



CITY OF BELLE ISLE, FLORIDA CITY COUNCIL AGENDA ITEM COVER SHEET

Meeting Date: November 4, 2020

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: Appeal of P&Z decision to deny a Variance for a dock at 5842 Cove Drive

Background: The Planning & Zoning Board denied the appeal for a dock variance at 5842 Cove Drive; the property of Jeffrey Giles. The variance was denied because it did not meet the criteria stated in the code. In the Notice of Appeal submitted by Mr. Gervase, attorney for Mr. Giles, Mr. Gervase fails to address the two most important issues of the code: The first being is that the work was done without a permit and that this “grandfathered” was renovated against the code that clearly states that grandfathered docks are not allowed to be expanded or a new roof put on without FIRST getting a permit.

Mr. Gervase explains how his client meets the criteria for expanding, constructing, or extending the dock; however it is clear in Section 48-34 (c) that a permit is needed for any expansion and that the dock must now conform to the criteria in Section 48-33. The dock does not meet the criteria listed under Section 48-31 because it does not meet the setback requirement by being 5 feet off the property line.

Section 48-34 (b) is very clear: **Maintenance and repair of docks.** When maintenance and repair of docks involves the repair or replacement of pilings or other portions of the dock at or below the water surface, or of any roofed structure, the permit holder shall submit an application for a permit pursuant to [section 48-31](#) of this article. Maintenance or repair of the deck surface of a dock that does not involve activity at or below the water surface, or of any roofed structure, is allowed without notice or permit, except that all such maintenance and repair activities must maintain the original design and original footprint of the dock and structures located on such dock or associated therewith.

Section 48-34 (c) is also very clear **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.

It is clear that Mr. Giles expanded his dock. Photo 1 shows the original dock with the extended roof and the roof supports are clearly outside of the dock. Photo 2 shows those roof supports enclosed in the dock. As stated above: 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.

It is also clear that Mr. Giles did work below the water line by installing new supports and he did the work without the proper environmental protections in place (i.e. turbidity barrier). As stated above: when maintenance and repair of docks involves the repair or replacement of pilings or other portions of the dock at or below the water surface, or of any roofed structure, the permit holder shall submit an application for a permit pursuant to section 48-31 of this article. Photo 2 and Photo 3 clearly shows new roof supports.

Mr. Giles also did not get a permit for repairing the roof of the dock. He stated in the P&Z meeting that it was done when the house had its roof replaced: however the dock is not listed on the permit (attached) for the house roof and therefore this was also done without a permit and according to Section 48-33 (b), a permit is needed for roof repairs or replacement. As stated above: when maintenance and repair of docks involves the repair or replacement of pilings or other portions of the dock at or below the water surface, **or of any roofed structure**, the permit holder shall submit an application for a permit pursuant to section 48-31 of this article.

Mr. Giles contends that the roof of his dock was always touching his neighbors dock. The staff does not believe this is true. As shown in Photo 4, a gap can be seen between the roof line of the neighbor and Mr. Giles sloped roof. In Photo 5, that gap is no longer there and the sloped roof is touching the neighbor's boathouse and the slope of the roof is lower than in Photo 4. In the event the neighbor sells his property or Mr. Giles sells his, it would be difficult for either seller or buyer.

These are the salient points of the P&Z's denial of the variance and the City staff concurs with the P&Z decision. All else in Mr. Gervase's Notice of Appeal is "smoke & mirrors) and should be considered irrelevant to the appeal. For example, he states toward the end of his appeal that the P&Z Board erred because they allowed comments from a non-resident. Actually it is Mr. Gervase who erred in that The Florida Constitution and Sunshine Act give "the public" the right to attend the meetings of public collegial bodies. Florida law does not

limit access to meetings to a specific category of people or a profession. **Anyone** may attend. Florida law also recognizes a **public right to comment during open meetings**, but the public body holding the meeting may adopt reasonable rules and regulations to ensure the orderly conduct of meetings.

Staff Recommendation: Deny the Appeal of Jeffrey Giles and further require Mr. Giles to bring his dock into conformance as stated in BIMC which includes conforming to all criteria outlined in BIMC Section 48-31 and Section 48-32. The Council should remember that this is a similar situation to the dock at 2820 Nela Avenue (Angela Rosselot).

Suggested Motion: I move that deny the appeal of Case #2020-08-006, Application for Variance by Jeffrey Giles, 5842 Cove Drive, Belle Isle, FL 32812. I also move that the dock located at 5842 Cove Drive be brought into conformance with Section 48 of the BIMC by applying for and receiving an approved permit within 90-days of the date of this hearing and constructing the dock within 6 months of the date of the permit.

Alternatives: Approve the appeal which would allow the dock to continue to be a nonconforming dock.

Fiscal Impact: TBD if the City is forced to remove the dock.

Attachments:

- Notice of Appeal from Jeffrey Giles
- P&Z Minutes
- Photos 1-5
- Giles Roofing Permit