

Exhibit 1

JAMES BARNETT, trustee
2406 BAY DRIVE REVOCABLE TRUST
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September 11, 2020

Request For Variance -- 2406 Bay Drive, Pompano Beach, FL 33062

The Petitioner is requesting a Variance to be granted as follows:

PART I – L pier dock and boatlift:

Variance from the provisions of Section **151.03(C)(3)** of the City of Pompano Beach Code of Ordinances, in order to construct a new concrete **finger pier** that would replace the existing multi decade (at least 30 years) old finger pier at the same location and having the same footprint, other than the 6 foot proposed width differing from the existing 4 foot width. The Petitioner's request is to construct a 38 foot finger pier that extends into the waterway a distance of 47 feet from the property line when the 3 foot wide seawall cap and 6 foot wide marginal dock are factored in, and has a width of 6 feet, rather than limit the finger pier to 20 feet in length as measured from the measurement reference line and 4 feet in width as permitted by code.

2. Variance from the provisions of Section **151.03(C)(2)** of the City of Pompano Beach Code of Ordinances, in order to construct a 12 foot long and 4 foot wide **small secondary dock attached to the finger pier** and parallel to the seawall that extends into the waterway a distance of 47 feet from the recorded property line. The small dock would accommodate docking using the adjacent boatlift referred to in Item 3 immediately below.

3. Variance from the provisions of Section **151.03(C)(4)** of the City of Pompano Beach Code of Ordinances to allow a new **boatlift** that would replace the existing old boatlift at the west side of the existing finger pier, which existing boatlift is positioned in a manner that accommodates docking of a vessel perpendicularly to the seawall, instead of the permissible parallel-to-seawall orientation. The navigational channel, i.e., the portion of the Hillsboro Bay that extends from the seawall to the opposite shore, is approximately 760 feet, and so the proposed location of the boatlift is well within acceptable limits. The Petitioner makes this request in order to construct a 16 foot by 15 foot boatlift that would extend a maximum of 62 feet into the waterway, as the lift must be installed 47 feet from the existing seawall wet face for safe launching, docking and storage of a vessel that would avoid bottom scouring and prop dredging and associated environmental and marine life damage. The outer side of the new

boatlift is essentially 62 feet from the wet face of the seawall. The width of the boatlift is required to fit the vessel. Included in this application is a bathymetric survey conducted by a licensed surveyor, McLaughlin Engineering Company, showing the water depth at Mean Low Water (MLW) is insufficient to moor a vessel along the seawall, which creates an undue hardship to Petitioner and prevents reasonable and full lawful use and enjoyment of property. Additionally, it is a condition of Broward County Environmental Resource License (ERL) No. DF20-1181 (Exhibit 14), in Standard Condition A(4), that: "All watercraft associated with the construction and use of the permitted structure shall only operate within waters of sufficient depth so as to preclude bottom scouring or prop dredging. **Specifically, there shall be a minimum 12-inch clearance between the deepest draft of the vessel (with the motor in the down position) and the top of any submerged resources or canal bottom at mean low water.** (emphasis in the original license)". This license included the proposed finger pier.

PART II – existing dolphin pile clusters:

4. Variance from the provisions of Section **151.03 (C)(6)** of the City of Pompano Beach Code of Ordinances, in order to maintain four **existing (multi-decade) dolphin piles clusters** that are located further than 40 feet as measured from the recorded property line or measurement property line (and are in fact 66.43 feet, 71.69 feet, 103.89 feet and 107.02 feet, from the recorded property line (see up-to-date XY survey revised 09/03/2020 to show dolphin pile distances from seawall)). The minimum spacing between all of the dolphin piles clusters is greater than the required ten feet.

DETAILED NARRATIVE:

The Petitioner purchased his home in March of 2020. Prior to Hurricane Irma (2017), the Petitioner's property had a small 6 foot concrete dock, at the far end of which was connected a 38 foot long and 4 foot wide finger pier, and along side of which on the west side was connected a boatlift that accommodated dockage of a boat perpendicular to the seawall. The finger pier has existed at the property for at least 3 decades (see several old site plans and drawings filed with the City of Pompano Beach Building Department and stamped "approved", in Exhibit 10). For several decades there was also a large wooden dock structure that extended perpendicularly to the seawall (see 2003 survey and 2012 survey in Exhibits 11 and 12), but this dock was destroyed by Irma, and the Petitioner is not seeking to restore it. Finally, a series of decades-old dolphin pile clusters extends into the waterway up to 107 feet from the seawall. Prior to Irma, all four properties to the west of the Petitioner's property until the Intracoastal drawbridge had perpendicular T-docks, all of which were longer than the Petitioner's current finger pier (see Exhibit 4). Some of the other T-docks were destroyed by Irma, and are being restored (including at 2500 Bay Drive, which abuts the Petitioner's property). The Hillsboro Bay area to the north of the Petitioner's property and also to the north of the other four properties to the west of the Petitioner's property, is very wide, i.e., 760 feet or more, and this explains why T docks have been permitted, or at the very least tolerated, in the area for many decades, given that this allows for mutual use and enjoyment for both the private property owners in the area and the public use of the waterways in a safe and cooperative manner serving public interests, and that has formed part of the historical character of the neighborhood.

The Petitioner's water-frontage or seawall length is 95 feet. The Petitioner is proposing to replace the existing 38 foot long wooden finger pier with a concrete finger pier of the same length but 6 feet wide instead of 4 feet wide, at the same location as the existing finger pier. The Petitioner did not know at the time of his purchase that the existing boatlift was apparently not installed under a permit, nor that it did not comply with the applicable standards that prohibit perpendicular docking of a boat. Further, in exhaustive attempts to pull records from Pompano Beach City Hall, the Petitioner had been told that due to the age of the property (which turned out to be 26 years older than reflected in Broward County Property Appraiser Public (BCPA) records, i.e., BCPA listed the house as built in 1977, but in Petitioner's seeking of records, a permit from 1951 was found, which Petitioner did provide to BCPA, and in turn they have since updated the BCPA record to reflect the year built as 1951), and not knowing how far back the installation of the finger pier, dolphin pile clusters and other marine structures occurred, that it may very well be that the relevant permits/records predated the commencement of the City's use of microfiche for file storage, and therefore no longer available (although there could still be a possibility that they may have existed). As a result, we are left without finding the original permits. The seller of the property to the Petitioner and the seller's agents also assumed the structures were permitted in the past.

Accordingly, given how shallow the areas close to the seawall are, and the requirement that any boat dockage must be parallel to the seawall, the Petitioner's only reasonable recourse to avoid the shallowness hardship and be able to dock a moderately sized boat is to construct a small marginal dock at the end of a modest finger pier, to form an L pier dock and install a boatlift to the immediate north of the L dock.

An L pier dock that is not explicitly defined by the provisions of the code. The finger pier will extend from the Petitioners' existing wet face into the waterway approximately 47 feet from the property line when the 3 foot wide seawall cap and 6 foot wide marginal dock are factored in. The proposed 16 foot by 15 foot boatlift attached to the end of the L pier dock would extend a maximum of 62 feet into the 760 foot wide waterway.

Accordingly, the furthest edge of the entire L pier dock/boatlift structure will extend a total of approximately 62 feet (or 8.16%) into the waterway as measured from the wet face of the seawall, which is a Variance from Section 151.03(C)(2) because of feet limitation, and not because of percentage limitation. In the Petitioner's case, the dock extends out only 8.16% into the waterway, which is significantly less than 10% of the approximately **760 foot** width of the waterway. The proposed structure is also a Variance from Section 151.03(C)(3), because of feet limitation, but not because of percentage limitation, which Petitioner's proposals are within acceptable percentage limits by taking up only 8.16% of the width of the waterway, and much less than permitted 20%. In addition, Section 151.03(C)(3) limits the width of a finger pier; the Petitioner is requesting a width of 6 feet in lieu of the 4 feet requirement for safety reasons.

The Petitioner's property is a waterfront lot located on the south side of a cove of Hillsboro Bay. Hillsboro Bay is believed by the Petitioner to be the widest water body along and connected to the Intracoastal Waterway in the City of Pompano Beach. As a result of the Petitioner's property location on the south side of the cove in Hillsboro Bay, his family experiences

disadvantages that other waterfront properties do not. The biggest challenge the Petitioner faces is due to the position of his home which has extremely low water levels. The water level at the Petitioners' dock is a mere 2 feet at the seawall at low tide (see seagrass and topographic survey in Exhibit 8) and approximately 6 feet further out to the proposed small marginal dock at the end of the finger pier and boatlift (see seagrass and topographic survey in Exhibit 8 as well as bathymetric survey in Exhibit 9). The water is too shallow to properly and safely moor a moderate-sized boat within 20 feet of the seawall **and** also comply with the condition of the Petitioner's Broward County Environmental Resource License (ERL) No. DF20-1181 (in Standard Condition A(4)) that: "All watercraft associated with the construction and use of the permitted structure shall only operate within waters of sufficient depth so as to preclude bottom scouring or prop dredging. **Specifically, there shall be a minimum 12-inch clearance between the deepest draft of the vessel (with the motor in the down position) and the top of any submerged resources or canal bottom at mean low water.** (emphasis in the original license)".

Most waterfront properties are situated on bodies of water that are linear (i.e., canals), and as a result, cities put dock restrictions in their Codes to prevent residential docks from interfering with the through traffic along the waterway or navigable channel. The average width of waterways along the Pompano Beach Intracoastal Waterway is approximately 200 feet. Based on the typical waterway width, ten percent of a 200 feet wide canal is 20 feet. If the resident on each side of the 200 feet wide waterway extended 20 feet into the water, there would be approximately 160 feet or 80 % of an area left for boaters traveling down the waterway to use. Furthermore, the vast majority of properties are located on side canals which, from personal observation have an average width range from approximately 90 feet to 120 feet. The legislative intent of the Code for all intents and purposes is met as further explained below given that the Code was intended to reflect a holistic approach to all waterways and property owners; yet the Petitioner's property location, which allows for a much larger than average waterway width, the shape of the property within a bay, shallowness of the water that causes hardship for boat docking, etc. is unique to the Petitioner and is essentially the type of exception to the Code for which a variance was intended. There are rare cases where the body of water is bowl-shaped and the width of the waterway is much wider than the average 200 feet. Hillsboro Bay at the Petitioner's property is one of these bowl-shaped waterways, and is almost four times the average width, at approximately 760 feet, which leaves 84 % or approximately 636 feet (assuming the residents on either side extend 62 feet waterward) of the waterway for navigation, well above Section 151.03 (1), which sets the minimum width of the Navigational Channel at 40 feet.

Of further note, the actual portion of the Hillsboro Bay that is used for boat traffic to and from the Atlantic Ocean is a relatively narrow channel that is situated disproportionately in the upper third portion of the Bay towards the north shore, because the north shore is more linear and the south shore at the Petitioner's property has a deep bend or curve, which has the effect of significantly widening the channel to the 760 foot width. Accordingly, the presence of structures that extend 62 feet waterward at the Petitioner's property (in the case of the L pier dock and attached boatlift), and 107 feet waterward (in the case of the furthest dolphin pile cluster), would have zero obstruction or other effect to naval traffic within the actual trafficked channel of the Bay.

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The second part of the Variance application pertains to four long-standing dolphin pile clusters that are located further than 40 feet as measured from the recorded property line or measurement property line (and are in fact 66.43 feet, 71.69 feet, 103.89 feet and 107.02 feet, from the recorded property line (see XY survey revised 09/03/2020 to show dolphin pile distances from seawall). As Exhibit 14 shows, the Petitioner's property and the four properties to the immediate west all have dolphin pile clusters that extend further than 40 feet from their seawalls. As stated above, the Hillsboro Bay area to the north of the Petitioner's property and also to the north of the other 3 properties to the west of the Petitioner's property is very wide, i.e., 760 feet or more, and this explains why the dolphin piles have been permitted, or at the very least tolerated, in the area for many decades. It can therefore be said that the existing dolphin piles are consistent with the long-standing historical character of the neighborhood.

The unique shape of the small bay or cove adjacent to the Petitioner's property that is contained within the larger Hillsboro Bay may explain the unique threat to privacy and safety posed to the Petitioner's family. Because the waterway significantly widens at the Petitioner's property, and the Hillsboro Inlet is a no wake zone, boaters are in essence invited to park their boats for extended periods of time outside the Petitioner's property. The area outside the Petitioner's property has become in essence a sandbar where boaters can enjoy the ocean view and not be in the direct path of other boaters coming to and from the ocean in the much narrower waterway to the east of the Petitioner's property.

In fact, the current environment in the waterway in front of the Petitioner's property is problematic, and the dolphin piles are no longer a convenience, and have become a means of abating a nuisance. At times, public revelers assemble in a virtual armada of boats, which but for the current dolphin piles that have been existence on the property for decades, would carry on directly within survey lines of Petitioner's property (i.e., Petitioner's backyard). At times, the noise is so loud and filled with foul and discriminatory languages that the police have to be called. Petitioner's understanding was that previously there was frequent law enforcement patrol of Hillsboro Bay, but it appears that has not been the case at least since the time Petitioner has purchased the property, which provides all the more reason for the Petitioner to want to keep the current pilings to assist with providing some sort of boundary where the public access to the water is respected but does not intrude onto Petitioner's property rights as well. The photos in Exhibit 7 illustrate the scene during the day. In several cases, boaters even approach the seawall beyond (i.e., to the south) of the dolphin piles. For example, recently a trespasser docked his boat and wandered directly on to the Petitioner's land.

Additionally, there was a three week period where three large sailboats and catamarans were continuously docked right outside the Petitioner's property, and when the Petitioner notified the Florida Fish and Wildlife office to request an investigation, he was informed by an officer from that agency that the agency no longer comes aboard continuously-docked watercraft during evening hours because there was a recent incident when an entitled boater opened fire on the officer who attempted to come aboard the vessel. The officer further stated that this mindset on the part of many live-aboard boat owners that their boat is their castle and they can come and do as they please and will defend their rights with guns is a real threat.

The Petitioner has been informed that there is nothing that can be done to prevent long term dockage of live-aboard vessels in public waterways.

So this is now a matter not just of privacy and enjoyment of the Petitioner's property, but also of personal safety and security and abatement of nuisance circumstances. Imagine if the long-standing dolphin piles were removed, and there were no barrier (imperfect as it is, but better than nothing) to prevent trespassers from coming onto the property and seeing if they could force their way into the Petitioner's home for a crime of opportunity. The Petitioner's wife is early in her first pregnancy, and is hopeful that newborn children will bless the home and be able to safely congregate on the property without risk and have quiet enjoyment of the property

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In order for the Board to grant this request, the Petitioners must meet all of the following criteria:

D(1)(a) There are extraordinary and exceptional conditions (such as topographic conditions, narrowness, **shallowness, or the shape of the parcel of land**) pertaining to the particular land or structure for which the Variance is sought, that do not generally apply to other lands or structures in the vicinity.

Special and peculiar conditions and circumstances affect the Petitioners' property, which conditions and circumstances do not apply generally to neighboring lands, building, and structures in the vicinity. As noted above and discussed below, the Petitioner's property suffers from the extraordinary and exceptional conditions such as, but not limited to, "shallowness" due to extremely low water levels. Due to the unique shape and location of this parcel of land where the immense width of Hillsboro Bay of 760 feet at the Petitioner's property (at the point at which the waterway significantly widens), granting a Variance for the length of the Petitioner's finger pier, small marginal dock and boatlift, as well as four existing dolphin pile clusters, will not interfere with the navigational channel or any neighboring properties. In fact, there would be approximately 650 feet of navigable channel beyond the proposed structures that are the subject of this Variance left for boaters to travel down the navigable channel. The proposed design is consistent with the Petitioners' four immediate neighbors to the west experiencing the same conditions due to low water levels at the very wide channel area, and who all have T-docks and dolphin piles similar that proposed or existing at the Petitioner's property (see Exhibit 4). It is also due to the shallowness and shape of land (within a cove or bay of a larger bay) that seems to invite the public to come closer onto Petitioner's property, which doesn't generally apply to other properties or structures in the City of Pompano.

D(1)(b) The extraordinary and exceptional conditions referred to in paragraph a., above, are not the result of the actions of the landowner.

The existing conditions and circumstances are not a result of any action of the Petitioner. The existing finger pier, boatlift (which the Petitioner proposes to essentially relocate) and dolphin pile clusters, were all present when the Petitioner bought the property and have been present on the property without injury or detriment to others for decades. The low water level is a naturally occurring condition that is a result of the specific location of the Petitioner's property along Hillsboro Bay. The Petitioner has no control over the shallow depth of the water at his location, and

any dredging would damage the delicate and pristine coastal environment that is so close to the Atlantic Ocean. Additionally, there is possibility of risk that dredging along the Petitioner's old seawall could collapse it, along with the old seawalls to the immediate west and east of the property, further supporting the Petitioner's plan to rehabilitate the dock and water area structures in a reasonable and safe manner without in anyway harming the environment or public or other private property owners. The Petitioner has made every effort in the design of the proposal to meet the intent of the Code requirements by requesting a length that will allow reasonable use of the property and has obtained explicit signed consent letters from each of the neighbors to the immediate west and east of the Petitioner's property (Exhibits 5 and 6). The consent letters were signed because the proposed project will not impact the view corridors of the neighbors to the west or east.

D(1)(c) Because of the extraordinary and exceptional conditions referred to in paragraph a., above, the application of this Code to the land or structure for which the Variance is sought would effectively prohibit or unreasonably restrict the utilization of the land or structure and result in unnecessary and undue hardship.

The existing water levels make it impossible to keep a boat of even moderate size at the dock. With the 8 foot dock limitation, the Petitioner's family is unable to reasonably use their dock because the water is too shallow. Without granting this Variance request, the Petitioner's family are unable to enjoy their waterfront property in the same manner as those properties on waterways with better depth. If the Petitioners are restricted a four feet (4') by twenty feet (20') finger pier, they would continue to experience low water levels, due to the position of their property along the waterway. One of the major reasons why the Petitioner bought his waterfront property in the first place was to be able to dock a moderately sized boat in safety, and it would be a major hardship if he were unable to do so.

D(1)(d) The Variance would not confer any special privilege on the landowner that is denied to other lands or structures that are similarly situated.

The Petitioner is unaware of any similarly situated landowner that has been denied a reasonable accommodation to the Code via denial of a variance.

D(1)(e) The extent of the Variance is the minimum necessary to allow a reasonable use of the land or structure.

Based on the water depths documented in both the seagrass and topographical survey, and bathymetric survey, referred to above, the extent of the Variance is the minimum necessary to allow a reasonable use of the land or structure in relation to the finger pier, small marginal dock and boatlift, and the extremely wide waterway at the Petitioner's location and the additional 45 feet distance from the boatlift to the furthest of the four existing dolphin pile clusters is the minimum necessary to afford reasonable use of the land and structures as well as minimum necessary to afford a minimum of privacy and safety for Petitioner's family

D(1)(f) The Variance is in harmony with the general purpose and intent of this Code and preserves its spirit.

Granting the Variance will be in harmony with the general purpose and intent of the zoning code, and the proposed design is the minimum variance that will allow the reasonable use of the land, building or structure. Of special note, the majority of the Variance is for the maintenance of the current structures (i.e., replace the existing finger pier with better material, keep the current dolphin pilings, reformat the already existing boatlift, etc.) that have been on the property in harmony for decades and without issue.

D(1)(g) The Variance would not adversely affect the health or safety of persons residing or working in the neighborhood, be injurious to property or improvements in the neighborhood, or otherwise be detrimental to the public welfare.

According to Section 151.01, the intent of the Code is to permit construction in and upon the waterways that does not interfere with navigation, endanger life or property, or deny the public reasonable viable access to public waterways. Respecting this, the Petitioner has taken great care to make plans that respect the intent of the Code:

- No interference with navigation: The Petitioner's proposal will not be interfere with navigation. The much larger than average width of waterway available ensures all boat traffic can continue as normal.
- Respects life and property: In-water inspections of the proposed site have been completed and there is no observable seagrass in the area, and therefore there will be no adverse impact on the sea bed at this location. The health and safety of persons residing or working the in the neighborhood remains protected as it has been for decades. Furthermore, the Petitioner's proposal will also preclude bottom scouring and prop dredging of the pristine marine environment close to the seawall. The proposed Variance will not be injurious to property or neighbors, and will not be detrimental to public welfare.
- The public remains with reasonable viable access to public waterways: As mentioned above, the width of the waterway where the Petitioner's property is located is so wide that extending the finger pier/small marginal dock and boatlift into the waterway 62 feet, and preserving the existing 107 feet of the furthest of four dolphin pile clusters, will not deny any access to the public waterway. The access to the waterway will not be altered in any way by the Petitioners' proposal. If the request is granted, there will be more than 650 feet of distance from the structures across the waterway, which is significantly more than most of the waterways in the City.

The Petitioner is simply asking to be given the same opportunity to dock a boat of reasonable moderate size in a safe manner as surrounding property owners do, as well as preserve his family's safety and privacy, and trusts that the Zoning Board will grant the Variance in light of Petitioner's undue hardship, including and not limited to the shallowness, topographic conditions, and shape

of the parcel of land. As an additional safety feature, the Petitioner will install lights along, and at the end of, the finger pier and small marginal dock.

D(1)(h) The Variance is consistent with the comprehensive plan.

The Petitioner believes that the Variance is consistent with the comprehensive plan.

Thank you for your kind consideration.

Note: the Petitioner obtained approval from the Florida Department of Environmental Protection (DEP) and Broward County for the proposed finger pier. At that time that he applied for these approvals, the Petitioner was unaware that he would in essence have to move the existing boatlift, and install a small marginal dock at the end of the finger pier to accommodate the correct parallel-to-seawall boat dock orientation, as well as to preserve the four existing dolphin pile clusters. Accordingly, the Petitioner understands that approval of the Variance requests will be conditioned on the Petitioner obtaining all required environmental approvals for the small marginal dock, repositioned boatlift and retention of existing dolphin pile clusters, after any Variance is granted and prior to construction of any new items that are the subject of the Variance.

Dated at Pompano Beach this 11th day of September, 2020

A handwritten signature in blue ink, appearing to be 'James Barnett', written over a horizontal line.

James Barnett, Trustee
2406 Bay Drive Revocable Trust

Exhibits to Variance Application of 2406 Bay Drive, Pompano Beach, FL 33062

- Exhibit 1 -- narrative
- Exhibit 2 -- - recent updated XY survey dated September 3, 2020
- Exhibit 3 -- drawing prepared by seawall contractor Seatech showing the proposed structures overlaid on the existing XY survey
- Exhibit 4 -- Google Earth View (as of August 5, 2020) of Hillsboro Bay showing various perpendicular finger piers, dolphin piles, and other structures in this widest part of the Bay that contains the Petitioner's property
- Exhibit 5 -- consent letter of adjacent neighbor to the east (at 2402 Bay Drive)
- Exhibit 6 -- consent letter of adjacent neighbor to the west (at 2500 Bay Drive)
- Exhibit 7 -- various recent photographs of area in front of subject property showing boaters and swimmers uncomfortably close to subject property, and in some cases trespassing onto structures
- Exhibit 8 -- seagrass and topographical survey dated June 2, 2020
- Exhibit 9 -- bathymetric survey dated July 5, 2020
- Exhibit 10 -- old site plans and drawings from 1991 and 2003 filed with City of Pompano Beach building department and stamped "approved", which show the existing finger pier
- Exhibit 11 -- survey from 2003 showing existing finger pier and much larger dock
- Exhibit 12 -- survey from 2012 showing existing finger pier and much larger dock
- Exhibit 13 -- legal description of subject property
- Exhibit 14 -- Broward County Environmental Resource License (ERL) No. DF20-1181
- Exhibit 15 -- Photograph showing dolphin piles in the area