

**BOARD OF ADJUSTMENT
DESTIN CITY HALL BOARDROOM
WEDNESDAY, MARCH 1, 2023
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, March 1, 2023, at Destin City Hall Boardroom.

2. ROLL CALL & PLEDGE OF ALLEGIANCE:

Present:

Tom Weidenhamer
Daniella Piper
David Emerson
Cyron Marler
James Moomaw

Absent

Robert Pinard

Staff Present:

Kim Montgomery Deputy City Clerk
Daniel Butler Senior Planner
Steven O'Connor, Principal Planner
Daniel Butler, Senior Planner

3. APPROVAL OF MINUTES:

➤ **October 5, 2022**

Motion to approve the minutes of the October 5, 2022, meeting was made by Board member Marler, with Board member Piper providing the second. The motion passed 5-0.

5. PUBLIC COMMENT:

None

6. NEW BUSINESS:

A. 22-65-VR – 530 Harbor Blvd Variance Request

The City Attorney swore in staff members and members of the public who will be testifying for the request. He also informed everyone that he had spoken with the applicant prior to the meeting and Mr. Abadie agreed to waive the reading of the notice and the application into the record.

Mr. O'Connor informed the members the purpose of the hearing is to hear the Variance Request for the extension of a dock request located at 530 Harbor Blvd. by Mr. Mike Abadie, who is seeking relief from the maximum dock length requirements set forth in LDC Section 11.05.01, subsections (M), (F), and (G). First, subsection (M) provides as follows: (M) Excepting docks connected to uplands zoned SHMU, or those located on Choctawhatchee Bay, no dock shall be longer than the width, at the mean high-water line, of the lot to which the dock is

attached.

1. For those docks connected to uplands zoned SHMU, or those located on Choctawhatchee Bay, a dock may be constructed to a length of 1.5 times the width of the property at the mean high-water line, provided the length of the dock does not exceed the maximum length established by paragraphs F and G above.

2. For the purpose of this subsection, lots may be combined with neighboring lots. However, no dock may exceed the limitations specified in subsection F above. The referenced subsections (F) and (G) provide: (F) No new or existing dock shall be constructed or modified such that the length of any pier as completed is greater than 20 percent of the width of the Harbor or waterway at the place where the pier is located, or out 200 feet, whichever is less, except in Choctawhatchee Bay. (G) No piling(s) shall be added to the waterward end of any pier which piling(s) would make the total length of the dock more than 200 feet, or 20 percent of the waterway, whichever is less, except in Choctawhatchee Bay. The Applicant requests approval for a 253' total length dock, which is 53 foot longer than the 200' maximum allowed per Subsections 11.05.01(M), (F) & (G).

FINDINGS: According to LDC Section 2.25.03(C), to authorize upon appeal such variance from the terms of any zoning ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of such ordinance would result in unnecessary and undue hardship. In order to authorize any variance from the terms of the conditions, the Board of Adjustment must find:

A. That special conditions or circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.

Applicant response: The harbor adjacent to the shoreline on the eastern half of the Gilligan's Marina property is shallow with the -3-foot contour up to 65 feet from the MHW line (shown in provided drawings). As the Destin Land Development Code requires any new dock to extend less than 200 feet from the shoreline (11.05.01 F) and DEP requires at least 1 foot of clearance from the deepest part of the vessel to the submerged bottom, the shallow shoal restricts the number of slips that can be placed within this area. Other properties in the same zoning district do not have the same shallow depth extending as far as the eastern side of Gilligan's marina and can maximize the number of slips within the available area as allowed by the LDC and extend less than 200 feet from the shoreline.

Staff Findings: Due to the limited depth and the USACE requirement of a minimum of one foot (1') of clearance, there is a special condition applicable to this property. However, staff

has not confirmed whether this condition applies to the other properties within the same zoning district. Nor if the condition does apply, if it was mitigated via other previously allowable dredging or approvals. The Board will need to determine if the Special Condition criteria is satisfied.

B. That special conditions and circumstances do not result from the actions of the Applicant.

Applicant response: The shallow depths on the east side of the property are natural and not caused by the applicant. **Staff Findings:** Staff has no way to confirm if the special condition exists due to natural events or if caused by the human activity within the harbor. The Board will have to determine if the Special Condition criteria is satisfied.

C. That granting the requested variance will not confer on the Applicant any special privileges denied by any zoning ordinance to other lands, buildings, or structures in the same zoning district.

Applicant Response: No additional advantages or special privileges are provided to the property owner. The total number of slips in the proposed design (17) is the same number of slips as if the shallow depths on the east side of the property did not exist and the dock was designed to extend 200 feet from the shoreline.

Staff Findings: If approved, the only variance granted would be to the length of the dock itself and would not increase the permittable slip density. The staff agree that this criteria has been satisfied.

D. That literal interpretation of the provisions of any zoning ordinance would deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of any zoning ordinance, and would it result in unnecessary and undue hardship on the Applicant.

Applicant Response: The literal interpretation of LDC 11.05.01(M),(F) & (G) would prevent Mr. Abadie from maximizing the number of slips allowed under the LDC. Other property owners in the zoning district that do not have a shallow depth near the shore are able to maximize the number of slips within the available area as allowed by the LDC and extend less than 200 feet from the shoreline.

Staff Findings: The limitations applied by the USACE due to the existing shoal limits the applicant's ability to develop his property to the allowable slip density within the maximum allowable length per LDC Subsections 11.05.01 (M) (F) & (G). Staff agrees this criteria is

satisfied.

E. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

Applicant Response: The shallow bathymetry does not allow for 5 slips to be permitted and constructed. Due to this shallow shoal, the dock was shifted seaward into the harbor until the 5 slips had at least one foot of clearance for a three-foot draft boat. No further changes to the dock were made.

Staff Findings: The proposed design of the dock does request less than the minimum, as the shoal extends 65'± from the MHWL and the applicant is requesting twelve feet (12') less at 53' beyond the 200' maximum allowed. The staff agree that this criteria is satisfied.

F. That the granting of the variance will be in harmony with the general intent and purpose of any zoning ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Applicant Response: The proposed dock extending 253 feet from the existing shoreline into the harbor will be in harmony with the general intent and purpose of the zoning ordinances. The approval of the variance would not be injurious to the area, adjacent properties or otherwise detrimental to the public welfare. It will not reduce access to the harbor for any other marina in the harbor nor will the proposed extension into the harbor impede safe navigation. The distance from the north side of the Destin Harbor to the south side at this location is approximately 1,300 feet and with the proposed dock extension to 253 feet, it will be less than 25% of the total width of the harbor.

Staff Findings: Depending on where or how you measure, the width of the Destin Harbor ranges from 975'± to 1300'±. The proposed dock at 253' is 19.4% to 24.1% the width of the waterway at this location of the Harbor. While the LDC does limit the maximum length of the dock, applicants are allowed to request relief through the Variance process. For perspective 3,000'± to the east of this proposed dock the Harbor is 160'± wide and the mouth of the Harbor is 275'± wide. Due to the existing conditions of the Harbor and other operations around the Harbor, staff agrees that this criteria are satisfied.

Additional Responses: As the applicant is requesting variance from LDC Section 11.05.01(M)(F) &(G) Marina Siting, to authorize any variance from the terms of the conditions, the Board of Adjustment must find:

G. LDC 11.05.09 Exceptions. Exceptions from the provisions of Section 11.05.01 are as

follows: 11.05.09.A. The Board of Adjustment may approve an exception for docks and pilings to be extended beyond the limits allowed in paragraphs M and N of Section 11.05.01 provided that, in addition to the criteria listed in Section 2.25.03.G, the following criteria is also met:

1. That site-specific environmental conditions would impede placement of slips near or next to the shoreline.

Applicant Response: The harbor adjacent to the shoreline on the eastern half of the Gilligan's Marina property is shallow with the -3-foot contour to within 65-feet from the MHW line (shown in provided drawings). As DEP requires at least 1 foot of clearance from the deepest part of the vessel to the submerged bottom, the shallow depths of the shoal impede the placement of slips near the shoreline.

Staff Findings: Due to the limited depth and the USACE requirement of a minimum of one foot (1') of clearance, there is a site-specific environmental condition that limits the placement of slips next to the shoreline. Staff agrees this criteria is satisfied.

2. That site specific environmental conditions exist that prohibit dredging.

Applicant Response: Dredging is generally prohibited by DEP and the USACE within this portion of Destin Harbor due to the ability to apply for and obtain this variance that allows the docks to be moved seaward to avoid having to dredge. Dredging may cause a temporary reduction in water quality conditions due to turbidity and due to the shallow shoals on either side of the proposed docking facility may require periodic maintenance dredging to remove sand transported and deposited within the dredge limits. This may result in deeper water depths where water quality conditions may degrade and may result in cumulative impacts to the Harbor over time, thus no dredging is recommended.

Staff Findings: Due to USACE and DEP limitation on dredging in the Harbor, Staff agrees this criteria is satisfied.

3. That the proposed layout of the dock and pilings does not create a hazard to navigation.

Applicant Response: The proposed dock will not cause a hazard to navigation. The proposed dock will extend 253 feet from the existing shoreline. The distance from the north side of the Destin Harbor to the south side at this location is approximately 1,300 feet so the dock extends less than 25% of the total width of the harbor. The docks on the south and opposite site of the harbor extend approximately 150-feet from the shoreline which totals 400-feet for both docks and 900-feet of open unobstructed water. The marinas adjacent to Gilligan's Marina access to the Harbor will not be affected either.

Staff Findings: Based on the existing conditions of the Harbor and the width of channels, staff agrees this criteria is satisfied.

4. That no additional slips are obtained that would otherwise fit into a dock of the maximum size allowed without the exception.

Applicant Response: No additional slips above the allowed are proposed. The shallow waters do not allow for five (5) slips to be permitted and constructed, thus approval of this variance request will regain these five (5) slips by extending the dock seaward to 253 feet from the existing shoreline.

Staff Findings: The allowable slip density is 1-slip per 8-linear feet of waterfront at MHWL. The property with the two lots is 209'± feet wide and would allow approximately 26 slips. The applicant is only requesting seventeen (17) slips, staff agrees that this criteria is satisfied.

Motion by Board member Weidenhamer that the Board of Adjustment approve Variance Request 22-65-VR with the following recommended conditions:

- 1. Meeting all Federal, State, and local regulations pertaining to approvals for marina facilities prior to submitting for a Marine Construction Permit.**
- 2. If any vessel with onboard waste facilities is moored long-term (more than 72 hours), a pump-out system shall be installed.**
- 3. White navigational lights shall be installed at both sides of the docks prior to a request for an inspection for a Certificate of Completion.**
- 4. A Marine Construction Permit shall be applied for with the updated Federal and State approved plans no later than six months and completed no later than 12 months from the grant of variance. Board member Emerson provided the second.**

Board member Marler stated that E8 to E11 concerns him and inquired as to why they have to be so far out. Additionally, he asked if the plans were for strictly commercial boats or private boats.

According to Mr. Abadie, he currently has 15-verbal commitments for the 17-slips and all the Captains are charter vessels driven by a U.S. Coast Guard licensed and the other slips are available to anyone other than a livery vessel, private owned or captained vessel. He brought up how the lack of charter boat slips was discussed at Council's recent Visioning Session by the Mayor and how these slips would make that possible for those that are in need of slips for their charter boats.

Board member Marler stated that he would be more comfortable with if the last four slips were for commercial only and not private. **He then made a substitute to the motion by adding to Chairman Weidenhamer's original motion, for the last four slips to be for commercial only.** Staff member O'Connor asked for clarification that he means for slips E8 through E11 to be limited to commercial charter boat vessels only. Board member Marler confirmed that that is what he meant.

Board member Piper asked for clarity that the code allows for 200-feet and the applicant is asking for a Variance for the additional 62-feet.

Mr. O'Connor answered affirmatively, adding that the applicant still has to go before the Harbor & Waterways and City Council, both of which are public hearings, for the request and approval. Board member Piper then asked how staff determines that this request is in the public interest.

According to Mr. O'Connor, staff shies away from making a solid determination, unless they can point to a Comprehensive Plan policy or in the Land Development Code that allows them to clearly state that fact thus, is why staff defers to the Board members appointed by City Council.

Board member Emerson asked if they could legally certify those slips in question to be for commercial purposes only.

The Land Use Attorney asked if the applicant is willing to consider that condition.

According to Mr. Abadie, he is leaning toward them being commercial but added if someone with a yacht needed to come in to dock, he would not want to turn them away. Adding that in reality, they would use less parking and would be less boat traffic in the harbor. Even with the commercial industry need being a higher need than most, he still would not want to close them off to private yachts.

With that, Board member Marler amended his amended motion to **if possible those slips be limited to commercial first. Chairman Weidenhamer provided the second to the amendment. The motion passed 5-0.**

B. BOA-000995-2023 – Destin Cottages Variance Request

Mr. Butler explained the applicant is requesting relief to LDC Section 8.09.03.A.6.b & LDC Section 8.09.03.A.6.c, which relates to pedestrian amenities required within the

MultiModal Transportation District (MMTD), such as sidewalk buffers, benches, and trash receptacles within the development. Additionally, the applicant is seeking to revise the approved Lighting Plan regarding pedestrian scaled lighting within the development, required per LDC Section 8.09.03.A.6.e. The subject project is located at 318 Sibert Avenue & 412 Kelly Street and the applicant must meet the 6 criteria as outlined in the code, in order for them to grant the Variance.

FINDINGS: According to LDC Section 2.25.03(C), to authorize upon appeal such variance from the terms of any zoning ordinance as will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of such ordinance would result in unnecessary and undue hardship. In order to authorize any variance from the terms of the conditions, the Board of Adjustment must find:

A. That special conditions or circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

Applicant response: Common areas and interior ROW deeded to HOA. As per City staff, variance to change PUD is the recommended method to change minor items in the D.O. ROW is private and gated and should be regulated by HOA as per other developments in the city.

Staff Findings: Special conditions do exist in the fact that FPL has already installed the lighting connection areas, although not in the City approved locations, and agree that the PUD nature of the development could remove the pedestrian amenity requirement within the development, since it is private property, maintained by the HOA. However, there are no special conditions that exist in which the landscape buffer would need to be removed. This criteria has been satisfied for the first three requests, but not the fourth.

B. That special conditions and circumstances do not result from the actions of the Applicant.

Applicant response:

1. Lighting plan as per Florida Power and Light.

2. Private and gated roads are not typically subject to certain provisions of City Code, but PUD form of the DO requires City approval.

3. Desire to create more contiguous green front yards.

Staff Findings: Florida Power & Light (FPL) did not install the lights along the private road in accordance with the approved sight plan. As the applicant did not have any control over the lighting installations by FPL this was not a condition or circumstance created by the applicant. The Code language provided for pedestrian amenities reads as if they should be placed along the

public sidewalk; therefore, should not be subject to such requirement, since the internal sidewalk is private. The sidewalk buffer language does not differentiate; therefore, the landscaped sidewalk buffer shall remain required, as it could create a safety hazard for pedestrians within the development. This criteria has been satisfied for the first three requests, but not the fourth.

C. That granting the requested variance will not confer on the Applicant any special privileges denied by any zoning ordinance to other lands, buildings or structures in the same zoning district.

Applicant Response: The applicant did not provide a response to this item. **Staff Findings:** Granting the first three items, as previously noted, would not confer on the applicant any special privileges denied by any zoning ordinance to other lands, buildings or structures in the same zoning district. However, as all developments within the city are required to provide a sidewalk buffer, granting this specific request would grant a special privilege to the applicant. This criteria has been satisfied for the first three requests, but not the fourth.

D. That literal interpretation of the provisions of any zoning ordinance would deprive the Applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of any zoning ordinance, and would it result in unnecessary and undue hardship on the Applicant.

Applicant Response: No deprivation of Rights are assumed. Planning staff has recommended this variance process to make the changes that are [approved but not ratified.]

Staff Findings: Staff has not approved any changes, but rather informed the applicant of the appropriate process in which to pursue to propose the changes. Whatever requests are granted tonight, if any, a Development Order Deviation shall be required to record the changes in site plans. The literal interpretation of the LDC does not deprive the applicant any rights as would be enjoyed by other properties. However due to actions by FPL, and a desire to not encourage the public to walk through the private development, it would deprive the applicant of certain privacy privileges enjoyed by other properties. Requiring the sidewalk buffer, would not deprive the applicant of any rights. This criteria has been satisfied for the first three requests, but not the fourth.

E. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

Applicant Response: The variance requested affects only the residents of the 12 lots within the gated community.

Staff Findings: These requests do not affect the use of the land; however, granting the fourth request, as previously noted, would create a potential safety conflict. This criteria has been satisfied for the first three requests, but not the fourth.

F. That the granting of the variance will be in harmony with the general intent and purpose of any zoning ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare. Applicant Response: Zoning issues are not the subject of this variance request.

Staff Findings: Granting the first three requests of this variance would not be injurious to the area involved or otherwise detrimental to the public welfare; however, removing the sidewalk buffer could potentially be injurious to the residents of the development.

Mr. Brad Fletcher applicant explained that their proposal for a gated neighborhood, and they installed a 10-foot sidewalk per requirements of the PUD. He added that he also has planned to build less housing than the density required, and everything he's asking for, is more site specific and the only condition that he has reserves over is the sidewalk. Explaining further that the lot sizes in the PUD are to be smaller and the way they will be oriented, left to right, and the sidewalk buffer requirements of the code states speed limits of 25-mph. However, the speed limit in this PUD will not be more than 12 mph. Therefore he is asking to move the sidewalk up next to the roadway so that the properties will have more area for grass instead of the three foot buffer between the roadway. Additionally, he is asking to not put benches and trash cans the development and instead, place them along Kelly Street and Sibert Avenue.

The Chairman opened the hearing to the public, with no one coming forward, he closed the public portion of the hearing and called for a motion.

Motion by Chairman Weidenhamer to grant the Variance request in its entirety and to include staff's conditions for the following:

- **Modify the previously approved Lighting Plan for lighting within the development, as Florida Power & Light (FPL) has already placed the connection in areas for such lights without conferring with City Staff.**
- **Utilize a different model of streetlight within the development, as it is a private street.**
- **Remove the required pedestrian amenities (benches and trashcans) from within the development and place them on Kelly Street and Siebert Avenue.**
- **Remove the three-foot buffer between the edge of pavement and the sidewalk and allow it to be installed up next to the curb.**

Board member Marler provided the second and the motion passed with a unanimous vote

of 5-0.

➤ Next meeting April 5, 2023

5. ADJOURNMENT:

There being no further business the meeting was adjourned at ~~6:35~~ p.m.

Adopted and approved this 5th day of April 2023

Tom Weidenhamer
Tom Weidenhamer, Chairman

Kim Montgomery
Kim Montgomery, Deputy City Clerk