CITY OF FORT LAUDERDALE

DRAFT
MEETING MINUTES
CITY OF FORT LAUDERDALE
MARINE ADVISORY BOARD
FORT LAUDERDALE FIRE RESCUE DEPARTMENT
528 NW 2ND STREET, STATION #2
FORT LAUDERDALE, FLORIDA 33311
3RD FLOOR CONFERENCE ROOM
THURSDAY, SEPTEMBER 5, 2024 – 6:00 P.M.

		Cumulative Attendance January-December 2024	
Steve Witten, Chair	P	7	1
James Harrison, Vice Chair	A	4	4
Tyler Brunelle	P	7	1
Robyn Chiarelli (6:15-8:19)	P	4	4
Jason Dunbar (dep. 8:21)	P	4	1
Barry Flanigan (arr. 7:00)	P	7	1
Robert Franks	P	6	3
Elisabeth George	P	8	0
Brewster Knott	P	5	3
John Lynch	A	6	2
Noelle Norvell	A	4	4
Ed Rebholz	P	6	2
Bill Walker	P	5	3
Robert Washington	A	6	2

As of this date, there are 14 appointed members to the Board, which means 8 would constitute a quorum.

Staff

Andrew Cuba, Marine Facilities Manager
Jonathan Luscomb, Marine Facilities Supervisor
Susan Grant, Acting City Manager
Robert Dunckel, Assistant City Attorney
Sgt. Travis O'Neal, Marine Unit Supervisor
Carl Williams, Director of Parks and Recreation
Stephen Gollan, Fire Chief
William Schultz, Police Chief
K. Cruitt, Recording Secretary, Prototype, Inc.

Communications to City Commission

None.

Patience Cohn, representing the Marine Industries Association of South Florida (MIASF), noted that the city of Miami has a dedicated derelict vessel Officer. Sgt. O'Neal advised that the Marine Unit stays on top of the derelict vessels anchored in Fort Lauderdale; many more vessels are considered to be at risk rather than derelict. Three at-risk tickets must be issued to these vessels before they can be classified and adjudicated as derelict, which is a time-consuming process.

Ms. Cohn also asked what would be done once a derelict vessel has been anchored or moored more than 45 days. Sgt. O'Neal replied that this would probably involve a citation, although he would need more information about the new bill to be certain.

Kevin Connelly, member of the public, asked if grant funds are available for closed-circuit television (CCTV) cameras in certain areas. Sgt. O'Neal explained that most of these cameras are located on private properties rather than City-owned properties.

VI. 10 Minutes with an Industry Expert – Brendan McDonnell, Co-Managing Pilot – Port Everglades Pilots Association – "Small Boat Traffic from the Eyes of a Port Everglades Pilot"

Chair Witten introduced Captain Brendan McDonnell, Co-Managing Pilot of the Port Everglades Pilots Association, who gave a PowerPoint presentation on small boat traffic as seen by Port Everglades Pilots.

Mr. Flanigan arrived at 6:00 p.m.

Capt. McDonnell showed several examples of the difficulty of very large vessels to see smaller ones on the waterway. He referred to the International Regulations for Preventing Collisions at Sea (COLREGS), which are navigational rules that apply to vessels on waterways, noting that it can also be extremely difficult for large vessels to come to a stop. Interference of small vessels with large ones at the Port can result in serious economic delays. He strongly encouraged smaller boaters to monitor their radios when on the water.

VII. Dock Waiver – 1240 Bayview Drive / Andrew Schein, Esq. as agent for Richard Lehecka

Andrew Schein, representing the Applicant, showed a PowerPoint presentation on the Application, which is a request for a boat lift, which would be placed at 36 ft. from the property line. Waterway width varies between 200 ft. and 280 ft. An average width of 250 ft. was used in the Application. The request would extend use of the waterway from roughly 10% to 14.4%. The Applicant's boat is 40 ft. in length and would be approximately 11 ft. from the dock.

Mr. Schein noted that the property lines for the subject site are not fully accurate. The Applicant's dock is located fully outside his property line. He added that the Application includes letters of support from immediate neighbors.

Mr. Schein advised that he had spoken with Attorney Dunckel in advance of tonight's meeting to discuss a potential issue. Section 47-19.1 of the City's Unified Land Development Regulations (ULDR), which addresses accessory structures such as boat lifts, mooring piles, and docks, states that no watercraft shall be docked at an adjacent property such that it extends beyond the side setback line as extended into the waterway. He stated that the Assistant City Attorney's interpretation of Code is that because accessory structures are not permitted in side yards in the subject zoning district, they are also not permitted in waterways.

Mr. Schein concluded that his interpretation of this language differed from this reading. While Attorney Dunckel had requested the Application be deferred for this reason, Mr. Schein was not comfortable doing so, as he did not agree with the Assistant City Attorney's interpretation.

Attorney Dunckel explained that Code allows marginal docks to extend from property line to property line; however, Section 47-19.1 states that no accessory use or structure may be located within a required yard setback specified by the zoning district where the development site is located, unless specifically permitted by the ULDR. He advised that he has seen Code Enforcement cite properties in which a floating vessel platform is located within a side yard setback once a boat has been placed on that structure.

Attorney Dunckel suggested that if the Board chooses to recommend approval of the dock waiver request, it should be done specifically with a potential challenge in mind in relation to the boat lift extending into the side yard setback.

Attorney Dunckel encouraged the Board to review the subject property's location on Seminole Lake and its proximity to the Intracoastal Waterway, which means it is greatly influenced by tides and storms, as are most waterways within the City. He was not certain that tidal influences constituted extraordinary circumstances in this case.

Mr. Schein pointed out that the subject location is often used as a "yacht turnaround" area, which creates large waves from large boats. In addition, extension into the waterway is measured from the property line rather than from the location of the dock. The dock itself is outside the property line.

Mr. Flanigan commented that the language referring to extraordinary circumstances should be eliminated from waiver requests. Attorney Dunckel stated that there must be a standard by which applications are judged. It was also noted that while large boats turn in the area, it is an idle speed zone.

Chair Witten commented that the majority of waivers that come before the Board do not have extraordinary circumstances. He felt an owner's request to have a boat lift constituted a reasonable request in itself. He asked if Attorney Dunckel had identified other issues with the request aside from a lack of extraordinary circumstances.

Chair Witten also asked if the setback question was a legal challenge the Board is not capable of addressing within its purview, and if that meant they should defer the Item. Attorney Dunckel stated that the language he had cited is part of Code, which is the standard by which the City Commission must judge the Application. The Commission's decision could then be challenged in court to determine whether or not there is substantial evidence to support the conclusion that extraordinary circumstances exist.

Attorney Dunckel reiterated that if the Board recommended approval of the Application, they should state that the Assistant City Attorney feels there is a violation of Code which could deny the Applicant the necessary zoning permit to proceed.

Mr. Schein confirmed that the Applicant understands zoning is a separate issue and that a zoning permit may be denied; however, the Application before the Board is not a zoning application.

Attorney Dunckel advised that extraordinary circumstances are determined on a case-by-case basis and may include factors such as high wake or speed zones; however, he did not believe the Application before the Board at this time fell into any of the necessary categories.

Mr. Brunelle asked if the use of a boat lift in the event of a hurricane could be seen as an extraordinary circumstance. Attorney Dunckel stated that a hurricane would affect all properties on a waterway.

Mr. Schein observed that the Applicant's dock already exists, and if the dock were rebuilt, there may be a way to position the boat lift in a way where an 11 ft. waiver would not be necessary. The 11 ft. buffer, however, is required between the dock and the center of gravity on the lift.

Mr. Brunelle asked if the dock is located within the Applicant's property line. It was clarified that the dock is 1.4 ft. from the property line. The property is required to have a 10 ft. setback on each side. Mr. Schein replied that the dock and finger pier were approved and permitted by the Zoning Department.

Attorney Dunckel asserted that his recommendation to defer the Item was separate from the waiver request itself; he was instead asking the Board to think in terms of whether or not the Application satisfies the requirements for extraordinary circumstances, such as high speed or wake zones, which the Board regularly sees. He also recalled a case in which a waiver decision by the City Commission was appealed; while the City prevailed in that case, it is not guaranteed that they would win others. For this reason, he

recommended careful review of applications, particularly due to issues that can occur on the western New River.

Mr. Walker asked if extraordinary circumstances may include navigational hazards on the waterway. Attorney Dunckel confirmed that this was his interpretation of Code.

Chair Witten observed that the Board regularly uses the term "extraordinary circumstances," and proposed that a full discussion to clarify this term be placed on a future agenda. He reiterated, however, that the Board should not ignore a request for a boat lift or another type of waiver if extraordinary circumstances are not provided. Attorney Dunckel stated that if an application was granted by the City Commission with no mention of extraordinary circumstances, it was his opinion that the approval could be overturned in court.

Chair Witten asked if the Board may still recommend approval of the Application even if they do not believe extraordinary circumstances exist. Attorney Dunckel replied that in his opinion, if the Board does not believe extraordinary circumstances exist, it is their responsibility to recommend denial of the Application. If they do believe the factors presented constitute extraordinary circumstances, it is their responsibility to recommend approval, subject to the side yard setback issue.

Mr. Brunelle commented that extraordinary circumstances are not required to be negative impacts. Attorney Dunckel pointed out that extraordinary circumstances are historically considered in light of how they negatively impact an applicant and their property. He reiterated that he hopes to modify this language in Code in the future, and will seek feedback from the Board at that time.

There being no further questions from the Board at this time, Chair Witten opened the public hearing. As there were no individuals wishing to speak on the Item, the Chair closed the public hearing and brought the discussion back to the Board

Motion made by Mr. Brunelle, seconded by Mr. Dunbar, to approve. In a roll call vote, the **motion** passed unanimously (10-0).

Chair Witten concluded that he will request a discussion of extraordinary circumstances be placed on a future Agenda.

[redacted] Waiver – 601 Cordova Road / JFB Assets Management, Jean-Francois [redacted]

Hector Heguaburo, representing the Applicant, exp[redacted]t while this Application had previously been approved, a subcontractor made an error [redacted] the dock, placing it within 1 ft. of a setback. The Applicant was asked to bring the Appli[redacted] before the Board.