

**JUPITER INLET COLONY
BUILDING AND ZONING COMMITTEE APPLICATION
REQUEST FOR VARIANCE**

Submittal Date: 9-30-20

Applicant Information			
Applicant/Owner ¹	Ryan and Shana Simovitch		
Mailing Address	102 Lighthouse Dr		
Address of Subject Property	<input checked="" type="checkbox"/> same		
Property Control Number (PCN)	32-43-40-31-01-000-1020		
Lot. No.	102	Lot Area	30,184 SQ. FT.
Phone No.	305-609-2878	Email Address	ssimovitch@hotmail.com

1. As shown on last recorded Warranty Deed.

Variances Requested					
Description ¹	Zoning Code Section	Code Requirement	Proposed	Request (+/-)	% Difference
Side Setback (example)	Sec. 14(C)	10.0'	8.0'	-2.0'	20%
1. Dock Length	Sec. 21-18 (a)	36.0'	45.0'	9.0'	25%
2. Dock Setback	Sec. 21-18 (c)	25.0'	15.0'	-10'	40%
3. Boat Lift Setback	Sec. 21-18 (d)	10.0'	1.0'	-9.0'	90%

1. Attach additional pages if necessary.

PURPOSE: Generally, describe the request and the purpose of each request: See attached.

JUSTIFICATION STATEMENT: Attach a separate statement justifying the request. Address each criterion below and provide supporting documentation, if necessary. **See attached.**

CRITERIA: Appendix A - Zoning Code, Article I. General Provisions, Section 5, of the Code of Ordinances of the Town of Jupiter Inlet Colony: Section 5. Variances; Criteria for Consideration.

- (A) In order to authorize any variance from the terms of this zoning ordinance, the Town Commission must find all of the following:
- (1) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district.
 - (2) That the special conditions and circumstances do not result from the actions of the applicant.
 - (3) That granting the variance requested would not confer on the applicant any special privilege that is denied by this ordinance [Appendix A, Zoning Code] to other lands, buildings, or structures in the same zoning district.
 - (4) That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would work unnecessary and undue hardship on the applicant.
 - (5) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.
 - (6) That the grant of the variance will be in harmony with the general intent and purposes of this ordinance and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

APPLICATION MATERIAL: Submit the following information; include two (2) hard copies and one (1) pdf of each document on a thumb drive.

- Completed application and fee (\$1,000.00 per variance request, check made payable to JIC).
- Justification Statement.
- Consent Form.
- Current as-built Survey, showing all structures, setbacks, and relevant measurements.
- Site Plan, drawn to scale, of existing and proposed conditions.
- Lot Occupancy Calculation.
- Any other documentation pertinent to the request.

ALL APPLICANTS: Be aware that in granting a variance, the Town Commission may impose conditions, restrictions, or limitations to mitigate any potential impact and a reasonable time limit within which the variance(s) shall be begun, completed, or both. The application will be scheduled for the next available Building and Zoning Committee meeting. If you have any questions, please contact the Planning and Zoning Administrator.

cc: The Honorable Dan Comerford, Mayor, and members of the Town Commission
John Pruitt, Chief of Police and Town Administrative Officer
JIC Town Staff

PURPOSE: The purpose of the requested variance is to allow Ryan and Shana Simovitch to construct a new single-family dock with a boat lift and personal watercraft lift as permitted by the Florida Department of Environmental Protection (DEP) and the U.S. Army Corps of Engineers (COE). The requested variance is to allow the dock to extend further into the waterway and into the side setback noted in the Town code.

JUSTIFICATION STATEMENT: The dock was permitted by DEP and the COE after four different dock configurations were submitted (and multiple others discussed with both the DEP and COE but turned down prior to submitting). The fourth (permitted) dock configuration meets all of DEP and COE requirements which includes the avoidance of the removal of mangroves, the COE's "Setback Guidance for Structures along Certain Federal Channels," and DEP's side setback requirements because a setback waiver was provided by the neighbor to the north. In order to meet all of the state and federal requirements, the dock needs to be located along the north side of the property, where the ICW channel is furthest out into the waterway. The mangrove fringe in combination with the proximity of the ICW channel creates special circumstances unique to this property and the need for a Variance. The permitting process for this project took six and a half months with DEP and nine months with the COE. Both the DEP and COE met with Matt Butler, the coastal engineer hired for this project onsite.

The following is provided in support for the requested variance:

Sec. 21-18. - Length, width and configuration.

(a) No dock or pier shall be constructed which extends waterward from the mean high water line in excess of the lesser of the following distances:

- (1) Fifty (50) feet; or
- (2) Ten (10) percent of the waterway width; or
- (3) The distance from the point at which the dock or pier intersects the mean high water line measured in a straight line to the nearest point on the three-foot mean low water line;

provided, however, the foregoing limitations shall not prohibit a dock which does not extend waterward from the mean high water line in excess of six (6) feet.

CRITERIA:

- (A)(1) – Special conditions and circumstances do exist which are peculiar to the land, structures, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district. These special conditions and circumstances include the width of the mangrove fringe in combination with the proximity of the ICW channel. The mangrove fringe is wider at this property than all other properties, and the distance between the mangrove fringe and the ICW channel is narrower than all other properties in the Town.
- (2) – The special conditions and circumstances (width of the mangrove fringe and location of ICW channel) do not result from the actions of the applicant.

- (3) – Granting the variance requested would not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings, or structures in the same zoning district because the other properties have docks with the ability to install a boat lift for a boat and a personal watercraft between the mangrove fringe, if present, and the ICW channel setback. Also, other docks in the area extend beyond the length criteria noted in Section 21-18(a).
- (4) – The literal interpretation of the provisions of this ordinance would deprive the applicant rights commonly enjoyed by other properties in the same zoning district. The majority of the properties have docks with boat lifts that extend beyond the limit required.
- (5) – The requested variance is the minimum variance that will make possible the reasonable use of the land and structure. This dock will remain shorter than most docks in the area.
- (6) – The grant of the requested variance will be in harmony with the general intent and purposes of this ordinance and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare. As noted above, the dock will be shorter than most in the area, and it will only extend beyond the mangrove fringe by eight feet.

Sec. 21-18. - Length, width and configuration.

- (c) No dock or pier shall be located less than twenty-five (25) feet from the waterward extension of the property line of any adjoining riparian property owner. For purposes of illustration of this subsection only, an illustrative sketch is on file in the clerk's office, and designated as exhibit "B." Any dock or pier shall be deemed to comply with this subsection if the waterward end of the center line of the dock or pier is equidistant from the nearest points at which the property lines of adjoining property owners intersect the mean high water line. For purposes of illustration only of this subsection, an illustrative sketch is on file in the clerk's office, and designated as exhibit "C."

CRITERIA:

- (A)(1) – Special conditions and circumstances do exist which are peculiar to the land, structures, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district. These special conditions and circumstances include the width of the mangrove fringe in combination with the proximity of the ICW channel. The mangrove fringe is wider at this property than all other properties, and the distance between the mangrove fringe and the ICW channel is narrower than all other properties in the Town. In order to meet all of the state and federal requirements, the dock needs to be located along the north side of the property, where the ICW channel is furthest out into the waterway.
- (2) – The special conditions and circumstances (width of the mangrove fringe and location of ICW channel) do not result from the actions of the applicant.

- (3) – Granting the variance requested would not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings, or structures in the same zoning district because the other properties have docks that either meet the setback or are currently within the setback, presumably with a variance. The other properties also have the ability to install a dock between the mangrove fringe, if present, and the ICW channel setback without a requirement to be within the side setback.
- (4) – The literal interpretation of the provisions of this ordinance would deprive the applicant rights commonly enjoyed by other properties in the same zoning district. The majority of the properties have docks which were able to be constructed between the mangrove fringe, if present, and the ICW channel without having to be located within the side setback. Many of the docks in the area are within the 25' side setback, presumably with variances.
- (5) – The requested variance is the minimum variance that will make possible the reasonable use of the land and structure. This dock will remain within the applicant's approximate riparian area and setback approximately 15-feet from the approximate riparian line. A setback waiver was provided by the adjacent riparian property owner.
- (6) – The grant of the requested variance will be in harmony with the general intent and purposes of this ordinance and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare. As noted above, a setback waiver was provided by the adjacent riparian property owner.

Sec. 21-18. - Length, width and configuration.

- (d) Mooring pilings may not be located within ten (10) feet of the waterward extension of the property line of any adjoining riparian property owner, nor more than fifteen (15) feet waterward of a line of any dock used with the same riparian property. If more than one dock is used with the same property, the endpoint of the dock extending further from the mean high water line shall be used. For the purpose of illustrating the provisions of this subsection, an illustrative sketch is on file in the clerk's office, and designated as exhibit "E."

CRITERIA:

- (A)(1) – Special conditions and circumstances do exist which are peculiar to the land, structures, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning district. These special conditions and circumstances include the width of the mangrove fringe in combination with the proximity of the ICW channel. The mangrove fringe is wider at this property than all other properties, and the distance between the mangrove fringe and the ICW channel is narrower than all other properties in the Town. In order to meet all of the state and federal requirements, the boat lift piles need to be located along the north side of the property, where the ICW channel is furthest out into the waterway.

- (2) – The special conditions and circumstances (width of the mangrove fringe and location of ICW channel) do not result from the actions of the applicant.
- (3) – Granting the variance requested would not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings, or structures in the same zoning district because the other properties have boat lifts that either meet the setback or are currently within the setback, presumably with a variance. The other properties also have the ability to install a boat lift between the mangrove fringe, if present, and the ICW channel setback without a requirement to be within the side setback.
- (4) – The literal interpretation of the provisions of this ordinance would deprive the applicant rights commonly enjoyed by other properties in the same zoning district. The majority of the properties have a boat lift which was able to be constructed between the mangrove fringe, if present, and the ICW channel without having to be located within the side setback. At least one of the boat lifts in the area is within the 10' side setback, presumably with a variance.
- (5) – The requested variance is the minimum variance that will make possible the reasonable use of the land and structure. This boat lift piles will remain within the applicant's approximate riparian area and setback approximately 1-foot from the approximate riparian line. A setback waiver was provided by the adjacent riparian property owner.
- (6) – The grant of the requested variance will be in harmony with the general intent and purposes of this ordinance and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare. As noted above, a setback waiver was provided by the adjacent riparian property owner.

**CODE OF ORDINANCES
SECTION 21. WATERWAYS**

Sec. 21-23. - Variances.

Application for variances and variance hearings shall be in accordance with the procedure established by article II of chapter 22. However, no variance shall be granted unless such variance will not be contrary to the public interest, unless owing to special conditions, a literal enforcement of the provisions of this article would result in unnecessary and undue hardship. In order to authorize any variance from the terms of this article, the commission must find with respect to the proposed project as follows:

- (1) No hazardous condition would be created;
- (2) The flow of water would not be impeded or interfered with;
- (3) No obstruction to navigation would occur;
- (4) It would not interfere with traditional public uses of the waterway, including but not limited to swimming, fishing or boating;
- (5) It would not create an appreciable obstruction of waterway views or would otherwise detract from aesthetic values;
- (6) It would not appreciably disrupt, interfere with, or disturb marine or benthic life;
- (7) It would not contribute to the pollution of the waterway or the degradation of its condition;
- (8) It would not interfere with the lawful rights of riparian owners;
- (9) It would be consistent with any other applicable laws, rules or plans.

CRITERIA:

1. No hazardous condition would be created

RESPONSE: Both the Florida Department of Environmental Protection (DEP) and the U.S. Army Corps of Engineers (COE) reviewed the project regarding the potential for hazardous conditions and adverse affects on navigation. Both agencies determined that the proposed dock would not result in a hazardous condition or a hazard to navigation. Both agencies issued a permit for the proposed dock.

2. The flow of water would not be impeded or interfered with

RESPONSE: The proposed dock is pile-supported, and therefore, would not impede or interfere with the flow of water.

3. No obstruction to navigation would occur

RESPONSE: As noted above, the DEP and COE reviewed the proposed project and determined that the project would not obstruct navigation because the dock meets the applicable setback from the ICW channel.

4. It would not interfere with traditional public uses of the waterway, including but not limited to swimming, fishing or boating

RESPONSE: The proposed dock would not adversely interfere with traditional public uses of the waterway. DEP, whom owns the submerged bottom and acts on behalf of the Trustees of the Internal Improvement Trust Fund of the State of Florida for projects located over sovereignty submerged land, has provided a Letter of Consent for the use of the sovereignty submerged land for the proposed dock.

5. It would not create an appreciable obstruction of waterway views or would otherwise detract from aesthetic values

RESPONSE: The proposed dock does not create an appreciable obstruction of waterway views and does not detract from aesthetic views. The proposed dock is within the applicant's riparian area, which includes their right to a view and wharfing out with a dock. The proposed dock is similar to others in the area.

6. It would not appreciably disrupt, interfere with, or disturb marine or benthic life

RESPONSE: The DEP and COE reviewed the proposed project, and they determined that the proposed project does not appreciably disrupt, interfere with, or disturb marine or benthic life. No mangroves are proposed to be removed as a result of the proposed project.

7. It would not contribute to the pollution of the waterway or the degradation of its condition

RESPONSE: The proposed dock will not contribute to the pollution of the waterway or the degradation of its condition. The dock would be constructed with appropriate materials typically utilized for docks in the marine environment.

8. It would not interfere with the lawful rights of riparian owners

RESPONSE: The proposed dock is within the approximate riparian area of the applicant, and the adjacent upland riparian property owner signed a setback waiver for the proposed dock.

9. It would be consistent with any other applicable laws, rules or plans

RESPONSE: As evidenced by the DEP and COE permit, the proposed dock is consistent with their applicable laws and rules. Also, the proposed dock would meet all other local applicable laws, rules and plans.