

**BOARD OF ADJUSTMENT
DESTIN CITY HALL BOARDROOM
WEDNESDAY, APRIL 6, 2022
5:30 P.M.**

1. CALL TO ORDER:

Chairman Weidenhamer called the Board of Adjustment Meeting to order at 5:30 p.m., on Wednesday, April 6, 2022, at Destin City Hall Boardroom.

2. ROLL CALL & PLEDGE OF ALLIGENCE:

Present:

Tom Weidenhamer
David Emerson
Cyron Marler
James Moomaw
Robert Pinard

Absent

Kimberley Mergler
Daniella Piper

Staff Present:

Kim Montgomery Deputy City Clerk
Steven O'Connor Principal Planner
Daniel Butler Senior Planner
Kyle Bauman City Attorney
Kimberly Kopp Land Use Attorney

3. APPROVAL OF MINUTES:

A. November 3, 2021

Vice Chairman Emerson moved to approve the minutes of the December 8, 2021 meeting as corrected with Chairman Weidenhamer provided the second to the motion and the passed 5-0.

4. NEW BUSINESS: The decision was made to hear 155 Calhoun Variance first since the applicant for 21-43-VR

A. 22-08-VR 155 Calhoun Ave. Variance Request

Ms. Shirley Perman is requesting variance from Article 11.05.00 - Marina Siting of the Land Development Code (LDC) due to no application for replacement and/or repair records of sustained damage to the dock within six months. The proposed project intends to restore the previously existing dock to its original style and location. Therefore, the applicant is requesting a variance from:

Article 11, Section 11.05.00. - Marina Siting: This article establishes and regulates procedures and standards by which the city controls and regulates development, construction, and activities within and contiguous to the Harbor and Waterways of Destin. The following regulations and prohibitions shall apply to the Harbor and Waterways of Destin. Specifically, in this case, the applicant is requesting a variance from the twenty-five foot (25') property line setback, without property owner's permission, as listed in 11.05.01.S. and;

Article 11, Section 11.05.10. - Reconstruction of existing facilities: For existing facilities which are damaged by accidents, vandalism, ordinary wear and tear or acts of God, the provisions of paragraphs F, G, M, and N of Section 11.05.01 shall not be applicable to reconstruction so long as the damaged facilities are reconstructed in the same or lesser dimensions and so long as the construction permit is applied for from the city within six months of the sustaining damage.

The Land Use Attorney (LUA), Ms. Kim Kopp waived the reading of the application into the record.

Chairman Weidenhamer accepted the party status for the adjacent property owner, Mr. Tim Shore.

The City Attorney swore in all members that would be providing testimony for the case.

Ms. Shirley Perman explained to the Board she purchased the property last year and spoke of her intention of wanting to rebuild the dock to its original historical location and length and also for the health of the marine ecology that is present. She explained how she was under the assumption that all she needed was to go on to the FDEP website and get her self-certify permit since the dock was being rebuilt in its original board for board location. However, when the pilings were being replaced, she was issued a Stop Work Notice from the city. She explained further that when meeting with the planning department staff, that is when she learned she needed to get building permits. Subsequently, when she applied for them, she also learned that the original dock does not meet the riparian setback requirements. She spoke of how she went to the next door neighbor, Mr. Tim Shores and explained her intentions of rebuilding to its original state. However, he was not agreeable for fear that there might be an addition added later on that could potentially block his view, and is why she is here now, to ask for a Variance to rebuild a dock to its original state, noting that she not even asking to go out as far as she is allowed to, nor does she want to. Additionally, she expressed that she does not have any intention to add a boat lift or boat house either. She then introduced her tenant who lives the property who is the son to the original property owner and is available for testimony and any questions the Board may have for him.

Mr. Gail Milligan spoke to the board about growing up on the property and how there was always a dock at the property as far as he can remember. He also spoke of how the dock was always shorter than any other docks on the water, and how the property went into disrepair when his aging mother's health went into decline and subsequently how the dock was heavily damaged by hurricane Opal and other storms however, he was financially unable to get it repaired because of the cost of health care for his mother.

Chairman Weidenhamer asked Ms. Perman if she intended to use the original pilings. Ms. Perman stated no because they are rotted and could not be reused.

Steven Tatum, representing the adjacent property owner, Tim Shores, stated that his client is simply asking for the 25-foot setback requirements in the city codes so that his view would not be blocked. He additionally pointed out that the FDEP permit requirements is 1-year after the structure is destroyed to rebuild the way it was, and they are now way past that deadline. He also spoke of how they feel rebuilding to the 25-foot setback would not make a difference for her property.

Mr. Tim Shores spoke of how the dock does not meet the board for board requirements of the code since it has been in disrepair longer than the 1-year deadline. And how he tried to come to an agreement with Ms. Perman, but they could not.

The Chairman asked if any of the work has already been performed. According to the Ms. Perman, so far only about 1/3 of the pilings have been installed.

After a brief break, Mr. Tatum reiterated that the setback requirements, staff does not support the request, and the proposed project does not meet the code. He also reiterated how there is plenty of room on the property for the project to be built to the requirements of the code.

Ms. Perman explained that she understands her request does not meet code, but the location of the original dock has been there for over 60-years and it does not interfere with any view corridors and there are sea grasses present that she does not want to disturb if built to the setback requirements.

Motion by Chairman Weidenhamer to grant the Variance request to reconstruct the dock in the current position with the strict provision that no permanent structure is to rise above the surface of the deck. Board member Marler provided the second for the sake of discussion.

Board member Marler spoke of how the property most likely was originally owned by some of the founding families being either the Destin's or the Marler's and how back then, property lines were not even an issue when it came to building docks to access the water.

According to the LUA, staff has a point of clarification on the motion with regard to the language. She then asked Mr. O'Connor to explain.

According to Mr. O'Connor, permanent structures cannot be constructed over submerged land leases, so the language needs to be changed to *minor structure* since they are meant to be built on a temporary basis. Which essentially means that they can be blown away with extreme wave or wind action.

Chairman Weidenhamer amended the motion to read, **"To grant the Variance request to reconstruct the dock in the current position with the strict provision that no minor**

structure is to rise above the surface of the deck.

For clarification purposes, Board member Marler asked if that he means no boathouses or similar structures? Chairman Weidenhamer's reply was yes, that is correct. **The motion passed with a vote of 4-1, with Vice Chairman Emerson dissenting.**

B. 21-43-VR Waverly Circle Variance Request

Board member Marler informed the hearing that he will be abstaining from any voting because he is employed by a division of Legendary Inc., LLC.

The City Attorney swore in all individuals to provide testimony. He then explained the Code requires the reading of the application and the published notice into the record unless it's waived by the applicant.

Both the applicant, Mr. Rodney Chamberlin and city staff agreed to waiving the readings into the record.

Mr. Rodney Chamberlin provided the reasoning as to why they are requesting the Variance to eliminate a poorly designed round-about and make it a two-way street and fix all of the alignment problems, which would also correct the driver behavioral problems that exist. Additionally, these corrections would also provide the intersection spacing required by code. He then explained how they investigated the traffic at the location and there are ongoing problems with trucks, especially delivery trucks trying to navigate the roundabout but not being able to without going off the roadway

Chairman Weidenhamer asked Mr. Chamberlin if the streets within the gated community are the ones are being corrected. According to Mr. Chamberlin, they are.

Chairman Weidenhamer opened the hearing to the public.

Barbara Comes of 480 Gulf Shore Drive, Unit 110 Magnolia House spoke of how she was under the impression that in order to apply for a Variance, the situation has to warrant causing problems or is currently unsafe. And that to her, she feels that neither is the issue for this request. She said the roundabout has been there for over 30-years and it facilitates traffic flow and to her, making it a two-way stop sign would be too confusing. She spoke of the numerous pedestrians making their way to the beach, utilizes the green space's park like area and feels this is just an appeasement to the property owners who may have future plans for that general area.

Joan Lewis owner of Destin Point feels the roundabout slows the traffic down and she's concerned that the green space in the immediate location will be destroyed by plans of subdividing it to build more homes. Additionally, to her, roundabouts work, this one works, and

she does not see the point in trying to do away with something that is effective.

With no further comment from the public, Chairman Weidenhamer closed the public portion of the hearing and asked the board members to comment or a motion.

The City Attorney asked Mr. Chamberlin if he had any additional information to add.

According to Mr. Chamberlin, this particular roundabout is far too large for its location and the character does not fit, from an engineering standpoint.

Board member Emerson asked Mr. Chamberlin if the southwest curve of the original roundabout between Melrose and the short leg area is staying as it is. According to Mr. Chamberlin, it is. Board member Emerson verified with Mr. Chamberlin the different scenarios where there are traffic issues with larger trucks not being able to make the turns. Mr. Chamberlin explained that when Waverly is moved over, to become a traditional 90° intersection, that will correct those problems. Additionally, they ran an analysis of the turns, they used the largest type truck that would use the roundabout, that being a DFCD fire truck, and the analysis showed those type of trucks make the two way turns better.

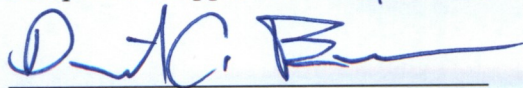
Board member Emerson then addressed the comment made about plans to subdivide the green space and asked Mr. Chamberlin if he was aware of those plans. According to Mr. Chamberlin he is not aware of any plans to do that. That they were contracted to reconfigure the area where the round-about is located and to improve the pond area as a greenspace for the community, as mentioned in the memo.

Motion by Board member Emerson to recommend the Board of Adjustments approve the Variance Request 21-43-VR with Board member Moomaw providing the second. A roll call vote of 5-0 was taken and the motion passed.

5. ADJOURNMENT:

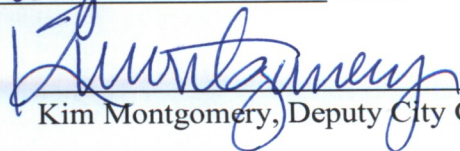
There being no further business the meeting was adjourned at 7:20 p.m.

Adopted and approved this 4th day of May 2022.



~~Tom Weidenhamer, Chairman~~

David Emerson
Vice Chairman



Kim Montgomery, Deputy City Clerk

TO BE FILED WITH 4/6/22 BOA MINUTES

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME MARLER CYRON EUGENE		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE B.O.A. BOARD OF ADJUSTMENT	
MAILING ADDRESS 616 2nd Street		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY	
CITY DESTIN	COUNTY OKALOOSA	NAME OF POLITICAL SUBDIVISION: City of Destin	
DATE ON WHICH VOTE OCCURRED 4-6-22		MY POSITION IS: ☐ ELECTIVE ☒ APPOINTIVE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; and

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, CYRON E. MARLER, hereby disclose that on 4-6-22, 20 ____ :

(a) A measure came or will come before my agency which (check one or more)

- ☐ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____ ;
- ☐ inured to the special gain or loss of my relative, _____ ;
- ☐ inured to the special gain or loss of _____, by
whom I am retained; or
- ☐ inured to the special gain or loss of _____, which
is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

I AM EMPLOYED BY A DIVISION OF LEGENDARY, INC / LLC

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

Date Filed

4-6-22

Signature

Cyron E. Marler

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.