

NOTICE OF APPEAL

Case No.: 2020-08-006

This is an appeal of the Planning and Zoning Board's (the "Board") denial of the Variance Application submitted by Jeffrey Giles (the "Variance") for his Dock located at 5842 Cove Drive, Belle Isle, FL 32812, Case No.: 2020-08-006.

This appeal is being submitted by Donald Gervase, dgervase@provisionlaw.com, attorney for Jeffrey Giles, and whose office address is:

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The Hearing was held on September 22, 2020; therefore, this Notice of Appeal is timely filed.

The Board erred in denying the Variance for the following reasons, each of which shall be addressed in red italics:

Pursuant to The Code of Ordinances for the City of Belle Isle (the "Code"), Sec. 48-33. – Dock Variances. It states:

(a) In the event the applicant wishes to construct, expand, extend, or repair a dock, or conduct any other activity not meeting one or more of the criteria or requirements described in [section 48-32](#), a variance application must be made for hearing by the city planning and zoning board. Application fees shall be in accordance with the city fee schedule.

(b) The board shall not approve an application for a variance unless and until each of the following criteria have been met:

(1) The dock shall not create conditions hazardous to navigation nor any safety hazards;

At the Hearing, the Board did not determine that the Dock repair performed by the homeowner create any conditions hazardous to navigation nor any safety hazards.

(2) The location and placement of the dock shall be compatible with other docks in the area, and the NHWC of the lake;

At the Hearing, the Board did not find that the location and placement of the dock was incompatible with other docks in the area, and the NHWC of the lake. To the contrary, the Board found that the dock was comparable with other docks in the area.

(3) The current level of the lake shall not be a factor in deciding whether to approve or deny a variance;

At the Hearing, the current level of the lake was not a factor in deciding whether to approve or deny the Variance.

(4) The application does not confer a special benefit to the landowner over and above the adjoining landowners and does not interfere with the rights of the adjoining property owner to enjoy reasonable use of their property;

At the Hearing, the Board did not find that the application conferred a special benefit to the landowner over and above the adjoining landowners nor that it would interfere with the rights of the adjoining property owner to enjoy reasonable use of their property. In fact, evidence submitted and testimony given that indicated that the adjoining property owner benefitted from the dock repairs.

(5) The requirements of subsection [42-64\(1\)](#), except for subsection [42-64\(1\)d](#).

The requirements of subsection 42-64(1), except for the consideration of subsection 42-64(1)d have been met.

BIMC Section 48-34(c) states:

“Nonconforming "grandfathered" docks. A dock that was duly permitted and authorized by the county when under county jurisdiction, or duly permitted and authorized by the city under and that complied with a previous version of the city's dock regulations, which dock does not conform with the city's current dock regulations under this article, shall be considered a "grandfathered" dock and shall be an authorized legally non-conforming structure. Except for maintenance and repair activities allowed by this article, the expansion or modification of a legally non-conforming (or "grandfathered") dock is not permitted except in situations where: (i) the dock is brought into conformance with the then current dock regulations of this article, or (ii) the city determines that the dock will be modified in such a way as to substantially decrease or mitigate the dock's non-conformity with the current dock regulations of this article. However, when a grandfathered dock is damaged or requires any maintenance or repairs, the costs of which equal or exceed 75 percent of the then current cost to reconstruct the dock, such maintenance or repair shall not be permitted unless the dock is brought into compliance with the current regulations under this article and any other relevant city regulation.”

The Board determined that the Dock was grandfathered in and was duly permitted at the time of its construction. This dock was originally constructed on the lot line of the property, and the repairs have not expanded the Dock any closer to the lot line.

BIMC Section 48-30 defines, among others, the following terms:

Dock means any permanently fixed or floating structure, slip, platform (whether covered or uncovered) extending from the upland into the water, capable of use for boat mooring and other water-dependent recreational activities. The term "dock" also includes the area used to dock or moor a boat, and any device or structure detached from the land that is used for or is capable of use as a swimming or recreational platform, boat lift and/or for other water-dependent recreational activities, or as a platform for non-boating use. This term does not include any boat that is temporarily docked, moored, or anchored for less than 72 consecutive hours.

Maintenance means the act of keeping the dock in a safe and useable condition consistent with original design specifications.

Repair means to restore to the permitted design specifications of a dock structure, including the replacement of the entire dock or portions of the dock.

The Dock that is the subject of this appeal was repaired and/or maintained in conformity with the definitions set forth in the BIMC.

In fact, prior to the Hearing the following recommendations were made by April Fisher of Fisher Planning and Development Services:

“Staff Recommendations

Staff provides an evaluation based on the dock variance criteria for the application below.

- (1) The dock does not create conditions hazardous to navigation nor any safety hazards as proposed. Because it is an existing dock and the applicant is not seeking to increase the terminal platform, it is not creating a hazardous condition. If the applicant were seeking to increase the size of the terminal platform, it should be rebuilt to meet the side setback requirement.
- (2) The location and placement of the dock will be compatible with other docks in the area, and the NHWC of the lake as it does seek a similar pattern to other dock configurations and will not restrict canal navigation.
- (3) The current level of the lake is not a factor in request of the variance as it is not seeking to augment the lake level or gain additional dock length based on lake level.
- (4) The application does not confer a special benefit to the landowner over and above the adjoining landowners and does not interfere with the rights of the adjoining property owner to enjoy reasonable use of their property as it is consistent with other similar dock layouts on the lake in this neighborhood, and it will not impede boat travel as it is currently built.
- (5) The requirements of subsection 42-64(1), except for subsection 42-64(1)d are met:
 - a) Special Conditions and/ or Circumstances (Section 42-64 (1) d):
Per Sec. 48-33 (b) (5), this criterion is not applicable to consideration of a dock variance.

b) Not Self- Created (Section 42-64 (1) e):

The request for a variance is not due to a self-created situation, as the application is seeking to repair an existing dock in the same configuration and extend the roof. The dock already sits closer than five feet to the side property line and this application does not create this condition.

c) Minimum Possible Variance (Section 42-64 (1) f):

The requested variance is the minimum possible variance to make reasonable use of the land and building as the proposed repairs and roof addition do not increase an existing setback nonconformity.

d) Purpose and Intent (Section 42-64 (1) g):

The requested variance could be construed to be in harmony with the general purpose and intent of the land development code and not injurious to the neighborhood as it seeks to repair an existing dock structure and not dredge or disturb the lake bottom. It is consistent with other similar dock configurations, and it will not impede boat travel as the configuration exists.

Based on consideration of these review criteria staff **recommends approval** of the requested variance application.”

While there were other factors that the Board addressed, the main point that led to the denial of the Variance at the hearing was that the roofs of the Dock and that of the neighboring dock roofs were touching. However, this information was provided by testimony from a non-resident of the community and shown to be false by a letter from the actual homeowner stating that the docks had always touched and that the improvements to the Dock actually enhanced the neighbors use of his dock.

It is believed that the Board erred in allowing comments from a non-resident of the City of Belle Isle to be made a part of the record and considered at the hearing.

In addition, aerial photos from as early as 2006 show the two docks in question had always abutted one another and therefore should not have been a factor in the Board’s decision.

Finally, at the hearing held on September 22, 2020 (the “Hearing”), the chair of the Board stated, “The purpose of the code is to improve our community over time.” Later, at least one of the Board members noted that Mr. Giles dock was aesthetically pleasing and enhanced the appearance of the community. Also, at the Hearing another Board member expressed concerns that, of late, homeowners seem to be asking for forgiveness rather than for permission. It seems apparent that the denial was based more on the members of the Board attempting to set an example or message to one homeowner rather than basing its decision on sound reasoning and conformity with the Municipal Code.

For the foregoing reasons, it is asked that a hearing to appeal the Board’s denial of the Variance.

Sincerely,



Don Gervase