

Memorandum No: 138

City Attorney's Office

To: Marine Advisory Board Members
From: Robert B. Dunckel, Asst. City Attorney
Date: November 4, 2025
Re: Application/Waiver of Limitations/ 1409 SW 17th Street

Law

ULDR §47-19.3(c) provides in part that mooring structures (i.e. finger piers) “. . . **shall not extend into the waterway** more than twenty-five (25) percent of the waterway or twenty-five (25) feet, whichever is less, **as measured from the property line.**”

ULDR § 47-19.3 (e) allows the City Commission to grant a waiver of those limitations at a public hearing with notice provided to property owners within 300 feet of the subject property. However, ULDR § 47-19.3 (e) also provides:

In no event shall the extension exceed thirty (30) percent of the width of the waterway and no variance may be approved by the Board of Adjustment or other agency permitting an extension beyond the thirty percent (30%) limitation.

Facts, Argument and Issues

In the Application before you, the Applicant seeks a waiver of those limitations for two finger piers, the Westernmost one extending 56.5' and the Easternmost one extending 36.5' into the adjacent waterway as measured from the upland rear platted property line.

At issue for this Application and the two finger piers is *what is the width of the waterway as measured from the property line.*

It should be noted that the Applicant has title to 71.8' of submerged lands beyond the rear platted upland property line. Ownership of the submerged lands do not equate with a private ownership of the water column above the submerged lands. At one time the Applicant advocated that measuring from the property line meant measuring from the outward boundary of the submerged lands. In short, our Code does not recognize the outward boundary of the submerged lands as relevant to measuring the width of the waterway under §47-19.3 (c), (d) or (e). In applying §47-19.3 (c), (d) and (e) the City has a history of always measuring the width of the waterway from the upland rear platted property line.

The Application makes reference to a “boat basin” which appears on the 1947 Revised Plat of Yellowstone Park, as found at page 10 of the Application. On page 12 the Application makes reference to the Crevalle Canal North of the “boat basin.” The Applicant advances the notion that the finger piers do not exceed 30% of the width of the Crevalle Canal.

If that approach had any validity, then there would be no need to file an Application for a waiver as the threshold for seeking a waiver would be measured, according to Applicant's

argument, at the edge of the Crevalle Canal as the finger piers do not extend more than 25' into the Crevalle Canal.

To the casual eye, looking Eastward from New River, the width of the waterway includes both the 1947 "boat basin" as well as the Crevalle Canal, with width of the Crevalle Canal varying as high as 75' +/- and narrowing down to a mere 35' +/- in width at the extreme Western end of Crevalle Canal where it intersects with the New River.

It is the opinion of the City Attorney's Office that the "width of the waterway" as applied to this Application, includes not only the "boat basin" set forth on the 1947 Revised Plat of Yellowstone Park, but also includes that portion of Crevalle Canal to the North of the Application. The "boat basin" and Crevalle Canal are part of the same waterway but derived from different sources. Together, both "boat basin" and adjacent Crevalle Canal, constitute one navigable waterway as it is (i) subject to the ebb and flow of the tide and (ii) susceptible of use as an instrumentality of interstate commerce. Hence, the width of the waterway includes both the "boat basin" as well as the adjacent Crevalle Canal.

We have asked the City's Surveyor to measure the width of the waterway from the rear upland platted property line of 1409 SW 17th Street, including both the "boat basin" (77.1') and the adjacent Crevalle Canal (63.8') for a total width of the waterway of 140.9' as measured from the mid-point of the 56.5' Westernmost finger pier. A waiver of limitations shall not be granted that exceeds 30% of the width of the waterway.

Conclusion

Accordingly, it is my recommendation that in the event the Board is inclined to recommend to the City Commission approval of a waiver of limitations for this Application, it should condition that recommended approval to limiting the Western finger pier to no more than 42'.