

## Staff Report

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**File #:** LN-102

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Zoning Board of Appeals  
Meeting Date: April 15, 2021

### **VARIANCE - 2406 BAY DRIVE REVOCABLE TRUST**

<b>Request:</b>	Variance
<b>P&amp;Z#</b>	20-11000008
<b>Owner:</b>	2406 Bay Drive Revocable Trust
<b>Project Location:</b>	2406 Bay Drive
<b>Folio Number:</b>	4843 29 04 1420
<b>Land Use Designation:</b>	L-Low 1-5 DU/AC
<b>Zoning District:</b>	RS-2 (Single-Family Residence 2)
<b>Agent:</b>	James Barnett
<b>Project Planner:</b>	Scott Reale

### **Summary:**

Applicant Landowner is requesting a VARIANCE from Section 151.03 (C)(3) of the City of Pompano Beach Code of Ordinances, in order to construct a finger pier that extends into the waterway a distance of 47 feet from the recorded property line (Measurement Reference Line) and has a width of 6 feet, rather than limit the finger pier to 20 feet in length as measured from the recorded property line (Measurement Reference Line) and 4 feet in width as permitted by code.

### **ZONING REGULATIONS**

#### **§ 151.03 STRUCTURES IN WATERWAYS.**

...

(C) In a canal, river, basin or waterway which is more than 50 feet in width, wharves, finger piers, fixed docks, floating docks, boat lifts (floating or stationary), floating vessel platforms, dolphin, fender or mooring piles, and/or mooring buoys must be constructed or installed pursuant to the following conditions provided that the navigational channel is not encroached upon:

...

(3) Fixed finger piers and floating finger piers may be constructed or erected to extend into any canal, river, basin, or waterway a distance of 20% of the width of the canal, river, basin, or waterway or a distance of 20 feet, whichever is less, as measured from the recorded property line or measurement property line. A finger pier (floating or stationary) shall not be constructed to a width greater than four feet. The distance between finger piers shall not be less than 25 feet.

**LAND USE PATTERNS**

Subject property (Zoning / Existing Use): RS-2 | single-family dwelling

Surrounding Properties (Zoning District / Existing Use):

- North: RM-20 | multi-family dwelling
- South: RS-2 | single-family dwelling
- East: Intracoastal Waterway
- West: RS-2 | single-family dwelling

**PROPERTY INFORMATION**

1. The subject property has no code violations. In 2001, a Variance was granted for a front yard setback and fence height (Appeal #01-27).
2. The request before the Board is to construct a finger pier that extends into the waterway a distance of 47 feet from the recorded property line (Measurement Reference Line) and has a width of 6 feet, rather than limit the finger pier to 20 feet in length as measured from the recorded property line (Measurement Reference Line) and 4 feet in width as permitted by code.
3. Pursuant to §151.09(B)(1) property owners seeking relief from the standards in Chapter 151: Beaches and Waterways, must first go before the Marine Advisory Board (MAB) for its review and recommendations.
4. The applicant's original application included additional variance requests; however, the requested relief was ultimately streamlined, and at the March 30, 2021 Marine Advisory Board Meeting, the landowner obtained a recommendation for approval of the requested variance. The recommendation, along with an analysis of the variance review standards, is included in the application backup.

**VARIANCE REVIEW STANDARDS**

A Variance application shall be approved only on a finding that there is competent substantial evidence in the record that all of the following standards are met:

- 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;
- b) The extraordinary and exceptional conditions referred to in paragraph a., above, are not the result of the actions of the landowner;
- 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;
- d) The Variance would not confer any special privilege on the landowner that is denied to other lands or structures that are similarly situated.
- e) The extent of the Variance is the minimum necessary to allow a reasonable use of the land or structure;
- f) The Variance is in harmony with the general purpose and intent of this Code and preserves its spirit;
- 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; and

- h) The Variance is consistent with the comprehensive plan.

**Staff Conditions:**

Should the Board determine that the applicant has provided competent substantial evidence to satisfy the eight Variance review standards, staff recommends the Board include the following conditions as a part of the Order:

1. Obtain all necessary governmental permits and approvals including building and zoning compliance permits.
2. Substantial compliance to the plans submitted with this application.



**MARINE ADVISORY BOARD**  
1201 N.E. 5<sup>th</sup> Avenue  
Pompano Beach, Florida 33060  
Memo # 21-02

30 March 2021

TO: Zoning Board of Appeals

FROM: Marine Advisory Board (MAB), City of Pompano Beach

RE: MAB review and evaluation of Petition to the Zoning Board of Appeals dated 11 September 2020 Applicant: 2406 Bay Drive Revocable Trust

The Petition to the Zoning Board of Appeals requests a Variance to Chapter 151 Beaches and Waterways, specifically §151.03(C)(3).

**§151.03(C)(3)**

**Fixed finger piers and floating finger piers may be constructed or erected to extend into any canal, river, basin, or waterway a distance of 20% of the width of the canal, river, basin, or waterway or a distance of 20 feet, whichever is less, as measured from the recorded property line or measurement property line. A finger pier (floating or stationary) shall not be constructed to a width greater than four feet. The distance between finger piers shall not be less than 25 feet.**

**The Petitioners are requesting authorization to install a finger pier extending 47-feet from the Measurement Reference Line (Property Line), versus a code of 20-feet with a width of 6-feet versus a code of 4-feet**

*Pursuant to §151.09(B)(1) Any such application for variance must first be submitted to the MAB for its review and recommendations. The following constitutes a review of the Petition by the MAB in accordance with §155.2420.D Variance Review Standards.*

*A Variance application shall be approved only on a finding that there is competent substantial evidence in the record that all of the following standards are met.*

*(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.*

**The petitioners' property experiences low water levels (see bathometric survey attached). Due to the width of the waterway at the inlet, granting a variance for the length and width of the petitioners' finger pier will not interfere with the navigational channel**

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

**The low water level is a naturally occurring condition that is a result of the specific location of the petitioners' property.**

*(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.*

**With the new 8-foot parallel dock, the petitioners are unable to reasonably use their dock because the water is too shallow. Without granting this variance request, the petitioners are unable to enjoy their waterfront property in the same manner as those properties on waterways with better depth.**

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

**There are no other similar structures on residentially zoned properties to moor vessels in the Hillsboro Inlet bay.**

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

**Based in the bathometric survey, the 47-foot finger pier will allow the petitioner to access reasonable depth.**

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

**Yes, the variance is in harmony**

*(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.*

**There are no adverse conditions.**

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

**Yes**

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Based upon the MAB's review and discussion of the above conditions, the MAB recommends approval of the requested variance for the 47-foot finger pier (versus the code of 20-feet) with a width of 6-feet (versus the code of 4-feet) under §151.03(C)(3) with all attending members voting as follows:

**47-Foot Finger Pier Versus A Code of 20-Feet**

P. Cutt YES; F.Pelly NO; G.Leyes YES; R. Grissinger YES; J. Chapman YES; L Corson YES

**The dissenting votes were due to the following:**

The average depth of the water at the new concrete dock is not unique to other residential properties mooring vessels on the same body of water (east of the property) and throughout the City.

Granting this variance would confer special privilege to the landowner that has been denied to other lands or structures that are similarly situated, have shallower water and set a precedent that could deny other adjacent property owners' clear access to the navigable channel. The properties to the west of the petitioner are multi family, of which no vessels are moored.

The request is not the minimum necessary to moor a vessel.

If granted, a vessel cannot be moored at the proposed finger pier. A variance for perpendicular docking cannot be recommended or granted by ZAB under 91.10(C)(2)(a) which states:

*(a) Unless otherwise provided for in this subsection, all boats or watercraft located in any canal or waterway shall be docked parallel to the seawall or shoreline.*

As a result, it is anticipated the petitioner will come back to request a variance for an addition structure at the end of the pier (ancillary dock) and a boat lift that would extend 62-feet from the property line. Otherwise, the 47-foot finger pier would serve no purpose.

**6-Foot Width of Finger Pier Versus a Code of 4-Feet**

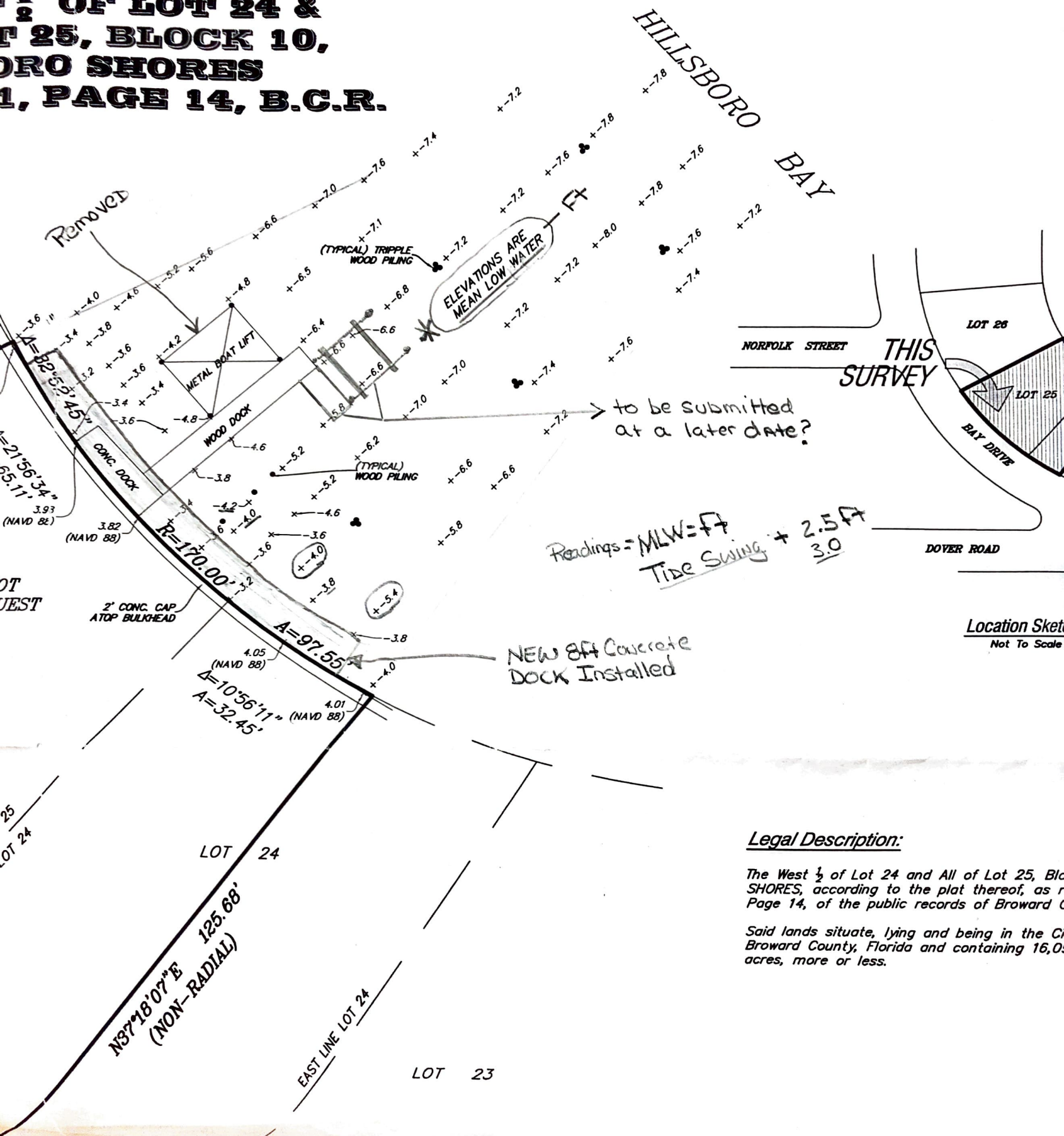
P. Cutt, NO; F. Pelly, YES; G. Leyes, YES; R. Grissinger, YES; J. Chapman, YES; L. Corson. YES

**The dissenting votes were due to the following**

Considering the factors that the ZBA reviews for consideration of granting a variance, this property does not necessarily meet those factors that the ZBA has for consideration.

# TRIC SURVEY

**1/2 OF LOT 24 &  
LOT 25, BLOCK 10,  
DORO SHORES  
1, PAGE 14, B.C.R.**



Location Sketch  
Not To Scale

## Legal Description:

The West 1/2 of Lot 24 and All of Lot 25, Block 10, DORO SHORES, according to the plat thereof, as recorded on Page 14, of the public records of Broward County, Florida.

Said lands situate, lying and being in the City of Broward County, Florida and containing 16,000 acres, more or less.



**James Barnett**  
(trustee for 2406 Bay Drive Revocable Trust)

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**REVIEWED FOR CODE COMPLIANCE  
SUBJECT TO ALL CODES OF THE  
CITY OF POMPANO BEACH**

**BP20-00006191  
08/27/20**

City of Pompano Beach

To Whom it May Concern

**Re: 2406 Bay Drive Seawall Work and Related Marine Structures, Permit # 20-6191**

As part of the approval process for the issuance of permit # 20-6191, I hereby agree to proceed with the removal of any existing known non-conforming structures based on a denial of a code variance from the City (ZBA) Planning and Zoning Board of Appeals for any existing non-conforming structures. The known existing non-conforming structures at the subject property are as follows: the existing boat lift, finger pier and mooring piles beyond 40 feet from the seawall.

Regards,

James Barnett