



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Public Hearing

H.4.

4/20/2021

Subject:

Public Hearing Re: Amending Brevard County Code Chapter 62, Article VI Zoning Regulations, Section 62-2118, Regarding Measurement Point for Dock Projection and Clear Navigable Zone between Docks at Residential Properties.

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board of County Commissioners conduct a public hearing to consider the draft ordinance amending Brevard County Code Chapter 62, Article VI Zoning Regulations, Section 62-2118 to establish measurement points for dock projection and clear navigable zones between docks at residential properties.

Summary Explanation and Background:

On October 27, 2020, the Brevard Board of County Commissioners directed Planning and Development staff to draft a report with proposed code revisions to address dock-related issues throughout the County. On January 26, 2021, the Board granted legislative intent and permission to advertise a code amendment to the residential code requirements establishing measurement points for allowable dock projection into waterways; and identifying clear, navigable zones between docks at residential property lines.

The proposed amendment in Section 62-2118(d)(3) clarifies that the 20 percent projection calculation is based on the waterway width as depicted on a recorded instrument, such as plat or easement. Further, proposed language identifies measurement of allowable dock projection begins at the property line, as surveyed. Where the property line extends into the waterway, two scenarios may be encountered as follows.

- Where the property is non-bulkheaded, measurement may begin from the buffer establishment line, safe upland line, mean high-water line or ordinary high-water line, as indicated on the applicant's survey.
- Where the property line extends into the waterway, and the property is bulkheaded, measurement shall begin from the face of the seawall or bulkhead.

The proposed amendment to Section 62-2118(d)(2), creates a clear area that prevents the placement of navigation or dredging obstruction (e.g., mooring boats/watercraft, crab/fish traps, etc.) which are not

considered to be regulated by setbacks.

Proposed ordinance language creates the following definition and prohibits “waterway encroachment” in the seven and one-half (7.5) foot side property line setback.

Waterway encroachment includes, but is not limited to, buoys, crustacean or fish traps, nets, oyster mats and gardens, floating and inflatable docks, rafts, platforms and mats, fishing poles and equipment, boating accessories, parts, and attachments, boards, rocks not part of a revetment, vegetation not including mangroves regulated by the Florida Department of Environmental Protection, or any other object that could potentially impede navigation.

Additionally, several definitions are proposed to be added to the Code mirroring the definitions found in other County Codes. Lastly, nonconforming dock language has been provided in the attached ordinance for existing docks that do not meet the proposed requirements. Such docks would be considered legally nonconforming until replaced or structurally repaired by more than fifty (50) percent.

On March 10, 2021, the Building Construction Advisory Committee heard the proposed ordinance and unanimously recommended approval.

On March 22, 2021, the Local Planning Agency heard the proposed ordinance and unanimously recommended approval.

Clerk to the Board Instructions:

Within 10 days of adoption, please file certified copy of ordinance with the Department of State, and return a certified copy of the filed ordinance to Planning and Development.



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

June 16, 2021

MEMORANDUM

TO: Tad Calkins, Planning and Development Director

RE: Item H.4., Public Hearing to Amend Brevard County Code Chapter 62, Article VI Zoning Regulations, Section 62-2118, Regarding Measurement Points for Dock Projection and Clear Navigable Zones between Docks at Residential Properties

This is to correct the Memorandum dated April 21, 2021. The Board of County Commissioners, in regular session on April 20, 2021, conducted the second public hearing and adopted Ordinance No. 21-09, amending Brevard County Code Chapter 62, Article VI Zoning Regulations, Section 62-2118, establishing measurement points for dock projection and clear navigable zones between docks at residential properties; **and directed staff to review the percentage of the projection, how a roof is measured landward and deducting from what is allowed over water, and the overall square footage of the dock limited to 500 square feet.** Enclosed is a fully-executed Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell".

Kimberly Powell, Clerk to the Board

Encl. (1)



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

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April 21, 2021

M E M O R A N D U M

TO: Tad Calkins, Planning and Development Director

RE: Item H.4., Public Hearing to Amend Brevard County Code Chapter 62, Article VI Zoning Regulations, Section 62-2118, Regarding Measurement Points for Dock Projection and Clear Navigable Zones between Docks at Residential Properties

The Board of County Commissioners, in regular session on April 20, 2021, conducted the second public hearing and adopted Ordinance No. 21-09, amending Brevard County Code Chapter 62, Article VI Zoning Regulations, Section 62-2118, establishing measurement points for dock projection and clear navigable zones between docks at residential properties. Enclosed is a fully-executed Ordinance.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell".

Kimberly Powell, Clerk to the Board

Encl. (1)



FLORIDA DEPARTMENT *of* STATE

RON DESANTIS
Governor

LAUREL M. LEE
Secretary of State

April 23, 2021

Honorable Rachel M. Sadoff
Clerk
Board of County Commissioners
Brevard County
Post Office Box 999
Titusville, Florida 32781-0999

Attention: Deborah Thomas

Dear Ms. Sadoff:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Brevard County Ordinance No. 2021-09, which was filed in this office on April 23, 2021.

Sincerely,

Ernest L. Reddick
Program Administrator

ELR/lb

ORDINANCE NO. 2021- 09

AN ORDINANCE AMENDING CHAPTER 62, "LAND DEVELOPMENT REGULATIONS", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VI, ZONING REGULATIONS, DIVISION 1, SPECIFICALLY AMENDING SECTION 62-2118, RESIDENTIAL BOAT DOCKS AND PIERS, TO REVISE THE EXISTING DEFINITIONS AND TO ADD NEW DEFINITIONS FOR BUFFER ESTABLISHMENT LINE, BULKHEAD AND SEAWALL, SAFE UPLAND LINE, VESSEL, WATERCRAFT, AND WATERWAY ENCROACHMENT; AMENDING THE GENERAL REQUIREMENTS TO ESTABLISH A CLEAR, NAVIGABLE ZONE, TO CLARIFY MARINE IMPROVEMENTS AND ACCESSORIES SUBJECT TO SIDE SETBACK AND PROJECTION REQUIREMENTS, AND TO CLARIFY POINTS OF MEASUREMENT FOR RESIDENTIAL BOAT DOCK AND PIER PROJECTION INTO MANMADE WATERWAYS; ADDING PROVISIONS REGARDING NON-CONFORMING DOCKS; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA.

WHEREAS, the Board of County Commissioners desires to establish clear, navigable zones between residential boat docks in manmade canals that coincide with current setbacks; and

WHEREAS, the Board of County Commissioners wishes to establish clearly defined measuring points for residential boat dock projections in manmade canals; and

WHEREAS, the Board of County Commissioners, on January 26, 2021, approved legislative intent and permission to advertise an amendment to land development regulations regarding residential boat docks and piers; and

WHEREAS, the Building Construction Advisory Committee, on March 10, 2021, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Local Planning Agency, on March 22, 2021, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Board of County Commissioners has reviewed the recommendations of the Local Planning Agency and the Building Construction Advisory Committee and has considered the comments of interested citizens in public hearing; and

WHEREAS, the Board of County Commissioners has determined that the proposed amendment serves the public health, safety and welfare of the citizens of Brevard County.

OFFICIALLY FILED WITH THE SECRETARY OF STATE ON APRIL 23, 2021.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Section 62-2118. Definitions and rules of construction, Code of Ordinances of Brevard County, Florida, Residential boat docks and piers is hereby amended as follows:

Sec. 62-2118. - Residential boat docks and piers.

- (a) *Purpose and intent.* The provisions of this section are intended to regulate the size and location of boathouses, docks and piers located in canals, public drainage easements and drainage rights-of-way in all residential zoning classifications in the unincorporated areas of the county. This section also provides minimum structural standards for the construction of residential boat docks and piers.
- (b) *Definitions.* For purposes of this section:
 - (1) *Boathouse* means a structure built at the water's edge used for storing boats, which may extend from a seawall or the shore over the water. A boathouse has a roof, and is partially or totally enclosed by sides.
 - (2) *Buffer establishment line* means a surveyed contour line along a shoreline from which the landward surface water protection buffer may be identified. The line is established along the approximate land-water interface of a shoreline. The elevation of 0.9 feet N.G.V.D. 1929, or N.A.V.D 1988 equivalent elevation, shall be used to define the line along the Indian River Lagoon system. The use of this line is exclusive to Brevard County for the sole purpose of establishing the surface water protection buffer or dock projection into canal and infers no jurisdictional or property boundaries.
 - (3) *Bulkhead or seawall* means a manmade shoreline wall, breakwater or encroachment, excluding shoreline stabilization as defined in Section 62-3661 Brevard County Code, as may be amended, designed or positioned to break the force of waves or to hold back or protect the shoreline from erosion. Headwalls and other similar minor structures necessary for the implementation of permitted stormwater management systems shall not be considered bulkheads.
 - (4) *Covered boat dock* means a structure built at the water's edge used for storing boats, which may extend from a seawall or the shore over the water. A covered boat dock has a roof, but shall be neither partially nor totally enclosed by sides of any type.
 - (5) *Canal* means a manmade or artificially improved natural waterway at least 80 feet in width, as depicted on recorded instrument, which may be used for navigation or drainage.
 - (6) *Dock and pier* mean a platform extending from a seawall or the shore which is used to secure or provide access to boats. A dock or pier is supported by piles or pillars and has no sides or roof.

- (57) *Drainage easement or right-of-way* means a stream or a manmade or artificially improved natural waterway less than 80 feet, as depicted on recorded instrument, in width which has been accepted by the county and recorded as such.
- (8) *Safe upland line* means a boundary line determined by the Florida Department of Environmental Protection, Bureau of Survey and Mapping, in consultation with the applicant. The safe upland line is normally located landward of either the mean or ordinary high-water line and is based upon the location of known or approximated mean high-water lines, ordinary high-water lines and mature upland vegetative communities, whichever is applicable.
- (9) *Vessel* means synonymous with boat as referenced in s. 1(b), Article VII, Florida Constitution, and includes every description of watercraft, barge, and airboat, whether driven by outboard or inboard motor, other than a seaplane on the water, used or capable of being used as a means of transportation on the water. This includes all types of personal watercraft.
- (10) *Watercraft* means any vessel that travels on, in or under the water regardless of means of propulsion.
- (11) *Waterway encroachment* includes, but is not limited to, buoys, crustacean or fish traps, nets, oyster mats and gardens, floating and inflatable docks, rafts, platforms and mats, fishing poles and equipment, boating accessories, parts, and attachments, boards, rocks not part of a revetment, vegetation not including mangroves regulated by the Florida Department of Environmental Protection, or any other object that could potentially impede navigation.
- (c) *Required permits; site plan.*
- (1) A dock permit, if applicable, shall be obtained from the Army Corps of Engineers. The Army Corps of Engineers must also approve any excavation done in conjunction with the construction of a boat dock or pier. In cases where a canal may come under state jurisdiction, permits may also be required from the state department of environmental regulation and department of natural resources.
- (2) Prior to the issuance of a building permit for a boat dock or pier, a site plan showing the location of the proposed construction in relation to the existing structures on the site or lot shall be submitted to the public works department for approval when the boat dock or pier is proposed to be built in a public drainage easement or drainage right-of-way. In cases where the public works director determines that the proposed dock or pier may interfere with the primary function of the drainage easement or right-of-way, the applicant may be required to obtain approval from the board of county commissioners.
- (3) A building permit shall be obtained for the construction of a covered boat dock, boat dock or pier located in canals, drainage easements and drainage rights-of-way in the unincorporated areas of the county. Construction of any covered boat dock, boat dock or pier must meet the minimum construction standards specified in subsection (e) of this section. In conjunction with the building permit application for a covered boat dock, boat dock or pier, the applicant shall submit a site plan

bearing the approval of the public works department or the board of county commissioners as described in subsection (c)(2) of this section.

(d) *General requirements.*

- (1) A boat dock, covered boat dock or pier shall be an accessory use in all residential zoning classifications in the unincorporated areas of the county. Boathouses shall be prohibited from being constructed in a canal, drainage easement or drainage right-of-way in the unincorporated areas of the county.
 - (2) A boat dock, covered boat dock or pier, including pilings, together with moored vessel(s) or watercraft, and any waterway encroachment, shall maintain a clear, navigable zone by extending no closer than seven and one-half feet to the side property line, as projected in a straight line into the waterway.
 - (3) No boat dock, covered boat dock or pier, together with pilings, moored vessel(s) or watercraft, and any waterway encroachment, shall project into a manmade waterway more than 20 percent of the width of the waterway, as depicted on the recorded instrument creating the waterway, or 30 feet from the property line, whichever is less. Where the property line extends into the waterway:
 - i) If the property is non-bulkheaded, dock projection shall be measured from one of the following: buffer establishment line, safe upland line, mean high-water line or ordinary high-water line, as indicated on the applicant's survey.
 - ii) If the property is bulkheaded, dock projection shall be measured from the face of the bulkhead or seawall.
 - (4) Docks and piers shall be no higher than the property's seawall, if any exists, or no more than three feet above the mean high-water line of the waterway if no seawall exists. No covered boat dock shall exceed 20 feet in height, as measured from the mean high-water line to the highest point of the roof of the covered boat dock.
 - (5) The deck of the dock, pier, boat lift or covered boat dock, including the platform and any walkways attached to the dock, pier, boat lift or covered boat dock which extend out over the water, shall not exceed 400 square feet in size. When a covered boat dock or covered boat lift is constructed, the area under roof shall not exceed 500 square feet, and in no case shall the area defined by the deck together with the roofed area exceed 600 square feet.
- (e) *Construction standards.* In conjunction with all building permit applications, the applicant shall submit two copies of plans and specifications, drawn to scale, with sufficient clarity and detail to indicate the nature and character of the work. The design, construction, alteration and repair of the superstructure of residential boat docks and piers shall conform to the provisions of the Standard Building Code, as adopted by the board of county commissioners. Pile dimensions, spacing and embedment shall be designed according to accepted engineering practices.
- (f) *Final survey.* Upon completion of the boat dock or pier, a final survey prepared and certified by an engineer or surveyor registered in the state, showing the as-built

location and depicting compliance with the minimum setback requirements for the boat dock or pier, shall be submitted to the county building division for final approval.

- (g) *Maintenance.* No owner of any parcel of property in the unincorporated area of the county shall permit any boat dock or pier located on or contiguous to his property to become dilapidated, deteriorated, structurally unsound, or a safety hazard, or otherwise be in violation of this chapter.
- (h) *Nonconforming Docks.* An existing boat dock, covered boat dock or pier, together with pilings that have been permitted, shall be considered a legal nonconforming dock and may remain until said boat dock, covered boat dock or pier, together with pilings that have been permitted, is replaced or more than 50% of the dock's structural element (excluding decking) is repaired.

(Code 1979, § 14-20.44; Ord. No. 2009-22, § 1, 8-18-09)

SECTION 2. *Conflicting Provisions.* In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

SECTION 3. *Severability.* If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 4. *Area Encompassed.* This ordinance shall take effect only in the unincorporated area of Brevard County, Florida.


SECTION 5. *Effective Date.* A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This ordinance shall take effect upon adoption and filing as required by law.

SECTION 6. *Inclusion in code.* It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.


DONE, ORDERED AND ADOPTED, in regular session, this 20 day of
APRIL, 2021.

Attest:

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA


Rachel M. Sadoff, Clerk

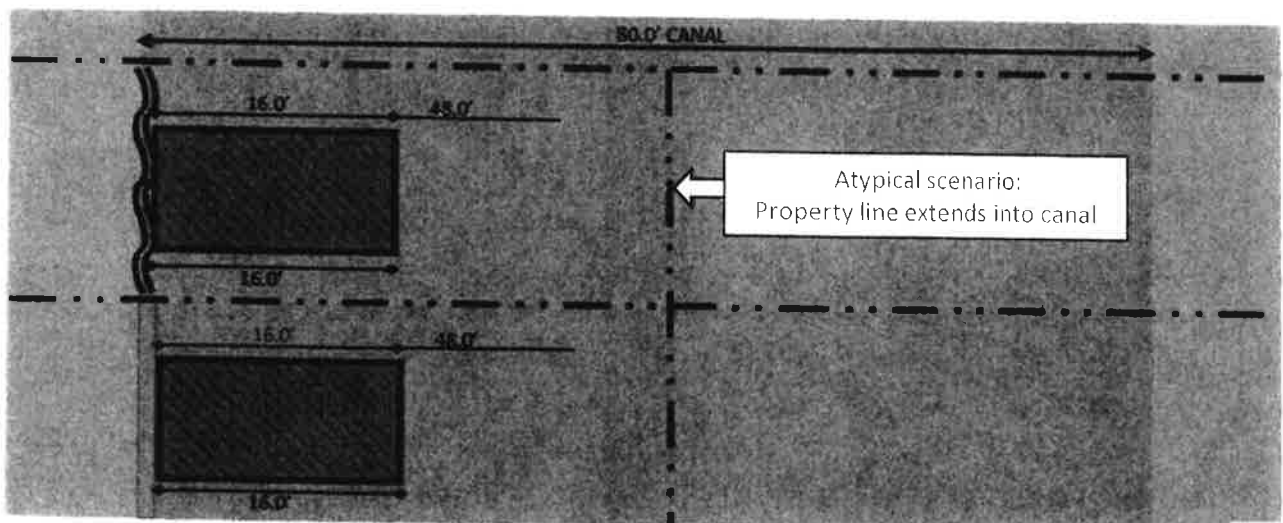
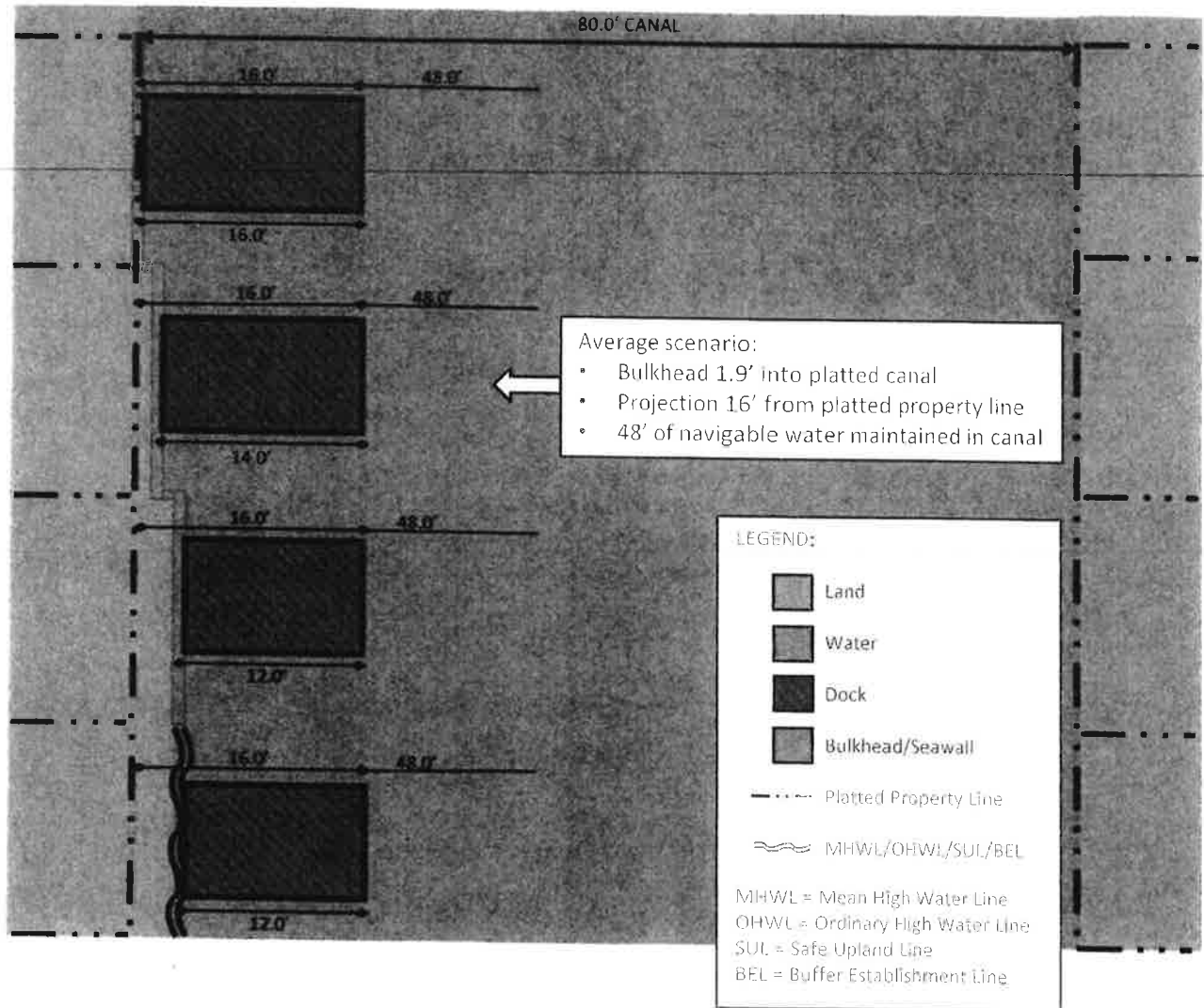
(SEAL)


Rita Pritchett, Chair

(Approved by the Board on 4/20/, 2021)

Reviewed for legal form and content by: _____

ATTACHMENT -- DOCK SCENARIOS





Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Unfinished Business

I.1.

1/26/2021

Subject:

Legislative Intent and Permission to Advertise Code Amendment RE: Chapter 62, Article VI, Zoning Regulations, Section #62-2118, Residential Boat Docks and Piers.

Fiscal Impact:

None

Dept/Office:

Planning and Development

Requested Action:

It is requested that the Board grant legislative intent and permission to advertise a code amendment to Chapter 62, Article VI, Zoning Regulations, Section #62-2118, Residential Boat Docks and Piers, to establish more consistent points for measuring dock projection and creating a riparian clear area between residential docks.

Summary Explanation and Background:

On October 27, 2020, the Brevard Board of County Commissioners directed Planning and Development staff to draft a report with proposed code revisions to address dock-related issues throughout the County. The attached staff report addresses two specific issues relating to docks: 1) the landward measurement point for a dock, and 2) clear riparian zones between docks.

The landward measurement point for a dock: The code does not contain a clearly defined point from which a dock's projection into a waterway is measured. Currently, code section 62-2118, states "no boat dock, covered boat dock or pier, together with the watercraft being moored at the structure, shall project into a manmade waterway more than 20 percent of the width of the waterway or 30 feet, whichever is less, including pilings." The code also defines a dock as, "a platform extending from a seawall or the shore which is used to secure or provide access to boats. . ." Since the code does not identify the measurement point, there have been different interpretations of the measurement point over the years which have created inconsistencies with dock projection. A potential solution for the Board's consideration would be to amend the code to establish clearly defined measuring points that take into consideration the lot line and its relationship to the shoreline of the waterway.

Clear riparian zones between docks: Currently, the Code requires docks and pilings maintain 7.5 ft. setback from side lot lines. However, it does not contain provisions that provide a clear area which prevents the placement of navigation obstruction (e.g., mooring boats/watercraft, crab/fish traps, etc.). A potential solution for the Board's consideration would to amend the code to establish clear zones that coincide with current setbacks or increase the setback distance from 7.5 ft.

Options for Board consideration:

1. Direct staff to draft code amendments to establish clearly defined measuring points that takes into consideration the lot line and its relationship to the shoreline of the waterway, and to establish clear zones that coincide with current setbacks.
2. Direct staff to draft code amendments to establish a clearly defined measuring points that takes into consideration the lot line and its relationship to the shoreline of the waterway, and increase the setback distance from 7.5 ft.
3. Provide alternative direction.

It should be noted that the County's Code only applies to dock constructed in canals, public drainage easements and drainage right-of-way's in residential zoning classifications in unincorporated areas of Brevard County. Docks constructed at properties along major waterbodies, such as the Indian River Lagoon and Banana River Lagoon, are regulated and permitted by the State (Florida Department of Environmental Protection and/or the St. Johns River Water Management District), although the County does permit electrical and other improvements associated with these docks.

Clerk to the Board Instructions:

None.



BOARD OF COUNTY COMMISSIONERS

TO: Brevard County Board of County Commissioners
FROM: Tad Calkins, Director – Planning and Development
DATE: January 26, 2021
SUBJECT: Dock Related Issues Staff Report (Point for Measuring Dock Projection and Clear Riparian Area between Docks at Residential Properties)

BACKGROUND: On October 27, 2020, the Brevard Board of County Commissioners directed Planning and Development staff to draft a report with proposed code revisions to address dock-related issues throughout the County. Dock construction in canals, public drainage easements and drainage right-of-ways in residential zoning classifications in unincorporated areas of Brevard County is subject to County code Section 62-2118 and requires a building permit. Docks constructed at properties along major waterbodies, such as the Indian River Lagoon and Banana River Lagoon, are regulated and permitted by the State (Florida Department of Environmental Protection and/or the St. Johns River Water Management District). During the past year, ninety-five (95) dock permits and two (2) dock variances were processed by the Planning and Development Department. Additionally, one hundred twenty-nine (129) seawall/bulkhead construction permits and seven (7) Surface Water Permits for revetments were issued in 2020.

In recent months, two specific issues relating to docks have been brought to staff's attention: 1) How manmade waterways are measured, which affects dock length allowance and projection into a waterway; and 2) How clear riparian zones between docks at residential property lines are established.

1. **MEASUREMENT OF MANMADE WATERWAY:** Current County code requires that *"no boat dock, covered boat dock or pier, together with the watercraft being moored at the structure, shall project into a manmade waterway more than 20 percent of the width of the waterway or 30 feet, whichever is less, including pilings"* Ch 62-2118 (d)(3). In addition, docks are defined as *"a fixed or floating structure, including moorings, used for the purpose of berthing buoyant vessels either temporarily or indefinitely"* Ch 62-3661.

Issue: Location of landward measurement point is not defined in the current code which may result in conflicting interpretations and confusion regarding measuring the width of manmade waterbodies as well as measuring the length of dock projections into waterways. Three potential landward measurement points have been identified:

- At the property line abutting the waterway, as established by a recorded instrument (plat, deed, etc.)

- ADVANTAGE: A plat is a legal recorded document that is readily available and provides a static measurement point that ensures consistency for application of this code.
- DISADVANTAGE: Some property plats extend into or across the waterway (Refer to Figure 1).
- At the elevation of land-water interface, i.e., the SUL (safe upland line), the OHWL (ordinary high water line), or the MHWL (mean high water line)
 - ADVANTAGE: The SUL, OHWL, and MHWL can be determined by a survey.
 - DISADVANTAGE: The land-water interface may not provide a consistent measuring point without survey as water levels can vary spatially and temporally. Water levels in Brevard County can fluctuate seasonally (high-water and low-water seasons).
- At the face of bulkhead or seawall, if present
 - ADVANTAGE: Easily identifiable measuring point.
 - DISADVANTAGE: Variable measurement point from property to property as seawalls may exist up to 48 inches waterward of property line. Refer to Section 62-3666 (8)c.iii of the Surface Water code, *"If an existing bulkhead cannot be removed due to safety, structural, or other environmental concerns, the waterward extension of the new bulkhead, where practicable, shall meet the least waterward extension of these criteria:*
 - a) *Shall not exceed a maximum of 18 inches from the existing waterward bulkhead face, except where otherwise permitted by FDEP.*
 - b) *Shall be located parallel and in line with adjacent existing and legally permitted bulkheads.*
 - c) *A bulkhead shall not extend further than 48 inches into a canal as recorded in the public records.*



Figure 1. View of potential measuring points

A review of the Code of Ordinances of twenty (20) municipalities and counties throughout the state of Florida did not disclose a universally common landward measuring point; however, waterline, seawall/bulkhead line, and property line were all referenced as points of measurement, either singularly or in combination. Approximately one-third (1/3) of the entities did not reference a point for measuring dock projection. Refer to Table 1 in Attachment A – Comparison of Dock Code throughout Florida.

Measurement of Manmade Waterway Considerations:

- Option 1 - Amend code to establish clearly defined measuring point that takes into consideration aforementioned scenarios.
- Option 2 – Amend code per other Board direction
- Option 3 - No changes to code at this time

2. **ESTABLISHING CLEAR RIPARIAN ZONES BETWEEN DOCKS:** Current County code requires that *“a boat dock, covered boat dock or pier, including pilings, shall extend no closer than seven and one-half feet to the side property line, as projected in a straight line into the waterway.” Ch 62-2118 (d)(2)*

Issue: Current code provisions do not provide clear area that prevents the placement of navigation obstruction (e.g., mooring boats/watercraft, crab/fish traps, etc.) which are not considered to be regulated by setbacks. See *potential* scenario depicted in Figure 2 below. Two possible options to establish a clear riparian area between docks at residential properties have been identified:

- Establish clear zone including but not limited to moored watercraft or other obstructions to coincide with side setback requirements
 - **ADVANTAGE:** Establishes a minimum 15 ft clear area between residential lots for navigation.
 - **DISADVANTAGE:** Some number of existing docks with moored watercraft and/or other marine improvements (e.g., pilings) may not meet 15 ft clear riparian area between docks and may require alternate mooring location, modification to dock structure, or variance to meet code.
- Increase side setback distance requirements for docks (currently 7.5 ft)
 - **ADVANTAGE:** Increases distance between dock structures to >15 ft.
 - **DISADVANTAGE:** Does not prevent a moored watercraft from encroaching into setback area. Additionally, some number of existing docks may not meet setback and would require modification to dock structure or variance to meet code requirements.



Figure 2. Potential scenario for illustrative purposes only (not to scale) of watercraft encroachment into setback.

Approximately 60% of the Code of Ordinances reviewed (refer to Table 2 in Attachment A - Comparison of Dock Code throughout Florida) include language in their dock code to ensure an area clear from moored watercraft encroachment and/or to provide protection of encroachment upon the riparian rights of other property owners.

In addition, the dock code comparison provided as Table 2 in Attachment A (Comparison of Dock Code throughout Florida) shows side setback requirements for docks range from 5 feet to 25 feet, with the 10 feet as most common (20% of entities). Approximately 25% of entities require same side setbacks for docks as set for zoning district.

Establishing Clear Riparian Zone between Docks Considerations:

- Option 1 - Amend code to include a clear zone that coincides with side setback requirements for docks
- Option 2 - Amend code to increase side setback distance requirements for docks
- Option 3 – Amend code per other Board direction
- Option 4 - No changes to code at this time

Thank you.

2 Enclosures:

1. Attachment A – Comparison of Dock Code throughout Florida
2. Attachment B – Dock and Property Line Scenarios

ATTACHMENT A - Comparison of Dock Code throughout Florida

Staff reviewed the Code of Ordinances of twenty (20) municipalities and counties throughout the state of Florida to compare with current Brevard County code regarding dock related issues (point for measuring dock projection and clear riparian area between docks at residential properties). A comparison matrix of findings is provided as Table 1 below. A summary of code references regarding dock related issues is provided as Table 2.

Table 1. Types of Dock Projection Measurement Points referenced in various Code of Ordinances

| | No reference | MHWL | MLW | waterline | Seawall / bulkhead | Property line / lot line | Point of installation |
|---------------------------------|-----------------|----------|----------|-----------|-----------------------|-----------------------------|--------------------------|
| 1. Brevard County | X | | | | | | |
| 2. City of Cocoa Beach | X | | | | | | |
| 3. City of Indian Harbor Beach | | X | | | | | |
| 4. City of Palm Bay | | | | X | | | |
| 5. City of Melbourne | | | | X | | | |
| 6. City of Satellite Beach | | X | | | | | |
| 7. Volusia County | X | | | | | | |
| 8. Indian River County | | | X | | | | |
| 9. Orange County | X | | | | | | |
| 10. Town of Lantana | | X | | | X | | |
| 11. Town of Manalapan | | | X | | X | | |
| 12. Village of Royal Palm Beach | | | | X | X | | |
| 13. City of Crystal River | | X | | | | | |
| 14. Town of North Palm Beach | | | | | | X | |
| 15. City of Vero Beach | | | X | | | | |
| 16. City of Stuart | X | | | | | | |
| 17. City of Palm Coast | X | | | | | | |
| 18. Charlotte County | | X | | | | | X |
| 19. City of Marco Island | | | | | X | X | |
| 20. City of Cape Coral | | | | X | | | |
| 21. City of Jupiter | X | | | | | | |
| TOTAL | 7 | 5 | 3 | 4 | 4 | 2 | 1 |

Table 2. Summary table of code references regarding dock related issues

| | Measurement points – waterway and/or dock projection | Setbacks - side | Moored watercraft setbacks and/or clear zone requirements |
|------------------------------------|--|--|---|
| Brevard County | <i>no code reference</i> | A boat dock, covered boat dock or pier, including pilings, shall extend no closer than seven and one-half feet to the side property line, as projected in a straight line into the waterway. Where two abutting properties sharing canal frontage submit concurrent permits for dock structures, there is no minimum side setback from the shared property line for each property owner. Sec. 62-2118 (d)(2) | <i>no code reference</i> |
| City of Cocoa Beach | The width of any waterway shall be determined by either of the following methods: 1) As indicated on a survey. 2) As determined from an aerial map using data provided by the Brevard County Property Appraiser. Section 3-28 D.2.a | Side setbacks for any waterside accessory structure shall be twenty (20) percent of the lot width or a minimum of fifteen (15) feet from any side property line, whichever is greater. The property width shall be measured along the rear property line. Section 3-28 D.2.e | If a waterside vehicle is docked or moored within fifteen (15) feet of the side property line, it shall be done so in such a manner that does not significantly impede docking or mooring at an adjacent property. Section 3-28 D.2.g.(4) |
| City of Indian Harbor Beach | Length of a dock or pier shall mean the distance from the mean high water line at the landward end or landward side of such dock or pier to that point on the dock or pier nearest the center of the waterway in which such dock or pier is located. Sec. 19.(b)(9) Width of an artificial waterway shall mean the distance measured perpendicular to the centerline of | A boat dock, covered boat dock or pier, including pilings, shall extend no closer than to the side property line of the parcel or lot on which such dock or pier is located or parcel boundary line than the minimum side yard distance established in the zoning district in which such lot or parcel is located as projected in a straight line into the waterway. Sec. 19.(d)(2) | <i>no code reference</i> |

| | Measurement points – waterway and/or dock projection | Setbacks - side | Moored watercraft setbacks and/or clear zone requirements |
|------------------|---|---|---|
| City of Palm Bay | <p>such artificial waterway from the mean high water line on one side thereof to the mean high water line on the opposite side thereof. If either shore of an artificial waterway consists of a bulkhead the width of such waterway shall be measured from the bulkhead. <i>Sec. 19.(b)(13)</i></p> <p>WIDTH OF WATERWAY. The distance measured perpendicular to the centerline of such waterway from the mean or ordinary high water line on one shore thereof to the mean or ordinary high water line on the opposite shore thereof. If either shore consists of a bulkhead or seawall, the width of such waterway shall be measured from the seawall or bulkhead. § 170.140(A)</p> <p>Length. Piers, docks and boathouses, alone or together in combination to include the boat, boat mooring spaces and pilings, shall not project into a waterway more than thirty three percent (33%) of the minimum width of the waterway or two hundred fifty (250) feet, whichever is less, measured from the point at which the pier, dock or boathouse is proposed to be extended into the waterbody. § 170.140(D)</p> | <p>No piers, docks, or boathouses shall be constructed so as to encroach upon the riparian rights of other property owners. § 170.142</p> | <p><i>no code reference</i></p> |

| City of Melbourne | Measurement points – waterway and/or dock projection | Setbacks - side | Moored watercraft setbacks and/or clear zone requirements |
|--|---|---|---|
| <p>Length—Marine facilities, alone or together in combination to include the boat, boat mooring spaces and pilings, shall not project into a waterway more than 20 percent of the minimum width of the waterway or 250 feet, whichever is less, measured from the point at which the marine facility is proposed to be extended into the water body. The minimum width of the waterway is determined by establishing a line perpendicular to the shoreline at the point of origin of the marine facility and creating two 45-degree radials off the perpendicular line at the point of origin. Each of the 45-degree radials shall be extended until intersecting with another shoreline at which point they shall be connected with a line creating a 90-degree zone of intersection. The shortest distance between shorelines within this 90-degree zone of intersection shall be established as the minimum width of the waterway. Sec. 2 (F)(2)(a)</p> | <p>A side yard setback shall be required for all marine facilities together or in combination to include boat mooring spaces and pilings. Side yard setbacks shall be equal to the side setback of the zoning district in which the marine facility is located or 7.5 feet, whichever is greater. Lot lines shall be extended into the waterway for purposes of the measurement. Sec. 2 (F)(2)(a)</p> | <p>Regardless of setbacks, no marine facility shall be constructed so as to encroach upon the riparian rights of other property owners, unless said riparian property owner shall consent in writing in form and substance acceptable to the city attorney to such encroachment. Sec. 2 (F)(2)(a)</p> | |

| | Measurement points – waterway and/or dock projection | Setbacks - side | Moored watercraft setbacks and/or clear zone requirements |
|------------------------------------|---|--|--|
| City of Satellite Beach | Structures shall not extend into the water more than 20 feet or 20 percent of the canal's width, whichever is less except mooring piles on the Grand Canal may extend into the water no more than 30 feet. <i>Sec. 30-525(a)</i> | Every portion of any structure set forth in section 30-524 shall be set back at least ten feet from the extended side-yard property line. <i>Sec. 30-525(b)</i> | Boats shall maintain a five-foot setback from the extended side-yard property line. <i>Sec. 30-526(b)</i> |
| Volusia County | The dock area shall not exceed 750 square feet, including any boathouse, but excluding walkway extensions into the water. The area of a boathouse is the square footage under roof. Walkways shall not exceed eight feet in width. <i>Sec. 72-278(1)</i> | No dock shall be permitted within 15 feet of any side lot line, or its extension into the water. <i>Sec. 72-278(5)</i> | <i>no code reference</i> |
| Indian River County | Docks, including tie-off piles, mooring or dolphin poles, and public piers shall not project outward from the shore more than twenty-five (25) percent of the width of the waterway at a point where they are located. The outward projection of a dock and associated structures shall be measured from the water's edge at mean low tide. <i>Section 932.07(3)(b)1.</i> | Riparian side yard setback encroachment prohibited. No dock, pier, boat shelter or other waterfront structure may encroach on a required riparian side yard setback as extended waterward for the zoning district in which the project is located, unless such an encroachment is necessary for the utilization of riparian rights. <i>Section 932.07(4)</i> | No portion of a watercraft moored at such boatslip shall project into the extended riparian side yard setback, unless necessary to allow the utilization of riparian rights. <i>Section 932.07(2)</i> |
| Orange County | The dock shall extend only to the point where reasonable water depth for vessel mooring is achieved. <i>Sec. 15-342(a)</i> | <i>no code reference</i> | The dock shall not adversely affect the rights of other persons and property owners' use of, and access to, the water body. <i>Sec. 15-342(a)</i> |

| | Measurement points – waterway and/or dock projection | Setbacks - side | Moored watercraft setbacks and/or clear zone requirements |
|--|---|---|---|
| Town of Lantana | The length of a dock or pier extending from the shore into any water shall not exceed twenty-five (25) percent of the width of the water body at the specific location of construction. However, regardless of the width of the water body, no dock shall exceed one hundred (100) feet in length as measured from the bulkhead line or mean high water line Sec. 23-134(a)(2) | No pier or dock or mooring pilings extending from the shore shall be closer than twenty-five (25) feet from the joint property lines of immediately adjoining property owners, except with the written consent of such adjoining property owners; If the dock is a marginal dock (parallel and immediately adjacent to a bulkhead), the setback restriction shall be ten (10) feet. Sec. 23-134(a)(5) | <i>no code reference</i> |
| Town of Manalapan | No dock shall project waterward more than necessary (evidenced by bathymetric surveys) to reach a terminus and mooring area located in a water depth of three (3) feet of water at mean low water (MLW), or more than eighty (80) feet from any lot or lot of record or seawall, whichever is less. § - 151.063(B)(1) | No dock or portion of a dock, including any of its dolphin piling, shall be located closer than twenty-five (25) feet to any other dock or portion thereof or any of its dolphin pilings or to any other lot or lot of record to which such dock is not accessory or to the closest portion of the side lot lines of the lot or lot of record from which the dock projects or the waterward projection or extension of such side lot lines. § - 151.063(B)(12) | No portion of any docked boat, ship or water vessel shall project closer than twenty-five (25) feet to the closest portions of the side lot line of any lot or lot of record to which such dock is accessory or the waterward projection or extension of such side lot lines or closer than twenty-five (25) feet to any lot or lot of record to which such dock is not accessory. § - 151.063(C)(2) |
| Village of Royal Palm Beach | Docks shall extend a maximum of five (5) feet out from the face of the bulkhead wall or from the edge of the water body. In no instance shall any structure extend more | For construction water side of any lot on the water body, a dock shall not be placed within ten (10) feet of the side property line extended; | <i>no code reference</i> |

| | Measurement points – waterway and/or dock projection | Setbacks - side | Moored watercraft setbacks and/or clear zone requirements |
|-------------------------------------|---|---|---|
| | than twenty (20) percent of the width of the water body; Sec. 7- 18(b)(2,3) | Sec. 7-18(b)(1) | |
| City of Crystal River | No dock shall extend waterward of the mean high water line more than two hundred (200) feet over sovereign , submerged land or more than twenty-five (25) percent of the width of the waterway at that particular location, whichever is less. Sec 5.01.07(M) | All boat docks, boat davits, boat lifts, boathouses, and boat covers shall comply with any applicable side yard setback. Such side yard setback shall be measured from the extension of the side lot line into the water, perpendicular to the shore line, at the point where the side lot line intersects with the mean high water line. Sec 5.01.07(J) | Boats stored on such structures shall not protrude beyond the side yard setback. Such side yard setback shall be measured from the extension of the side lot line into the water, perpendicular to the shoreline, at the point where it intersects with the mean high water line. Sec 5.01.07(K) |
| Town of North Palm Beach | Docks shall extend a maximum of five (5) feet waterward from the rear property line. Sec. 5-84(5) | In regard to construction waterside of any lot having fifty- foot or less frontage on the water, docks shall not be placed within five (5) feet of the side property line extended. In regard to construction waterside of any lot having greater than fifty-foot frontage on the water, docks shall not be placed within ten (10) feet of the side property line extended. Sec. 5-84 | <i>no code reference</i> |
| City of Vero Beach | Docks may extend into a waterway a maximum of 20 percent of the width of the waterway. | Docks shall be setback a minimum of 15 feet from side property lines. Sec. 31.05(a)(5) | Forty percent (20 percent either side of the centerline) of the width of the waterway shall remain unobstructed by docks, |

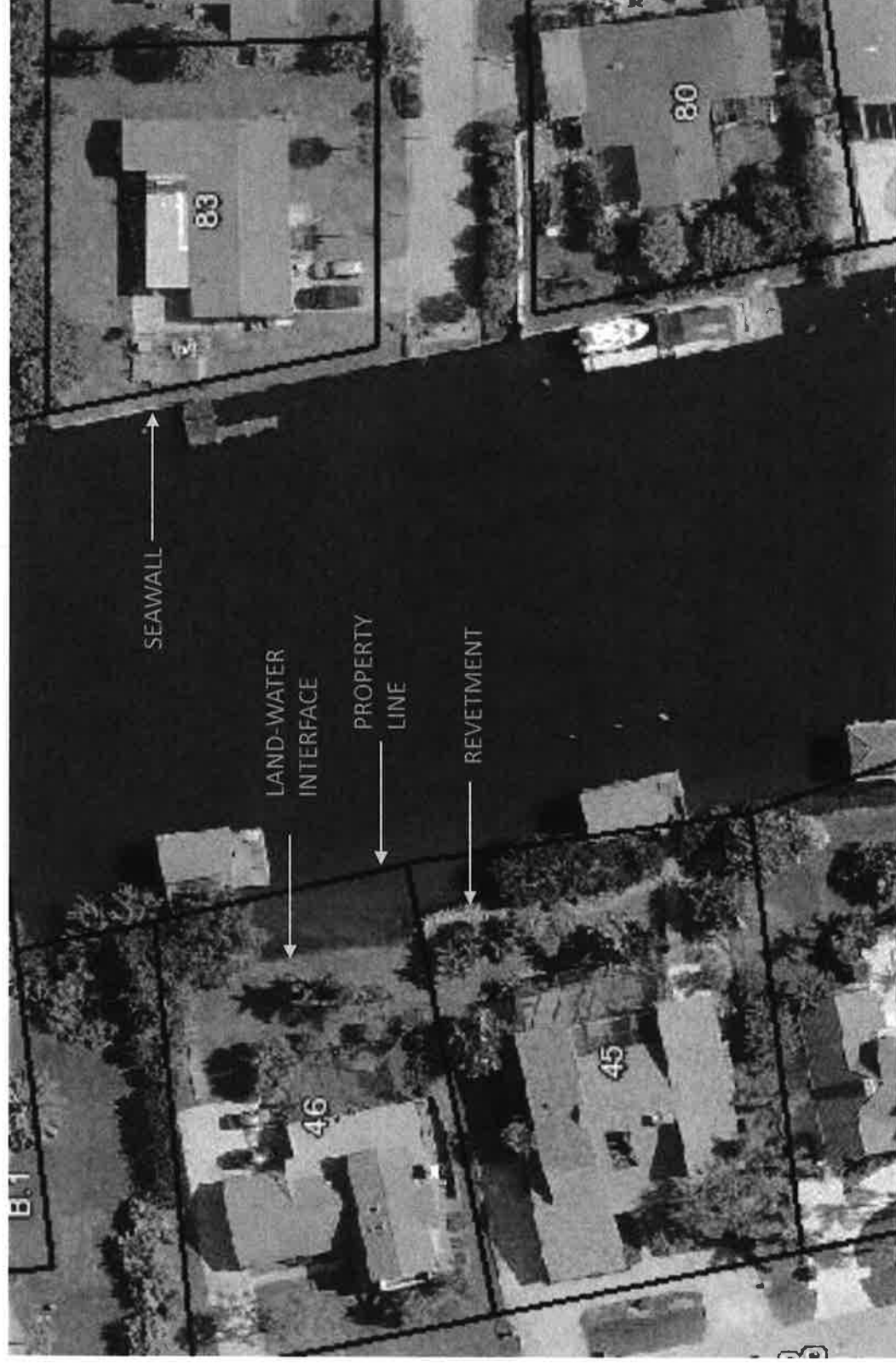
| | Measurement points – waterway and/or dock projection | Setbacks - side | Moored watercraft setbacks and/or clear zone requirements |
|---------------------------|---|---|---|
| | Sec. 31.05(a)(3) For the purposes of this section, measurements shall be from the mean low water mark. Sec. 31.05(a)(6) | | mooring or dolphin poles, or moored boats. Sec. 31.05(a)(1) |
| City of Stuart | Docks on canals and creeks shall not extend from the shoreline waterward more than 25 percent of the canal width measured at the narrowest point of the canal adjacent to the lot Sec. 10-171(d) | All residential docks or piers shall be set back a minimum of five feet from both the riparian and side property lines, and shall not impair the use of existing or future dockage, because of proximity. Sec. 10-171(a) | All residential docks or piers shall be set back a minimum of five feet from both the riparian and side property lines, and shall not impair the use of existing or future dockage, because of proximity. Sec. 10-171(a) |
| City of Palm Coast | The length of all docks, inclusive of all components, shall not exceed 65 percent of the property frontage along the canal. Sec. 4.01.05.C.3.b | The minimum setbacks from a projection of the side property line to the structure shall be a minimum of ten feet. Sec. 4.01.05.C.3.a | The size of the vessel and location of adjacent docks shall be considered to ensure that the vessel does not interfere in any manner with the navigation of ingress and egress. Sec. 4.01.05.C.3.b |
| Charlotte County | On manmade bodies of water, such structures shall not extend further seaward than twenty-five (25) percent of the open water span or twenty-five (25) feet from the mean high waterline or seawall at the point of installation, whichever is less. Sec. 3-9-65(b)(2) | Boating structures are required to meet the minimum side yard requirement set forth in the zoning district in which the property is located Sec. 3-9-65(a)(4) | <i>no code reference</i> |

| | Measurement points – waterway and/or dock projection | Setbacks - side | Moored watercraft setbacks and/or clear zone requirements |
|-----------------------------|---|---|--|
| City of Marco Island | Protrusion shall be measured from the face of the seawall. On lots where the property line extends into the water, the protrusion shall be measured from the property line. Sec. 54-111(a)(4) The platted width of the waterway shall be defined by the recorded plat. Sec. 54-111(a)(5) Marine improvements may extend 25% of the calculated waterway width or 40 feet, whichever is less, as measured from the water frontage line Section 5.4.3A.1 | Boat docking facilities shall have side yard setbacks equivalent to 15 percent of the seawall length, as measured along the waterfront and from each applicable riparian line. a. The minimum required setback shall be seven and one-half feet. b. The maximum required setback shall be 15 feet Sec. 54-111(b)(1) Marine improvements are setback 12 feet from each extended side property line. Section 5.4.3A.1 | The setback shall apply to that portion of the boat dock facility and moored vessel waterward of the property line. Sec. 54-111(b)(1)d. |
| City of Cape Coral | | | <i>no code reference</i> |
| City of Jupiter | Docks which are located on or upon any manmade surface waters (i.e., lakes, retention ponds, or canals), boundaries of such manmade surface waters being totally within a residential area, shall not project more than five feet or ten percent of the width of the waterway, whichever is greater Sec. 27-2626(b)(2) | No dock, boat lift mooring space, mooring piling, davit, other mooring facility, or floating structure (i.e., dock, walkway, floating vessel platform, etc.) shall be located nearer to the side lot line than the side setback required for the district within which the property is located as measured from a line that extends out from the side property lines into the waterway or canal. Sec. 27-2626(b)(6) | boats may be moored without a setback to the extensions of a property's side property line, but no part of the boat shall overhang the vertical plane created by a side property line's extension into the waterway or canal. Sec. 27-2626(b)(6) |

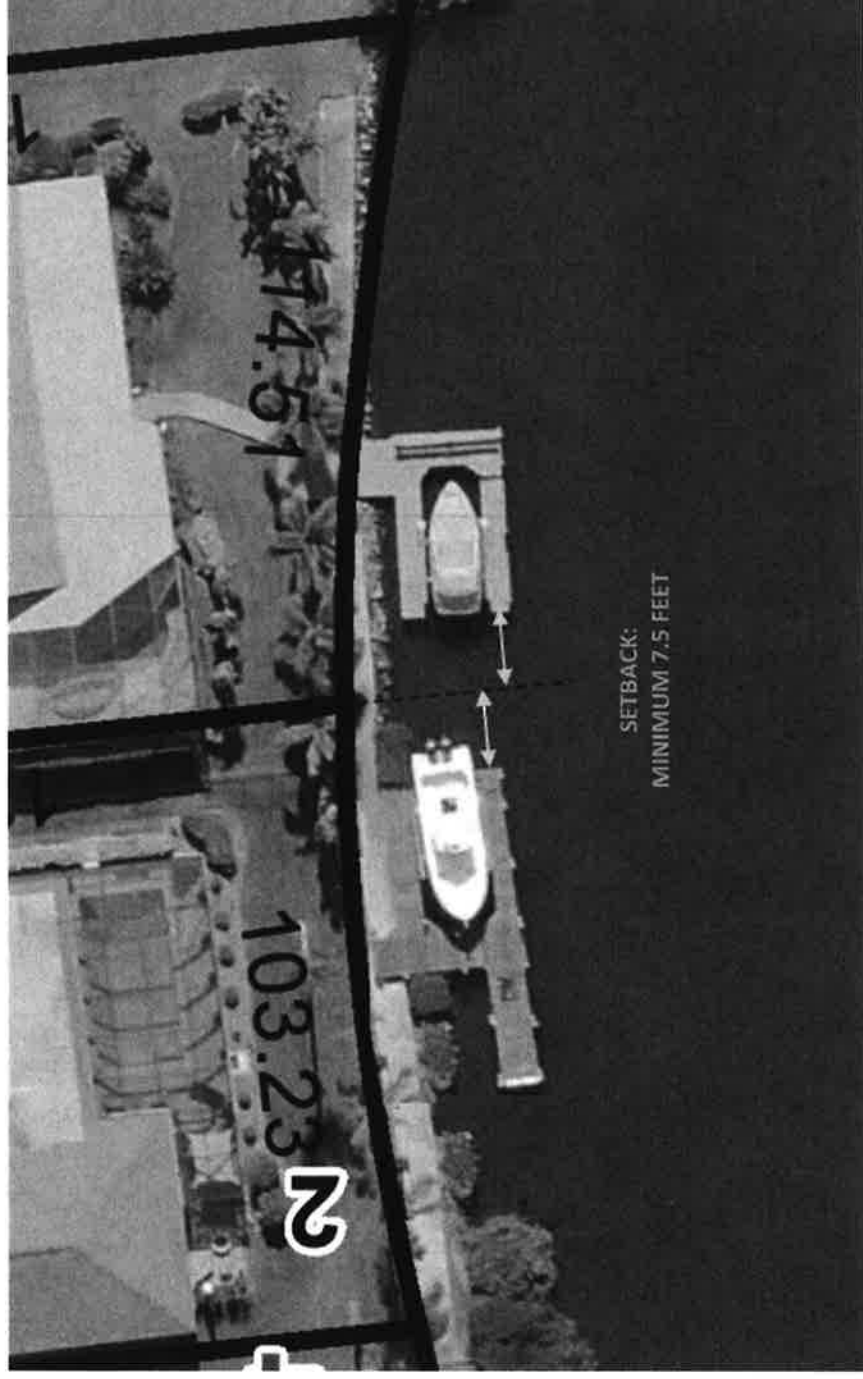
Attachment B

Scenarios of Dock and Property Lines

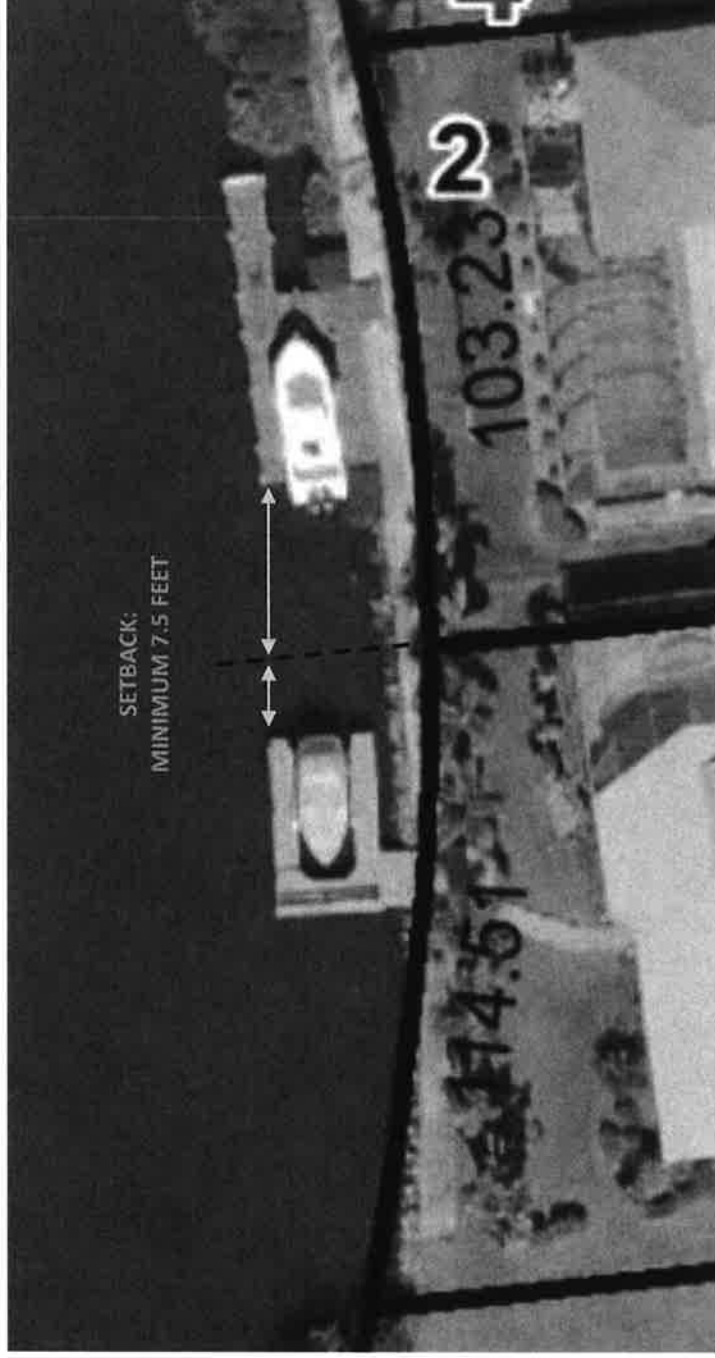
Example scenario showing possible measuring points



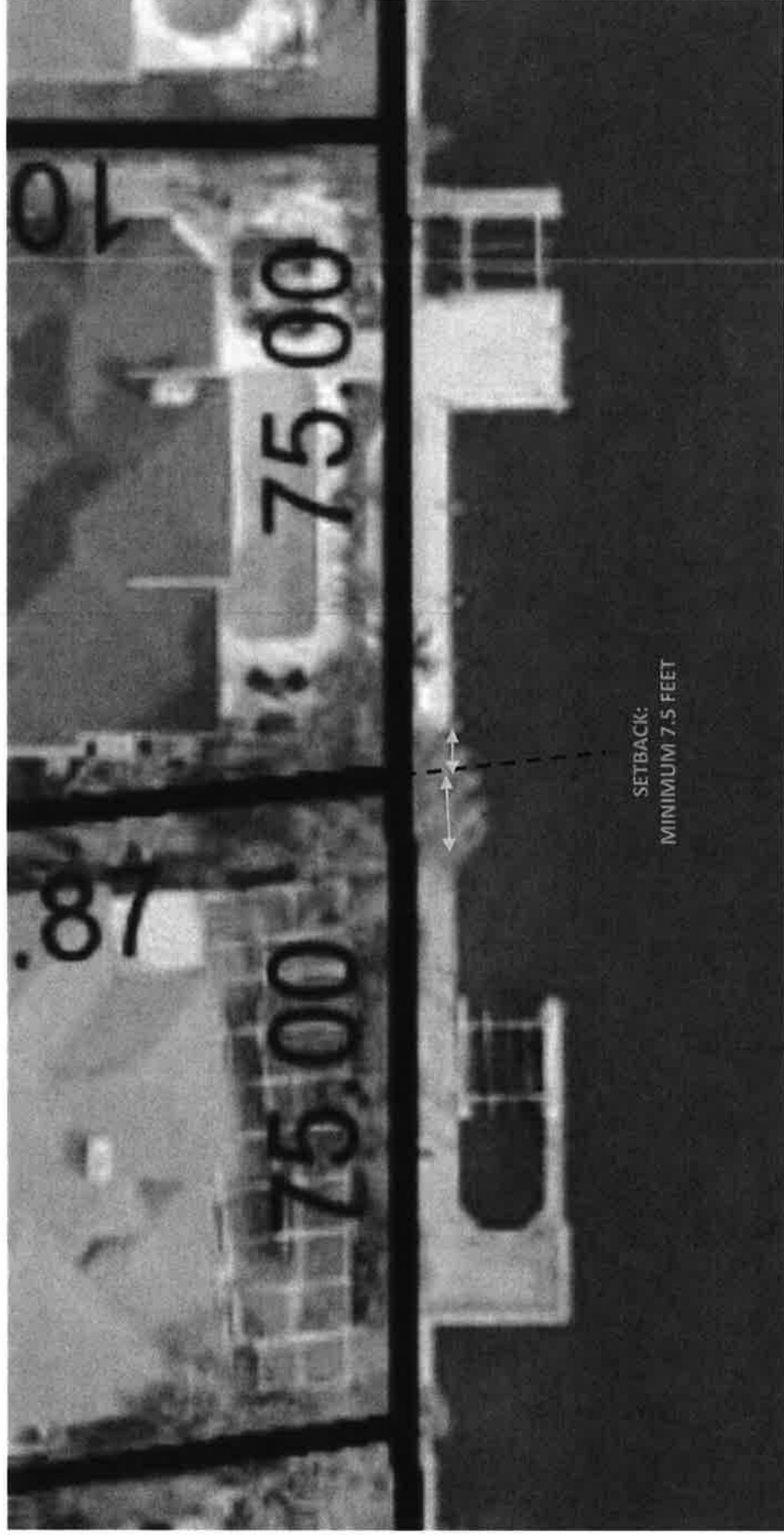
Example scenario (altered photo)



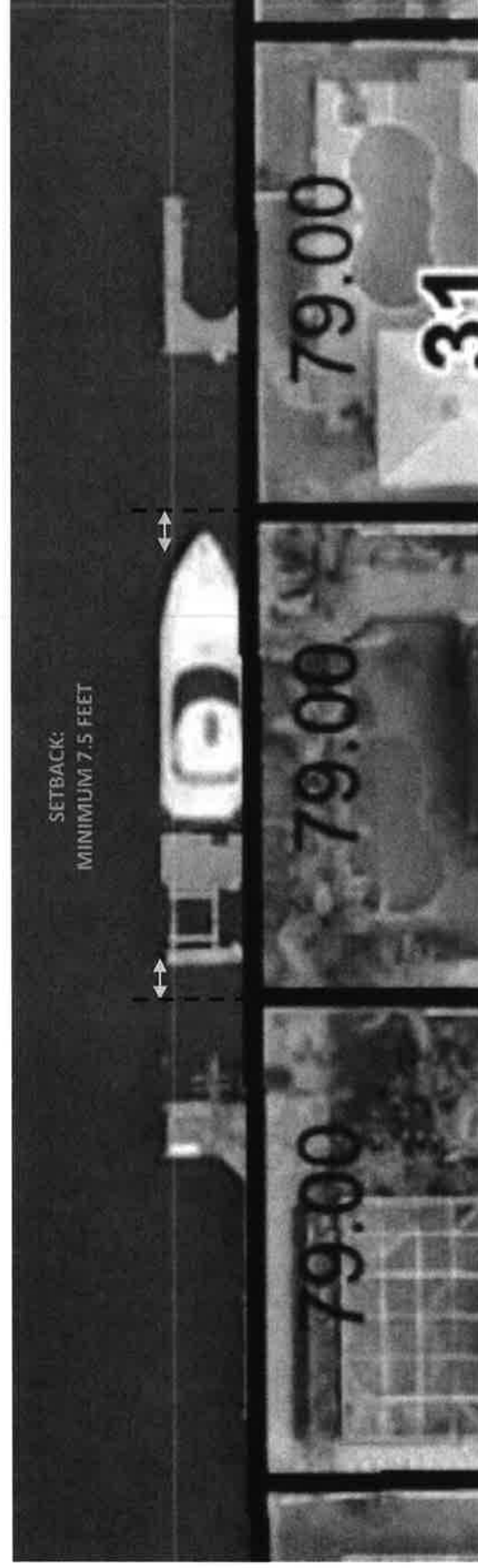
Example scenario showing setback area



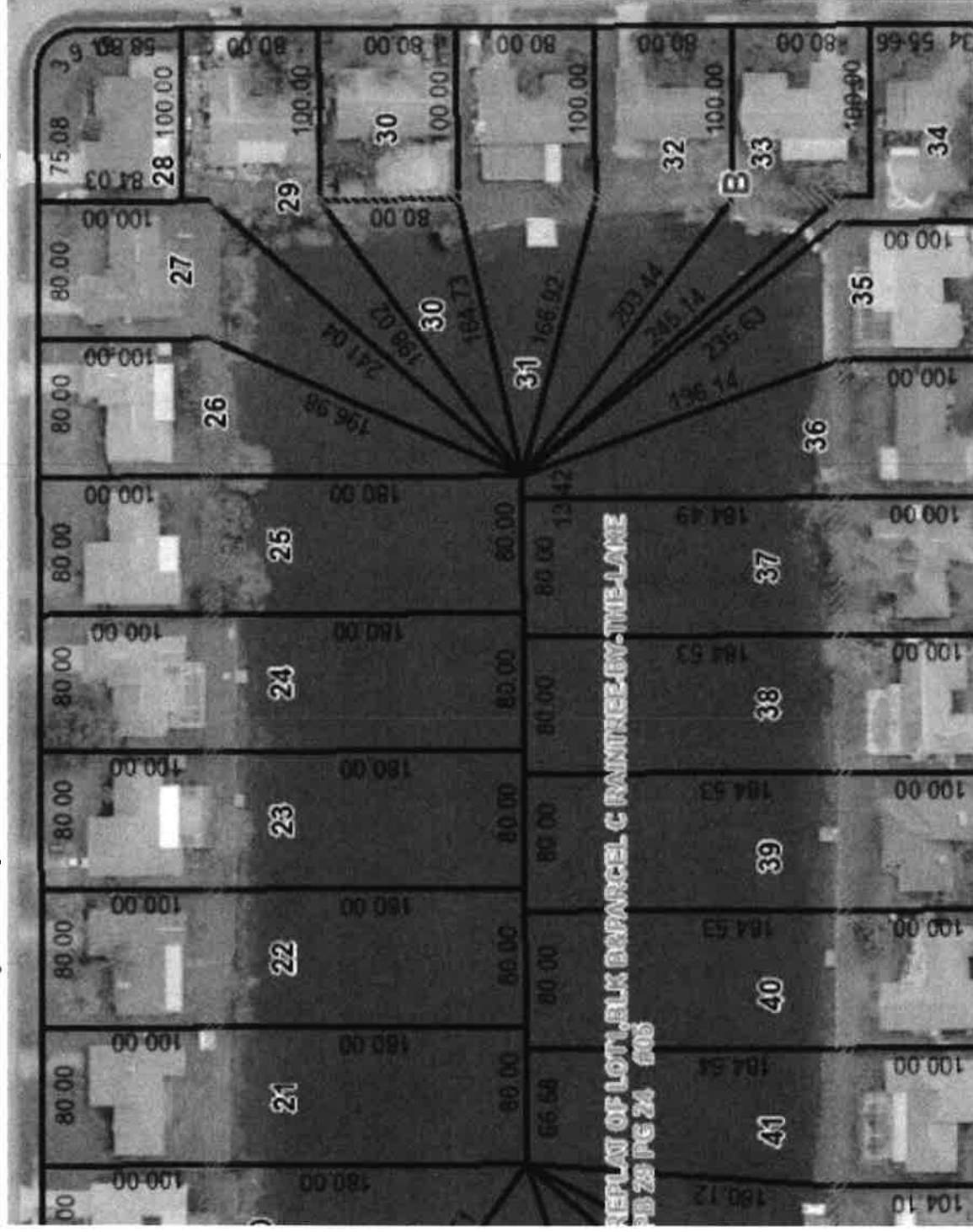
Example scenario showing setback area



Example scenario showing vessel encroachment into setback area



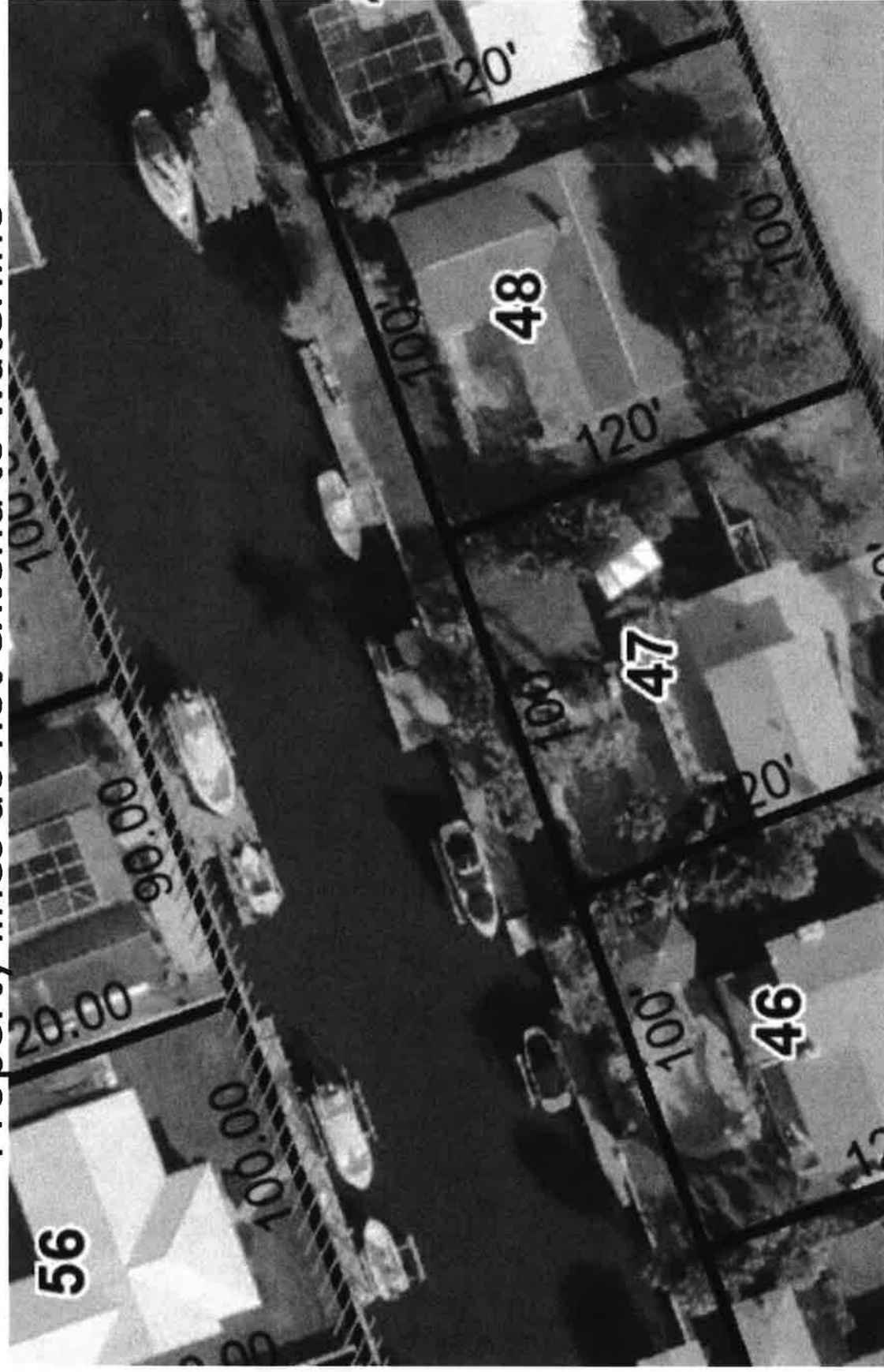
Special situations to consider:
Property lines extend into waterbody



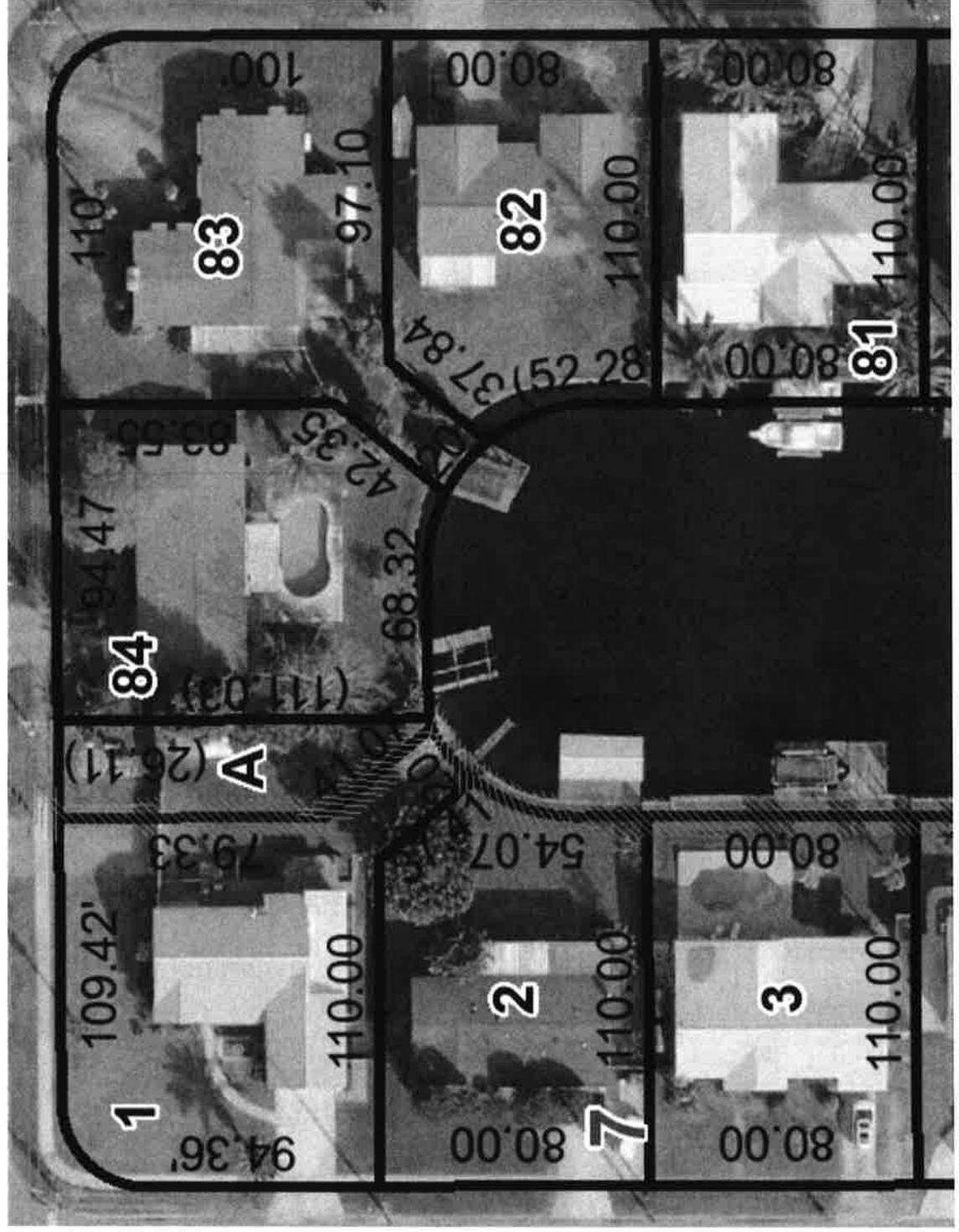
Special situations to consider:
Property lines extend into waterbody



Special situations to consider:
Property lines do not extend to waterline



Special situations to consider:
End of canals and corner lots



Special situations to consider:
End of canals and corner lots



Special situations to consider:
End of canals and corner lots



From: Calkins, Tad
To: Jones, Jennifer
Subject: FW: Proposed Zoning Ordinance regarding Dock Requirements
Date: Thursday, March 25, 2021 10:03:58 AM
Attachments: image001.png

Jennifer,

The following email was sent to all of the Marine Contractors that are licensed to work with Brevard County. Please include this with the attachments for the agenda report.

Thanks,
Tad

From: Nebel, Marina E
Sent: Wednesday, March 10, 2021 5:00 PM
To: Elmore, Amanda T <Amanda.Elmore@brevardfl.gov>
Subject: Proposed Zoning Ordinance regarding Dock Requirements

Good afternoon,

You are receiving this email because there is a proposed zoning ordinance regarding dock requirements.

The Brevard Board of County Commissioners (BOCC) authorized legislative intent and permission to advertise amendments to the Brevard County Zoning Code on January 26, 2021. The proposed changes affect unincorporated properties within Brevard County only. The tentative schedule for the Local Planning Agency and the Board of County Commissioners to consider this item is provided below. This meeting series is subject to change if the item is tabled or staff receives other BOCC direction. All meetings are held at the Brevard County Government Complex, 2725 Judge Fran Jamieson Way, Viera, FL 32940, Building C, Room 101.

March 22, 2021 Local Planning Agency (LPA), 3pm

April 6, 2021, Board of County Commissioners (BOCC) Public Hearing/Meeting, 5pm

April 20, 2021, Board of County Commissioners (BOCC) Public Hearing/Meeting, 9am

The agenda item and associated documents that the LPA will consider on March 22nd are available for download at <https://brevardfl.legistar.com/Calendar.aspx>. Click on the "Meeting Details" link for the meeting date of interest, you would need to click March 22, 2021 for the LPA meeting. Then click on the "File #" link next to the item of interest. Example: this would

be file #2621 for Agenda #H.1. You will then see all the attachments as individual blue links in the top/middle of your screen and can download them to your computer.

Documents have not yet been produced for the April 6th and April 20th BOCC public hearings. When those materials are available they will be posted under the "Meeting Details" for those meeting dates at the link above.

If you have questions about the schedule, please email to jennifer.jones@brevardfl.gov. If you have questions about the content of the potential amendments, please email amanda.elmore@brevardfl.gov or jane.hart@brevardfl.gov.

If you do not wish to receive future updates, please reply.

Amanda Elmore

Assistant Director

PLANNING & DEVELOPMENT DEPARTMENT

2725 Judge Fran Jamieson Way, C-201

Viera, Florida 32940

New Direct Line: (321) 307-8996

New Internal Extension: 58996

e-mail: amanda.elmore@brevardfl.gov

website: <https://www.brevardfl.gov/PlanningDev>



BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 2021- 09

AN ORDINANCE AMENDING CHAPTER 62, "LAND DEVELOPMENT REGULATIONS", CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA; AMENDING ARTICLE VI, ZONING REGULATIONS, DIVISION 1, SPECIFICALLY AMENDING SECTION 62-2118, RESIDENTIAL BOAT DOCKS AND PIERS, TO REVISE THE EXISTING DEFINITIONS AND TO ADD NEW DEFINITIONS FOR BUFFER ESTABLISHMENT LINE, BULKHEAD AND SEAWALL, SAFE UPLAND LINE, VESSEL, WATERCRAFT, AND WATERWAY ENCROACHMENT; AMENDING THE GENERAL REQUIREMENTS TO ESTABLISH A CLEAR, NAVIGABLE ZONE, TO CLARIFY MARINE IMPROVEMENTS AND ACCESSORIES SUBJECT TO SIDE SETBACK AND PROJECTION REQUIREMENTS, AND TO CLARIFY POINTS OF MEASUREMENT FOR RESIDENTIAL BOAT DOCK AND PIER PROJECTION INTO MANMADE WATERWAYS; ADDING PROVISIONS REGARDING NON-CONFORMING DOCKS; PROVIDING FOR CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED; PROVIDING AN EFFECTIVE DATE; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA.

WHEREAS, the Board of County Commissioners desires to establish clear, navigable zones between residential boat docks in manmade canals that coincide with current setbacks; and

WHEREAS, the Board of County Commissioners wishes to establish clearly defined measuring points for residential boat dock projections in manmade canals; and

WHEREAS, the Board of County Commissioners, on January 26, 2021, approved legislative intent and permission to advertise an amendment to land development regulations regarding residential boat docks and piers; and

WHEREAS, the Building Construction Advisory Committee, on March 10, 2021, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Local Planning Agency, on March 22, 2021, reviewed the proposed ordinance and made recommendations; and

WHEREAS, the Board of County Commissioners has reviewed the recommendations of the Local Planning Agency and the Building Construction Advisory Committee and has considered the comments of interested citizens in public hearing; and

WHEREAS, the Board of County Commissioners has determined that the proposed amendment serves the public health, safety and welfare of the citizens of Brevard County.

OFFICIALLY FILED WITH THE SECRETARY OF STATE ON APRIL 23, 2021.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, as follows:

SECTION 1. Section 62-2118. Definitions and rules of construction, Code of Ordinances of Brevard County, Florida, Residential boat docks and piers is hereby amended as follows:

Sec. 62-2118. - Residential boat docks and piers.

- (a) *Purpose and intent.* The provisions of this section are intended to regulate the size and location of boathouses, docks and piers located in canals, public drainage easements and drainage rights-of-way in all residential zoning classifications in the unincorporated areas of the county. This section also provides minimum structural standards for the construction of residential boat docks and piers.
- (b) *Definitions.* For purposes of this section:
- (1) *Boathouse* means a structure built at the water's edge used for storing boats, which may extend from a seawall or the shore over the water. A boathouse has a roof, and is partially or totally enclosed by sides.
 - (2) *Buffer establishment line* means a surveyed contour line along a shoreline from which the landward surface water protection buffer may be identified. The line is established along the approximate land-water interface of a shoreline. The elevation of 0.9 feet N.G.V.D. 1929, or N.A.V.D 1988 equivalent elevation, shall be used to define the line along the Indian River Lagoon system. The use of this line is exclusive to Brevard County for the sole purpose of establishing the surface water protection buffer or dock projection into canal and infers no jurisdictional or property boundaries.
 - (3) *Bulkhead or seawall* means a manmade shoreline wall, breakwater or encroachment, excluding shoreline stabilization as defined in Section 62-3661 Brevard County Code, as may be amended, designed or positioned to break the force of waves or to hold back or protect the shoreline from erosion. Headwalls and other similar minor structures necessary for the implementation of permitted stormwater management systems shall not be considered bulkheads.
 - (4) *Covered boat dock* means a structure built at the water's edge used for storing boats, which may extend from a seawall or the shore over the water. A covered boat dock has a roof, but shall be neither partially nor totally enclosed by sides of any type.
 - (5) *Canal* means a manmade or artificially improved natural waterway at least 80 feet in width, as depicted on recorded instrument, which may be used for navigation or drainage.
 - (6) *Dock and pier* mean a platform extending from a seawall or the shore which is used to secure or provide access to boats. A dock or pier is supported by piles or pillars and has no sides or roof.

- (57) *Drainage easement or right-of-way* means a stream or a manmade or artificially improved natural waterway less than 80 feet, as depicted on recorded instrument, in width which has been accepted by the county and recorded as such.
- (8) *Safe upland line* means a boundary line determined by the Florida Department of Environmental Protection, Bureau of Survey and Mapping, in consultation with the applicant. The safe upland line is normally located landward of either the mean or ordinary high-water line and is based upon the location of known or approximated mean high-water lines, ordinary high-water lines and mature upland vegetative communities, whichever is applicable.
- (9) *Vessel* means synonymous with boat as referenced in s. 1(b), Article VII, Florida Constitution, and includes every description of watercraft, barge, and airboat, whether driven by outboard or inboard motor, other than a seaplane on the water, used or capable of being used as a means of transportation on the water. This includes all types of personal watercraft.
- (10) *Watercraft* means any vessel that travels on, in or under the water regardless of means of propulsion.
- (11) *Waterway encroachment* includes, but is not limited to, buoys, crustacean or fish traps, nets, oyster mats and gardens, floating and inflatable docks, rafts, platforms and mats, fishing poles and equipment, boating accessories, parts, and attachments, boards, rocks not part of a revetment, vegetation not including mangroves regulated by the Florida Department of Environmental Protection, or any other object that could potentially impede navigation.
- (c) *Required permits; site plan.*
- (1) A dock permit, if applicable, shall be obtained from the Army Corps of Engineers. The Army Corps of Engineers must also approve any excavation done in conjunction with the construction of a boat dock or pier. In cases where a canal may come under state jurisdiction, permits may also be required from the state department of environmental regulation and department of natural resources.
- (2) Prior to the issuance of a building permit for a boat dock or pier, a site plan showing the location of the proposed construction in relation to the existing structures on the site or lot shall be submitted to the public works department for approval when the boat dock or pier is proposed to be built in a public drainage easement or drainage right-of-way. In cases where the public works director determines that the proposed dock or pier may interfere with the primary function of the drainage easement or right-of-way, the applicant may be required to obtain approval from the board of county commissioners.
- (3) A building permit shall be obtained for the construction of a covered boat dock, boat dock or pier located in canals, drainage easements and drainage rights-of-way in the unincorporated areas of the county. Construction of any covered boat dock, boat dock or pier must meet the minimum construction standards specified in subsection (e) of this section. In conjunction with the building permit application for a covered boat dock, boat dock or pier, the applicant shall submit a site plan

bearing the approval of the public works department or the board of county commissioners as described in subsection (c)(2) of this section.

(d) *General requirements.*

- (1) A boat dock, covered boat dock or pier shall be an accessory use in all residential zoning classifications in the unincorporated areas of the county. Boathouses shall be prohibited from being constructed in a canal, drainage easement or drainage right-of-way in the unincorporated areas of the county.
- (2) A boat dock, covered boat dock or pier, including pilings, together with moored vessel(s) or watercraft, and any waterway encroachment, shall maintain a clear, navigable zone by extending no closer than seven and one-half feet to the side property line, as projected in a straight line into the waterway.
- (3) No boat dock, covered boat dock or pier, together with pilings, moored vessel(s) or watercraft, and any waterway encroachment, shall project into a manmade waterway more than 20 percent of the width of the waterway, as depicted on the recorded instrument creating the waterway, or 30 feet from the property line, whichever is less. Where the property line extends into the waterway:
 - i) If the property is non-bulkheaded, dock projection shall be measured from one of the following: buffer establishment line, safe upland line, mean high-water line or ordinary high-water line, as indicated on the applicant's survey.
 - ii) If the property is bulkheaded, dock projection shall be measured from the face of the bulkhead or seawall.
- (4) Docks and piers shall be no higher than the property's seawall, if any exists, or no more than three feet above the mean high-water line of the waterway if no seawall exists. No covered boat dock shall exceed 20 feet in height, as measured from the mean high-water line to the highest point of the roof of the covered boat dock.
- (5) The deck of the dock, pier, boat lift or covered boat dock, including the platform and any walkways attached to the dock, pier, boat lift or covered boat dock which extend out over the water, shall not exceed 400 square feet in size. When a covered boat dock or covered boat lift is constructed, the area under roof shall not exceed 500 square feet, and in no case shall the area defined by the deck together with the roofed area exceed 600 square feet.

(e) *Construction standards.* In conjunction with all building permit applications, the applicant shall submit two copies of plans and specifications, drawn to scale, with sufficient clarity and detail to indicate the nature and character of the work. The design, construction, alteration and repair of the superstructure of residential boat docks and piers shall conform to the provisions of the Standard Building Code, as adopted by the board of county commissioners. Pile dimensions, spacing and embedment shall be designed according to accepted engineering practices.

(f) *Final survey.* Upon completion of the boat dock or pier, a final survey prepared and certified by an engineer or surveyor registered in the state, showing the as-built

location and depicting compliance with the minimum setback requirements for the boat dock or pier, shall be submitted to the county building division for final approval.

- (g) *Maintenance.* No owner of any parcel of property in the unincorporated area of the county shall permit any boat dock or pier located on or contiguous to his property to become dilapidated, deteriorated, structurally unsound, or a safety hazard, or otherwise be in violation of this chapter.
- (h) *Nonconforming Docks.* An existing boat dock, covered boat dock or pier, together with pilings that have been permitted, shall be considered a legal nonconforming dock and may remain until said boat dock, covered boat dock or pier, together with pilings that have been permitted, is replaced or more than 50% of the dock's structural element (excluding decking) is repaired.

(Code 1979, § 14-20.44; Ord. No. 2009-22, § 1, 8-18-09)

SECTION 2. Conflicting Provisions. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

SECTION 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 4. Area Encompassed. This ordinance shall take effect only in the unincorporated area of Brevard County, Florida.

SECTION 5. Effective Date. A certified copy of this ordinance shall be filed with the Office of the Secretary of State, State of Florida within ten (10) days of enactment. This ordinance shall take effect upon adoption and filing as required by law.

SECTION 6. Inclusion in code. It is the intention of the Board of County Commissioners that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Brevard County, Florida; and that the sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

DONE, ORDERED AND ADOPTED, in regular session, this 20 day of
APRIL, 2021.

Attest:


Rachel M. Sadoff, Clerk
(SEAL)

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA


Rita Pritchett, Chair

(Approved by the Board on 4/20/, 2021)

Reviewed for legal form and content by: _____

ATTACHMENT – DOCK SCENARIOS

