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Date	Ver.	Action By	Action	Result
3/21/2024	1	Zoning Board of Appeals	POSTPONED	

Zoning Board of Appeals

Meeting Date: March 21, 2024

VARIANCE - POMPANO REAL ESTATE INVESTMENTS

Request: Variance
P&Z# 23-11000016
Owner: Pompano Real Estate Investments
Project Location: 855 S Federal Highway
Folio Number: 494306490010
Land Use Designation: C- Commercial
Zoning District: General Business (B-3)
Agent: John Piotrowski
Project Planner: Scott Reale

Summary:

The Applicant Landowner is requesting VARIANCES from the following provisions in the Pompano Beach Code of Ordinances:

1. Section 151.03(G)(2), in order to construct a 50' finger pier from the Measurement Reference Line (MRL) that extends an additional 30' into a waterway rather than limit the finger pier to a maximum distance of 20' into a waterway as per code.
2. Section 151.03(G)(2), in order to construct a 5' wide finger pier rather than limit the finger pier to a maximum width of 4' as per code.
3. Section 151.03(G)(1), in order to construct a 25' x 5' T dock at the end of a 50' finger pier that extends a total of 55' from the MRL. This is an additional 47' into a waterway rather than limit the dock to a maximum 8' extension into a waterway as per code.
4. Section 151.03(G)(4), in order to construct a boat lift that extends a total of 66' from the MRL that extends an additional 38' into a waterway rather than limit the boat lift to a maximum 28' extension into a waterway as per code.

The subject property is located on the Joey Accardi car dealership site along the west side of S Federal Highway, and south of the Cypress Creek (C-14) canal.

APPLICABLE CODE REGULATIONS

§ 151.03 STRUCTURES IN WATERWAYS.

(A) Measurement standards for all structures except for wooden, fabricated wood, or concrete docks shall be from the measurement reference line seaward to the end of the structure including pilings. Measurement standards for wooden, fabricated wood, or concrete docks and finger piers shall be from the measurement reference line seaward to the end of the dock's decking.

(B) No mooring structures or other similar structures may be erected or installed within five feet of an extended side property line or cause a watercraft or vessel to extend within five feet of an extended side property line.

(C) No mooring structures or any other similar structures may be erected or installed into the navigational channel or cause a watercraft or vessel to extend into the navigational channel.

(D) Any structure erected pursuant to this section shall be kept in good repair by the owner thereof and shall be subject to removal by the city in the event that they are unsafe or create a hazard to navigation as determined by the City Engineer or City Building Official, the cost thereof to be assessed against the owner. However, opportunity for notice and a hearing shall be afforded to the owner prior to such removal by the city.

(E) In a canal, river, basin, or waterway 50 feet in width or less, fixed, or floating docks shall not be constructed or installed more than five feet waterward of the measurement reference line.

(F) In a canal, river, basin, or waterway 50 feet in width or less, vessel davits, hoist, vessel lift, floating vessel platform, personal watercraft/jet ski platform are permitted to be constructed seaward to the navigational channel.

(G) In a canal, river, basin, or waterway which is more than 50 feet in width, mooring structures or any

other marine structures must be constructed or installed pursuant to the following conditions.

(1) Fixed vessel docks, floating docks or wharves may be constructed or installed to extend into any canal, river, basin, or waterway a distance of 10% of the width of the canal, river, basin, or waterway or a distance of eight feet whichever is less, as measured from the measurement reference line.

(2) 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 measurement reference 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.

(3) Fixed vessel docks, wharves, or finger piers shall not be constructed or erected so as to cause the elevation of the deck to exceed the elevation of the top of the abutting tidal flood barrier or rip-rap, with the exception that decking on fixed vessel docks, wharves, or finger piers may be elevated above the abutting tidal flood barrier or rip-rap a total of two inches in order to meet any surface finish of the abutting tidal flood barrier or rip-rap.

(4) Vessel davits, elevator lifts, cradle lifts, floating lifts, floating vessel platforms, personal watercraft/jet ski platform used for the express purpose of storing a watercraft out of the water or any other similar form of vessel lifting device may be constructed or installed to extend into any canal, river, basin, or waterway, in a fully raised position, a distance up to 28 feet, as measured from the measurement reference line subject to the provisions of subsection (B) and (C) above.

(5) If an elevator lift is permitted, approved, and built, an access platform may be constructed pursuant to an approved permit to facilitate access to vessels when the lift is in the down position. Said access platform, attached to a permitted and approved dock structure, shall be limited to the spacing between the battered support beams of the elevator and shall not extend more than three feet beyond the dock into the waterway or exceed ten feet in width. Said access platform is deemed an accessory to the elevator lift and its authorized placement is contingent upon the existence of a permitted and properly operating lift at the location. Should the lift fall into disrepair and no longer function or is removed and not replaced, then an approved existing access platform must be removed if it causes the dock structure to exceed any of the size restrictions set forth in this section including, but not limited to, the requirements of subsection (F) and (G) (1) above.

(6) In a canal, river, basin, or waterway less than 150 feet, but more than 50 feet in width, dolphin, mooring, or fender piles and/or mooring buoys may not be installed in any canal, river, basin, or waterway any further than the navigation channel boundary line as measured from the measurement reference line.

(7) In a canal, river, basin, or waterway 150 feet or greater in width, dolphin, mooring, or fender piles and/or mooring buoys may not be installed in any canal, river, basin, or waterway any further than 40 feet as measured from the measurement reference line.

(8) In a canal, river, basin, or waterway, adjacent to single-family zoned lots, dolphin, mooring, or fender piles are limited to two or two clusters per lot.

(9) All dolphin, mooring, and fender piles shall have a six-inch wide fluorescent or reflective band placed two feet below the top of the piling. Mooring buoys shall have a reflective band a minimum of four inches wide.

(10) No roofs or similar covering structures may be installed in, over, or upon any canal, river basin, or waterway within the city. This shall include covered structures over mooring structures or other similar structures.

(H) Docks, fixed docks, floating docks, or similar structures meeting the requirements of subsection (A) through (G) above may be constructed or installed within five feet of the extended side property line once the following conditions have been met prior to any permit being issued pursuant to the terms of this section:

(1) The affected abutting property owners shall enter into an agreement with the city which states the property owners have reviewed and approved the proposed plans as they relate to the placement of the

above structures which is erected within five feet of the extended side property line and the owners indemnify the city for any claim brought against the city for the placement of structures installed within five feet of the extended side property line. The agreement shall be approved by the Office of the City Attorney for legal content and recorded along with a copy of the approved plans in the Public Records of Broward County, Florida, and shall be considered to be a restriction running with the land and shall bind the heirs, successors and assigns of the property owners.

(2) No watercraft or any type of vessel shall be docked within five feet of the extended side property line.

(3) Fire suppression systems shall be installed in accordance with all applicable fire codes.

(I) In addition to the requirements contained in subsections (A) through (G), if two or more lots share a common docking area, the following conditions must be met prior to any permit being issued under the terms of this section.

(1) The affected property owners may enter into an agreement with the city which shall state the property owners have reviewed and approved the proposed plans as it relates to the placement of any structure in the common docking area as well as the proposed docking of any vessel or watercraft as permitted in § 91.10. The agreement shall be approved by the Office of the City Attorney for legal content and recorded along with a copy of the approved plans in the Public Records of Broward County, Florida, and shall be considered to be a restriction running with the land and shall bind the heirs, successors and assigns of the property owners.

(2) In lieu of provisions in subsection (I)(1) above, the City Engineer may divide the common docking area from the seaward intersection of the extended lot lines to the wet face of the tidal flood barriers or rip-rap corner of the adjoining lots.

(J) The provisions of subsections (H) through (I) shall not apply where a court of competent jurisdiction has adjudicated the docking rights of the adjoining property owners.

(K) Diagrams which document examples of the different docking provisions and waterways described by this section shall be maintained by and with the Code Enforcement Division.

§ 151.09 VARIANCES.

(A) The Zoning Board of Appeals of the City shall hear and decide any variance requests from the regulations contained within this chapter.

(B) The provisions under § 151.03(B) and (C) are prohibited from variances.

(C) Any such application for variance must first be submitted to the Marine Advisory Board for its review and recommendations.

(D) The procedures, applications, form, timetables, and fees for the filing of a variance from these regulations shall be the same as that provided for a variance from any zoning ordinance as provided in Chapter 155.

§ 91.10 DOCKING AND LIVING ABOARD VESSELS.

...

(D) Dockage.

(1) In canals or waterways adjacent to single-family, multi-family and commercial zoned lots where the property is improved and has been issued a Certificate of Occupancy for single-family, multi-family and commercial use or in canals or waterways adjacent to property which has been improved and issued a Certificate of Occupancy for single-family, multi-family and commercial use, docking of vessels or watercraft shall be permitted, provided that no vessel or watercraft shall be docked in any canal or waterway in such a manner as to have any part of the vessel or watercraft extended within five feet of an extended side boundary lot line or encroach into the "navigational channel."

...

NAVIGATIONAL CHANNEL. Shall be defined as the 45% of the width of a canal, river, basin, or waterway with a width of greater than 40 feet. All other canals, rivers, basins, or waterways 40 feet or less, the navigational channel is 55% of the width of the canal, river basin, or waterway. The center of the navigational channel shall coincide with the centerline of the canal, river, basin, or waterway. Where the navigational channel runs to the terminus of a dead-end canal, river, basin or waterway, the navigational channel shall end a distance from the deadend canal, river, basin or waterway that is equal to the distance between the navigational channel and tidal flood barrier, rip-rap or shoreline as measured along the same canal, river, basin or waterway but before the terminus of a deadend canal, river, basin or waterway.

PROJECT DETAILS AND MARINE ADVISORY BOARD MEMO

1. The applicant is requesting a number of variances associated with Pompano Beach Code of Ordinances, Chapter 151: Beaches and Waterways, in order to build a structure that will extend into the waterway 66' encroaching into the navigational channel. The applicant's narrative makes the following statements:
 - a. The proposed project falls entirely within the property lines of the 855 S Federal Highway parcel;
 - b. The shoreline of the subject property has receded over the years;
 - c. The water in this area is extremely shallow making it impossible to effectively use the property as intended;
 - d. The proposed project will not impede navigation within the canal;
 - e. The proposed structures were approved by the Broward County Environmental Protection & Growth Management Department via license GL-POB2303-035;
 - f. The associated Pompano Beach building permit application, BP #23-3033, was rejected by the City's Engineering Department, prompting this variance application.
2. 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. This meeting took place on August 15, 2023.
3. The MAB recommendation memo is provided herein and provides a detailed review and analysis of the petitioner's request. The Board recommended denial of the variance application, articulating the following points as part of their line of reasoning:
 - a. The proposed project extends into the navigational channel. The encroachment would require a variance under §151.03(C) which states: *No mooring structures or any other similar structures may be erected or installed into the navigational channel or cause a watercraft or vessel to extend into the navigational channel.*
 - b. A variance cannot be granted from §151.03(C) as noted in Section §155.09(B) which states: *The provisions under §151.03(B) and (C) are prohibited from variances.*
 - c. The proposed project would also require a variance from Section §91.10(D)(1), again because of the encroachment into the *navigational channel*. The powers and duties of the ZBA do not extend to granting relief from this code provision.
 - d. The applicant did not provide a bathometric survey, which is required for submission if shallow water is the primary reason for the variance request.

LAND USE PATTERNS

Subject property (Zoning / Existing Use):

- B-3 | motor vehicle sales (Joey Accardi)

Surrounding Properties (Zoning District / Existing Use):

- North: RM-30 | Waterford Point Condo
- South: B-3 | automotive repair
- East: B-3 | marina, gas station, and hotel
- West: RS-2 | waterway followed by single-family dwellings (Cypress Lake Estates)

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.

Recommendation:

The Marine Advisory Board Memo states the following: *Based upon the MAB's review and discussion of the above conditions, the MAB does not recommend the requested variance.*

As previously noted, the project, as submitted, would require relief from two additional code provisions related to encroachment into the navigational channel. Both of these code provisions, §151.03(C) and §91.10(D)(1),

fall outside of the ZBA's power and authority.