

RESOLUTION 20-46

A RESOLUTION OF THE CITY OF MARCO ISLAND, FLORIDA, DENYING A SPECIAL PERMIT FOR A FIVE FOOT BOAT DOCK EXTENSION AT 1071 OLD MARCO LANE, MARCO ISLAND; MAKING FINDINGS; PROVIDING DEFINITIONS; DENYING THE BOAT DOCK EXTENSION; PROVIDING FOR FAILURE TO OBTAIN OTHER DEVELOPMENT PERMITS; PROVIDING FOR FAILURE TO COMPLY WITH APPROVAL; PROVIDING THAT THIS DEVELOPMENT ORDER DOES NOT CREATE ANY VESTED RIGHTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 54-115 of the of the Marco Island Waterways and Beaches Code relates to special permits to maximum protrusion lengths of a docking system; and

WHEREAS, the Owner/Developer submitted a Boat Dock Extension Plan for the Development of a boat dock extension for 1071 Old Marco Lane, Marco Island, Florida; and

WHEREAS, the City of Marco Island staff has reviewed and recommended denial of BD-20-000167, which is subject to a revised application; and

WHEREAS, the dimensional requirements for the dock extension have not been met, because the required setback is fifteen percent (15%) of the seawall length, which length is approximately seventy-one feet (71'); and

WHEREAS, the proposed setback as shown on the Boat Dock Extension Plan is shown as eight feet (8') is code deficient, but the Boat Dock Facilities Code requires at least a 10-foot, 7-inch side yard setback; and

WHEREAS, the proposed dock protrudes greater than twenty-five percent (25%) of the channel width which is in violation of code requirements especially on a narrow 60-foot wide canal; and

WHEREAS, currently there is no dock on the opposite side of the waterway, and based on code requirements and principles of navigation safety, at least fifty percent (50%) of the canal needs to be open and navigable, which would require at least a thirty feet (30') free and clear channel, and should a dock be proposed on the opposite shore of the canal, the maximum allowed (with an approved one foot (1') boat dock extension) would be thirteen feet (13'), thereby unfairly disadvantaging the landowner across the canal; and

WHEREAS, the neighboring land to the South is partially on the end of the channel, and the proposed dock will be in the neighboring land occupant's view corridor, which is in violation of code requirements; and

WHEREAS, the Owner/Developer has proposed two docked vessels on the Property as shown on the Boat Dock Extension Plan and one of the docked vessels will be twenty-six feet (26') in length, and the other docked vessel will be eighteen feet, five inches (18'-5") in length viewed and measured collectively exceed fifty percent (50%) of the water frontage, which is inconsistent with code requirements; and

WHEREAS, the proposed dock extension will negatively impact the landowner across the channel when and if they decide to construct a dock, because if and when one is constructed, it will be limited to a maximum of thirteen feet (13'), if a one foot (1') extension is approved in order to maintain fifty percent (50%) of the waterway open for navigation; and

WHEREAS, the Owner/Developer maintains that the water depth within five feet (5') of the Subject Property's seawall is of an inadequate depth; and

WHEREAS, given that the first five feet of submerged bottoms is legally part of the Subject Property, the dock can extend out twelve feet (12') from the Subject Property's property line, and this provides adequate water depth negating the need for the additional five-foot (5') dock extension; and

WHEREAS, the additional protrusion will impact the neighboring property owner to the South by inhibiting said neighbor's ability to dock or egress the neighbor's property due to the Owner/Developer's additional dock protrusion; and

WHEREAS, the City's Planning Board has reviewed the staff report and the Boat Dock Extension Plan, taken public testimony, and hereby recommends denial of the special permit conditioned upon the boat dock extension submission package and subject to certain findings set forth herein, as being non-compliant with applicable Boat Docking Facilities regulations on October 2, 2020 and November 6, 2020; and

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING BOARD OF THE CITY OF MARCO ISLAND, FLORIDA:

SECTION 1. Recitals; Definitions.

(a) That the foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

(b) That as used herein, unless the context hereof, or City Code of Ordinances, requires to the contrary, the following terms will be defined as set forth below:

(1) "Boat Dock Extension Plan" means the 4-page document, entitled Shallop – 1071 Old Marco Lane, Marco Is", prepared by Collier Seawall & Dock, LLC of Marco Island, FL, including Sheet A1 (Existing Conditions-2019 Aerial) dated May 6, 2020 without last date of revision; Sheet A2 (Proposed Design) dated April 21, with last date of revision being September 25, 2020; Sheet A3 (Electrical Design) dated May 6, 2020 with no date of revision; and Sheet A4 (Water Depths) dated June 22, 2020 with no date of revision.

(2) "City" means the City of Marco Island, a Florida Municipal Corporation.

(3) "Development" is defined as set forth in Section 163.3164, Florida Statutes.

(4) "Development Order" is defined as set forth in Section 163.3164, Florida Statutes.

(5) "Boat Docking Facilities" means the City of Marco Island Codes which consists of Section 54-100 through 54-118, Code of Ordinances of the City of Marco Island.

(6) "Owner/Developer" means Scott and Cynthia Shallop, 24710 E. River Road, Grosse Ile, MI 48138, as owners or developers of the Subject Property, and each of their respective successors and assigns.

(7) "Subject Property" means the following described parcel of land, lying, situate and being in the State of Florida, County of Collier, City of Marco Island, to-wit:

A Portion of Lots 2 and 3, Block 6, Old Marco Village, according to the plat thereof, as recorded in Plat Book 6, Page 3, Public Records of Collier County, Florida, described as follows:

From the Point of Beginning at the Northwest corner of said Lot 3, run N. 70°34'45" E. along the Northwest line of said Lot 3, for 135.00 feet; thence S. 19°25'15" E. along the Northeast line of said Lots 3 and 2, for 62.23 feet to a point of curvature; thence run 8.57 feet along the arc of a curve concave to the Northeast, having a radius of 30.00 feet and subtended by a chord having a length of 8.54 feet and bearing S. 27°36'11" E.; thence S. 58°26'08" W. for 139.33 feet to a point on the Southwest line of Lot 3; thence run N. 19°25'15" W. along the Northwest line of Lot 3, for 100.00 feet to the Point of Beginning.

SECTION 2. Adoption. The Owner/Developer's special permit Petition 20-000167 for the boat dock extension as set forth on the Boat Dock Extension Plans on the Subject Property is hereby denied.

SECTION 3. Failure to Adhere to Resolution. That failure to adhere to the denial contained in this Resolution shall be considered a violation of this Resolution and the City Code, and persons found violating this Resolution shall be subject to the penalties prescribed by the City Code. The Owner/Developer understands and acknowledges that it must comply with all other applicable requirements of the City Code before it may commence construction or operation.

SECTION 4. Development Order does not grant a vested right. That issuance of this Development Order by the City does not in any way create any right on the part of the Owner/Developer to obtain a permit from a state or federal agency and does not create any liability on the part of the City for issuance of the approval if the Owner/Developer fails to obtain the requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in the violation of state or federal law. All applicable state and federal permits must be obtained before commencement of the Development. This condition is included pursuant to Section 166.033, Florida Statutes, as amended.

SECTION 5. Effective Date. That this Resolution shall take effect immediately upon adoption.

ADOPTED BY THE PLANNING BOARD OF THE CITY OF MARCO ISLAND, this 6th day of November 2020.

ATTEST:




Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 

Claire Babrowski, Chair

Approved as to form and legal sufficiency:



David N. Tolces, City Attorney