

## BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, November 20, 2024, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida, with Vice Chair Sonya Mallard presiding, to consider the requests below:

Board members present were: Sonya Mallard, Vice Chair (D1); Steve Holmberg (D3); Dr. Joanna Bass (D4); and Bill Huffman, Chair (D5);

Staff members present were: Greg Hughes, Assistant County Attorney; Billy Prasad, Deputy Director (Planning and Development); Jeffrey Ball, Zoning Manager; Paul Body, Senior Planner; Desiree Jackson, Planner; and Yovanca Rijo, Digital Reporter (Esquire)

The meeting was called to order at 1:30 p.m.

### Excerpt of complete Agenda

#### **Item H. 6. John N. Beckstrom and Lisa M. Beckstrom (Clifford R. Repperger, Jr.) request variances for an accessory structure in an RU-1-11 zoning classification. (24V00044) (Tax Account 2418448) (District 2)**

Paul Body read the item into the record.

Clifford Repperger presented on behalf of the applicant. He submitted additional documents and public comment for the record. He further referred to a PowerPoint prepared presentation throughout the course of discussion for this. He reiterated the formal variance request. He stated this situation is unique in that they are not trying to obtain approval of the existing dock but rather they are seeking to reduce the existing structure because of previous construction undertaken pursuant to prior permitting. The existing structure was built on a piling that extended past the property line. The only way to cure the problem now is to reconfigure the dock and lift so that it is built entirely within the triangle for the building envelope for this lot. They request a variance of 7.5 ft from the required 7.5 ft on both sides of the property. He explained the proposed dock. He then further talked about the platted Dianna Shores Unit 5 subdivision for which this corner lot subject property is located in. Because it is a corner lot it has reduced frontage on the right of way to the canal front. The issue of the encroaching dock past lot lines is very common in this subdivision. He compared the frontage of subject lot 81 to that of other close surrounding lots. He then illustrated the conditions of the existing dock on the subject property and that of nearby lots facing the same encroachment issues, including ones that have had variances granted in the past. The subject property has had a dock and lift since the 1980s according to aerials. He then referred to different periods such as 2007 when the subject property, under different ownership, had an existing dock but with a bigger configuration. It matched the configuration that was shown for 2012, which he claimed was roughly the same year when the neighbor Mr. Guthry directly to the east purchased their property. In 2022, when the Beckstrom's purchased the property, the walkaround dock has been removed but the lift had remained. He then stated that the Beckstrom's purchased the property in December 2021 and referred to an existing outstanding dock permit issued by the County for the property that had not been finalized for some reason. That permit showed a dock extension. After the Beckstrom's acquired the property, they applied for a seawall permit which was finalized in November 2022. He referred to the seawall design and plot plan. That plot plan reflected where the pilings are and was approved for construction. When the dock was completed, one of the pilings was located 2.4 ft outside of the triangle. That as built survey was accepted and finalized by the County. Afterwards there was also an electrical installation permit issued December 2022 and finalized and included the boat lift on the piling that is over the property line. He moved on to the Code Enforcement complaint that was reported by the neighbor to

the east in reference to the piling not meeting the setbacks. A litigation filed against the Beckstroms is also pending. He believes that by obtaining this variance and reducing the size of the dock it will resolve the pending litigation between the two parties. He visually presented the distance between the piling and Mr. Guthry's dock. He claimed the distance between the piling and Mr. Guthry's dock to roughly be 40 ft. He mentioned he had seen Mr. Guthry present at the meeting today and suspected he will claim to have navigational problem with regard to where the subject existing piling is. Mr. Repperger presented a video of Mr. Guthry docking his boat in a seated position with really no navigational difficulties. The applicant is seeking only the use that has historically existed on the property. He said "the literal enforcement of the Code would deprive the applicant rights commonly enjoyed by other properties in the subdivision to construct docks and utilize the platted right of way canal" and would cause a hardship on the applicant. He believed this is the minimum variance they can request and will not be injurious to neighboring properties.

Jeffrey Ball clarified that "the offending pill or pier that is outside of the projection is not part of this request. The applicant has agreed to move that piling within the projection line. The second thing that I want to point out is that the permit history that we have on file there is no record of Zoning reviewing those permits."

Mr. Repperger acknowledge that and believes the County would take the position that they would not have approved the piling over the line.

Bill Huffman asked about the additional property that was also owned on the adjacent side.

Mr. Repperger replied "if you look at the plat, they own all of lot 81 and a small portion of lot 80." That is what the legal description of the deed conveys.

#### Public Comment

Nick Badonni presented as the attorney on behalf of Mr. Guthry and handed out exhibits to which he referred to throughout the course of his presentation. He stated to be against the application. Exhibit A he noted was a 2018 overview of the boat lift. Exhibit B he noted was a 2020 overview of the boat lift with slight changes/additions to the boat light but to where it still remained within the triangle of the lot lines that follow in the water. Exhibit C was a 2022 visual representation of the boat lift still within lines. This was when the Beckstrom's purchased the property. Exhibit D was a 2023 overhead of when the Beckstrom's redid the seawall that extends beyond the lot lines. Mr. Guthry is fine with the seawall extension. Exhibit E was a 2024 overhead that shows the same piling but with a roof significantly overhanging into the water transgress those boundaries. Exhibit F was a 2024 but from a slightly different angle. Mr. Badonni stated the video was showing Mr. Guthry pulling into the dock but that "it's a lot easier to move into a space than it is to back out of the space. The navigational problem that with the dock currently exists is not navigating into the boat slip, it is when navigating out of the boat slip that is the problem." Exhibit G presented the 2018 survey which did not show the exact location of the pilings. "All they did was hand draw the pilings on the survey. This was not something done by a surveyor." This just showed the old pilings were all within that triangle. Exhibit H was a 2022 survey that was part of their permitting process. "There was not any sort of approval of an as-built dock and boat lift in 2018. In 2022 there was no permit pulled for building the dock either. The 2022 permitting was merely for the seawall. They just marked where the possible pilings might be if they were to build a boat lift. The boat lift was never approved by any permitting office at any time" he said. They did have permits for the electrical work on the lift but again that was just for the electrical

on the lift. That was not for the placement of the lift itself. The Beckstrom's built the lift without ever consulting with Mr. Guthry and without proper approval through Brevard County. Additionally, no discussion Mr. Guthry was undertaken prior to or during the installation of the seawall over his property. Exhibit I was the proposed survey. Mr. Badonni claimed "it does not make any sort of determination as to whether this proposed boat lift will alleviate any of the previous navigational concerns. All it does is hem this into a triangular shape. This is a 21.9ft boat and even more when you add the engine." Exhibit J through L were additional pictures from Mr. Guthry's lot line showing the current overhang of the boat and the awning. The common scene for these corner lots is not to build a large boat structure because of the spacing constraints. Mr. Badonni then referred examples of other properties within Merritt Island in Exhibit M through O. He then cited for further discussion three litigation cases that relate to those six factors that were heard about today. The first being *Ellen vs City of Miami* from 1959. *Herrera vs City of Miami* from 1992, *Town of Indialantic vs Natts* from 1981. He went line by line of the six considerations set forth under the Code to get a variance and claimed those six considerations were also imposed within the three cases that were previously mentioned. He based that "the special conditions are not unique. There are numerous corner lots within the same zoning restrictions. It's not atypical to have corner lots. In fact when people buy these corner lots they usually get a discount in the value of the property because you are restricted when you are putting in docks and boat slips. You are limited by size." Next, he claimed several factors where "the Beckstrom's are responsible for the condition on which they find themselves in." They moved the seawall by 2.5 ft thereby restricting their available space to place the boat. They chose a 22 ft long boat. "You don't get a pass when you have essentially chosen the land you chose to buy" he said. Then he noted this request would grant a special privilege by stating "All corner lots have to live by the same rules. When you grant a variance you are essentially providing them with extra rights that those other lot owners do not have. It would grant special privilege to the Beckstroms." For criteria number four he believes the literal enforcement of the provisions of the Code would not deprive the applicant of rights commonly enjoyed by other properties in the identical zoning classification. He then brought up the reasoning of the setback requirements and how the inability to meet said setback related to the navigational issues incurred by Mr. Guthry. In addition, he clarified the definition of "undue hardship" and added "you can't use this property for really anything unless you get a variance. Well they are using it as a residence. So they are able to achieve reasonable use of the property. They have a seawall where they can go in and out of the water. Maybe not with the 22 ft boat that they prefer. But you can moor a smaller vessel to that. You can even moor a 22 ft boat without a lift onto that dock." He claimed "to show undue hardship you need to show that there is no use of that property on what you can use. And they have not done that." There are plenty of uses. They have not shown that there is no reasonable use for this property under that current zoning. He stated the current litigation issued against the Beckstrom's is to enforce the 7.5 ft setback requirement. This variance request is sought to be an end around that litigation.

Thomas Guthry presented in disfavor of the application. He went into further detail about his navigational troubles when trying to pull his boat out.

Steven Holmberg asked, "if this variance was approved that would not take care of the problem?"

Mr. Guthry replied "no. Only if they are going to damage his boat. I have already damaged my boat against that piling".

Mr. Holmberg said "well if they make the smaller then it fits."

Mr. Guthry said "it's not going to help".

Mr. Holmberg asked why.

Mr. Guthry replied "because I am still going to be right on the property line. I am not going to have that 7.5 ft to maneuver my boat and take my boat out. Making the dock smaller, as you see the proposed dock in the back, just going to swing the back of the boat towards the seawall. It's not going to have any effect whatsoever".

Mr. Holmberg and Mr. Huffman asked about the civil case.

Mr. Badonni reiterated that there is a filed lawsuit seeking to enforce the 7.5 ft setback requirement under County Code onto the subject property and noted the trial will take place early next year.

Mr. Holmberg asked if the County is a party within the lawsuit. Mr. Badonni replied no.

Sharlene Praddick presented to speak in favor for the application. She noted to be 2 doors down from the Beckstroms. She said "when they are building new seawalls within our development, which most of the houses are now having to do because they were built in the mid 70s, they have to go out further. They don't remove the old seawall. They go beyond it and fill in." She was not aware of how far they were built out for the Beckstroms but noted that "all of them do come out much farther and they are higher because now with the water rising we have flooding. So that is a requirement when you do get a new seawall." She believed Mr. Guthry to be a good navigator. She has seen him coming in and out of his boat and has personally not seen him have a problem.

Brian Reiner presented to speak in favor for the application. He considered himself a neighbor and friend of the Beckstroms. He feels a doable compromise can be made. He feels the moving of the piling will provide the navigation necessary. He said "I have less room behind my dock with a 24 ft boat than Tom will have".

End public comment.

Mr. Repperger relayed his client has remained transparent the whole way through and that they have tried to resolve this issue to their best efforts. He reiterated how the approval of this variance request would resolve the issue. He introduced Mr. Barriall to advise the Board as to why the seawall was constructed the way that it was.

Renel Barriall, contractor and owner of Pelican Coast Marine Dock & Seawall, presented before the Board. He stated that Code protocol states that "when you construct a new seawall, which is not revised by the Zoning Department but revised by Public Works, we are allowed to construct the seawalls no more than 18 in. from the face of the existing failed wall to the face of the new wall up until you get a 4 ft projection into the boundary line." He then talked about the "return" and said that "return has to be as tight you can get it to the boundary line otherwise until the neighboring seawall, which we took great care to do that, so there is no erosion between the two boundary lines. And we do that on the other end as well. Otherwise there would be a foot gap and then as rains come in it's going to around that return and erode between the two properties and cause a bigger problem." When the seawall was permitted he claimed the engineering stated where four pilings and future boat lift were to be installed. Mr. Beckstrom at the time was still deciding whether to keep the boat lift he

had at the time or to install a new one. The plot plan that was previously referred to was a boundary survey with Mr. Barriar's hand drawing of where the proposed construction would take place. Mr. Barriar believed they had clearly conveyed to the County during this permitting process their intention to install the pilings and at no time were they told they could not do that or that a secondary permit for the pilings would be needed. He stated he was asked by Tony Vitale to provide a photo of the type of reflective tape to be used to make the pilings reflective. He provided that along with his other documents and the permit was approved with the installation of those four pilings. "When I called for my Tide Back Inspection we passed. When I called for my final inspection, which those pilings were clearly in view of the County Inspector that came out, we passed final" he said.

Mr. Huffman asked "in pushing that 18" forward is that what pushed the piling forward?"

Mr. Barriar answered "the boat lift that Cliff had shown from the slide where the Beckstrom's purchased the home. That boat lift square was already there. All we did was extract that and put in the new seawall and then move it out 18 in. So that's what caused the...[seawall]..issue of it going over by two feet".

Mr. Huffman asked if the County permit inspector took any measurements during inspection.

Mr. Barriar replied "No, because we submitted an as-built survey." He claimed once the construction was completed, the as-built survey was submitted to show the property with the constructed additions. It was not until a year later that the complaint arose.

Mr. Huffman asked if all of the pilings are to be removed.

Mr. Barriar said yes. Everything but the seawall will need to be ripped out and rebuilt. He directed on how it will be rebuilt to allow a walkway out to the boat.

Motion to table item H.6. to March 19, 2025, pending the related court case by Steven Holmberg, seconded by Bill Huffman. The motion failed 2 to 2.

Motion to approve item H.6. as depicted on the survey by Joanna Bass, seconded by Sonya Mallard. The motion failed 2 to 2.

Meeting adjourned 4:02pm.

Meeting was called back to order at 4:05pm

Jeffrey Ball made recommendation to table the item to the December meeting.

Motion to table item H. 6.to the December meeting by Sonya Mallard, seconded by Joanna Bass. The motion passed unanimously.

Meeting adjourned at 4:06pm.