

**BOARD OF ADJUSTMENT
DESTIN CITY HALL BOARDROOM
WEDNESDAY, OCTOBER 5, 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, October 5, 2022, at Destin City Hall Boardroom.

2. ROLL CALL & PLEDGE OF ALLEGIANCE:

Present:

Tom Weidenhamer
Daniella Piper
Kimberley Mergler
Cyron Marler
Robert Pinard
James Moomaw

Absent

David Emerson

Staff Present:

Rey Bailey City Clerk
Daniel Butler Senior Planner
Webb Warren D. City Manager
Christopher Willis Planner
Kyle Bauman City Attorney

3. APPROVAL OF MINUTES:

➤ **June 1, 2022**

Motion to approve the minutes of the June 1, 2022 meeting was made by Board member Pinard, with Board member Moomaw providing the second. The motion passed 5-0.

5. PUBLIC COMMENT:

None

6. NEW BUSINESS:

A. 22-55-VR – Okaloosa County Tower Variance Request

The City Attorney swore in staff member Daniel Butler, the applicant, Greg Coffey and Cristina Girardi for any testimony they may need to provide. He then asked staff if they wanted to enter the staff report and all attached exhibits into the record, with no objections by either sides, the City Attorney entered the documents into the record.

Mr. Butler explained Cristina Girardi of Williams Communications, Inc., on behalf of Okaloosa County, is requesting approval of a Variance Request, 22-55-VR. This request is seeking relief from LDC Section 7.19.08 & Section 7.19.03.B.3.f, which is related to a communication tower setbacks and maximum tower height for the proposed Okaloosa P25 Public Safety Communications tower to be located in Destin. The subject tower is one (1) of

twelve (12) towers being built throughout the County as part of a multi-million dollar investment in a unified public safety system that will serve over thirty (30) local emergency and public safety agencies. The location of the towers are driven by the design of a system that needs to meet a stringent inbuilding coverage requirement of 30dB in 95% of the county. The subject tower is located at 218T Main Street, Destin, FL 32541 and is in compliance with Comprehensive Plan policies 8-1.1.1: Ensure Effective Intergovernmental Coordination, Policy 8-1.1.4: Coordinate with Okaloosa and Walton Counties on Development and Growth Management Issues and Policy 11-1.2.6: Safety

Chairman Weidenhamer opened the hearing for public comment, with no one coming forward to speak on the request, he closed the public portion of the hearing.

Motion by Chairman Weidenhamer, seconded by Board member Marler to approve Variance 22-55-VR. The motion passed with a unanimous vote of 6-0.

B. 22-53-VR – 105 and 109 Calhoun Avenue Variance Request

The City Attorney swore in staff Daniel Butler and the applicant, Mike Buckingham for any testimony they may need to provide. He then asked staff if they wanted to enter the staff report and all attached exhibits into the record, with no objections by either sides, the City Attorney entered the documents into the record.

Chairman Weidenhamer opened the hearing for public comment, with no one coming forward to speak on the request, he closed the public portion of the hearing and turned the hearing over to the members for any questions or comments.

Mr. Butler explained Candi Gray of Emerald Coast Permitting, Inc., as well as Mr. Buckingham of 105 & 109 Calhoun Land Trust, is requesting approval of a Variance Request, 22-53-VR. This request is seeking relief from the maximum allowable dock length, per Land Development Code Section 11.05.01.M. The project includes construction of a new commercial marina, consisting of a proposed dock length of $\pm$ 392' that houses twenty-five (25) slips plus one (1) transient slip, for a total of 26 slips total. The subject property is located at 105 & 109 Calhoun Avenue (Parcel IDs: 00-2S-22-0630-0000-1211 & 00-2S-22- 0630-0000-1210). The applicant is requesting a variance request from LDC Section 11.05.01.M Marina Siting – Maximum Dock Length. The maximum length allowed along the Choctawhatchee Bay is 1.5 feet per linear foot of water frontage. The plans show 208 feet of waterfront, allowing for a 312' long pier per Code. The proposed project is proposing a 392' long pier. The excess length is due to an identified environmentally sensitive area of sea grass within the first $\pm$ 100 feet of the pier. Therefore, the applicant is requesting a variance from LDC Section 11.05.01.M Marina Siting –Maximum Dock Length.

Additionally, Mr. Butler informed the Board members that in order to approve the request, the applicant must meet the following conditions:

- 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 circumstances are due to permitting conditions placed on the property by the US Army Corps of Engineers (USACE) due to grass bed locations.

Staff Findings: There is currently submerged aquatic vegetation covering $\pm 86'$ waterward of the site area that has been deemed as unusable by the USACE unusable area has forced the applicant to extend further out into the water to accommodate the proposed slips. Therefore, staff agrees that this criteria has been satisfied.

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

Applicant response: The USACE limits the construction of the dock/piers within the first 86 feet of the shoreline.

Staff Findings: The applicant had initially proposed 33 slips, which were approved by USACE and FDEP in 2020. USACE has limited the construction within the first 125' of the shoreline due to the identified environmentally sensitive area of sea grass, requiring the applicant to extend further into the water and increasing the total length of the dock. Therefore, staff agrees that this criteria has been 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: Granting this variance does not confer any special privilege, only a modification to the length of the dock due to grass bed locations.

Staff Findings: As there are special environmental conditions on the subject site, granting the requested variance will not confer on the applicant any special privileges denied to others. Therefore, Staff agrees 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 result in unnecessary**

and undue hardship for the Applicant.

Applicant Response: The applicant should be allowed the full length of usable dock as enjoyed by other properties with similar configurations, which would be realized if not impacted by the permit and grass bed locations.

Staff Findings: The limitations applied by the USACE due to the existing environmentally sensitive area does not allow the applicant to use the first 125' of the proposed dock. The literal interpretation of the Code would only allow the applicant to construct a dock of 312' in length, leaving only 185' of useable length of dock. Therefore, the literal interpretation of the LDC would deprive the applicant of any rights or cause an unnecessary or undue hardship. Staff agrees that this criteria has been 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: This is the minimum variance required to make reasonable use of the proposed permitted structure.

Staff Findings: The requested variance would allow the applicant to extend the length of the dock further than the maximum allowable length per the LDC, but due to the identified environmentally sensitive area and the proposed use, the first 125' waterward length is unnavigable with the proposed vessels without dredging the environmentally sensitive area. Therefore, Staff agrees that this criteria has been 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 granting of the variance is consistent with the surrounding uses and structures and is not detrimental to the public welfare.

Staff Findings: Given the environmentally sensitive area identified by the USACE, the LDC allowing for dock lengths to be 1.5 times the linear water frontage, and the proposed use is allowed in the zoning district. Therefore, Staff agrees that this criteria has been satisfied.

Additional Responses: As the applicant is requesting variance from LDC Section 11.05.01.M 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: Existing regulatory authorizations (FDEP 0317602-002-EI/46; USACE SAJ-2019-03226) prohibit mooring within 125 ft. of the shoreline. Seagrasses are documented in the vicinity of the shoreline and water depths are too shallow to avoid permanent impact to these resources if mooring were to be proposed.

Staff Findings: The site-specific environmental conditions that impede the placement of slip near the shoreline are located within the first 125' of the shoreline. It is covered by an environmentally sensitive area of sea grass, making the applicant extend further into the water and increasing the total length of the dock. Therefore, Staff agrees that this criteria has been satisfied.

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

Applicant Response: Seagrasses exist within 110 ft. of shoreline, where permanent impacts from dredging would be unacceptable to regulators.

Staff Findings: The existing environmentally sensitive area has forced limitations by USACE that prohibit dredging and does not allow the applicant to use the beginning section of dock. Therefore, Staff agrees that this criteria has been satisfied.

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

Applicant Response: Potential effects on navigation has been reviewed and approved by regulatory agencies. At its furthest extent, the proposed dock remains 425' from the federal navigation channel. The facility should maintain USCG approved navigation lights (PATONs) at the north and south corners of the most waterward "T"-dock.

Staff Findings: The proposed application has been reviewed by FDEP and USACE for assurance of Navigation and Maintenance. The Permittee understands and agrees that, if future operations by the USACE require the removal, relocation, or other alteration, of the structures or

work herein authorized, or if in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the USACE to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the USACE. Therefore, Staff agrees that this criteria has been 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: Proposed dock length 386' is based upon slip dimensions, and to meet market demand within the limitations of City Code. Proposed twenty-six (26) slips are based upon water depth to preclude dredging.

Staff Findings: As previously stated, the applicant has revised the plan to reflect a total of twenty-five (25) slips plus one (1) transient slip, which reflects a reduction of six (6) slips. As the first six (6) slips, as shown on the USACE and FDEP plans, are now being removed, we defer to the Board on whether this criteria has been met and whether the evidence and justification provided by the applicant satisfies this criteria.

The Chairman opened the hearing to the public for input, with no one coming forward, he closed the public portion of the hearing and asked the Board members for comments or a motion.

Board member Marler asked what exactly the impact is in the shallow area for this request.

According to Mr. Buckingham, the USACE stipulated the presence of seas grasses causes them to go out further as well as the shallowness of the water.

Board member Pinard questioned what the future plan may be of the request, adding that there most likely would be a need for parking. According to Mr. Buckingham, the plan is to stay as it is now be presented, bay fishing trips adding that currently all of the proposed slips have already been reserved. He also informed the Board the property has plenty of parking as it is now. However, he also owns the property across the street that can be used for any additional overflow parking, if necessary.

Board member Mergler asked if the proposal is for a city marina. Mr. Buckingham replied that this is a private owned project. She then asked what type of materials is proposed to be used and are they going to use Freeflow in the area where the sea grasses are present. According to Mr. Buckingham, Freeflow will be used and is required per USACE and is a part of the design for those areas where the grasses are present. Additionally, they are wanting to use concrete for the project but that depends on the total cost and if it will be affordable.

Board member Piper stated that she thought projects could not be built over seagrasses at all.

According to Mr. Buckingham, the USACE are the ones that set the rules that have to be adhered to and they approved the permit design for the project he is presenting.

Board member Marler asked if there are plans to provide fuel. According to Mr. Buckingham they are not planning to provide fuel at this time and briefly explained that is a whole different level of permitting approval.

Board member Piper asked if there is a plan in the future to allow more pontoon boat rental companies. According to Mr. Buckingham, that is not the plan and that their vision is strictly for bay fishing.

Board member Mergler then asked why they felt they need so many slips pointing out that the area is very quiet now and questioned what the surrounding residences have to say about the proposed request. According to Mr. Buckingham, the adjacent neighbor to the north is agreeable and was present that the Harbor and Waterways Board, who has recommended Council to approving it, and the other adjacent property owner is the city owned park. Additionally, he informed the board that he co-owns the property across the street. She asked if they would be willing to not put in as many slips as they are proposing. According to Mr. Buckingham, they originally proposed to have 6 more and had to scale back and this amount of slips is allowed in the code and is their right as a property owner.

Board member Mergler stated that she understands the rights of property owners, but just doesn't understand why the project has to be so big and asked if they, as board members, have the right to suggest that.

According to the City Attorney, they do, however, they have the 10 criteria that they are to base their approval or denial of the project.

Agency member Marler asked Mr. Buckingham for assurance that the slips are all reserved for bay boat fishing only and that they are all charter type boats that have certified captains. Mr. Buckingham answered affirmatively that statement is correct. Adding that he has never been a fan of pontoon boats and has always supported the charter boat industry and is also pushing hard for a city marina.

Board member Marler provided some historical information regarding the land and the shallowness of the water and pointed out that the project will not interfere with the navigational channel. Additionally, there are other projects along the same shoreline that go out and named the Army Camp as one.

Motion by Board member Weidenhamer to approve Variance request 22-53-VR – 105 and 109 Calhoun Avenue with the following conditions:

- **Prior to issuance of a Building Permit, the applicant shall submit a revised dock drawing to all applicable Federal, State, and City agencies showing the maximum slip density and allowed length as approved by the Board of Adjustment.**
- **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 Marler providing the second. The motion passed 4-2, with Board members Mergler and Piper voting no.

5. ADJOURNMENT:

There being no further business, the meeting was adjourned at 5:30 p.m.

Adopted and approved this 1st day of March, 2023.

Tom Weidenhamer
Tom Weidenhamer, Chairman

Kan Montgomery
Kan Montgomery, Deputy City Clerk