



BOARD OF COUNTY COMMISSIONERS

Planning & Development Department

2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940

TO: Brevard County Board of County Commissioners

FROM: Tad Calkins, Director – Planning and Development

DATE: January 26, 2021

SUBJECT: Dock Related Issues Staff Report (Point for Measuring Dock Projection and Clear Riparian Area between Docks at Residential Properties)

BACKGROUND: On October 27, 2020, the Brevard Board of County Commissioners directed Planning and Development staff to draft a report with proposed code revisions to address dock-related issues throughout the County. Dock construction in canals, public drainage easements and drainage right-of-ways in residential zoning classifications in unincorporated areas of Brevard County is subject to County code Section 62-2118 and requires a building permit. Docks constructed at properties along major waterbodies, such as the Indian River Lagoon and Banana River Lagoon, are regulated and permitted by the State (Florida Department of Environmental Protection and/or the St. Johns River Water Management District). During the past year, ninety-five (95) dock permits and two (2) dock variances were processed by the Planning and Development Department. Additionally, one hundred twenty-nine (129) seawall/bulkhead construction permits and seven (7) Surface Water Permits for revetments were issued in 2020.

In recent months, two specific issues relating to docks have been brought to staff's attention: 1) How manmade waterways are measured, which affects dock length allowance and projection into a waterway; and 2) How clear riparian zones between docks at residential property lines are established.

1. **MEASUREMENT OF MANMADE WATERWAY:** Current County code requires that *"no boat dock, covered boat dock or pier, together with the watercraft being moored at the structure, shall project into a manmade waterway more than 20 percent of the width of the waterway or 30 feet, whichever is less, including pilings"* Ch 62-2118 (d)(3). In addition, docks are defined as *"a fixed or floating structure, including moorings, used for the purpose of berthing buoyant vessels either temporarily or indefinitely"* Ch 62-3661.

Issue: Location of landward measurement point is not defined in the current code which may result in conflicting interpretations and confusion regarding measuring the width of manmade waterbodies as well as measuring the length of dock projections into waterways. Three potential landward measurement points have been identified:

- At the property line abutting the waterway, as established by a recorded instrument (plat, deed, etc.)

- ADVANTAGE: A plat is a legal recorded document that is readily available and provides a static measurement point that ensures consistency for application of this code.
- DISADVANTAGE: Some property plats extend into or across the waterway (Refer to Figure 1).
- At the elevation of land-water interface, i.e., the SUL (safe upland line), the OHWL (ordinary high water line), or the MHWL (mean high water line)
 - ADVANTAGE: The SUL, OHWL, and MHWL can be determined by a survey.
 - DISADVANTAGE: The land-water interface may not provide a consistent measuring point without survey as water levels can vary spatially and temporally. Water levels in Brevard County can fluctuate seasonally (high-water and low-water seasons).
- At the face of bulkhead or seawall, if present
 - ADVANTAGE: Easily identifiable measuring point.
 - DISADVANTAGE: Variable measurement point from property to property as seawalls may exist up to 48 inches waterward of property line. Refer to Section 62-3666 (8)c.iii of the Surface Water code, *"If an existing bulkhead cannot be removed due to safety, structural, or other environmental concerns, the waterward extension of the new bulkhead, where practicable, shall meet the least waterward extension of these criteria:*
 - a) *Shall not exceed a maximum of 18 inches from the existing waterward bulkhead face, except where otherwise permitted by FDEP.*
 - b) *Shall be located parallel and in line with adjacent existing and legally permitted bulkheads.*
 - c) *A bulkhead shall not extend further than 48 inches into a canal as recorded in the public records.*

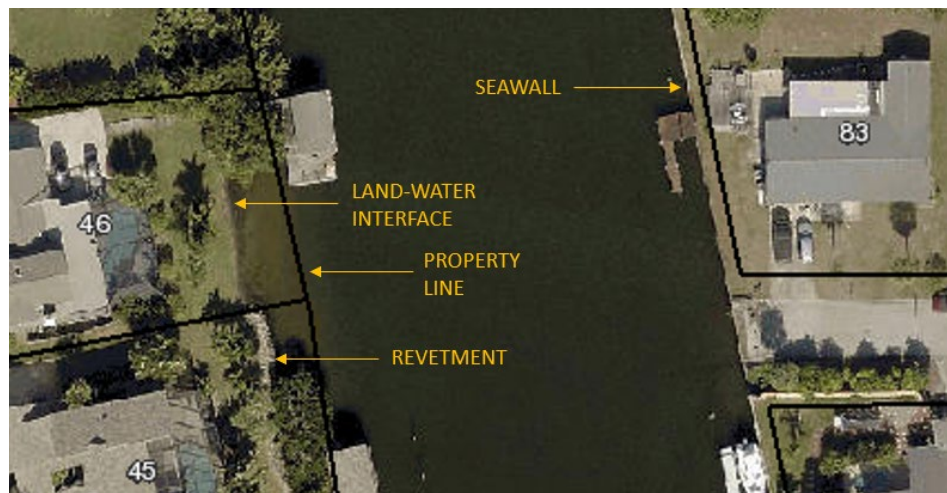


Figure 1. View of potential measuring points

A review of the Code of Ordinances of twenty (20) municipalities and counties throughout the state of Florida did not disclose a universally common landward measuring point; however, waterline, seawall/bulkhead line, and property line were all referenced as points of measurement, either singularly or in combination. Approximately one-third (1/3) of the entities did not reference a point for measuring dock projection. Refer to Table 1 in Attachment A – Comparison of Dock Code throughout Florida.

Measurement of Manmade Waterway Considerations:

- Option 1 - Amend code to establish clearly defined measuring point that takes into consideration aforementioned scenarios.
- Option 2 – Amend code per other Board direction
- Option 3 - No changes to code at this time

2. **ESTABLISHING CLEAR RIPARIAN ZONES BETWEEN DOCKS:** Current County code requires that *“a boat dock, covered boat dock or pier, including pilings, shall extend no closer than seven and one-half feet to the side property line, as projected in a straight line into the waterway.”* Ch 62-2118 (d)(2)

Issue: Current code provisions do not provide clear area that prevents the placement of navigation obstruction (e.g., mooring boats/watercraft, crab/fish traps, etc.) which are not considered to be regulated by setbacks. See *potential* scenario depicted in Figure 2 below. Two possible options to establish a clear riparian area between docks at residential properties have been identified:

- Establish clear zone including but not limited to moored watercraft or other obstructions to coincide with side setback requirements
 - ADVANTAGE: Establishes a minimum 15 ft clear area between residential lots for navigation.
 - DISADVANTAGE: Some number of existing docks with moored watercraft and/or other marine improvements (e.g., pilings) may not meet 15 ft clear riparian area between docks and may require alternate mooring location, modification to dock structure, or variance to meet code.
- Increase side setback distance requirements for docks (currently 7.5 ft)
 - ADVANTAGE: Increases distance between dock structures to >15 ft.
 - DISADVANTAGE: Does not prevent a moored watercraft from encroaching into setback area. Additionally, some number of existing docks may not meet setback and would require modification to dock structure or variance to meet code requirements.



Figure 2. Potential scenario for illustrative purposes only (not to scale) of watercraft encroachment into setback.

Approximately 60% of the Code of Ordinances reviewed (refer to Table 2 in Attachment A - Comparison of Dock Code throughout Florida) include language in their dock code to ensure an area clear from moored watercraft encroachment and/or to provide protection of encroachment upon the riparian rights of other property owners.

In addition, the dock code comparison provided as Table 2 in Attachment A (Comparison of Dock Code throughout Florida) shows side setback requirements for docks range from 5 feet to 25 feet, with the 10 feet as most common (20% of entities). Approximately 25% of entities require same side setbacks for docks as set for zoning district.

Establishing Clear Riparian Zone between Docks Considerations:

- Option 1 - Amend code to include a clear zone that coincides with side setback requirements for docks
- Option 2 - Amend code to increase side setback distance requirements for docks
- Option 3 – Amend code per other Board direction
- Option 4 - No changes to code at this time

Thank you.

2 Enclosures:

1. Attachment A – Comparison of Dock Code throughout Florida
2. Attachment B – Dock and Property Line Scenarios