Neil Schiller; nscheiller@govlawgroup.com

Project Planner: Anthea Gianniotis, Development Services Director

Anthea Gianniotis, Development Service Director entered the file 2023-228 into the record.

**Exparte Communication**

Alek Hayes-None

Robert Cohen-None

William Schloesser-None

Brenda Cullinan-None

Vlad Dumitrescu-None

Mike Miles-None

**Applicant Presentation**

Neil Schiller, Government Law Group

Troy Gagliardi-Owner

Desiree Cook-Owner

**Staff Presentation**

Anthea Gianniotis, Development Service Director, presented the project by means of a PowerPoint presentation.

**Public Comments**

Wayne Waller-936 Evergreen Drive

Mr. Waller is opposed to the building of this dock. Mr. Waller spoke to the City who then visited our property and agreed this was a problem. Mr. Waller spoke to several neighbors, and all are in agreement to oppose the variance.

Kelli & Ross Freeman-917 Banyan Drive

They discussed the inconvenience of the boat and dock.

Wanda and Fred Fetzer-932 Evergreen Drive

They noted that by the board approving this request it would set a precedent going forward.

Lori Levinson-1035 S. Federal Hwy.

She previously lived across from the property but at the present time she feels that the request should be denied.

### **Rebuttal/Cross Examination**

Neil Schiller - Mr. Schiller commented that the request will not be setting a precedence, and each waiver will have its own set of circumstances. The building permit for this project is with the City's license to proceed. Mr. Schiller also noted that the dock is built to the plans included in the permit file.

Anthea Gianniotis - LDRs are fair to all residents and setbacks matter. The boat dock is in the right place which didn't require electrical review or inspection because the dock didn't need electrical outlets. Ultimately situations like these happen when there is a disconnect between the process and the information.

### **Board Comments**

Vlad Dumitrescu asked Ms. Gianniotis if the lift was built correctly and the boat is over hanging, infringing the 10-foot set back, if there was no boat there would be no violation. Ms. Gianniotis commented that was correct, but there is no boat that will go onto this boat lift with the right arm at the 10-foot setback that will not be a code violation. Unfortunately, the findings are what we vote on. The lift needs to move over.

Mike Miles asked if the walk around is part of the lift? Mr. Schiller replied that this was added after the fact, and it will be removed. Mr. Miles commented that there are boats east of this dock and asked if they would be out of compliance.

Anthea Gianniotis clarified that a lot of docks and boat lifts in the City happen without permits because we might not see them. But do to the fact that your neighbor bought a boat that is too big and encroaches, you should have the right to have a boat lift that is positioned in a way that any vessel will encroach.

Robert Cohen commented that there are inconsistencies. There are two different drawings of the same name, one with the permit and one with DEP. There is also a survey of June 1, 2023, which has incomplete dimensions.

**MOTION** to move the 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) set forth in LDR Section 2.4.7(A)(5). was made by Jesse Schloesser and seconded by Alek Hayes.

**MOTION CARRIED 6-0**

*Pursuant to LDR Section 2.4.7(A)(5), all decisions of the Board of Adjustment are final. Based on the entire record before it, the Board of Adjustment **denies**  X  the variance solely for the purposes as presented at the meeting. The Board of Adjustment adopts this Order this 7th day of September 2023.*

**MOTION** to 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) made by Mike Miles and seconded by Alek Hayes.

**MOTION CARRIED 6-0**

*Pursuant to LDR Section 7.9.11(A)(5), all decisions of the Board of Adjustment are final. Based on the entire record before it, the Board of Adjustment **denies**  X  the variance solely for the purposes as presented at the meeting. The Board of Adjustment adopts this Order this 7th day of September 2023.*

**B. 809 NW 2nd Street (2022-040):** Consideration of a variance request from Land Development Regulations (LDR) Section 4.3.4(K) Development Standard Matrix, to allow a 13-foot side street setback, whereas a minimum of 15 feet is required, and LDR 4.6.15(G)(1) to allow the swimming pool to encroach into the front setback at 15 feet, whereas a minimum of 25 feet is required.

Address: 809 NW 2nd Street

PCN: 12-43-46-17-25-002-0172

Property Owner: 7 SW 9th Street, LLC.

Authorized Agent: Thomas F. Carney, Jr. Esq., tfc@carneystanton.com

Jennifer Buce, Planner, entered the file 2022-040 into the record.

**Exparte Communications**

Alek Hayes-None

Robert Cohen-None

William Schloesser-None

Brenda Cullinan-None

Vlad Dumitrescu-None

Mike Miles-None

**Applicant Presentation**

Thomas Carney-Carney Stanton

**Staff Presentation**

Jennifer Buce presented the project by means of a PowerPoint presentation.

**Public Comments**

Eristine Holladay, - West Side Heights - A year ago I applied for a 5-foot setback on either side of my house. I was denied and want to understand why this project is here in front of the board.

Ann Stacey Wright, 225 SW 7<sup>th</sup> Avenue- There is going to be a wall in front of the house for the safety of children, but this is encouraging curious children.

Carolyn Young, I am against the variance but in favor of the redevelopment, but the house is not compatible with the neighborhood. A pool in the front yard is a safety hazard.

Reggie Cox, 715 NW 2<sup>nd</sup> Street- Agree with previous speakers but oppose the variance for a swimming pool.

Dr. Jerome Burke, 230 NW 7<sup>th</sup> Avenue- Oppose the variance for a swimming pool.

**Rebutal/Cross**

Thomas Carney- Mr. Carney recognized that this is a small lot but can't fit a swimming pool in the backyard.

B. Candon, Candon Design Architect- Mr. Candon spoke about the safety issue regarding the pool. Anytime you have a pool you need to have protection and it will be a six-foot wall.

Anthea Gianniotis-There have been more questions brought up on the setbacks. The front setback is 25 feet and 7.5 feet for the interior.

**Board Comment**

Brenda Cullinan- Ms. Cullinan asked if they could put the pool in the backyard. Ms. Gianniotis explained that due to the strange position of the property and what is in the front and back of the house, it makes this difficult.

Mike Miles- Mr. Miles asked if they pushed the house to the south and asked for relief on the front set back to put the pool in the back, the driveway becomes smaller so could. The homeowner parks in the driveway that is within the right-of-way. Ms. Buce said they cannot.

**MOTION** to move approval of the Variance request for 809 NW 2nd St (2022-040 VAR-BOA) from LDR Section 4.3.4(K), to allow a 13- foot side-street setback, whereas 15 feet is required, by finding that the request is consistent with the findings set forth in LDR Section 2.4.7(A)(5) was made by Mike Miles and seconded by Alek Hayes.

**MOTION CARRIED 6-0**

*Pursuant to LDR Section 2.2.4(D)(8), all decisions of the Board of Adjustment are final. Based on the entire record before it, the Board of Adjustment **approves**   X   the*

*variance solely for the purposes as presented at the meeting. The Board of Adjustment adopts this Order this 7th day of September 2023.*

**MOTION** move denial of the Variance request for 809 NW 2nd Street (2022-040) from LDR Section 4.6.15(G)(1) to allow the swimming pool to encroach into the front setback 15 feet where 25 feet is required by finding that the request is consistent with the findings set forth in LDR Section 2.4.7(A)(5) was made by Alek Hayes and seconded by Jesse Schloesser.

**MOTION CARRIED 4-2**

*Pursuant to LDR Section 2.2.4(D)(8), all decisions of the Board of Adjustment are final. Based on the entire record before it, the Board of Adjustment **denied** X the variance solely for the purposes as presented at the meeting. The Board of Adjustment adopts this Order this 7th day of September 2023.*

**8. Reports and Comment**

A. Staff Comments

The next meeting will be:  
October 4, 2023

Anthea Gianniotis passed on information to the Board regarding the City Commission. The next agenda will be posted next Tuesday and there are three ordinances that are listed for first reading. Staff are trying to combine and streamline development review so that one board is looking at all the issues. This will not be finalized until October, and Staff will keep the Board updated.

Robert Cohen remarked that terms needed to be extended, any information on this. Ms. Gianniotis explained that at the first reading at the next meeting in September Staff would know if it would be necessary.

B. Attorney Comments

None

C. Board Comments

None

**9. ADJOURN**

There being no further business to come before the Board, the meeting was adjourned at 7:30pm.

The undersigned is the Secretary of the Board of Adjustments and the information provided herein is the Minutes of the meeting of said body for **September 7, 2023**, which were formally adopted and APPROVED by the Board on **June 6, 2024**.

**ATTEST:**

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**CHAIR**

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**BOARD SECRETARY**

NOTE TO READER: If the Minutes you have received are not completed as indicated above, then this means that these are not the official Minutes of the Board of Adjustment. They will become official minutes only after review and approval, which may involve some amendments, additions or deletions.