



# Board of Adjustment

## STAFF REPORT

### DEVELOPMENT SERVICES DEPARTMENT

100 NW 1<sup>ST</sup> AVENUE, DELRAY BEACH, FLORIDA 33444

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

#### Board of Adjustment

Meeting: April 4, 2019

File No.: 2019-127  
VAR-BOA

Application Type: Board of Adjustment

#### General Data:

Agent: Dave Nutter

Applicant: Donna & Gerson Cortes

Location: 3011 Jasmine Ter.

PCN: 12-43-46-28-04-000-4620

Property Size: 0.31 Acres

FLUM: R1-AA-B (Single Family Residential)

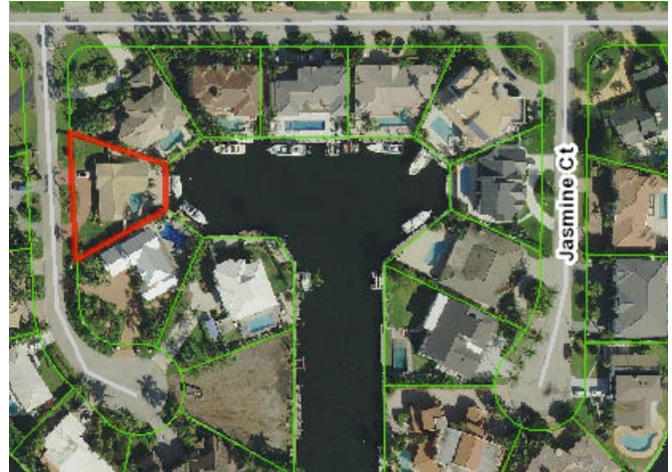
Zoning: RM (Multiple Family Residential)

#### Adjacent Zoning:

- R1-AA-B (North)
- R1-AA-B (West)
- R-1-AA-B (South)
- R-1-AA-B (East)

Existing Land Use: Single Family Home

Proposed Land Use: Single Family Home



#### Item before the Board:

The action before the Board is the consideration of a variance to allow a boat lift to extend 4'9.5" further into the waterway from the property line where 20' is the maximum allowed. In addition, the applicant is also seeking a variance for the side setbacks to encroach (7'0.7") on the northern side and (6'5.6"); southern side; 10' is required.

#### Recommendation:

**Deny** the Variance request (BOA 2019-127) to LDR 7.9.11(A)(B) to allow a boat lift to extend 4'9.5" further into the waterway from the property line where 20' is the maximum allowed and to reduce the side setback (7'0.7") on the northern side and (6'5.6"); southern side where 10' is required based upon a failure to make positive findings with respect to LDR Section 2.4.7(A)(5).

The request before the board is relief to allow a boat lift to extend 4'9.5" into the waterway. The applicant is requesting 24'9.5". Pursuant to LDR 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. In addition, the applicant is also seeking relief from the side setbacks of 10 feet. Pursuant to LDR 7.9.11(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. The property is zoned R-1-AA-B, the required side setbacks are 8 ½, therefore, 10 feet is required. On the northern side of the property 2'11.3" is proposed and on the southern side of the property 3'6.4" is proposed.

#### Background:

The property consists of Lot 426, 4<sup>th</sup> Section Tropic Isle, according to the map of plat thereof, as recorded in Plat Book 25, pages 69 and 70, of the Public Records of Palm Beach County, Florida. The proposal is to install a new finger pier and boat lift.

#### Variance Analysis:

Pursuant to **LDR Section 2.2.4(D)(4)**, the Board of Adjustment has the authority to grant variances and hear appeals from the provisions of the supplemental district regulations (Article 4.6) except where said authority is expressly prohibited or granted to others.

#### Project Planner:

Jennifer Buce, Assistant Planner  
[buce@mydelraybeach.com](mailto:buce@mydelraybeach.com)  
561-243-7138

#### Review Dates:

BOA Board:

#### Attachments:

1. Site Plans
2. pictures



Pursuant to **LDR Section 2.4.7(A)(5), Variances: Findings**, the following findings must be made prior to 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 findings noted above, the applicant has cited the following:

- (a) The applicant states *"The location of this property at the dead end of a canal and the angle of its side lot lines (due to its trapezoidal shape) restrict the mooring area of a vessel and the allowable area of any marine structures, to such an extent that it is not possible to install a structure nor moor a vessel at this property without it impacting vessels at adjacent properties, and without those vessels impacting it, the preferred manner of mooring would be perpendicular to the property. Due to the narrow width of the property and the angled side property lines, the angled setback lines will not allow a lift and a pier, to be installed at the property, without it extending past the setback lines. These same setback lines will not allow a vessel to moor at the property, whether parallel or perpendicular without the vessel extending outside of the setback lines. Waterfront properties that are wider at the water and do not have angled property lines, would not be so severely impacted by literal enforcements of the codes for waterward extensions and setback limits."*

#### Staff Variance Analysis

The property is a pie shape lot with a frontage of 140' and a rear of 50' wide located in the R-1-AA-B zoning district in the Tropic Isle neighborhood. There is an existing seawall and wood dock. The dock was built in 1999 and is 20'6" x 3.8.5" with two additional 10 x 25 wood pilings. This structure was built with the intent to moor a boat. The width of the canal is approximately 100 feet, measured north to south and 300 feet wide. The applicant is requesting to demolish part of the existing dock and construct a new pier and boat lift which will be perpendicular to the existing dock. The applicant has an existing dock that meets the intent of the code and is requesting two variances to LDR Section 7.9.11 (A)(B); therefore, there is no special circumstances that exist which are peculiar to the lands, structures or buildings and does not show a basis for a hardship to grant a variance. Thus, a positive finding cannot be made with respect to finding "a".

- (b) The applicant states *"Literal interpretation and enforcement of Articles 7.9.5, 7.9.8 (and any reference 7.9.7) and 7.9.11 would not allow the applicants to moor their vessel without violating the setback lines, nor would it allow a perpendicular mooring position that would allow the vessel to be moored without impacting and being impacted by adjacent vessels. Waterfront properties that do not have narrowed frontages at the water and angled side property lines, are not affected in such a way from these extension and setback limits."*

#### Staff Variance Analysis

The requirements for LDR Section 7.9 (Docks, Dolphins, Finger Piers and Boat Lifts) are applied city wide. The applicant has an existing dock that can correctly moor a boat. Each of the homes in the canal have permitted docks or boat lifts that are parallel to the land and meet the intent of the code. Looking from a bird's eye view, a boat lift extending from a dock is uncommon along this waterway and appears atypical of the surrounding neighborhoods. In July of 2015, 3000 Jasmine Ct was **denied** a similar request to build a pier and boat lift. The literal interpretation of 7.9.8 finger Piers is for the safety of all boaters and to have navigable open space water. Therefore, granting this variance would not deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning. Thus, a positive finding cannot be made with respect to finding "b".



- (c) The applicant states *"The special conditions and circumstances are the result of the shape, width and angles of the property. The shape, width and angles of the property are not a result of any action of the applicants, but instead are a result of platting limitations around the dead ends of waterways. No action by or from the applicants caused these conditions, nor will any action by or from the applicant resolve these conditions."*

#### Staff Variance Analysis

The actions are a direct result of the applicant. As stated above, there is an existing dock on the property that did not require any relief. The applicant is proposing to build a pier and boat lift that will impede on both side setbacks significantly northern side (7' 0.7") and southern side (6' 56") to moor a larger vessel that will extend into the water horizontally. Throughout, the City this is not the normal practice in finger piers of this size. To date, one variance has been approved for an extension into the waterway for a parallel boat lift in the intracoastal waterway on 333 Palm Trail. Thus, a positive finding with respect to "c" cannot be made.

- (d) The applicant states *"Granting the requested variance will not confer any special privileges onto the applicants or the property, it will merely allow the applicant to be able to enjoy their property as any other owner of waterfront property can do. It will allow them to moor their vessel at their property in such a fashion that it does not cause impact to and is not impacted adjacent vessels and allows the vessel to be moored in the simplest and safest manner."*

#### Staff Variance Analysis

The granting of a variance would confer a special privilege that is denied to other lands, structures, and buildings. By granting this variance depending on how large the vessel is, could impede on neighbors' views, navigable water and open space enjoyed by the homeowners in this canal. By granting this variance it could make the water difficult to navigate a vessel as the water becomes crowded as these requests are approved. Based upon the above a positive finding with respect to "d" cannot be made.

- (e) The applicant states *"The requested variances are the minimum necessary to install the pier and lift to allow a vessel to be moored at the subject property without impacting any adjacent vessels. The requested extension of the pier and loft allows the vessel to moor without obstruction from the existing marginal dock but does not extend so far as to cause the vessel or either structure to extend beyond the extended side property lines. Parallel mooring of the vessel would still extend beyond the setback lines and would most likely create impacts from and to adjacent vessels. The granting of the requested variances is justified in that the proposed mooring configuration is the minimum necessary, does not create impacts to vessels at adjacent properties, and allows the applicants to enjoy their property as intended under the relevant code."*

#### Staff Variance Analysis

As noted in staff analysis above, the granting of the variance cannot be justified. The width of the canal is approximately 100 feet, measured north to south and 300 feet wide. For all to enjoy the same riparian water rights pursuant to Land Development Regulations 7.9 Docks, Dolphins, Finger Piers and Boat lifts must be adhered to. The applicant has an existing dock that can be utilized for mooring the boat or can build a lift within the allowed requirements. The platting of the land appears to be done for all the homes on Jasmine Ter. to have canal, water access. If a few homeowners on Jasmine Ter. decide that they want a larger boat that cannot be contained within their required setbacks, etc., then this begins to affect all the other homeowners who have existing boat lifts and would like to enjoy the same rights. In addition, the homeowners of 3021 Jasmine Ter. are also requesting a similar variance for a boatlift to extend further than the allowed 20 ft. and impede into the side setbacks. The neighbor to east is seeking a variance of 5' 1.2" for their boatlift to extend perpendicular into the waterway and .29 inches on the northern side and 8' 6 1/4" to the southern. Each home should have the same rights as each other. Based on the above a positive finding with respect to "e" cannot be made.

- (f) The applicant states *"The granting of the variances will allow the applicants to enjoy their property as any other owner of waterfront property, without conferring onto the applicant any special privileges not given to those other owners of waterfront properties, as intended under the relevant regulations. The granting of the requested variance will not impose any adverse, injurious or detrimental impacts or affects to the adjacent properties, neighborhood, local community, or the regulations if not necessarily within a literal interpretation, and as such do not introduce or cause to be introduced in to the area, neighborhood or to the public welfare, any component, structure or other aspect that is not familiar to or new to waterfront properties, private or commercial."*

#### Staff Variance Analysis

The granting of the variance will not be in harmony with the rest of the neighborhood. As stated previously in this report, it is uncommon for a boat to be perpendicular to the dock in the Tropic Isle neighborhood. Therefore, the granting of the variance will not be in



harmony with the general purpose and intent of existing regulations, will be injurious to the neighborhood, or otherwise detrimental to the public welfare and the request would be injurious to the neighborhood. Based on the above, positive findings cannot be made to finding (f).

Attached to our application are signed letters from each of the adjacent neighbors to the subject property, indicating their approval of the proposed structures and the associated requested variances. These letters indicate that those persons most likely to be affected by the granting of the requested variances have reviewed and expressed their approval of the proposed structures and layout.

Please see attached additional justification.

**Alternative Actions:**

- A. Continue with direction.
- B. Approve the Variance request (BOA 2019-127) to LDR 7.9.11(A)(B) to allow a boat lift to extend 4'9.5" further into the waterway from the property line where 20' is the maximum allowed and to reduce the side setback (7'0.7") on the northern side and (6'5.6"); southern side where 10' is required located at **3011 Jasmine Ter**, based upon positive findings with respect to LDR 2.4.7(A)(5).
- C. Deny the Variance request (BOA 2019-127) to LDR 7.9.11(A)(B) to allow a boat lift to extend 4'9.5" further into the waterway from the property line where 20' is the maximum allowed and to reduce the side setback (7'0.7") on the northern side and (6'5.6"); southern side where 10' is required located at **3011 Jasmine Ter**, based upon a failure to make positive findings with respect to LDR Section 2.4.7(A)(5).