

BOARD OF ADJUSTMENT MINUTES

The Brevard County Board of Adjustment met in regular session at 1:30 p.m. on Wednesday, December 18, 2024, in the Commission Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida;

Board members present were: Sonya Mallard, Vice Chair (D1); Jennifer Clements (D2); Dr. Joanna Bass (D4); and Bill Huffman, Chair (D5);

Staff members present were: Greg Hughes, Assistant County Attorney; Jeffrey Ball, Zoning Manager; George Ritchie, Planner; Paul Body, Senior Planner; and Desiree Jackson, Planner.

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

Approval of November 20, 2024, Minutes

Motion to approve the minutes of the November 20, 2024, meeting by Joanna Bass, seconded by Sonya Mallard. The motion passed unanimously.

H.1. Timothy Scott Gannon and Denise Irene Gannon request a variance for an accessory structure in an RU-1-11 zoning classification. (24V00045) (Tax Account 2417445) (District 2)

Paul body read the item into the record.

Denise Gannon explained the purpose of the request. They noted this request was submitted to legitimize the shed on the side of their house. She claimed they purchased a shed under 100 sq ft and that no permit was needed. They did not know before that it had to be within the setbacks. This request is in response to a code enforcement violation. She said “the Brevard County has approved our shed to where it is right now. We have had the vacated easement. All the utilities have approved that. There is really no other place to put it on our property.” The shed is 72 sq ft and does not block the views of the neighbors. Lastly she concluded “ there is really no storage in the older homes in Diana Shores and this is really the only place that we have to store our items.”

Paul Body noted that this item was heard previously on October 16, 2024. It was denied and they moved it a tenth further from the setback. Now it is being brought up with a different setback.

Bill Huffman said “a question from before was access for emergency vehicle to be able to get into the back area in case something goes wrong.”

Ms. Gannon replied “you are required to be 5 ft off the house for fire safety.”

Mr. Huffman said “for a 5 ft corridor minimum that meets handicap standard?” To which Ms. Gannon replied “yes”.

Jennifer Clements asked if there was any blockage for neighbors.

Ms. Gannon reiterated “no, it is on the side of our house.”

Ms. Clements asked to verify if the property was fully fenced.

Ms. Gannon affirmatively responded “yes”.

Ms. Clements asked why it was denied last time.

Ms. Gannon replied “we had brought three things. We didn't get the reason why. It was a 2-2 vote but we had multiple variances in one package. I think it kind of all got lost. It was a 2-2 vote that day so there was not a majority. So we had never got the reason why it was denied”.

Jeffrey Ball added “I think that during this discussion that you as a board had some concerns about the access for emergencies on that side of the house.”

Bill Huffman agreed and reiterated that there was a concern that there wouldn't be adequate access to the back.

No public comment.

Ms. Gannon added “Again we went for the vacated easement. Brevard County approved that. So they had no problems with any of that. So that has all been passed already.”

Motion to approve item H.1. as depicted 4/19/2024 by Jennifer Clements, seconded by Sonya Mallard. The motion passed unanimously.

H.2. The Viera Company (Ronak Jasani) requests a variance for kitchen facilities in a hotel or motel in an PUD zoning classification. (24V00046) (Tax Account 3019268) (District 4)

Paul Body read the item into the record.

Hassan Kamal, presenting on behalf of the applicant, presented the purpose of the request. He had passed multiple supplementary documents and referred to them during his presentation. The first page is a site plan of where the proposed hotel would reside. He noted there were two adjacent facilities located west of Lake Andrew Dr. The second page was a floor plan showing the units and efficiency or kitchenet uses proposed. All the units are to contain small kitchenet areas and they are intended for extended stay. This is typical of a Residence Inn Hilton Brand Hotel for which this hotel is to become. He said “and they've looked at this market and said this is a great place for them because of the uses that exist within proximity to the site.” The third page was an overall floor plan that shows how those units sit. The last page was an aerial location map that provided the site location and the proximity to the various attractions such as the UA facility, regional park, and government center. He pointed out two nearby hotels that are extended stay hotels, one of which was built by the same applicant and is also a Hilton brand hotel. Both of those projects are in the same PUD zoning classification of the Central Viera PUD and subject to the same regulations. He said “I do not know why but they were not required to obtain a variance and we have had conversations with staff about the applicability of this code and whether it is being interpreted or applied correctly to this site.” He concluded with mentioning that there were no adverse effects to the adjacent properties in consequence of this request.

Joanna Bass talked about the Fairfield hotel location and wanting clarification on that.

Bill Huffman asked “what is the basis of the 25% of the units. Is it a fire code?”

Jeffrey Ball responded “it was a section of code that was added to limit the fulltime residence in the tourist related zoning district.” He then went on to say “TU-2 is a traditional tourist related zoning district and where it was not appropriate to have long-term residents in a tourist area because of the light, noise, and impacts that are created from that use. “

Mr. Huffman started saying "So the idea that the kitchen could only occupy a certain amount was to..."

Mr. Ball responded "Correct, that it remained the primary use was a motel not in this case as a full time residence." "As Mr. Kamal had mentioned there are two other Residence Inn that have kitchens. Unfortunately, staff made mistakes in prior review of those and Mr. Hassan has been notified of that. So we made a mistake in that unfortunately you know we caught it this time and this is the remedy to do that variance. Staff does not see any issue with it. It is just one of the Code requirements that when you in this zoning classification where you have one when use the TU-2 zoning standards and that is where that is coming into the 25%" he added.

No public comment.

Motion to approve item H.2. in accordance with the site plan dated 9/16/2024 by Joanna Bass, seconded by Sonya Mallard. The motion passed unanimously.

H.3. William S. Simmons requests variances for a principal structure and an accessory structure in an RU-1-9 zoning classification. (24V00047) (Tax Account 2408868) (District 1)

Paul Body read the item into the record.

William Simmons explained the purpose of the request. He bought this home 3 years ago through a VA loan. When he recently applied for a permit to have a dock built he was told by the dock builder to provide a more recent survey than the one he had received when the home was bought. He had to have two surveys done. He added that he had bought the property in its current configuration with the existing structures in place. He is a mechanic by trade and bought the home with the existing shed for the purpose of storing his equipment. The home did not have a garage.

Sonya mallard had a question of wether this will not object the view of the right neighbor.

Mr. Simmons said no and spoke of having a good relationship with the neighbor. He does not know when the structures were built.

Sonya said "so tell me about your front porch".

Mr. Simmons replied "I guess when the first survey was done they measured from the house. The porch was there. But they measured from the house to the easement and I think that's where they made the mistake because the second guy that did the survey his measurement showed from the post, which is a few feet out from the house, he measured from the post to the easement. And that's when it go flagged."

No public comment.

Motion to approve item H.3. as depicted on the survey dated 2/8/2024 by Sonya Mallard, seconded by Joanna Bass. The motion passed unanimously.

H.4. John N. Beckstrom and Lisa M. Beckstrom (Clifford R. Repperger, Jr.) request a variance for a dock and watercraft in an RU-1-11 zoning classification. (24V00044) (Tax Account 2418448) (District 2) This item was continued from the November 20, 2024, BOA meeting.

Paul Body read the item into the record and noted the item was continued from the November 20th meeting and the vote was 2-2. It was recommended that they back so that a majority vote may take place.

Cliff Repperger, presented on behalf of the applicant for the application. A PowerPoint presentation was provided, to which he referred to during the presentation. He also presented and read previous and new public comment in favor of the application. He also provided a copy of an aerial from 1980 showing the subject property. He said "well there were certain things that were said at the last meeting particularly by Mr. Guthry and his attorney who were an objection about the fact that the lot was in some way like a substandard lot or was not paid for by full market value or didn't have fair market value or didn't carry with it the right of entitlement of waterfront use. And that's just not accurate. As demonstrated in the aerial the property has been used for waterfront for over 40 years of a slip of similar size to what is being requested in the current application. At the time that our clients purchased the property they paid fair market value for the property in fact the fair market value of the current property is listed on the property appraiser website at \$554,890. Mr. Guthry's property lot is listed at \$575,610 so really not that much different. In addition to that the Beckstrom's paid far more than market value for their property and that they paid \$635,000 for their property in 2021." He said there essentially was always an expectation of waterfront use with the property. He reiterated the request and noted that the current dock and boat lift serving the subject property is over the projected lot line by approximately 2.5 ft. The required side setback is 7.5 ft from the property line as projected out into the waterway. They are proposing to redesign the boat lift to be within the triangular configuration as a result of the lot line extensions into the water. He claimed this was the same type of variance previously granted by the Board for similar lots situated within the same subdivision. He then referred to the plat of the subject property. The Beckstrom's owned lot 81 and part of lot 80. He added "their frontage of lot 81 is 20.23. Mr. Guthry who lives to the east of the subject property who is in objection, lot 82, has approximately 138 ft of frontage. He specified from the last meeting that 24V00037, for a similar corner lot in Merritt Island, the Board granted approval of a 7.5 ft variance from the side lot lines. He then presented and described a current aerial of the subject property's boat lift to give an orientation of how the property is situated today. He stated "in the Dianna Shores subdivision this is a common problem. The subdivision was built this way. One block to the east this is the situation. You have corner lots and docks that are protruding beyond the lot lines as extended by the code definition. That is one block to the east. This is two blocks to the east same exact problem. Same exact subdivision. This is one block to the West exactly the same exact problem." He believes there is no expectation that those boats on corner lots are going to be smaller in the Dianna Shore subdivision. He then spoke about the history of the property and referred to information from 2007 from the property appraiser's website in which there was a lift and wraparound dock situated on the property. He showed the property aerial from 2012 with the wraparound dock and boat lift and noted Mr. Guthry had purchased his property on January 17th, 2012. At some point after 2012, the wraparound dock had been taken away but the lift remained. He then showed an aerial from 2021 of when the Beckstrom's purchased their property. He claimed the existing boat lift could have supported a 22 ft boat like the one the Beckstrom's now have. At the time that the Beckstrom's acquired the property there was an outstanding permit for a new boat lift and dock that been pulled by the prior property owner. The approved issued construction permit included the lift but was not finalized. In 2022, the Beckstrom's obtained a permit for the restoration and repair of the seawall. It

was finalized on November 29th, 2022. The engineering plans that accompanied the permit showed the location for the boat lift to be located in the pilings relative to the property line end. He claimed from this that "it's clear to everyone that the piling would have been over the line at that time. This was the plot plan that was included in that submittal package which also shows that four pilings to be reinstalled for the future boat".

Jeffrey Ball said the permit that Mr. Reppenger is referring to is for seawall dock. Zoning does not review sea wall permits.

Mr. Repperger replied "I'll note that the pilings were at issue in the permit because reflective tape was mentioned in the permit as a necessity for those pilings but nevertheless we have understand that zoning position." The 2022 permit was finalized and the as-built survey shows the one piling over the lot line. He then spoke further of the 2022 electrical installation permit for the boat lift, 22BC20542, that was approved and finalized on December 6th, 2022.

Jeffrey Ball clarified "that was for an electrical permit. Zoning does not review electrical permits even though it was for a boat lift."

Mr. Repperger then referenced an active code enforcement case reported by the neighbor Mr. Thomas Guthry. The pending case would be cured through the action of this variance. He showed a picture from the point of view of looking at the dock from the waterway to visually demonstrate the distance between it and Mr. Guthry's dock structure. He claimed there to be 42 ft between the subject property further east piling and Mr. Guthry's furthest west piling. Mr. Repperger reiterated this is no different than the same gap that Mr. Guthry had for nine years preceding the seawall being restored and exactly the same as it was for 40 years back to 1980. He then showed a video clip of Mr. Guthry navigating his boat into his slip, noting he had no difficulties with navigating into the slip. He continued to discuss the various criteria of sec. 62-253(a) and asserted a response to each criteria question. In response to criteria 1, he believed the orientation of the property makes it unique in that it does have limited frontage. The subdivision of the property which led to its configuration was of no result of the actions of the applicant. He claimed the literal enforcement of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same subdivision and same zoning classification. Mr. Repperger additionally noted that "the variance is granted is the minimum variance that would make possible the reasonable use of the land, building or structure. Again, we've showed you that we're literally using every available inch of space that we can within the extended triangle to try to put the lift back into a spot that we can make it code compliant." He then referenced several examples of previous variances with similar conditions that were approved such as 23V00050, 24V00037, and 24V00005.

Public Comment

Coleen Messey presented in favor of the application. She is a resident across the street. She kayaks on the canals. She did go down there and could not see any issues that would be obstructing.

Nick Badonni presented against the application. He provided and referred to a PowerPoint and exhibit documents. He said "If you looked at the variance what they are using is a 22 ft boat. That hood that we're looking for that is at least 22 ft or maybe a little bit more. What you heard Mr. Repperger talk about is that there was a 42 ft distance and that does not seem to work at least geographically looking at this because if we have about a 22 or 25 ft hood on that boat that is going to give us some

sort of frame of reference. And I think what you are going to hear from Mr. Guthry is that when you measure the end of this boat slip to the lot line, which is where they are trying to hem this structure into, we are dealing with 25 ft. And Mr. Guthry has a 22 ft boat that does not include the outboard. The outboard is going to add about 2 ft. So we are talking about 24 ft. Meaning 1 ft worth of play. Now I don't know how much all of you do parallel parking. One foot is not a lot. It is difficult. They are trying to have you, Mr. Guthrie, do this with essentially a 24 ft boat." He claimed when the Beckstrom's asked for this variance they did not measure the distance that would be left over. "We didn't do any sort of survey. We don't have any of that information. All we have is just people going out there with measuring tapes. From what Mr. Guthry has measured we have 25 ft to work with this plan" he added. Mr. Badonni then referred an aerial exhibit from 2018 and noted the limited space that was left over and said "he can't really back out. He has to essentially go out here and then he's got one foot to go zigzagging out in order to get loose and come out this way".

Joanna Bass asked "so in this old configuration Mr. Guthry is actually crossing the property line to back out of his slot?"

Mr. Badonni replied yes.

Ms. Bass responded "So he's crossing their property line to get his boat out."

Mr. Badonni replied "yeah if you call it a property line." The Beckstrom's do not own the rights to the canal. He then noted from the previously shown video that it is easier to pull into a slip than it is to pull out. He continued to the next image which was an aerial from 2020 and said "this is also the old configuration. If you kind of look at where the boundary lines are that you have that one piling that was within the approximate lines once you take them out into the water. So it was in. It was not compliant with the 7.5 ft setbacks but it did provide Mr. Guthry with sufficient room to back out and navigate outward". Another aerial from 2021 was afterwards shown. He transitioned to speaking on the permit history and noted "we had some representations by the Beckstrom's attorney this this current structure was approved and that is not what the permit history reflect. We have the relevant permits here on BASS. We have the 2018 one. I think that was the one that was expired from the previous owner that was discussed. Then we have this 2022 Res Marine Construction and 2022 Res Electrical. Those were the two ones that Mr. Beckstrom was presenting an argument that the new structure got approved through those permits. And if you look at the first one which was the boatlift they say describe the work to be done. New boatlift and dock." He pointed out what was being done according to the permit in which the pilings are to be put in the exact same place as they were before. "If that was the plan here today Mr. Guthry would not have a problem with it. He did not have a problem with where the old pilings were" he said. He noted the 2002 waterfront permit was for the seawall and not a boat lift. He continued to showing the engineering plans that were not necessarily plans for the boat lift. These plans said "proposed future boat lift by others" to indicate it was proposed for a future permit. The as-built survey he noted showed the seawall that was put in along with the new unapproved boat lift. Mr. Badonni said "if you look at what happened is they built the new seawall, then they extended it out about 2.5 ft and then they added it's about 2.6 right here so they actually moved the whole structure further out giving less room to work with when they built the new boat lift. Therefore the boat lift was done without a permit and Mr. Badonni clarified "the Beckstrom's attorney said quote they did everything that they could do to get it permitted and that is not the case. They did the work without it permitted". He stated that the code violation case has been put on hold to see what happens with this variance hearing.

Jeffrey Ball said “my understanding is that this variance today would remedy the piling that is outside of the property line projection into the canal.”

Mr. Badoni spoke of the electrical work and its related permit. He referred to one of the submissions that was made under that permit and said it is “not really showing where the lot lines are. But they gave a description of the new boat lift that would be much smaller than the actual boat lift where the pilings are. And then the engineering for the boat lift, which is standard engineering, there really is not anything that needs to get rejected here because it is standard. In 2023 this is what we are left with. We have the pilings going out and additional structures jutting out into the water towards Mr. Guthry’s side of the water.”

Mr. Ball stated “I want to make sure that everyone understands what is before you. The applicant today with the plan that he shows shows that piling being moved which meets code. The variances before you are for the side setbacks. Our code requires a minimum of 7.5 ft from the side property lines. The applicant is asking for 100% variance to that. So that is the two variances before you. It is not about the piling that goes across that property line. That will be solved when and if this variance gets...that is what is on the table for today is for the applicant to remove that piling and the two variances for the side setbacks”.

Mr. Badoni then mentioned that the neighbor to the northeast of Mr. Guthry has a boat lift that goes over the line. Mr. Guthry does not have a problem with that. He claimed the zoning allows these types of things to happen in terms of going over the lines when consent between the neighbors is granted. The code allowed one owner to build on the other owner's property with their consent, allowing them multiple ways where they could build a boat dock that still abides by the setbacks.

Paul Body interjected in stating that “the code has changed since then. It does not allow people to do two permits together to have them not meet a pro a setback.”

Mr. Badoni mentioned multiple violation cases against the contractor William Steel and then transitioned to speaking on the standard criteria of determination for variances. He specified that the courts have interpreted “undue and unnecessary hardship” as needing to meet all six criteria and that there is no reasonable use of the property without the variance. For this case no determination by the Public Works Director had been made, however considering the requirements per sec. 62-2118 Mr. Badoni claims the navigability of the canal needs to be considered. He read off subsection D regarding “a boat dock covered boat dock or pier including piling shuck then no closer than 7.5 ft to the side of the property line as projected into in a straight line into the waterway where two abiding property sharing canal to submit concurrent permits or dock structures there's no minimum side setback from the shared property...”

Mr. Body interjected stating that section is not in the code today and that perhaps the online version had not yet been updated.

Mr. Badoni carried on stating that the circumstances of the subject property are not unique. He stated that numerous corner lots with the same restrictions exist and later on listed various examples within Brevard. He stated these waterfront restrictions are considered in the valuation of the property. He then listed other uses smaller than a 22 ft boat that would still make use of the waterfront feature such as jet ski, kayaks, and smaller crafts. In response to the second criteria Mr. Badoni stated that “when you choose to purchase a property with a hardship that disqualifies you from a variance”. This

statement he claimed was assessed within the court case of Ellen vs City of Miami. He added that the Beckstrom's moved the seawall at least 2.4 ft and purchased a 22 ft boat, creating more confined conditions for the subject property. The other circumstances mentioned that resulted from the actions of the applicant included the building of the boat lift without a permit and not discussing with Mr. Guthry to consider his needs for navigability. On to criteria three, Mr. Badoni noted this provision would grant a special privilege to the subject property and would be at the expense of Mr. Guthry and his property's value because his rights are claimed to be greatly diminished. He referred to Josh Long, who is in the business of building boat docks and lift, who's opinion is that "the standard minimum space that you need is 5 ft. Not 1 ft. The recommended space is 10 ft. So they are exceeding the space needed by industry standards by only giving my client one foot worth of space for ingress and egress into his boat lift." He noted an additional option for the Beckstrom's to consider purchasing a boat lift that lifts and partially brings their boat onto their property to allow Mr. Guthry space to navigate into and out of his slip. Referring back to the court case of Ellen vs City of Miami, Mr. Badoni stated "a variance at least under the when it's reviewed by a court said is some exceptional and undue hardship to the property or to the individual land owner unique to that part parcel of property and not shared by property owners in the area is an essential prerequisite to granting of such a variance" and "a variance which permits a use not authorized by an existing zoning classification fixed under a plan zoning of the area or neighborhood generally is not justified unless the land cannot yield a reasonable return when used for purposes authorized in its present zoning." He inferred that buying a piece of property with problems does not constitute a hardship under the variance requirement. In addition, he noted that the subject property in its present zoning does not demonstrate that the land cannot be used for any other purposes permitted since the Beckstrom's currently have a house with waterfront views on it. He reiterated that the six requirements mentioned should be used to evaluate the variance rather than previously mentioned other surrounding properties which "may have existed under a different zoning regime". Mr. Badoni then spoke on another court case, Nance vs Indialantic. The court said that "a prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual land owner unique to that parcel and not shared by others property owners in the area. Indialantic zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area and therefore not the unique hardship required to support a variance." He said this is a similar common problem for corner lots, especially those within the Dianna Shores subdivision, therefore not unique to the subject property. In conclusion, he stated there is litigation regarding the current structure and not the variance structure.

Thomas Guthry, presented against the application. He mentioned the seawall but having no issue with it being further built on his property and his fence being moved without permission. He filed a complaint with code enforcement and periodically would call to receive an update. He claimed he was told that the contractor and complaint was being investigated. He confirmed with his attorney and inspector Castalano that the Beckstrom's are currently in violation of the building code. Mr. Guthry further stated "Beckstrom's attorney stated that he did an air measurement of the area. I have to back my boat out of 40 ft. If I had 40 ft to back my boat out I would not be here today and I would not be going through the expense of defending my property. I did a physical measurement because I did not understand what an air measurement was. I did a physical measurement from the property line to the area that I have to back out with a tape measure and recorded 25 ft. I have a 22 ft boat with an outboard motor and if the variance is granted the Beckstrom's boat will be on the property line and I will have restrictions on three sides. My dock to the front, and my lift, the seawall to the left, and the Beckstrom's boat on the property line. The Beckstrom's boat would be directly behind me and if the

variance is granted the only way to get my boat out is to physically push it sideways out of the area." He stated to have 100% disability and had multiple back surgeries. He noted "I want to make note that one of the pictures that the beam's attorney took that house was abandoned for 5 years and that dock he keeps mentioning was falling in the water and I used to have to take my boat out by rope I couldn't back it out. A friend of the Beckstrom's stated that he could back his 26 ft boat out of the area As described this person lives seven houses down on the canal and has never stepped foot on my property or has he ever witnessed me backing my boat out." He stated there was no video showing him backing out of his boat slip. The latest proposal shows the Beckstrom's boat on the property line but does not show the roof over his boat lift, which Mr. Guthry states gives him no relief in backing out his boat. "The roof measures 34 inches from the side pilings and 10 ft from the front pilings. This would not conform to the variance that they are asking. The 10 ft from the front piling would place the roof overhang approximately 4-6 ft over my property. Again, the Beckstrom's desire to have a large boat on a small waterfront with restrictions should not be allowed to impact the use of my property."

Sonya Mallard asked "when was the last time you were on your boat"

Mr. Guthry answer probably about 8 months ago, when the recording was made.

Bill Huffman asked "is there a reason for that?"

Mr. Guthry replied due to physical problems. He needs to have an able bodied person with him now to push his boat out.

Jennifer Clements asked "what is the actual frontage of the property?"

Mr. Guthry replied that the water frontage is 80 ft.

Mr. Repperger asked when the Catamaran was moored and to whom it belonged to.

Mr. Guthry replied it belonged to Josh and Marissa Long and could not recall the exact or approximate dates.

Mr. Repperger then brought up a code enforcement violation regarding the Catamaran.

Mr. Guthry noted that it was corrected and circumstances leading to the code enforcement case. He stated the events that took place.

Mr. Huffman asked what the duration was of the docking.

Mr. Guthry replied probably two months.

Joshua Long presented against the application. He is involved in the engineering and design processes for large scale marinas. He was asked by Mr. Guthry to speak on the process of designing docks and moving boats. He further said "when we have a dock that we are designing and there is a set slip length that is argument sake 40 ft, meaning that slip can hold a 40 ft vessel, that means the fair way that vessel comes down and has room to maneuver 90 degrees is going to be set somewhere between the ranges of 50 to 60 ft on average. So we try not to do less than 5 ft front and rear of the vessel and not more than 10 ft for the sake of saving room." Based on this current situation of the 25 ft space and 24 ft vessel that Mr. Guthry explained to him he said "you know if I was

required to do something, davitz would be the situation that I would do.” He explained “davitz” are seawall cranes that are able to lift a vessel upwards and towards the seawall where it leaves clearances in the water to allow movement of other vessel. Mr. Long further claimed that the Catamoran previously mentioned was his and explained that during the construction of their Yacht Club he was allowed to park it there for a couple months. When the violation was brought up, he was asked to move it, which he did immediately upon request.

Ms. Clements asked “what is the length of your boat?”. Mr. Long replied 36 ft which makes up about the full length of the dock.

Patricia Hill presented against the application. She reiterated the sequence of events that led to the infringement of Mr. Guthry’s property rights. She then referred to code 62-2118 and repeated the setback requirements and how this new boat lift is much larger than the old one and causes a hardship for Mr. Guthry to safely navigate his boat out of the dock. She said “with the Beckstrom’s old boat lift Tom could sit in the driver’s seat of the boat and back into the canal easily. Now the process is much more difficult with the larger boat they have built. Tom has to back up the boat a short distance, jump out of the driver’s seat, run to the other side of the boat, take a metal pole and push on the pylon trying to back the boat to turn the back of the boat to prevent hitting the Beckstrom’s dock. Many times it takes two to three times before he can line it up successfully. I have personally been in the boat and I’ve seen the danger and the difficulty it presents. On windy days he just used to sit in the driver’s seat and back up the boat. Now Tom is disabled and recently had back surgery so we rarely use the boat anymore due to this hardship.” She further claimed that the neighbors’ letters in support of the variance did not provide facts to substantiate the variance. Nor were those same neighbors directly affected by the variance. She described her first hand experience of when she pushed out the boat to assist Mr. Guthry and noted the fair amount of surprising difficulty she had with it. She reiterated “that the special conditions and circumstances do not result from the actions of the applicant. The circumstances in this case do result from the applicant. In his actions he chose to buy limited canal frontage with 23 ft versus Tom’s 80 ft frontage. He chose to build a bigger boat lift than his property would allow. He chose to put his boat lift on Tom’s property. So those actions and circumstances are a result of the applicant’s action.” Because not all six criteria are met she believes this variance should not be granted.

Ms. Clements stated she had moved to Merritt Island in 1995, had been a realtor and broker, and is a current homeowner on the water which contribute to her familiarity with waterfront properties. She asked for clarification of how Mr. Guthry currently navigates in and out of his boat slip.

Ms. Hill responded that he backs out a little bit and then swings into the canal.

Ms. Clements noted the discrepancy between the earlier mentioned 25 ft versus 40 ft. She said “I’m looking at it and if you have an 80 ft piece of frontage on the canal and I’m looking at a 36 ft boat you’re approximately 10 ft off of the east properties line. That is 45 ft. So I’m looking at 30 to 35 ft airing in the side of the opposition for access to get out of that the back of the boat lift.” In addition she added “I think ultimately what we’re trying to decide is can you have physical use of your property the way that you would like to have it. Can they have physical use of their property the way that they would like to have it and what’s the resolution in between.”

Ms. Hill replied “I would like to say that we do not have use of our property as we used to before this new boat lift was built.”

Ms. Clements then referred the permits that were presented and discussed the 18 in to 2 ft change in distance due to the new seawall that was built.

Ms. Hill stated it had to be more than that because before Mr. Guthry could sit in his boat to back out and now there is just not enough room.

Ms. Clements asked "is it because you think it is visual because the lift is now up and in no line of sight?"

Ms. Hill replied no and said "you have to use a pole to push the boat to swing the back of the boat to the side into the canal so you won't hit that new larger boat."

Ms. Clements noted that there still lies a discrepancy that needed to be explained for her to assess Mr. Guthry's ability to use their property.

Mr. Guthry said "that 40 ft came from an air measurement. That is why I physically went out with the tape measure and measured from the property line to the area I have to back my boat out." He was asked to rephrase how he backs out his boat. He repeated how he backs out his boat.

Ms. Clements asked for the distance of the canal.

Mr. Guthry responded saying it is "fairly wide on our end".

End Public Comment

Mr. Repperger wished to give a summarization and to address some questions. "I would urge you to really think about your position on this that what we are talking about is 2.5 ft at max. That is what we are talking about because the seawall was only pushed out about 18 in. That what it was and that pushed the piling out in over the line. Before that it was only 18 in. the other way. It is now 2.5 ft over the line. So before it was either over the line or it was at the property line. Before. And that's what it was before. And that's the way it was as Mr. Guthry operated his boat for nine years preceding the movement 2.5 ft. We are not talking about 7.5 ft. We are not talking about that. The variance application is requesting a 7.5 ft variance because that is what the setback is but that is not what we are talking about in terms of movement and what Mr. Guthry has been dealing with."

John Beckstrom, the applicant, elaborated on the request. In concern with the 40 ft measurement he claims was taken with a laser measuring device from the piling in question to the rear canal-side piling of Mr. Guthry's boat lift. That measured 42 ft. He said " I then to verify that measurement I measured from my back piling to my other neighbor's samuda's piling and that 51 ft. To verify the laser I then took a tape measure from my piling over their piling and verified it was exactly 51 ft. So the measurement from my piling in question to the piling on the back of Mr. Guthry's boat the nearest one that he would have to clear is 42 ft. The reason the 25 ft is there is last thursday Mr.long came came to Mr Guthrie's property I was on my boat. They dropped a tape measure through the fence onto my deck where The Medallion is and then measured from my seawall over to the back. So from a geometry perspective if you look down the red line towards that 25 ft line, that 25 ft is not from the piling, that 25 ft is from the seawall to the back of his lift. As you follow that line down to my piling you're moving further away from Mr. Guthry boat lift. So it's not 25 ft from the piling that he has to clear on my boat lift to the piling he has to clear on his boat lift. It is 42 ft. That's it."

Mr. Repperger restated the Board's previous granting of variances similar to this kind within the same subdivision. He also referred back to the electrical permit and said "the Beckstrom's did not do anything wrong in this case with regard to the electrical permit. It was stated that the electrical didn't include the boat lift. Well I'm looking directly at this the County's BASS permit development website and I can tell you that on that website and I'm reading directly from the permit application for permit number 22BC20542 which is the electrical permit.....to whom it may concern I need to amend this permit application in the description on the permit application needs to say installing boat lift on existing polls as well as what is listed in the description on the original application." He also added the discussion about the reflecting tape that needed to be visible on the pilings with regards to permit number 22BC13847. He states that "so to represent to this Board that the Beckstrom's did not ask for permitted for the boat lift is just it is inaccurate."

Greg Hughes clarified to the Board "Mr. Chair I just want to make one other point of clarification that the existing litigation it Brevard County is not a party to that litigation so it really has no bearing on your ability to deal with the matter before you today."

Motion to approve both requests of item H.4. as depicted on the survey dated 9/30/2024 by Jennifer Clements, seconded by Joanna Bass. Mr. Huffman voted to deny based on "the minimal or the minimum that can be done and also injurious to the are involved or otherwise detrimental to the public welfare." The vote passed 3-1.

Board Reports

Welcomed the new Board member Ms. Jennifer Clements. Bill Huffman noted that he will not seek the Chair position next year.

Jeffrey Ball noted to be soon leaving county service and was honored for his years of dedication.

The meeting was called to adjournment at 4:25pm