

**BOARD OF ADJUSTMENT MEETING MINUTES
THURSDAY, JULY 16, 2015 5:30 P.M.
CITY COMMISSION CHAMBERS**

A regular meeting of the City of Delray Beach Board of Adjustment was called to order by Chairperson, Allen Kilik, in the First Floor Conference Room at 5:30 p.m. on Thursday, July 16, 2015.

1. ROLL CALL SHOWED:

Present:	Allen Kilik	Absent:
	Michael Park	
	Dale Miller	
	Brenda Cullinan	
	Harvey Starin	
	Jess Sowards	
	Bryan Weber	

Also Present: Michael Dutko, Assistant City Attorney
Al Berg, Assistant Director of Community Improvement
Steve Tobias, Building Chief Official
Jeffrey Nelson, Applicant
David Nutter, Applicant Representative

At this time, Mr. Kilik reviewed the quasi-judicial rules.

Yolaina Ruiz, Board Liaison, swore in those individuals who wished to give testimony.

There were no ex parte communications by any Board member.

2. APPROVAL OF MINUTES:

Mr. Starin made a motion to approve the minutes from May 7, 2015, seconded by Ms. Cullinan. Said motion passed unanimously.

3. PUBLIC HEARING:

PETITION NO. 1035

A. Applicant: Jeffrey & Kathleen Nelson
Premises: 3000 Jasmine Court
Request: Requesting a variance to allow a finger pier and boat lift to be constructed more than the allowed 20' distance from the sea wall, property line or bulkhead. Applicant seeks to erect the finger pier and attached boat lift 25' from the seawall where the code allows 20' from the seawall property line or bulkhead.

Mr. Tobias stated that the property is a pie shaped lot approximately 225' wide in the front, tapering down to a 50' width at the rear of the property. It is 155' deep and located in the R-1-AAB land use district of Tropic Isle. The applicant requests that the Board approve a finger pier and boat lift beyond a maximum 20' distance. A 20' finger pier extending from

the exiting 5' dock is something which is not very common along this waterway and appears atypical of the surrounding community. No finger piers were observed in the immediate Tropic Isle neighborhood. All boats were moored parallel to the rear property line.

Staff recommends denial of the request for variance as submitted. There were not any boatlifts observed out this far nor were there any finger piers perpendicular to the seawall. A variance would have to meet all of the following requirements:

1. *There are special conditions that exist which are peculiar to the land, structure, or building involved which are not generally applicable to other lands, structures, or buildings in the same zoning district.*

Staff feels that there are not any special conditions unique to this property, other than those mentioned. There are properties in the area which are very similar, some of which have boat docks along the property.

2. *The literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning.*

Staff believes the literal interpretation of the Land Development Regulations (LDR) does not deprive the applicant of rights enjoyed by other properties. The uniform application of a maximum distance of 20' from the property line, seawall or bulk head for a finger pier assures every one of the same rights. The literal interpretation of the up to 20' finger pier is meant to preserve open space to safely navigate a vessel in the waterway. It should be respected as such.

3. *Special conditions and circumstances have not resulted from the actions of the applicant.*

The construction of a new finger pier is directly attributable to the actions of the applicant because the design represents their choice.

4. *The granting of the variance will not confer special privilege to the applicant that is denied to other lands, structures, and buildings under the same zoning.*

The granting of the variance will confer special privilege to the applicant. The extension of the finger pier from the allowable 20' to 25' could be a significant safety concern for both the applicant and surrounding properties.

5. *The reasons set forth in the petition justify the granting of the variance and the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.*

The reasonable use of the land/waterway can be granted without the variance. The request merely affords the applicant a longer finger pier. The 25% increase or 5' beyond what is allowed in the Land Development Regulations (LDR) is not minimum request. The applicant already has a reasonable use of the waterway to construct a finger pier and boat lift.

6. *The granting of the variance will be in harmony with the general purpose and intent of existing regulations, will not be injurious to the neighborhood, or otherwise be detrimental to the public welfare.*

The granting of the variance will not be in harmony with the code or the neighborhood. The variance requested represents a major departure from the code requirement imposed on other properties in the neighborhood. The variance will not be in harmony with other homes in the neighborhood and will represent a clear intrusion into the areas required to safely navigate a vessel. Therefore, staff cannot support the request.

At this time, the board had a brief discussion. Mr. Berg stated that there were no written rejections received. However, property owners can change, matters can change, neighbors can change and situations change, therefore staff had difficulty supporting the request. In addition, the applicant could build 15' feet for the finger pier and 5' from the dock without a variance request. Ms. Cullinan asked if there was a main reason for requesting 20' feet. Mr. Berg stated it is to allow a bigger vessel. Mr. Starin stated that there is a unique potential situation to this particular lot.

Mr. Nelson stated that he is requesting the variance to have enough space to bring a 30' foot boat to the dock. Mr. Sowards asked if he had considered removing 5' feet of the existing dock that is parallel to the sea wall to allow the request to fall within the 20' foot requirement. Mr. Nelson stated that the dock is a concrete pier. Mr. Nutter stated that the reason for the design is based on the shape of the property and the proposed design is the best way to bringing in a boat and allow neighbors to do the same.

Mr. Harvin stated that due to the shape of the lot it is difficult to dock a boat parallel to the seawall. Mr. Park stated that what the applicant is proposing is a pier extending out and perhaps the applicant would consider taking the dock to gain 5' feet and reduce the request of the variance. Mr. Sowards stated that the geometry of the proposed request is appropriate to get vessels in and out however he is unable to determine how much the minimum required would be. Mr. Weber stated that some of the requirements to approve the variance exist on this property. However, what disadvantage would the extra 5 feet cause to other neighbors. Ms. Miller stated that the City has valid points and it is very important for the Board to consider the neighbors and suggested the applicant might want to consider amending the request.

Mr. Kilik asked the applicant if he would like to have the opportunity to reconsider his application to amend the request and present it to the board at a different meeting.

Mr. Nelson stated that removing the dock to gain 5' feet to request a variance of 1' foot would involve other costs. He would like the board to vote on the request.

Mr. Park moved to deny the request for the variance based upon positive findings pursuant to Section 4.3.4 (K) in the Land Development Regulations for the City of Delray Beach. The motion was seconded by Mr. Harvin and passed 5-0.

4. COMMENTS AND INQUIRIES ON NON-AGENDA ITEMS:

- A. Board Members
- B. City Attorney

There being no further business, Chairperson, Mr. Kilik, declared the meeting adjourned at 6:45 p.m.

Yolaina Ruiz, Executive Assistant/Board Liaison

The undersigned is the Secretary of the Board of Adjustment of Delray Beach and the information provided herein is the minutes of the meeting of said Board on July 16, 2015, which minutes were formally approved and adopted by the Board on September 24, 2015.

Yolaina Ruiz, Executive Assistant/Board Liaison

NOTE TO READER: If the minutes you have received are not completed as indicated above, this means they are not the official minutes of the Board of Adjustment. They will become official minutes only after review and approval, which may involve some amendments, additions or deletions.