



Legislation Text

File #: 17-0024, **Version:** 2

Summary

To: Town Commission

From: Micah Maxwell, Town Manager

Date: 4/13/2017

Subject:

Request for Variance -3 Stonegate Drive

Summary:

The applicant is requesting a variance to two sections of the code with respect to construction of new boat dock. The first request would allow the dock to be extend thirty-five feet outside the fifty foot length maximum resulting in a eighty-five foot long dock. The second request would allow for the construction of a dock outside of the center one third of the property.

Previous Commission Action:

The Planning and Zoning Board recommended approval of variance for dock extension, but did not recommend approval for the variance to allow for the construction of the dock outside of the center one third of the property

Background/Problem Discussion:

The variances in question are governed by Section 66-251 and 66-253, which area attached. Section 66-253(b) (1)a, 1-6 outline the items that the town commission is required to initially determine prior to granting a variance request.

Criteria #1 - Special conditions and circumstances exist which are peculiar to the land, structure or buildings involved.

1. Mangroves and seagrass are present in the majority of the area adjacent to subject property.
2. The water depth appears very low in the area adjacent to the subject property. A survey has been provided as to the water depths in the area proposed for installation, however, there is no data provided for the water depth for the center 1/3 of the property. That said, visual inspection points to the area within the center 1/3 being very shallow as well.
3. Two of the three parcels attached to this variance were historically common areas to Stonegate, but were

recently transferred to the applicant. This is significant because one of the parcels in question would house the connection point for the proposed dock and the town needs to ensure that the conditions of the original site development are intact.

4. The Stonegate association documents restrict docks within Stonegate to the common areas and provide the town with the right, but not the obligation, to enforce those documents.

Criteria #2 - The special conditions and circumstances do not result from actions of the applicant.

1. To the knowledge of town staff the existence of mangroves and seagrass in the area were not a result of actions by the applicant.

2. To the knowledge of town staff the depth of the water adjacent to the subject property in the area were not a result of actions by the applicant.

3. The acquisition of the common areas was an action of the applicant.

4. The decision to restrict docks within Stonegate to the common areas appears to have not been by action of the applicant.

Criteria #3 - Literal interpretation of the provisions of this Code would work unnecessary and undue hardship on the applicant.

The town's code does not include a definition of "Hardship", nor does it include definitions for "Unnecessary or Undue Hardship". Section 66-10 of the town code identifies that those words not defined within the LDC "shall have their customary dictionary definition". Staff has identified the following as definitions for Unnecessary and Undue Hardship:

Undue Hardship - Special or specified circumstances that partially or fully exempt a person from performance of a legal obligation so as to avoid an unreasonable or disproportionate burden or obstacle.

Unnecessary Hardship - A deprivation of an owner's right to the beneficial use of property that is caused when a zoning ordinance makes it impossible to receive a reasonable return from the property.

Criteria #4 - The variance, if granted, is the minimum variance that will make possible the reasonable use of the land, structure or building.

To install a dock it appears that the applicant would either need to construct the dock some undetermined distance directly out into the harbor, or attempt to place the dock in a dredge area near the area proposed for installation. Should an approval be granted in the proposed area, staff would suggest that such an approval be conditioned on the applicant obtaining a dredge permit.

Criteria #5 - A grant of variance will be in harmony with the general intent and purpose of this Code, and that such variance will not be injurious to the zoning district involved or otherwise detrimental to the public interest.

Staff has attached section 66-6 of the town code, which speaks to the intentions and purposes of the land development code. Please refer to this section in making this determination. The zoning district involved is RE

(Residential Estate), the regulations of which are under 74-84, which are attached.

Criteria #6 - A grant of variance will not result in any land use not specifically provided for in the schedule of district regulations (section 74-82 of this Code) for the zoning district in which the property is located.

The zoning district involved is RE (Residential Estate), the regulations of which are under 74-82, which are attached. Boat docks are listed as an allowed use, however they are allowed as an accessory use or structure. 74-281(2) requires a principal permitted development on a parcel prior to the installation of an accessory structure. As 66-253(1) prohibits the commission from granting variances to use, the applicant would need to cure this issue prior to being granted a permit. Following the planning and zoning meeting, the applicant expressed that they intend to merge the properties so that there will be a single land parcel which includes the applicant's residence to make the dock a permitted accessory structure. Applicant has also indicated that the Stonegate subdivision recorded covenants will be amended to account for the original common area becoming part of applicant's residential property and associated responsibility for maintaining the common area improvements.

Expenditure Challenges: N/A

Financial Implications: N/A

Recommendation: N/A

Proposed Motion:

I move to approve/deny the request to construct an 85 foot dock

I move to approve/deny the request to construct the dock in the southern 1/3 of the property, conditioned on the three parcels in question being merged into one parcel, conditioned on the receipt of an approved dredge permit by the applicant, and conditioned on the town attorney's sign off as it relates to the status of the common areas of the Stonegate Development.