



**BOARD OF ADJUSTMENT MEETING
CITY OF ST. PETE BEACH**

155 Corey Avenue
St. Pete Beach, FL 33706

Wednesday, June 29, 2022
2:00 PM

Call to Order
Pledge of Allegiance
Roll Call

REGULAR MEETING

1. Changes to the Agenda -
2. Audience Comments - **Comments shall be limited to 3 minutes per person**
3. Approval of Minutes
 - a. **Approval of Minutes May 25, 2022**
4. Action Items
 - a. **Variance - 1805 Pass-A-Grille Way (Case No. 22025)**
Request to construct a residential dock that is proposed to be 35 feet in length (25 feet allowed).

Action Request: Motion to APPROVE WITH CONDITIONS the variance as requested for a dock to exceed the allowable length by 10 feet as proposed, subject to the removal of the two 48-foot wet slips which will significantly reduce the amount of dockage available to the subject property.
5. Adjournment

APPEAL: In accordance with 286.0105, Florida Statute (Notices of meetings and hearings must advise that a record is required to appeal), if a person decides to appeal any decision made by this committee,

board, agency, or commission with respect to any matter considered at this meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

AMERICANS WITH DISABILITIES ACT (ADA): In accordance with the Americans with Disabilities Act and Florida Statutes, if any person with a disability defined by the ADA needs special accommodation to participate in this proceeding, then not later than two business days prior to the proceeding, he or she should contact City Hall at (727) 367-2735.

**The public is cordially invited to attend this meeting.
All agenda material is available for review at City Hall or www.stpetebeach.org.**

CITY OF ST. PETE BEACH
DRAFT BOARD OF ADJUSTMENT MEETING MINUTES
May 25, 2022 2:00 P.M.

PRESENT: Paul Skipper, Chair
Sandie Lyman, Vice Chair
Denise Chase, Member

EXCUSED: Michael Bomar, Member

STAFF PRESENT: Matthew McConnell, Assistant City Attorney
Lynn Rosetti, Contract Planner
Ginny Bodkin, Deputy City Clerk
Ariana Wilson, Administrative Assistant

Chair Skipper called the meeting to order at 2:00 PM and led the Pledge of Allegiance.

1. Changes to the Agenda:

Assistant City Attorney McConnell explained that the Applicant for Item 4a, Case 22025 has requested a deferral to the June meeting; if the Board so moves, it will not be necessary to readvertise the variance. He added that public comment was submitted for this variance, however as this is a quasi-judicial hearing, it is best to hear the comment at the same time as the item.

Motion: Member Chase moved, and Vice Chair Lyman seconded to continue Item 4a., Case 22025 (1805 Pass-a-Grille Way) to the June 29, 2022 meeting. The motion passed unanimously.

2. Audience Comments – There were no general audience comments.

3. Approval of Minutes - a. 4/27/2022

Motion: Vice Chair Lyman moved, and Member Chase seconded the approval of the April 27, 2022 minutes as presented. The motion passed unanimously

4. Action Items

- a. Variance - 1805 Pass-A-Grille Way (Case No. 22025) - Request to construct a residential dock that is proposed to be 35 feet in length (25 feet allowed).**

Continued to June 29, 2022.

5. Adjournment – Next Meeting 6/29/2022

Motion: Vice Chair Lyman moved and Member Chase seconded adjournment at 2:03 PM.

These minutes will be considered for approval at the June 29, 2022 Board of Adjustment meeting.

BOARD OF ADJUSTMENT MEETING CITY OF ST. PETE BEACH

Agenda Report

Issue Considered: Variance - 1805 Pass-A-Grille Way (Case No. 22025)

Date: June 29, 2022

Prepared By: Lynn Rosetti, Consultant

Through: Jennifer McMahon, Chief Operating Officer

Summary of Issue: Request to construct a residential dock that is proposed to be 35 feet in length (25 feet allowed). Staff finds the request reasonable conditioned upon the removal of the two 48-foot wet slips which will significantly reduce the amount of dockage available to the subject property.

Funding: N/A

Requested Motion: Motion to APPROVE WITH CONDITIONS the variance as requested for a dock to exceed the allowable length by 10 feet as proposed, subject to the removal of the two 48-foot wet slips which will significantly reduce the amount of dockage available to the subject property.

Attachments:

1. 22025 - 1805 Pass-A-Grille Way LR Dock_June 2022 revised
2. BOA Application #22025
3. Tie Pole Removal
4. Letters Received



**PLANNING DIVISION
STAFF FINDINGS REPORT
TO THE
BOARD OF ADJUSTMENT**

VARIANCE CASE NO. 22025– William W. Adams, Property Owner

MEETING DATE: Continued to June 29, 2022

PREPARED BY: Lynn Rosetti, AICP, CFM, Contract Planner

REQUEST	An Unnecessary and Undue Hardship Variance request to construct a residential dock that has a proposed length of 35 feet and includes a 10' x12' boat lift on the north side. (LDC Sec. 6.23(d)(3)).
SUBJECT PROPERTY	1805 Pass-a-Grille Way, Property ID #18-32-16-68634-000-0011 Phillips Division Revised Map Unnumbered Tract E of Lot 21, Block G described Beginning 107.5 ft N of NE corner of 18 th Avenue and 1805 Pass-a-Grille Way St. Pete Beach, et al.
ACERAGE	Approximately 0.130 acres (5,650 sq. ft.)
LAND USE	RLM-2/PAG, Residential District / Pass-a-Grille Overlay on the Zoning Map; RU, Residential Low Medium on the Future Land Use Map.
FLOOD ZONE	AE-Elevation 10
SURROUNDING AREA	North – Single-family Residential South – Single-family Residential East – Little McPherson Bayou West – Pass-a-Grille Way / Single-family Residential

BACKGROUND

The applicant is seeking a variance from the Land Development Code (LDC) to allow for a dock that is proposed to exceed the length allowed by Code. Specifically, LDC Section 6.23(d)(3) limits the dock length to one-half of the zoning lot width at the waterfront. That equates to a maximum dock length of 25 feet. The applicant is seeking a dock length of 35 feet. This requirement may be varied administratively provided that a signed statement of “no objection” from the abutting property owners is submitted with the permit application. In this case, neither abutting property owner signed a statement of “no objection” to this proposal. The applicant proposes demolishing the existing 25-foot dock and replacing it with a new 35-foot dock with a 10-foot x 20-foot boat lift on the north side. The only requested variance is to length. As a condition of approval for the requested dock, the applicant is willing to remove the two permitted wet slips by removing their respective tie poles that extend out 48 feet from the existing seawall.

The subject zoning lot is 50 feet in width at the seawall, giving an allowable dock length of 25 feet measured from the seawall. An existing 12-foot-wide x 24-foot-long dock is currently connected to the subject property and meets LDC requirements. The lot is symmetrically rectangular in shape. The applicant is seeking to demolish the existing dock structure and build a new dock as shown on the site plan that exceeds the length allowed by the LDC in order to add a 10'x12' boat lift on the north side of the proposed dock.

ANALYSIS

The applicant is requesting to construct a dock in a manner that exceeds the length allowed by the LDC. The specific request is shown in the following table:

	Allowed	Requested	Variance
Length	25.0 feet	35.0 feet	10.0 feet

Staff has reviewed this request and finds the following:

- The subject property is 50 feet in width at the seawall and is rectangular in shape. The LDC (Sec.6.23(d)(3)) allows a dock structure to extend from the seawall to a length no greater than one-half the width of the zoning lot at the seawall (25 feet in this case). This requirement may be varied administratively provided that the signed statements of “no objection” from both abutting property owners have been submitted. In this case, signed statements of “no objection” from the abutting property owners have not been provided. As such, the Board has the authority to review this request and make a determination of approval, approval with conditions, or denial.
- The application stated that a longer dock is needed to accommodate a boat larger than the 25-foot maximum length would accommodate because said boat would require deeper water than the 25 feet maximum length would provide. Specifics for the boat were not provided because the applicant has not yet purchased the boat. Also noted on the site plan is stone riprap located from the seawall waterward several feet. A site visit by staff confirmed the existence of some rocks in the water near the seawall which may limit how close to the seawall a boat could safely navigate.
- A site plan and aerial are provided for the Board’s review. Review of the aerial photograph reveals that the both abutting properties have docks longer than the existing 25-foot dock at 1805 Pass-a-Grille Way. Pinellas County dock records show that the neighboring dock to the north is 36 feet in length. These records also indicate that the property to the south has a dock 38.5 feet in length. Also, to the north, is a small marina that has dock structures are longer than the residential docks to the south.
- The aerial photograph shows that the subject property is rectangular-shaped, and the attached site plan depicts the dimensions of the proposed dock. The additional 10 feet in length requested requires a variance to the proposed dock length from either the abutting property owners’ or the Board of Adjustment. In this case, signed statements of “no objection” from the

abutting property owners have not been provided. As such, the Board has the authority to review this request and make a determination of approval, approval with conditions, or denial.

Land Development Code Section 3.12, Variances: The appropriate board of authority may authorize hardship variances to the land development regulations if the applicant is able to demonstrate the following conditions:

- a) Special conditions and 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;**

Staff find that there may be special conditions or circumstances which are peculiar to the land, structure, or building involved and which are generally not applicable to others in the same zoning district. Staff finds that the subject property is a single-family residential lot in the Pass-a-Grille neighborhood. This rectangular shaped lot is 50 feet wide at the seawall. An existing 12-foot-wide by 24-foot-long dock exists which is compliant with the dock size and location requirements.

The site plan indicates some sloping of the sand bottom along with some rocks located from the seawall out several feet into the waterway. A site visit by staff confirms that some rocks appear to be located along the subject property seawall especially within close proximity to the subject property to the north. However, due to the way the seawall cap cantilevers over the water, and the questionable structural integrity of the existing dock which staff did not walk upon, staff was unable to determine the extent of these rocks. Nor was it possible for staff to get good photographs of the waterway bottom near the seawall in this location.

The existing dock at 1805 Pass-a-Grille Way is proposed for demolition and replacement with a smaller narrower dock that has a base landing approximately 4'x8' in size with a four-foot-wide walkout to a 6'x10' dock head. The applicant reduced the proposed dock length by one foot after the application was submitted and advertised by the City. The proposed 10'x12' boat lift is on the north side of the proposed dock structure.

- b) The special conditions and circumstances do not result from the actions of the applicant or a prior owner of the property;**

Staff find that there is existing stone riprap located along the seawall that projects outward a few feet from the seawall. Such riprap limits the full use of the length allowance by the property owner for the mooring of a boat. The applicant is seeking an additional 10-feet to insure clearance from the riprap and shallow water. These conditions are not the result of actions by the applicant.

- c) Literal interpretation of the provisions of the Land Development Code deprives the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Land Development Code and results in unnecessary and undue hardship on the applicant;**

Staff find that a literal interpretation of the provisions of Land Development Code would not deprive the applicant of rights commonly enjoyed by other properties in the same Zoning District because the existing permitted marine structure includes a permitted 12'x26' dock structure that could be

replaced as permitted there are two permitted wet slips that are 48 feet in length. The applicant has not demonstrated why the extra length for a new dock is needed. However, the applicant's representative has verbalized that the applicant is interested in purchasing a boat but is waiting to see what size dock and lift would be permissible to build. Every variance case is reviewed on a case-by-case basis and every case must stand on its own merits.

- d) The hardship has not been deliberately or knowingly created or suffered to establish a use or structure which is not otherwise consistent with the Comprehensive Plan or the Land Development Code, nor will it permit an increase in development density;**

Staff find that this hardship has not been deliberately or knowingly created by the applicant because comments by the applicant suggest that the applicant wanted new dockage similar to the dockage afforded to the abutting properties. Approval of this request would not permit an increase in development density.

- e) An applicant's desire or ability to achieve greater financial return or maximum financial return from his property does not constitute hardship;**

Staff does not find that a desire to achieve greater financial return forms the basis of the hardship for this request. The applicant has indicated a desire to wants to rebuild the dock in a manner that will support a boatlift in a manner similar to the applicant's neighbors. The applicant has also indicated that he is willing to remove the two permitted wet slips as a condition of the approval of this request.

- f) Granting the variance application conveys the same treatment to the applicant as to the owner of other lands, buildings, or structures in the same zoning district;**

The Board must consider variances on a case-by-case basis. Even within the same zoning district, each variance request has a different set of circumstances and variables. Therefore, the granting of one variance does not confer such allowances on another property. In this case, the applicant is seeking to demolish and rebuild his dock in a manner that will extend 10 feet further into the waterway that allowed by Code and also support a 10'x12' boat lift on the north side of the proposed dock. In addition, the applicant is willing to condition the approval of this request on the removal of the two existing wet slips which are each 48 feet in length. Staff does know if a 25-foot long dock would accommodate the requested boat lift in the requested configuration.

- g) The requested variance is the minimum variance that makes possible the reasonable use of the land, building, or structure; and**

Expert testimony on possible alternatives to the requested dock and related boat lift was not provided to staff. As such, staff cannot determine if this request is the minimum variance for reasonable use. However, the applicant is willing to significantly decrease the amount and size of existing dockage with the removal of the two 48-foot wet slips as a condition of the approval of this request.

- h) The requested variance is in harmony with the general intent and purpose of the Comprehensive Plan and the Land Development Code, is not injurious to the neighborhood or otherwise detrimental to the public safety and welfare, is compatible with the neighborhood, and will not substantially diminish or impair property values within the neighborhood.**

Staff finds that this request is in harmony with the purpose and intent of the Comprehensive Plan and Land Development Regulations in part because the request is not dissimilar to its abutting neighbors, and it proposes to eliminate the two 48-foot wet slips that could accommodate larger boats than the proposed 35-foot dock with boat lift.

Any variance granted hereunder shall expire one (1) year from the date of the development order providing for such variance, unless a building permit for the construction authorized by such variance is obtained within such time and said building permit has not expired prior to the completion of construction in accordance therewith.

SUMMARY:

Staff finds the request reasonable conditioned upon the removal of the two 48-foot wet slips which will significantly reduce the amount of dockage available to the subject property.

RECOMMENDATION:

Staff recommend Conditional Approval of this request to construct a new boat dock that will exceed the allowable length by 10 feet (35-feet total length) with a 10'x12' boat lift on the north side of the dock as proposed and described in the application subject to the removal of two 48-foot wet slips on either side of the dock, thus effectively decreasing the amount of dockage available to the subject property.

ZONING MAP

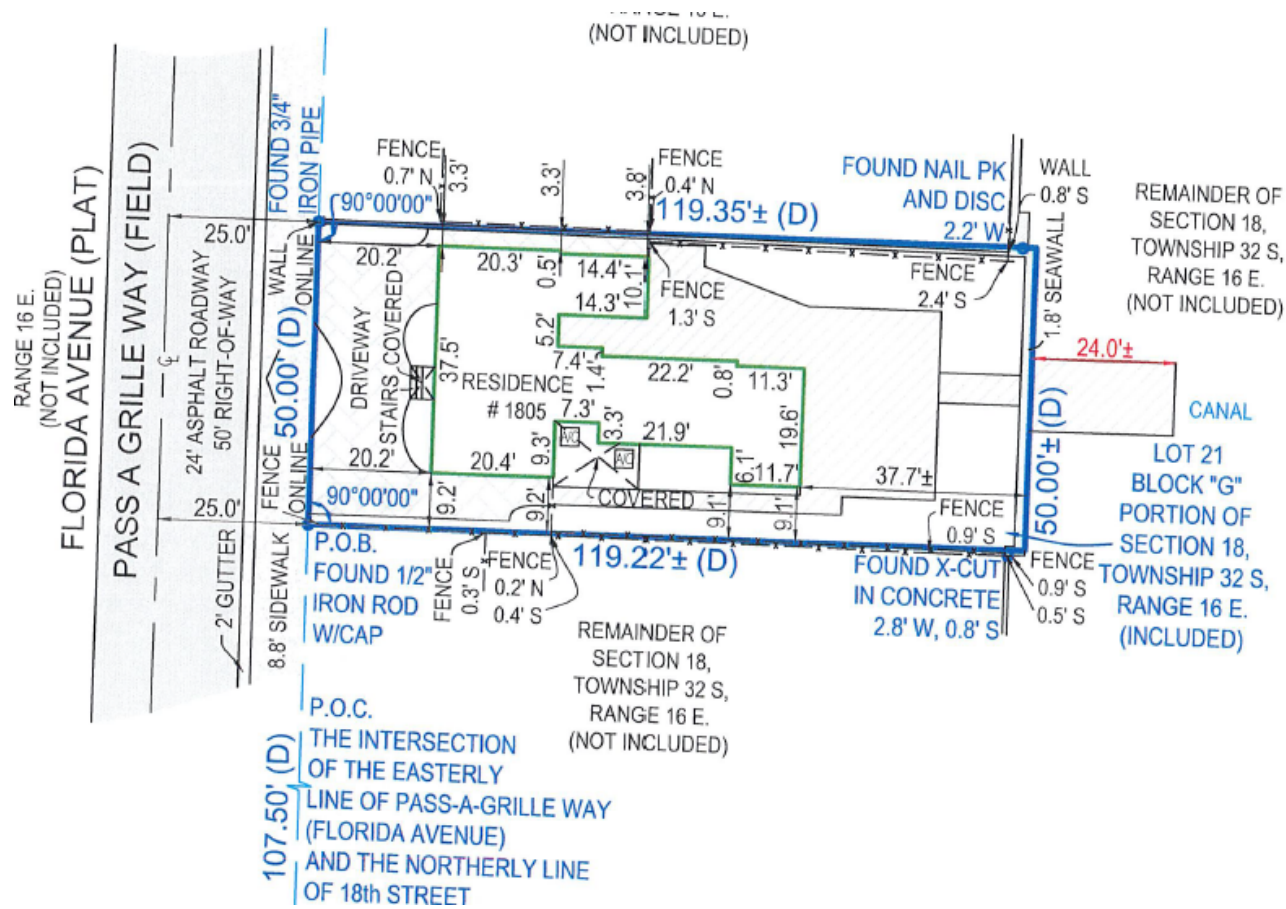


AERIAL MAP

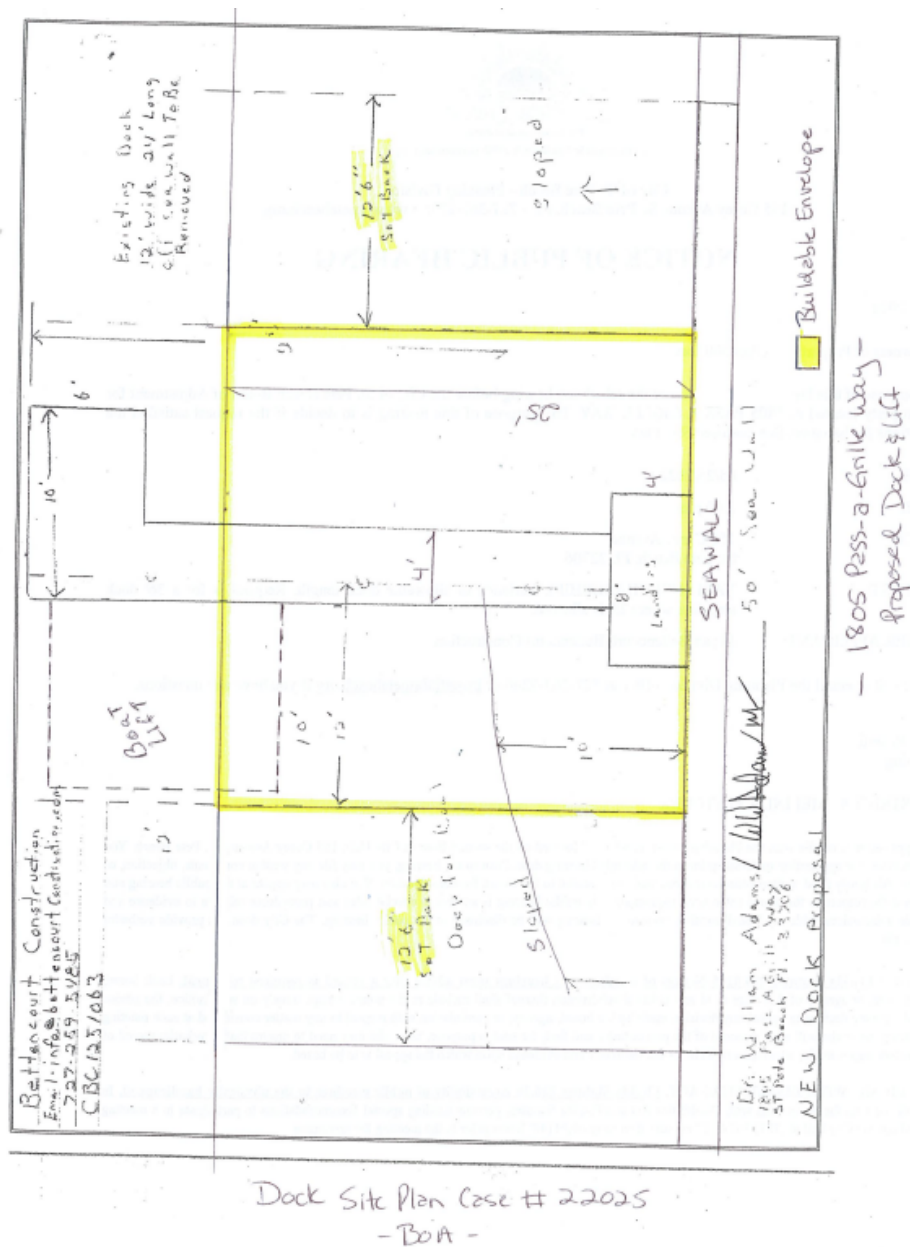
**Subject
Property**



SURVEY



DOCK ENVELOPE DETAILS – SITE PLAN



CASE #: 22025PARCEL #: 18-32-16-68634-000-011SUBMITTAL DATE: 4/13/2022 AMOUNT DUE: _____ PAYMENT DATE: _____**UNNECESSARY AND UNDUE HARDSHIP VARIANCE APPLICATION**

The following Items are to be submitted, along with this application, **at least 30 days prior to the public hearing:**

- Two (2) copies of the property survey, completed in the last ten years, which contains the legal description, land area, and existing improvements on the site that has been signed and sealed by a surveyor licensed in the State of Florida;
- Seven (7) copies of a site plan showing the request, drawn to scale, of size between 11x17" and 36x48";
- Emailed copy of the survey and site plan to planning@stpetebeach.org.
- The Application Fee, payable to the City of St. Pete Beach (non-refundable)

OWNER/AGENT INFORMATION:

Identification	Name	Address	Phone #
Owner	William W. Adams	1805 Pass a Grille Way St Pete Beach, Florida 33706	727 415-7463
Applicant/ Agent	BRYAN BETTENCOURT BETTENCOURT CONST.	info@bettencourt construction.com	727 259 5485
Owner Email Address:		Applicant/Agent Email Address:	
drbillmd@aol.com			

PROPERTY FOR PROPOSED VARIANCE:

Zoning Designation	Future Land Use Designation	Lot Area
		11
Legal Description: Phillips Division Rev Map Unnumbered Tract E of Lot 21 BK G DISC Best 107.5 ft N of NE Cor of 18th Ave Pass a Grille Way T4N 50E		
Address: The 116 ft to 117 ft of the 50 ft T4N 50E to 705		
Explanation of Request: Request a variance for the length of the dock need to properly moor the vessel and a larger boat will require deeper water		

Findings Necessary for Granting Request: In order for an application for a unnecessary and undue hardship variance to be approved or approved with conditions, the Board of Adjustment must make a positive finding with regard to each of the provisions below, which are also located in Division 3 of the Land Development Code. The applicant has the burden of proof demonstrating that the application for the variance complies with each of these requirements. Please explain in detail how your case meets these requirements (attach additional sheets if necessary):

1. Special conditions and 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;

Special need is the length
The land Development Code allows for 25 foot
+ the owner is requesting 36'
to properly moor the vessel

2. The special conditions and circumstances do not result from the actions of the applicant or a prior owner of the property;

The enlarged Dock Does NOT
encroach into the Setback

3. Literal interpretation of the provisions of the Land Development Code deprives the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Land Development Code and results in unnecessary and undue hardship on the applicant;

The owner requires a
dock that is 36'
to moor the vessel due to
the size

4. The hardship has not been deliberately or knowingly created or suffered to establish a use or structure which is not otherwise consistent with the Comprehensive Plan or the Land Development Code, nor will it permit an increase in development density;

NO

5. An applicant's desire or ability to achieve greater financial return or maximum financial return from his property does not constitute hardship;

NO

6. Granting the variance application conveys the same treatment to the applicant as to the owner of other lands, buildings, or structures in the same zoning district;

The design of the dock is similar in size and shape to other docks in the neighborhood particularly the neighbor at 1807 Pass-A-Grille Way.

7. The requested variance is the minimum variance that makes possible the reasonable use of the land, building, or structure; and

Yes, the size of the dock is the minimum size need to moor the vessel

8. The requested variance is in harmony with the general intent and purpose of the Comprehensive Plan and the Land Development Code, is not injurious to the neighborhood or otherwise detrimental to the public safety and welfare, is compatible with the neighborhood, and will not substantially diminish or impair property values within the neighborhood.

Yes, other comparable docks in the neighborhood.

Signature of Applicant

Date

Signature of Authorized Agent

Date

VARIANCE APPLICATION

Applicants must acknowledge understanding of the following. Initial each of the statements below. If you do not understand any of these, staff will explain them to you.

WJA I understand that the City will not accept or process an incomplete application.

WJA I understand that a non-conforming use or structure in a particular zoning district does not, in any way, provide justification for the granting of a variance. Furthermore, the existence of a permitted use or structure in adjacent districts does not constitute grounds for a variance.

WJA On all variances except for administrative (de-minimis) variances, a majority vote is required. Action on this application by the BOA/City Commission may be continued to a later meeting.

WJA I understand that if a variance is approved by the BOA, City Commission or City Manager, the applicant is required to obtain the appropriate building permits within 1 year from the date of the decision. If no permit is obtained within 1 year, the approval becomes voided.

WJA I understand that if any application filed under the provisions of this Code is denied, no subsequent application seeking substantially the same or similar approval shall be filed within six months of the final decision on the original application.

WJA I understand that any person aggrieved by the final decision of the Board of Adjustment or City Commission has the right to file a petition in the Pinellas County Circuit Court within 30 calendar days after the decision. Appeals of decisions made by the City Manager for administrative variances are to a hearing officer designated by the City Commission and must be made within 30 days from the date of the final administrative decision. Permits for construction may be granted prior to the expiration of this 30-day period, but an appeal will be grounds for revocation of the permit.

WJA I understand that I, as the applicant, or my authorized representative must be present at all scheduled public meetings on the application if applicable.

After acknowledgement of these conditions, complete the application form on the following pages.

WJA
Signature of Applicant

4/12/22
Date

Owner's Authorization for Agent

Community Development Department

City of St. Pete Beach, Florida

I/WE

William Adams

(print name of property owner)

hereby authorize

Bryan Bettencourt (Bettencourt Construction)

(print name of agent)

to represent me/us in an application for

Variance

(type of application: variance, conditional use, zoning, etc.)

WW Adams
Signature of Owner

WW Adams
Signature of Owner

William Adams
Print Name of Owner

William Adams
Print Name of Owner

The forgoing instrument was acknowledged before me this 12th day of

April ²⁰²¹ by William Adams or who is

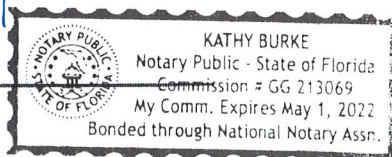
personally known to me produced

as identification.

Kathy Burke
(Notary Signature)

4-12-22
(Date)

My Commission Expires



Lynn Rosetti

From: Bryan Bettencourt <bettencourtbuilt@gmail.com>
Sent: Tuesday, May 17, 2022 10:38 AM
To: Lynn Rosetti
Subject: Tie poles

Follow Up Flag: Flag for follow up
Flag Status: Flagged

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To whom it may concern

This email is to confirm that the tie poles will be removed at time of dock demo

Thank you

--

Bryan Bettencourt

Letters Received

Lynn Rosetti

From: Victor G Tonas <tonas850@comcast.net>
Sent: Friday, May 13, 2022 1:10 PM
To: Lynn Rosetti
Subject: 1805 PAG Dock Variance Hearing

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Hello Lynn,

This is follow-up to the voicemail I left you today.

Wendy Hopwood and myself are the owners of 1807 Pass A Grille Way the abutting neighbor to the north of 1805 PAG Way owned by Dr Bill Adams having the dock variance request.

Both Wendy and myself, Victor Tonas are in Pittsburgh PA and will most likely not be able to attend this 4th hearing as we have Doctors appointments and other important matters that have been pre scheduled months in advance and overlap the hearing date of May 25. With that we request all correspondence regarding this matter including the St. Pete Beach Staff investigation, findings and recommendations as well as all emails and mailed correspondence that can be made available to us. Please email to: tonashouse@comcast.net at your earliest convenience.

We will be objecting to the variance in writing and will ask that our written comments be read as part of the hearing's testimony.

Thank you in advance,

Victor Tonas
724-712-6030

Lynn Rosetti

From: Mark Colburn <ddsmagd@aol.com>
Sent: Friday, May 20, 2022 2:24 PM
To: Wesley Wright; Wesley Wright; Amber LaRowe; cityattoney@stpetebeach.org; Lynn Rosetti
Subject: Email #1 of 2--Objection to Variance #22025 for 1805 Pass-a-Grille Way--Supporting adequate depth at 25 feet from seawall

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iRE: Variance #22025 for 1805 Pass-a-Grille Way

Dear Mr. Wright:

This email provides supporting evidence that a 25-foot dock as allowed by the Land Development Code for the property at 1805 Passa-Grille Way does not present an unnecessary or undue hardship to the variance applicant because of insufficient water depth.

Please note that the staff report for the hearing recommended AGAINST granting a variance for a 31'4" dock, and included a determination that a reasonably-sized boat could be accommodated by a 25-foot dock. We request that that staff report be entered into the record for the board's consideration at the 05/25/2022 hearing.

The pictures and depth readings were taken December 8, 2021 at 4:47 p.m. from the southern neighbor's property at 1803 Pass-a-Grille Way and facing north to the applicant's property.

Please forward to the St. Pete Beach Board of Adjustment members for their consideration for the 05/25/2022 hearing.

We request that this email be entered into the record for the hearing.

Please note that the subject property's seawall is already 2 to 3 feet farther seaward than either adjacent properties' seawalls, making a dock extension actually 2 to 3 feet longer in comparison to adjacent docks.

Thank you,

Mark Colburn
1803 Pass-a-Grille Way

This photograph was taken from 1803 Pass-a-Grille Way facing north and shows that the seawall for the applicant property at 1805 Pass-a-Grille Way already extends out 2 to 3 feet into the water than the seawall for 1803 Pass-a-Grille Way, the south neighbor. Since dock measurements are taken from the seawall, this photograph shows that the applicant property's dock is currently 2 to 3 feet farther into the water at its starting point than the south neighbor's dock at 1805 Pass-a-Grille Way..

ALSO NOTE:NO VISIBLE RIPRAP ON SUBJECT PROPERTY.

This photograph shows the measuring pole that was placed into the water from the dock at 1803 Pass-a-Grille Way at a water depth parallel to the end of the applicant's dock. The pole was lowered into the water until it touched the bottom.



After removing the pole from the water, the pole was placed on the deck of the dock at 1803 Pass-a-Grille Way for measuring. The water depth as shown by the watermark line on the pole is 8 feet. This indicates sufficient depth for nearly any boat.

This photograph shows a closeup of the watermark line of 8 feet on the pole.



This is the aerial photograph of the subject property at 1805 Pass-a-Grille Way. Note the approximately 30-foot boat moored within 25 feet of the seawall at the Pass-a-Grille Marina, north of the applicant property. This supports that the waterway has sufficient depth to support large boats within 25 feet of the seawall.

Lynn Rosetti

From: Mark Colburn <ddsmagd@aol.com>
Sent: Friday, May 20, 2022 7:51 PM
To: Lynn Rosetti; Wesley Wright; Wesley Wright; City Attorney; Amber LaRowe
Subject: Email #2 of 2--Objection to Variance #22025 for 1805 Pass-a-Grille Way--Supporting lack of riprap on subject property seawall

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RE: Variance #22025 for 1805 Pass-a-Grille Way, Board of Adjustment Meeting scheduled for 05/25/2022

Dear Ms. Rosetti:

This email is sent in opposition to Variance Application #22025 for 1805 Pass-a-Grille Way for a variance to construct a 36-foot dock when only 25 feet is permitted per the Land Development Code. If you could please forward to the board of adjustment members and city attorney in advance of the 05/25/2022 meeting. We request that this email with photographs be entered into the record for the 05/25/2022 hearing.

Please reply that you received this email.

The applicant's prior variance request (#21072) for a 30-foot dock was 20% greater than the allowed length (per the 10/27/2021 staff report). The current variance request in application #22025 is an even more dramatic increase of FORTY PERCENT greater than the allowed length, double the first request.

We provide photographs showing that there is no riprap abutting applicant's seawall to justify applicant's request for a 36-foot dock at 1805 Pass-a-Grille Way. In the 20+ years we have owned our property, there has never been riprap intalled on these two properties. Several years ago, the previous owners of the applican'ts property installed a new seawall, which extends farther into the water than do the adjacent seawalls.

The attached screenshot of an aerial satellite closeup of the subject property obtained 05/17/2002 from the New Earth website clearly shows that there is riprap only at the northern neighbor's seawall, with NO riprap along the subject property's seawall:

The darker areas in the water at the applicant's property (top of screenshot) are not riprap, they are merely random vegetation with some sparse pieces of debris. There is very minimal spillover of the actual riprap placed in 2017 by the northern neighbors on their own seawall at 1807 Pass-a-Grille Way past their lot line. The sandy bottom abutting the subject property's seawall is clearly visible. Our property at 1803 Pass-a-Grille Way, immediately to the south of the subject property, has had no riprap in the 20+ years we have owned it, and we have never seen riprap present on the applicant's property. Riprap is clearly not a feature of the subject property or of our property to the south.

During applicant's prior variance hearing for #21072 on 10/27/2021, the oral staff report did mention riprap (beginning at 30:40 in the video), but only in the context of a photo that showed riprap ONLY on the northern neighbor's seawall. The photo presented did not show riprap on the subject property's seawall as seen below:

Riprap was never cited in the 10/27/2021 written staff report, which, again, recommended AGAINST a variance allowing a much shorter 30-foot dock.

From the Staff Report presented 10/27/2021 on Variance #21072, page 3:

"... The application states that the special need relating to the dock length request is to be able to properly moor a vessel. However, **review by staff of aerial photographs and a site visit does not find any existing special conditions**

and circumstances property and related envelop (sic) in which to constrict a dock which are peculiar to the lands, structures, or buildings, and which are not applicable to other lands, structures, or buildings in the same zoning district.

Also, **the site visit by staff did not reveal any apparent issues relating to the depth of the water, sea grasses, irregularities relating to the size or shape of the dock envelop (sic).**"

..."Staff find that the specific conditions and circumstances are the result of the actions of the applicant wanting a longer and wider dock structure. **There do not appear to be any environmental constraints such as sea grass beds or shoaling affecting this property.**"

Even the testimony at the 10/27/2021 Board of Adjustment hearing (beginning at 31:48) by Mr. Speeler, the applicant's licensed dock contractor, made no mention of hardship due to riprap, or any mention of riprap at all.

Indeed, the applicant presented at that hearing to support his variance request was that the applicant felt he was entitled to have what his neighbors have, and that he needed a longer dock to support a boat that he doesn't own but would like to have someday. The new variance application relies on the same invalid premise. Each variance must stand on its own merits to be valid, and what the neighbors have or why they have it is not relevant.

Below are photographs taken 05/18/2022 at lower tide in the evening. They show the absence of riprap on the subject property:

From the adjacent northern property at 1807 Pass-a-Grille Way looking south to the subject property:



The new application #22025 for a FORTY PERCENT variance in dock length does not meet the applicant's burden of proof for hardship as it is deficient on its face in meeting at least 5 of the required findings:

Requirement #1: No special circumstances peculiar to the the subject property are described. There is only a request for a 36-foot dock to "properly moor the vessel."

Requirement #2: That the special conditions and circumstances do not result from the applicant's own actions is not addressed at all. The only assestion is that "the enlarged dock does NOT encroach into the setback," when it clearly exceeds by 40 percent the dock length requirement in the LDC. Although the point is moot since we have shown that there is no hardship due to riprap, if there were actually riprap, the applicant knew or should have known through his due diligence prior to purchasing the property that there was an issue with constructing a dock for the size boat he does not own and only may someday purchase. In that case, his hardship is self-created and his variance request must fail on that basis alone.

Requirement #3: Literal intepretion of the LDC depriving the applicant of rights common to other properties is not addressed. Applicant only states he "requires a dock that is 36' to moor the vessel due to the size." According to the staff report, the applicant does not currently own a boat that would require a dock of the requested size.

Requirement #4: The applicant only writes "No." He does not address that the FORTY PERCENT increase in length variance requested does actually violate the LDC.

Requirement #7: The applicant only says the request is the minimum size need (sic) to moor the vessel." He does not give any details about "the vessel" or why the request is the minium necessary. He does not claim that he cannot moor a boat on a 25-foot dock or that he is being denied reasonable use of his property.

It should be noted that nowhere in the application does the applicant bring up the issue of riprap.

The additional 10 feet of dock length, if approved, will basically wipe out our water view to the north and replace it with man-made structures. The waterway constricts the closer you get to the marina and the Vina del Mar bridge. As shown in the picture below taken from our property, aerial views do not adequately show just how narrow the channel is: