

**MINUTES OF THE
HARBOR AND WATERWAYS BOARD MEETING
DESTIN CITY HALL, FEBRUARY 27, 2023 - 5:30 P.M.**

1. CALL TO ORDER:

Chairman Hoey called the Destin Harbor and Waterways Board meeting to order at approximately 5:30 p.m. on Monday, February 27, 2023, at Destin City Hall, with the Pledge of Allegiance immediately following.

2. ROLL CALL:

Member Present:

John Stephens
Jim Green
Richard Hoey
Guy Tadlock
Bill McKissick
Jerod Hayden

Members Absent

Casey Jones

Staff:

Kim Montgomery Deputy City Clerk
Steven O'Connor Principal Planner
Kyle Bauman City Attorney
Steven O'Connor Principal Planner
Daniel Butler Senior Planner
Danny Sullivan, Code Compliance

3. APPROVAL OF MINUTES:

➤ **January 23, 2023**

Board member Tadlock moved to approve the minutes of the January 23, 2023 as written, with Board member Green providing the second; the motion passes with a 6-0 vote.

4. PUBLIC COMMENTS:

5. NEW BUSINESS:

A) Single-Family Residential Marine Construction Proposed at 4136 Belcourt Dr (PARCEL ID: 00-2S-22-4600-0000-0020).

Motion by Board member Green, seconded by Board member McKissick with Board member Hoey providing the second.

Board member McKissick asked if the self-certification was also with the city. Mr. O'Connor explained that the city does not issue self-certifications.

The motion passed 6-0.

B) Single-Family Residential Marine Construction Proposed at 783 Bayou Dr. (PARCEL ID: 00-2S-22-1320-0007-0000).

Mr. Willis provided the members that this applicant requests Harbor and Waterways Board approval for single-family marine construction located at 4136 Belcourt Dr, located within

Choctawhatchee Bay, a Class II Florida Waterbody. The application includes the proposed construction of One (1) 71' x 4' access pier, one (1) 14' x 12' terminal platform, one (1) 14' x 4' step-down platform, one (1) 16' x 4' access walk, one (1) 32' x 3' catwalk, one (1) 32' x 13' covered boat lift one lift and one (1) 15'x1' roof overhang, comprising a total of ± 1,099 square feet. The proposed marine construction project meets the following requirements of Section 11.05.00, City of Destin Land Development Code (LDC),

- 11.05.01.A – Construction of new dock
- 11.05.01.F, 11.05.01.G, and 11.05.01.M – Length of the pier
- 11.05.01.N – Slip density
- 11.05.01.S – Notifying adjacent property owner if project is proposed within 25' riparian setback.

Board member Green questioned if there is a requirement for an ariel view map to be submitted to show the riparian lines. Mr. O'Connor explained only if staff needs additional verification of the location of where the dock is located. In this case the dock is shared with the adjacent property owner so one is not necessary.

Board member Tadlock asked why a submerged land lease is not included in their review. According to Mr. O'Connor, the applicant has met the minimum requirements for a self-certification application per State Statutes and once they obtain their permits from the State, if necessary, staff will request for one to be provided at the at the Marine Construction permitting process for the building permit, but not at their level. He reminded the members again, that the old language is now preempted by the State and they nor the Council cannot hold their approval for that reason. Additionally, if the request is changed and is different than what they reviewed, it will have to go through their review process again.

Chairman Stephens opened the public for comment, with no one commenting he closed the hearing and called for a motion.

Motion by Board member Green, seconded by Board member McKissick, the motion passed 5-1 with Tadlock dissenting.

B) Single-Family Residential Marine Construction Proposed at 523 Norriego Rd (PARCEL ID: 00-2S-24-2186-000F-0060).

Mr. O'Connor approval for single-family marine construction located at 523 Norriego Rd, located within Destin Harbor, a Class II Florida Waterbody. Currently, the site and structural plans do not match. The site plan provided by the applicant shows the correct width dimensions of 54' wide. However, the structural plans provided show an incorrect width of 52' and do include the stairs and handrails, as part of the project. However, the stairs and handrails are not included in

the site plan. The application includes the proposed reconstruction of one (1) ±1,406 square foot dock and the new construction of one (1) 1,400 square foot upper deck, one (1) 120 square foot staircase, and 210 linear feet of handrails, comprising a total of ± 2, 926 square feet.

The proposed marine construction project meets the following requirements of Section 11.05.00, City of Destin Land Development Code (LDC),

- 11.05.01.A, 11.05.01.B – Construction of new dock
- 11.05.01.F, 11.05.01.G, and 11.05.01.M – Length of the pier
- 11.05.01.N – Slip density
- 11.05.01.S – Notifying adjoining landowners when a dock is placed within 25-foot riparian setback

He then provided the members with the background information explaining that initially the request was for a board for board approval, however, staff was made aware of some significant changes to the project after a complaint and it was determined that the request was not a board for board replacement and a stop work order was issued. In the site visit, it was determined that the applicant would be required to come before this board for review and a recommendation to Council's for approval. In staff's review, it was determined that the covering now is only for one of the slips and not both but because the applicant is now wanting an upper deck, the applicant was required to come before the board for a recommendation. Additionally, the request is now for less square footage than how it originally was built. Staff allowed the contractor to continue construction, but they cannot add the stairs and the railings until they get their approval. However another complaint was received saying that the dock exceeded what was originally approved a total width of 52 feet wide, staff went out, we measured it. It was 53 ft., so at that point staff issued another stop work order and required them to resubmit and update their harbor waterways board application to now reflect a 53 ft wide dock, that application was updated. So, they've updated it, and now, that's where we're at right now.

The Chairman opened the hearing to the public.

Mr. Chuck Mulle of 521 Norriego Road spoke of how the construction for a board for board has turned into much larger and has moved from the original location. He spoke of the requirements that he had to follow for his marine construction and why this project does not have to follow the same guidelines.

Mr. Larry Edwards 525 Norriego Road on the east side spoke of not being notified of the construction and happened to be in town to check on his property from the freeze and saw the construction, he spoke of a letter he received from the city about this Harbor Board meeting. He handed out pictures he's taken of the project and spoke of how it's substantially different than

what used to be there, and how it now blocks all his views and has devalued his property and asked the members to take that into consideration.

Board member Green spoke on how they both made comments about their views being blocked but looking at the aerial view of the project, both adjacent property owners have large boats and covered boat slips that are further out than this request. Adding that he is all about projects being correctly built to code but at the same time, he is also all for property rights of the owners. If it's not being built to Code and has to be torn down and rebuilt, that is where the satisfaction of the code applies and is why they are sitting up on this board, to ensure that it's built to code correctly. Additionally, the motion with the conditions is what that's ensuring, and denying is not something they're supposed to do, their job is to approve to code or rectify to code, and he is not going to deny anything that can be rectified to the requirements of the code.

Mr. O'Connor explained to the board members that the reference to having to get adjacent property owner's approval for marine construction requests is old code and was preempted by the State, so that a property owner's rights to construct his property can no longer be determined by approval of the neighbor, as long as it meets code. However, that does not prevent input from the adjacent property owners and, the new code requires if the project is within the 25-foot riparian lines. It does not require them or the city to do anything other than providing the letter to the adjacent property owners stating that the request is within the 25-feet of the riparian line and their comments are highly encouraged.

Scott Shockley, the contractor for the applicant, spoke how the project is a rebuild permit, not new construction and board for board is a rebuild to the original dock within the same footprint. He explained the majority of the issues stems from a clerical error in the beginning where the original drawing showed an open bay, was supposed to be 21' inside the piling not 23' outside and those pilings were removed, and their fight is changing out what was originally a barrel roof over both slips for an observation sundeck over one slip and a handrail. The two pilings that the boat in question is tied to are temporary and will be removed and the boat will go into the slip once the construction is finished. He spoke of how anywhere on Holiday Isle there are docks with boat slips that block the views of the water to the adjacent property owners and it is not wider or longer than what is allowed and there is no submerged land lease.

Board member Tadlock asked if the submerged land was never renewed? Mr. Shockley explained there never was a submerged land lease for this particular property. Mr. Tadlock pointed out that this is one of the legal nonconforming docks he's spoken of in the past and how at the end of the life of the structure they would have to be brought into compliance. He also mentioned how staff has stated in the past, if the noncompliant structures are destroyed by a named storm and the permit is not applied for within 6-months they would be null and void and that fact was considered at the beginning of this request but has been dropped and asked for an explanation.

Mr. Theodore Martell of 202 Sibert Avenue spoke of also being the contractor for the job and talked about how they removed and replaced the piles in the exact locations and how they measure. He spoke of how the clerical error that his son-in-law mentioned earlier was the first issue that was corrected. He also spoke of how the original request was to cover the entire areas but the owners chose to just put in the 25' wide roof over part of it with the sundeck on top in reality, on an environmental standpoint, what they are reducing half the size of the roof that was there and the building is by far less of an impact than what was originally built. He also mentioned that the impact on the views happens all along the harbor and how if you buy 100-feet, you get a 100-foot view and if you wanted 300-feet, you should have bought 300-feet.

Pam Edwards, 525 Norriego spoke of her only concern being that of her view and her main concern is how tall it is, and it's not even finished yet. She and all she enjoys now is sitting on her deck reading and watching the boats go by. She also spoke of how they didn't mind the construction workers parking on their driveway while they were not at their house but in turn had the sheriff department go through their garage when her husband was issued a no trespassing.

Chairman Stephens closed the public portion of the meeting.

Mr. O'Connor spoke of an email that was referenced earlier that he received last year from the FDEP and referred the members of the board to the end of their packet, the last page, that was sent to himself and the Building Official, Noel Bell explaining how they received the complaint of the dock at 523 regarding the dock rebuild and after their investigation, and the information and application that he supplied to them in an email for their review, they determined via email response that based on the email they received in regards to the repair and the amount of time that the dock has been in existence, they were not going to pursue enforcement related to complaint received. Additionally, Mr. O'Connor explained that he specifically asked if the dock would be required to obtain a submerged land lease and he was informed that since the dock was previously in existence since the 80's, it's considered grandfathered and would not. Furthermore, although the request was not specifically a board for board replacement, staff found that based on the complaint received, it was investigated, and a stop work order was issued. All proper procedures were then followed to bring the dock into compliance with city code, and based on staff's review, staff recommends approval of the request.

Board member Green asked that the concern with the riparian lines and asked if the original dock was built in the 80's and was approved.

According to Mr. O'Connor, he cannot speak to what was originally approved and what the adjacent property owners did. The fact that they have records that the dock has been in continuous use and the State has records or they have declared that it has been in continuous use. The city

does not require a 25-ft set back of riparian lines and are only required to notify the adjacent property owners that there is a project within the 25-ft. riparian lines and to come in and provide feedback for the board to consider. There is nothing in the code that states the dock has to be 25-feet from the riparian lines.

Board member McKissick asked that if this project was new construction and the way the drawings stand now, would it pass city code.

According to Mr. O'Connor, since there is no LDC requirement for a 25-foot setback, and with only the slip density and dock length requirement in the Marina Siting, it does meet code and would have to go through this process. Additionally, with the new categories that they will be reviewing for implementation into the new code, this would be considered a Category Two dock, because it is a residential dock that exceeds 1,000 square feet, it would be brought before this board for a recommendation to City Council.

Board member McKissick then asked for clarification that this is not a request for repair, this is a new dock, and wouldn't it have to start from scratch for a new approval?

Mr. O'Connor explained that is essentially, that is what this process is, that they are reviewing and the same process.

Board member Hayden asked the pictures included in their packet are the original dock prior to construction being done.

According to Mr. O'Connor, the pictures provided by one of the public speakers shows the roof structure covering the slips and is the location of the future deck and is what the applicants are requesting.

Board member Green asked Mr. O'Connor if it is the city's findings that there are no new pilings beside the ones on the side and that the new staircase is the change in slip cover to a deck from a corrugated roof.

According to Mr. O'Connor, it initially was submitted as a marine construction permit as board for board, and in a board for board, they are allowed to repair and replace everything, as long as it's in the exact same spot. It was determined based on investigation from a complaint that staff received that it was not, and once that complaint came in and was investigated, it was deemed no longer a board for board replacement and, is why it is now before them at this meeting.

Motion by Board member Green, seconded by Chairman Stephens, to recommend Council approve the request for residential marine construction proposed at 523 Norriego Road subject to the following conditions:

- 1) The submittal of State approval or exemption for the expansion of the project.**
- 2) Payment of the Net Positive Environmental Benefit (NPEB) per LDC Section 11.05.02.N., to the Community Development Department before the Stop Work order is released and a Certificate of Completion is requested.**
- 3) Resubmittal of both the Site Plans and Structural plans showing no discrepancy in square footage before the Stop Work order is released.**

The Chairman asked if he would consider adding the removal of the temporary pilings. Board member Green added the fourth condition of;

- 4) And the removal of the temporary pilings in place before the Certificate of Completion is issued.**

Board member Hayden provided the second.

According to Board member Hoey, what we have is an old dock that basically as it's being built now, and it's been modified, and asked if its going through the process now as new construction or a rebuild? According to Mr. O'Connor, at this point, it is it's going through the process as a new construction.

Board member Hoey then stated that according to our code and because of that, a rebuild in the same place, same dimensions, and it's grandfathered in that the setbacks and everything has to be where they originally were. If it didn't have 25 feet when it was originally built, but it has to go back in the same place, that's one of the terms of a rebuild. He then referred to Paragraph S, "That no dock or vessel shall be placed within the 25-foot setback of property, line, without providing prior, written notification to the adjoining property owners and requesting the response, he asked if that has been done.

Mr. O'Connor confirmed that statement and directed their attention to the adjacent property notification letters in their packet, which was also referenced in public comments and is #7 in their packet.

According to Board member Hoey, based on that, they do have some leverages and any objection received from the adjacent property owners will be considered by this board. Therefore, this board needs to recognize, we treat this as brand new unbuilt construction. So personally, I'm going to view this as if we're going to approve or disapprove something that's not even going into the ground yet. Additionally, the adjacent property owners have a determination that can or cannot influence my decision. Therefore, that is how I am going to interpret this, and going forward, I am glad you showed up today.

Board member Tadlock stated that he could not support the recommended motion for approval based on the fact that the project is within the 25-foot of the adjacent property. **He then made a substitute motion that no further work is done on this until the required FDEP and Army Corps of Engineers approval. The motion died for lack of a second.**

Mr. O'Connor reminded Board member Tadlock to the very last email from the FDEP that they're not going to do pursue the case any further.

Mr. Tadlock then stated he is not clear on what the neighbor's complaint was.

Mr. O'Connor explained the complaint is what was discussed earlier in this hearing, during the public comments by the adjacent property owners. Additionally, there will be no further requirement by the State for approval or the ACOE for that matter.

The City Attorney suggested Mr. Tadlock that he could make the motion for denial of the request.

According to Board member Tadlock, he feels that it is over the purview of this Board based on what they have heard and everything that they have seen and **made the alternate motion to recommend the City Council deny the request for the single home marine construction located at 523 Norriego Road with Board member Hoey providing the second.**

In discussion, Board member Hoey stated that part of this discussion has to focus on the fact that it went to the FDEP is a rebuilt and rebuilds at the DEP's level require that it go in the same place, in the exact same place. However, they consider this as a rebuild so, they don't have much to say about the setbacks.

Board member Green spoke against the substitute motion for reasons because if the city and is looking at this as a new build and pointed out that all of their concerns will be met through the new build process. He went to say that by denying the person the ability to develop their land as the adjacent property owners had their ability to develop their land, is hypocritical. He stated that what you're basically doing is, you're going to deny this person and basically going to make them, if the City Council denies this permit, they have got to remove everything and then they would have to start from scratch. He asked Mr. O'Connor if is that accurate?

Mr. O'Connor stated that he could not speak to the actions of what could or could not take place. However, based on the FDEP's email, the State is not looking at this as a rebuild. They did an investigation; they investigated the complaint for 11 days and determined there's going to be no action on their end.

Board member Green stated that he does not agree with denying the applicant the ability to correct the situation. He spoke of how staff took the appropriate steps and they have brought this as a new construction, which adheres to the code and has addressed the riparian lines and, they have corrected the project by it not being a board for board. He then stipulated that he does not support the substitute motion, he supports his motion for approval with the four conditions outlined.

The Chairman pointed out that even if this does get passed by this board, it still has to go through the building permit review, and everything will get corrected at that level.

Mr. O'Connor pointed out that currently everything is correct and meets the code requirements. The adjacent property owner notifications were sent out to the adjacent property owners. They are present and have made presentation in the public hearing portion of the meeting, and what they are considering is, if the dock slippage and density meets code and if the length meets code, which it does.

The motion failed 3-3 Board members Stephens, Green and Hayden dissenting and Tadlock, Hoey and McKissick voting yes.

The original motion to approve the request is now on the floor for a vote, **the motion failed 3-3 with Board members Stephens, Green and Hayden voting for the motion and Board members McKissick, Tadlock and Hoey dissenting.**

According to the City Attorney, the project will go forward to City Council without a recommendation from the Board.

C) Single-Family Residential Marine Construction Proposed at 525B Calhoun Ave (PARCEL ID: 00-2S-22-0630-0000-193D).

Mr. Willis explained to the members the project request is for requests Harbor and Waterways Board approval for single-family marine construction located 525 B Calhoun Ave, located within the Choctawhatchee Bay, a Class II Florida Waterbody, Prohibited Shellfish Harvesting Area. The application includes the proposed construction of:

One (1) 110' x 4' access pier, one (1) 20' x 8' terminal platform, one (1) 16' x 4' access walk, and one (1) 32' x 3' catwalk, comprising a total of ± 760 square feet. The proposed marine construction project meets the following requirements of Section 11.05.00, City of Destin Land Development Code (LDC),

- 11.05.01.A, 11.05.01.B – Construction of new dock
- 11.05.01.C, 11.05.01.D – Waste Disposal into the Harbor and Waterways of Destin

- 11.05.01.F, 11.05.01.G, and 11.05.01.M – Length of the pier
- 11.05.01.N – Slip density

and staff recommends approval of the request.

Chairman Stephens opened the public for comment on the request, with no one commenting, he closed the public portion and turned the discussion over for comment or a motion.

Motion by Board member Green, seconded by Board member McKissick that the Harbor & Waterways Board recommend City Council approval of the single-family marine construction project located at 525 B Calhoun Ave, subject to the applicant meeting all applicable City, State and Federal permit requirements. The motion passed unanimously.

Board member Tadlock asked if the two existing dock shown in the photograph are to be removed. According to staff, the dock in question belongs to the adjacent property.

6. BOARD MEMBER COMMENTS:

➤ Chairman Stephens –

- Field Contingency Oil Abatement Plans

Lt. Steve Browning of the Marine Safety Detachment Supervisor in Panama City spoke to the members how they cover the area from St. Marks to Navarre Bridge performing vessel inspections and illegal charters, and how they work closely with the FDEP and the EPA for the coastal waters in regards to pollution. He further explained their duties and the requirements of the law on how if anyone is to witness a chemical or oil spill on the local waters, and the requirements that vessels are responsible to have on board in case of a spill.

ENS Blackwell who leads with all aspects of pollution in the local area spoke of how there are not any facilities in Destin that hold anything more than 10,000 gallons by regulations. He recited all the requirements of the EPA that even the smaller fuel facilities have to follow. He spoke of the notification requirements for terminal facilities and the operators of vessels being in the middle of their jurisdiction, depending on the time of year, it could take hours to get to the incident because of traffic delays. In regards to gasoline discharge the product is too volatile to boom and is better to let it spread as it will get taken care of by nature, but diesel fuel, especially marine grade that has the red dye is different and there is on water recovery that can be done, and the Coast Guard is the lead investigative agency for those. He pointed out that that a person could be liable to up to \$55k a day per offense if they have to come in and hire a contractor to clean up the spill.

Board member Tadlock questioned the requirements for at home deliveries of motor fuel and the procedures to take if there was a spill. He provided background information of a spill that took place in the harbor several years ago and how it got out of control because there was no one to contact locally and nothing was done in enough time to contain it. ENS Blackwell replied that any oil spill that enters the water and causes a sheen, by law has to be reported and anyone that makes a report to the National Report Center

has to leave their name and contact information however, that information is protected by the National Privacy Protection Act. He also spoke of how the Coast Guard for the first time is in need of manpower and they are offering cash incentives to their recruiters and the public to get people to join and how if they can, he wants to have 5 new personal at the Destin Station so that they can have a team on hand to respond to incidents.

Motion by Chairman Stephens to recommend to Council that the city Florida's DEP Fuel Contingency Plan standards for all businesses, if they sell fuel or have their own method of fueling on the property. Board member Green provided the second for discussion. In discussion, Board member Green stated that he feels that it should have the ability to be contained within their adjacent fueling facility area of where its pumped. Chairman Stephens added to his motion the following, **five times the length of the largest vessel expected to utilize the facility on property.** Mr. Tadlock asked if their objective is to ensure that the entire area including any slips that could be contaminated is boomed. Board member Green provided an example of being 5 times the size of the Buccaneer Boat at Harbor Walk or the Destiny at the Fishing Co-op. Board member Green spoke of how important water quality is for everyone as well as this board and the Harbor Capacity Committee and supports the motion.

Mr. O'Connor provided the members information from Article 4 of the Comprehensive Plan, Public Participation, which is where the boards power comes from, which reads, *"Recommend the current Comprehensive Plan for future growth, development, and restoration of the harbor and waterways of Destin, and amendments thereto, which will upon adoption by City Council be incorporated into the city's Comprehensive Plan. Review of other public and private studies and recommendation of merit by the board are encouraged."* He then spoke of the Harbor Capacity Study is awaiting the soon to be released draft of the study conducted by the ACOE and their recommendations. Once they get that, they will review and discuss, this board will also get it to review and make specific recommendations. Mr. O'Connor then asked the members if they are aware of the Florida Clean Marina Program and recommended that they all go to the website and read it, noting that he feels it is 100% inline with the powers of their purview to implement recommendations for a clean harbor and waterways simply by Destinizing it by making simple word changes.

Chairman Stephens called for the vote and the motion passed unanimously 6-0.

The Chairman then asked Mr. Sullivan if there is a way to get his department to find out if there is a way that they can follow up with the livery vessel companies to ensure that they are all following the same fueling methods when they submit their application. Adding that he wants to make sure that what they are saying on their application, is exactly what they are doing, and writing on their application, getting gas at marina, as one of the applicants wrote, is not acceptable.

Mr. O'Connor explained that both the Planning Division and Code Compliance will work together to ensure that the applications for livery vessels are filled in correctly and have all the proper information provided. There was additional discussions regarding what all needs to be included in the application process and what staff will require to be included in the applications before being reviewed and approved.

The Chairman stated that he would like to get a follow up from Code to verify the business has proper equipment and to verify the necessary restrictions are in place, such as no smoking stickers and proof that the fire extinguishers are inspected, when and by whom.

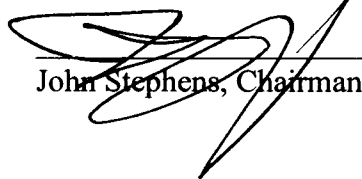
Mr. Sullivan assured the Chair that he and his department will look into a prevention plan and provide an update at a future meeting.

➤ **Board member Tadlock** – Asked in the event that an application goes forward with or without their recommendation, does the Council get the minutes. The Clerk explained that when the minutes are finished, the drafts are placed on the next Council's Consent Agenda for their review.

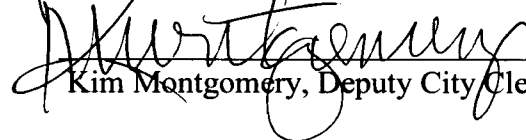
7. ADJOURNMENT:

With there being no further discussion, the meeting adjourned at 7:15 p.m.

Adopted and approved this 24th day of April 2023.



John Stephens, Chairman



Kim Montgomery, Deputy City Clerk