

**MINUTES — FEBRUARY 18, 2020  
CITY OF INDIAN ROCKS BEACH  
BOARD OF ADJUSTMENTS AND APPEALS**

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The Regular Meeting of the Indian Rocks Beach Board of Adjustments and Appeals was held on **TUESDAY, FEBRUARY 18, 2020**, at 7:01 p.m., in the City Commission Chambers, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida.

1. **CALL TO ORDER.** Chair Alvarez called the meeting to order at 7:01 p.m.

2. **ROLL CALL:**

**PRESENT:** Chair Rick Alvarez, Vice Chair Stewart DeVore, Board Member Waldemar H. Clark, Jr., Board Member Jim Labadie, and David Watt.

**OTHERS PRESENT:** Planning Consultant Hetty C. Harmon, AICP, City Attorney Randy Mora, and City Clerk Deanne B. O'Reilly, MMC.

**VACANT POSITIONS:** 1<sup>st</sup> Alternate Board Member and 2<sup>nd</sup> Alternate Board Member.

*(To provide continuity for research, items are listed in agenda order although not necessarily discussed in that order.)*

3. **APPROVAL OF MINUTES: December 17, 2019**

**MOTION MADE BY MEMBER CLARK, SECONDED BY VICE CHAIR DEVORE, TO APPROVE THE DECEMBER 17, 2019 BOARD OF ADJUSTMENTS AND APPEALS MINUTES AS SUBMITTED. UNANIMOUS APPROVAL BY ACCLAMATION.**

4. **BOA CASE NO. 2020-01 — 351-12<sup>TH</sup> AVENUE**

**Owner/Applicant: Patricia A. Jordan**

**Representative: Enterprise Marine**

**Subject Location: 351-12<sup>th</sup> Avenue**

**Legal Description: Indian Beach Re-Revised 2<sup>nd</sup> Addition, Block 89, Lot 13**

**Parcel #: 06-30-15-42066-089-0130**

**Variance Request: Variance requests from Section 94-86(a)(1) to allow for a dock facility to exceed the 50-foot length from the seawall by 6 feet and to allow a variance of 11 feet 4 inches into side yard setback leaving a side yard setback of 8 inches.**

**SUBJECT: BOA CASE NO. 2020-01:** Variance requests from Section 94-86(a)(1) to allow for a dock facility to exceed the 50-foot length from the seawall by 6 feet and to allow a variance of 11 feet 4 inches into side yard setback leaving a side yard setback of 8 inches for the property located at 351-12<sup>th</sup> Avenue, Indian Rocks Beach, Florida, and legally described as Block 89, Lot 13, Second Addition to Re-Revised Map of Indian Beach.

**OWNER** Patricia Jordan  
**PROPERTY LOCATION:** 351-12<sup>th</sup> Avenue  
**ZONING:** S- Single Family

Direction	Existing Use	Zoning Category
North	Residential	S
East	Residential	S
South	Intracoastal	N/A
West	Residential	S

**BACKGROUND:**

Patricia Jordan is requesting variances for the length of the dock and side yard setback of the lift that will encroach into the required 12-foot side yard setback by 11 feet 4 inches leaving an 8-inch distance between the boat lift and the side property line extended. Also due to the mangroves and seagrass, the applicant is requesting to extend the dock length by 6 feet. In August 2019, the City issued a joint dock permit with the neighbor, however, Pinellas County Environmental Management would not approve it due to the location of the mangroves and seagrass. The Army Corps of Engineers requires that the dock be constructed 5 feet above the seagrass, which resulted in the dock being elevated by a few steps at a point 10 inches 9 feet from the seawall.

**Sec. 2-152. Variances.**

(a) Generally; criteria for granting variances from the terms of subpart B.

(1) The Board of Adjustments and Appeals shall make recommendations on and the City Commission shall decide variance applications will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of subpart B will result in unnecessary and undue hardship. In order to recommend or decide any variance from the terms of subpart B, the Board or the City Commission shall consider each of the following:

- a. 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.

*The property is located in an area that has mangroves and seagrass and is not typical to most other properties in the City.*

- b. The special conditions and circumstances do not result from the actions of the applicant.

*The applicant did not create any special conditions or circumstances.*

- c. Granting the variance will not confer on the applicant any special privilege that is denied by subpart B to other lands, structures or buildings in the same zoning district.

*Granting the variance would not confer special privileges to the applicant, it would allow for the dock and boat lift to be constructed.*

- d. Literal interpretation of the provisions of subpart B would deprive other properties in the same zoning district under the terms of subpart B and would work unnecessary and undue hardship upon the applicant.

*The approval of this variance request would not deprive other owners of use and enjoyment of their properties.*

- e. The variance granted is the minimum variance that will make possible the reasonable use of the land, structure or building.

*This is the minimum variance to allow the owner to construct the dock and boat lift.*

- f. The granting of the variance will be in harmony with the general intent and purpose of subpart B, and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare.

*Granting the variance will be in harmony with the general intent and purpose of subpart B.*

**PUBLIC NOTIFICATION:** A public meeting notice was mailed by First Class Mail to the property owners within 150 feet in any direction of the subject property and posted on the property on February 3, 2020, per Code Section 2-149.

**STAFF RECOMMENDATION:** Based on the variance review criteria of Section 2-152, staff recommends approval of the request.

City Attorney Mora read the title of the Agenda Item.

City Attorney Mora stated this is a quasi-judicial proceeding and proceeded to review the rules for quasi-judicial proceedings.

City Attorney Mora inquired of the Members if any of them had any ex-parte communications with the applicant, with all Members responding in the negative.

City Attorney Mora inquired of the Members if any of them had done a site visit for the limited purpose of evaluating this case, with Chair Alvarez responding in the affirmative.

City Attorney Mora inquired if Chair Alvarez felt that his visit in any way impaired his ability to impartially adjudicate this matter, with Chair Alvarez responding in the negative.

All persons planning to give testimony during the quasi-judicial proceeding were duly sworn in by the City Attorney.

Planning Consultant Harmon stated the variance is for the property located at 351-12<sup>th</sup> Avenue. The applicant is requesting variances from Code Section 94-86(a)(1) to allow for a dock facility to exceed the 50-foot length from the seawall by 6 feet to clear the mangroves and the shallow water and a variance of 11 feet 4 inches into the side yard setback leaving a side yard setback of 8 inches.

Planning Consultant Harmon presented a PowerPoint Presentation depicting aerial views of the property showing the location on the lot, the mangroves, and the shallow water at the end of the lot, pictures from the seawall, and drawings of the dock design.

Planning Consultant Harmon stated the Army Corps of Engineers is requiring the applicant to step up the dock to 5 feet above the mean high water level not just at the seawall, but further on out just to keep that distance from the shallow water.

Member Watt stated he knows that the City Attorney stated the variance requests for 351 and 353-12<sup>th</sup> Avenues are separate, but to him, the variances are kind of one and in the same. He stated if the variance requests (351 and 353 12<sup>th</sup> Avenue) are considered individually, it is a much more egregious impact than if they are looked at together.

City Attorney Mora stated he understands the inquiry. It is his understanding that they are separate parcels and have separate owners, so accordingly, the Board needs to consider them independently. The cumulative effect is not what is at issue. The Board is looking at a variance for the property and that will run with the property if granted; not run relative to the neighbors.

Planning Consultant Harmon stated staff recommends approval of these variance requests.

Member Watt clarified that in August 2019, the City issued a joint dock permit with their neighbor (353-12<sup>th</sup> Avenue); however, Pinellas County Environmental Management did not approve it due to the location of the mangroves and seagrass.

Planning Consultant Harmon stated Pinellas County denied the permit due to the size of the dock platform.

**Joe Place, Enterprise Marine, 8165- 46<sup>th</sup> Avenue North, St. Petersburg, contractor for the applicant,** stated there was an original permit that was approved by the City and the square footage of the original permit is larger than what they are asking for now. Pinellas County did not turn it down technically for the size of the dock platform, they turned it down because of the seagrass out there, and according to Pinellas County Codes, the size of the head of the dock is the maximum that they would allow for their permitting. The Army Corps

of Engineers would allow a bit more, but the permit needs to be approved by Pinellas County first. The Army Corps of Engineers is requesting that the dock be elevated 5-foot above mean high water to allow more sunlight to get down to the seagrass.

Member Watt clarified everything that leaves the seawall meets current setbacks; it is just when the dock goes beyond the 50 feet. It is for the length of the dock and the boat lift that will encroach into the side setback.

Member Watt stated he has no problem with the length due to the seagrass and the shallow water, but he was looking more at the 8 inch side setback, but the fact that the neighbors are working together, he does not have a problem with the side setback and the encroachment is way out in the Intracoastal Waterway, and it is not the dock, it is the lift.

There was no public comment or testimony on BOA 2020-01/351-12<sup>th</sup> Avenue.

***MOTION MADE BY MEMBER WATT, SECONDED VICE CHAIR DEVORE, TO RECOMMEND TO THE CITY COMMISSION APPROVAL OF BOA CASE 2020-01 VARIANCE REQUESTS FROM SECTION 94-86(a)(1) TO ALLOW FOR A DOCK FACILITY TO EXCEED THE 50-FOOT LENGTH FROM THE SEAWALL BY 6 FEET AND TO ALLOW A VARIANCE OF 11 FEET 4 INCHES INTO SIDE YARD SETBACK LEAVING A SIDE YARD SETBACK OF 8 INCHES FOR THE PROPERTY LOCATED AT 351-12<sup>TH</sup> AVENUE, INDIAN ROCKS BEACH, FLORIDA, AND LEGALLY DESCRIBED AS LOT 13, SECOND ADDITION TO RE-REVISED MAP OF INDIAN BEACH.***

**ROLL CALL VOTE:**

**AYES: LABADIE, DEVORE, WATT, ALVAREZ.**

**NAYES: CLARK.**

***MOTION CARRIED BY A VOTE OF 4 TO 1 WITH MEMBER CLARK DISSENTING.***

**5. BOA CASE NO. 2020-02 — 353-12<sup>TH</sup> AVENUE**

**Owner/Applicant: Adam Probst**

**Representative: Enterprise Marine**

**Subject Location: 353-12<sup>th</sup> Avenue**

**Legal Description: Indian Beach Re-Revised 2<sup>nd</sup> Addition, Block 89, Lot 14**

**Parcel #: 06-30-15-42066-089-0140**

**Variance Request: Variance requests from Section 94-86(a)(1) to allow for a dock facility to exceed the 50-foot length from the seawall by 6 feet and to allow a variance of 9 feet 4 inches into side yard setback leaving a side yard setback of 2 feet 8 inches.**

**BOA CASE NO. 2020-02:** Variance requests from Section 94-86(a)(1) to allow for a dock facility to exceed the 50-foot length from the seawall by 6 feet and to allow a variance of 9 feet 4 inches into side yard setback leaving a side yard setback of 2 feet 8 inches for the

property located at 353-12<sup>th</sup> Avenue, Indian Rocks Beach, Florida, and legally described as Block 89, Lot 14, Second Addition to Re-Revised Map of Indian Beach.

**OWNERS:** Adam and Deborah Probst  
**PROPERTY LOCATION:** 353-12<sup>th</sup> Avenue  
**ZONING:** S- Single Family

Direction	Existing Use	Zoning Category
North	Residential	S
East	Residential	S
South	Intracoastal	N/A
West	Residential	S

**BACKGROUND:**

Adam and Deborah Probst are requesting variances for the length of the dock and side yard setback of the lift that will encroach into the required 12-foot side yard setback by 9 feet 4 inches leaving a distance of 2 feet 8 inches between the boat lift and the side property line extended. Also due to the mangroves and seagrass, the applicants are requesting to extend the dock length by 6 feet. In August 2019, the City issued a joint dock permit with the neighbor, however, Pinellas County Environmental Management would not approve it due to the location of the mangroves and seagrass. The Army Corps of Engineers requires that the dock be constructed 5 feet above the seagrass, which resulted in the dock being elevated by a few steps at a point 10 feet 9 inches from the seawall.

**Sec. 2-152. Variances.**

*(a) Generally; criteria for granting variances from the terms of subpart B.*

(1) The Board of Adjustments and appeals shall make recommendations on and the City Commission shall decide variance applications will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of subpart B will result in unnecessary and undue hardship. In order to recommend or decide any variance from the terms of subpart B, the Board or the City Commission shall consider each of the following:

- a. 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.

*The property is located in an area that has mangroves and seagrass and is not typical to most other properties in the City.*

- b. The special conditions and circumstances do not result from the actions of the applicant.

*The applicant did not create any special conditions or circumstances.*

- c. Granting the variance will not confer on the applicant any special privilege that is denied by subpart B to other lands, structures or buildings in the same zoning district.

*Granting the variance would not confer special privileges to the applicant, it would allow for the dock and boat lift to be constructed.*

- d. Literal interpretation of the provisions of subpart B would deprive other properties in the same zoning district under the terms of subpart B and would work unnecessary and undue hardship upon the applicant.

*The approval of this variance request would not deprive other owners of use and enjoyment of their properties.*

- e. The variance granted is the minimum variance that will make possible the reasonable use of the land, structure or building.

*This is the minimum variance to allow the owner to construct the dock and boat lift.*

- f. The granting of the variance will be in harmony with the general intent and purpose of subpart B, and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare.

*Granting the variance will be in harmony with the general intent and purpose of subpart B.*

**PUBLIC NOTIFICATION:** A public meeting notice was mailed by First Class Mail to the property owners within 150 feet in any direction of the subject property and posted on the property on February 3, 2020, per Code Section 2-149.

**STAFF RECOMMENDATION:** Based on the variance review criteria of Section 2-152, staff recommends approval of the request.

City Attorney Mora read the title of the Agenda Item and stated this is a quasi-judicial proceeding.

City Attorney Mora inquired of the Members if any of them had any ex-parte communications with the applicant, with all Members responding in the negative.

City Attorney Mora inquired of the Members if any of them had done a site visit for the limited purpose of evaluating this case, with Chair Alvarez responding in the affirmative.

City Attorney Mora inquired if Chair Alvarez felt that his visit in any way impaired his ability to impartially adjudicate this matter, with Chair Alvarez responding in the negative.

All persons planning to give testimony during the quasi-judicial proceeding were duly sworn in by the City Attorney.

Planning Consultant Harmon stated this property is located at 353-12<sup>th</sup> Avenue at the very curve of 12<sup>th</sup> Avenue. The applicants are requesting variances from Section 94-86(a)(1) to allow for a dock facility to exceed the 50-foot length from the seawall by 6 feet to clear the mangroves and the shallow water, and a variance of 9 feet 4 inches into the side yard setback leaving a side yard setback of 2 feet 8 inches.

Planning Consultant Harmon presented a PowerPoint Presentation to the City Commission depicting aerial views of the property showing the location on the lot, the mangroves, and the shallow water at the end of the lot, pictures from the seawall, and drawings of the dock design.

Planning Consultant Harmon stated the Army Corps of Engineers requires that the dock be constructed 5 feet above the mean high water level, which will result in the dock being elevated by a few steps at a point 10 feet 9 inches from the seawall.

**Joe Place, Enterprise Marine, 8165- 46<sup>th</sup> Avenue North, St. Petersburg, contractor for the applicant,** stated this is the same as BOA Case No. 2020-01. He stated the dock has been reduced from the original permitted project to receive approval from Pinellas County Environmental Management and the Army Corps of Engineers. Again, the total square footage has been reduced from what Pinellas County would allow to take place over a seagrass out in the Intracoastal.

City Attorney Mora stated the Board can take, as a matter of record, testimony from the previous case, if the Board so desires.

Member Labadie inquired if anyone has checked the seagrass. He is hearing that the seagrass is the main reason for the variances, but there is no seagrass growing above the waterline.

Mr. Place stated Pinellas County Environmental Management Division went and reviewed the subject property and denied the permit saying there was seagrass up to 50 feet out from the seawalls.

Member Labadie stated there is no seagrass above the waterline and stated he lives on 12<sup>th</sup> Avenue.

Planning Consultant Harmon stated seagrass needs air and light to sustain and grow.

Mr. Place stated Pinellas County Environmental Management wants to have more sunlight reach the seagrass.



Member Watt stated it is all about shading the seagrass out.

There was no public comment or testimony on BOA 2020-02/353-12<sup>th</sup> Avenue.

**MOTION MADE BY MEMBER LABADIE, SECONDED BY VICE CHAIR DEVORE, TO RECOMMEND TO THE CITY COMMISSION APPROVAL OF BOA CASE 2020-02 VARIANCE REQUESTS FROM SECTION 94-86(a)(1) TO ALLOW FOR A DOCK FACILITY TO EXCEED THE 50-FOOT LENGTH FROM THE SEAWALL BY 6 FEET AND TO ALLOW A VARIANCE OF 9 FEET 4 INCHES INTO SIDE YARD SETBACK LEAVING A SIDE YARD SETBACK OF 2 FEET 8 INCHES FOR THE PROPERTY LOCATED AT 353-12<sup>TH</sup> AVENUE, INDIAN ROCKS BEACH, FLORIDA, AND LEGALLY DESCRIBED AS BLOCK 89, LOT 14, SECOND ADDITION TO RE-REVISED MAP OF INDIAN BEACH.**

**ROLL CALL VOTE:**

**AYES: WATT, DEVORE, LABADIE, ALVAREZ.**

**NAYES: CLARK.**

**MOTION CARRIED BY A VOTE OF 4 TO 1 WITH MEMBER CLARK DISSENTING.**

**6. BOA CASE NO. 2020-03 — 531 HARBOR DRIVE NORTH**

**Owner/Applicant: Allen Hopley**

**Subject Location: 531 Harbor Drive North**

**Legal Description: Browns Addition to Re-Revised Map of Indian Beach, Lot 21.**

**Parcel #: 06-30-15-12402-000-0210**

**Variance Request: Variance request from Section 110-292(1)(b) to allow for a hedge to exceed 3 feet in height within 15 feet of the rear lot line.**

**SUBJECT: BOA CASE NO. 2020-03:** Variance request from Section 110-292(1)(b) to allow for a hedge to exceed three feet in height within 15 feet of the rear lot line, for the property located at 531 Harbor Drive North, Indian Rocks Beach, Florida, and legally described as Lot 21, Browns Addition to Re-Revised Map of Indian Beach. Parcel #06-30-15-12402-000-0210.

**OWNER: Allen & Eeva Hopley**  
**PROPERTY LOCATION: 531 Harbor Drive North**  
**ZONING: S- Single Family**

<b>Direction</b>	<b>Existing Use</b>	<b>Zoning Category</b>
North	Residential	S
East	Residential	S
South	Residential	S
West	Intracoastal	N/A

## **BACKGROUND:**

Allen and Eeva Hopley purchased their house in 2013 and landscaped the backyard. Areca palms were planted along both rear side yard property lines. In September 2019, the house to the north was sold and the owner complained to the City that his view was blocked. In December 2019, a code violation notice letter was issued by the City to the Hopleys for violation of the land development code.

### **Sec. 2-152. Variances.**

*(a) Generally; criteria for granting variances from the terms of subpart B.*

(1) The Board of Adjustments and Appeals shall make recommendations on and the City Commission shall decide variance applications will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of subpart B will result in unnecessary and undue hardship. In order to recommend or decide any variance from the terms of subpart B, the Board or the City Commission shall consider each of the following.

a. 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.

*There are no special conditions or circumstances that are peculiar to the land.*

b. The special conditions and circumstances do not result from the actions of the applicant.

*The applicant planted the palm trees in the rear yard setback.*

c. Granting the variance will not confer on the applicant any special privilege that is denied by subpart B to other lands, structures or buildings in the same zoning district.

*Granting the variance would confer special privileges to the applicant.*

d. Literal interpretation of the provisions of subpart B would deprive other properties in the same zoning district under the terms of subpart B and would work unnecessary and undue hardship upon the applicant.

*The denial of this variance request would not deprive other owners of use and enjoyment of their properties.*

e. The variance granted is the minimum variance that will make possible the reasonable use of the land, structure or building.

*The denial of this variance request would not deny reasonable use of the land.*

- f. The granting of the variance will be in harmony with the general intent and purpose of subpart B, and such variance will not be injurious to the area involved or be otherwise detrimental to the public welfare.

*Denial of the variance will be in harmony with the general intent and purpose of subpart B.*

**PUBLIC NOTIFICATION:** A public meeting notice was mailed by First Class Mail to the property owners within 150 feet in any direction of the subject property and posted on the property on February 3, 2020, per Code Section 2-149.

**STAFF RECOMMENDATION:** Based on the variance review criteria of Section 2-152, staff recommends denial of the request.

City Attorney Mora read the title of the Agenda Item and stated this is a quasi-judicial proceeding.

City Attorney Mora inquired of the Members if any of them had any ex-parte communications with the applicant, with all Members responding in the negative.

City Attorney Mora inquired of the Members if any of them had done a site visit for the limited purpose of evaluating this case, with Chair Alvarez responding in the affirmative.

City Attorney Mora inquired if Chair Alvarez felt that his visit in any way impaired his ability to impartially adjudicate this matter, with Chair Alvarez responding in the negative.

All persons planning to give testimony during the quasi-judicial proceeding were duly sworn in by the City Attorney.

Planning Consultant Harmon stated the property is located at 531 Harbor Drive North and the the applicants purchased the property in April 2013 and landscaped the backyard. Areca Palms were planted along both side yard property lines because the overall lot next-door (529 Harbor Drive North) was a mess and an eyesore. The applicants felt if they landscaped it, they would not have to look at the mess.

Planning Consultant Harmon stated the applicants are requesting a variance from Section 110-292(1)(b) to allow for a hedge to exceed 3 feet in height within 15 feet of the rear lot line for the property located at 531 Harbor Drive North.

Planning Consultant Harmon presented a PowerPoint Presentation depicting aerial views of the property, a picture of the backyard looking toward the Intracoastal Waterway, and pictures of the Areca Palms within the rear yard setback.

Planning Consultant Harmon stated the applicants did receive a Code Violation Notice Letter for violating the City's Land Development Code in December 2019, and since receipt of that letter, the applicants have thinned out the Areca Palms as shown in the PowerPoint Presentation.

Planning Consultant Harmon stated staff has recommended denial for this variance request based on the variance review criteria.

City Attorney Mora stated Code Section 110-292(1)(b), Lots with a rear yard abutting the Intracoastal Waterways, specifically states: *Hedges shall not exceed three feet in height when located within 15 feet of the rear lot line. Hedges located in the rear yard between the rear building line and 15 feet from the rear property line shall not exceed eight feet in height.*

Member Clark stated he does not understand because if it is a hedge, it would be completely blocking.

Planning Consultant Harmon stated a hedge can only be 3 feet tall per the City Code.

City Attorney Mora stated the interpretation staff has offered (as he understands it) is that the Areca Palms as they exist, based on their current configuration, constitute a hedge, so the variance is for those present not to plant something new. It is based on the current assembly of vegetation on the property being interpreted to constitute a hedge.

**Debra Gell, 2111 Dr. MLK, Jr. Street North, St. Petersburg, attorney for the applicants**, stated the definition of a hedge is not what the applicants have. She stated the applicants have taken steps to alleviate the problem by thinning out the palms, and by attempting to have a conversation with the next-door neighbor. Her client is willing to even thin the palms out more.

Attorney Gell stated the view that the next-door neighbor is saying he is losing is the applicants' dock and boat, which are exactly on the other side there. The only additional view the next-door neighbor would have would be to look into the applicants' backyard by walking there. There are about eight other properties in the waterway cul-de-sac that have trees near the setback and the applicants' are definitely in line with the ambience of the whole neighborhood. They are not doing something that is restrictive or infringing on their neighbor. These palms are not invasive, do not have a destructive root system, and have been there for 7 years.

Attorney Gell stated these palms and this issue is contrary to public interest. She believes this is a very nice neighborhood with concerned citizens who enjoy the waterfront, and if, in fact, the applicants are singled out, it is selective enforcement, if, in fact, there are other property owners who have these things.

Attorney Gell stated this is a complaint driven system. One neighbor made a complaint, but again there were attempts made to have conversations to work things out, and in her opinion, that should be the way it is with neighbors.

Chair DeVore clarified that the applicants had an arborist come out, and did the arborist install these trees and give the applicants an idea about the height at maturity that these trees would grow to.

**Allen Hopley, 531 Harbor Drive North, the applicant,** stated his landscaper planted the trees and is present to answer any questions. He did have an arborist come out after the fact who advised that the palms were not trees or hedges. From his view, they certainly look like trees. He stated his landscaper thinned out all the saplings to satisfy the complainant.

Mr. Hopley stated he purchased in 2013 and did extensive landscaping because the next-door house was a total mess. He stated the next two houses located next to 529 Harbor Drive North have zero landscaping.

Member Watt stated these are difficult situations and everyone pays a lot of money for these views and the landscaping is beautiful and everyone loves neighbors that take care of their properties. He asked what is the purpose of the palms trees if it is not for screening purposes.

Mr. Hopley stated his house is on a curve, so his neighbors are not going to gain any view by the removal of these palms other than his boat and backyard. There is no major view of any sort or significance that he is blocking.

Member Watt stated he understands, but there is a peripheral view. It is very clear that the Areca Palms are in violation of the City Code, and the fact that the applicants were able to do it and the other neighbors did not mind this is where the problem comes in. Like Mr. Hopley said there are probably hundreds of others that encroach the rear setback, but until someone else does not like it, they get away with it. That does not mean the law was changed for them. It is really not a slippery slope from that perspective.

City Attorney Mora opened the meeting for anyone who had record testimony to offer to the Board for its consideration.

**Horacy Radawiec, 529 Harbor Drive North,** stated he is the next-door neighbor and the complainant. Per the federal regulations, local codes, and Florida building and administration books, even if local jurisdiction does not require a permit for such landscaping, this does not permit anybody to plant trees as they want. The Code clearly states all vegetation have to be planted in accordance ASHA, Florida Department of Agriculture and/or ASLCA (American Society of Landscape Architects) etc...

Mr. Radawiec stated additionally, a palm tree should not be considered a fence and/hedge as they are not an approved species for that reason. Areca Palms may be planted in the

middle of the backyard in small groups in a way that they will not interfere with other setback regulations. Such as 4 feet from the eaves, 8 feet from property lines, and 8 feet from the seawall.

Mr. Radawiec stated these palms have already damaged his sprinkler system, which was put in only two years ago, which is 7 feet away from the fence. Many of the pipes in the system have been wrapped around by the root system, in turn cracking some of the pipes and creating leaks in the system. The palms in questions have been planted just a few inches off the seawall, which is prohibited, as well, and during the 6 years they have been planted, they could have already made major damage to the seawall, and the soil could start sinking under the seawall. Those roots are looking for water, and they will destroy everything that is in their way to get into the water supply. This is supposed to be investigated by the City inspector for damage to prevent a safety hazard to the neighboring houses for possible seawall damage and environmental safety. These palms were irresponsibly planted near the seawall, threatening the surrounding, while being planted far away from his house to remain safe.

Mr. Radawiec stated Mr. Hopley is actively blocking the view to his neighbors on the right side, while he can enjoy the unobstructed view on their side, which they have made sure to leave clear. If Mr. Hopley wants a privacy wall, he is welcome to do it around his pool, so nobody sees him. However, he cannot have complete open views while blocking them from other people.

Mr. Radawiec stated these palms have to be removed, have to be dug out completely, including their roots, which extend 8 feet into his yard, and either be utilized or relocated to a location adherent to the City Codes.

Mr. Radawiec emphasized the setback requirement for fences and hedges is 15 feet from the property line, not the seawall, which is an additional 3 feet off. They must be 15 feet to the building, and must be 8 feet in height.

**Eileen Spellissy-Slattry, 300 Harbor Drive, and the previous owner of 529 Harbor Drive North**, stated the home was a disaster, but it is a great house. They purchased the house in December 2016 and started working on it and cleared out all the tropical plants.

Ms. Spellissy-Slattry stated when Mr. Hopley planted the palms, they were 3 feet tall in April 2013, and those palms now block the southern exposure for 529 Harbor Drive North.

Ms. Spellissy-Slattry stated when she lived there, she did address the palms with the landscaper and asked if they could be trimmed. She stated the palms are just getting thicker and thicker.

Ms. Spellissy-Slattry stated Mr. Hopley is a part-time resident who rents out his residence when he is not there.

**Clarence Eichman, 527 Harbor Drive North**, stated he has lived there for a very long time and provided a history of the development of Harbor Drive North. He was told that the palms were to be maintained at 3 feet. He stated when he looks to the south, the palms do not blend with the area. He would like to see the palms at 3 feet and maintained at 3 feet because the applicants' house is tilted compared to 529 Harbor Drive North and his residence and their houses look almost directly across the bay. There should not be a privacy issue since the applicants' house is tilted.

**David Laramee, A Cut Above Lawn Service, 1501 Bay Pine Boulevard, landscaper for the applicants**, stated he is the landscaper who put in those plants. Technically, they are palm trees, not a hedge. In the City Code, it states hedges will be trimmed at 3 feet. He has consulted with an arborist and stated all palm trees are technically grasses. Palm trees do not have a root system. It is a hardwood tree. It only grows in depth. It has a root ball.

Mr. Laramee stated the reason why the palms were put in was because the applicants wanted a little more privacy because the next-door was very different, and they were trying to shield their property from the adjacent property due to the condition of that property. He planted those palms approximately 7 years ago and has taken care of the applicants' property since that time.

Mr. Laramee stated the applicants have done a lot of landscaping, and technically they are trees and not bushes. The City Code states a hedge roll. He stated when he planted the palms, they were within the City's limitations of the setback on the property line and the same was done on the opposite side, giving the lawn an even look.

Mr. Laramee stated Areca Palms can be grown as a shrub if they are kept cut low and let the suckers or babies grow or they can be thinned down and allow them to have a canopy. He stated Areca Palms do not extend into any other part of the property. He stated a palm tree grows into a ball, it does not grow out. It is a tree, not a hedge.

Member Watt stated the intention of the City Code is a non-screening for 15 feet, so what would Mr. Laramee's explanation or definition be of palm trees planted that close together be other than the purpose of screening.

Mr. Laramee referred to a picture in the PowerPoint Presentation depicting two separate palm trees would be technically obstructing the 15-foot view and asked Member Watt if he would consider having those palms removed.

Member Watt stated there is a difference when they are individual trunk trees versus a multi-stem screening. There is a clear difference. The applicants are talking about a lot of privacy, so he is presuming they are there for a screening effect. He is asking this question only because the applicants are trying to make a point that it is a tree and not a shrub. If it is not there to screen, then why are the palms that used to be 3 feet tall are now 15-16 feet tall.

Mr. Laramée stated at that portion of the property, there would be no one screening, so technically if someone was standing in the next-door neighbor's lawn and was looking into the applicants' lawn 15 feet back, they would see the applicants' boat and dock and would still see Areca Palms, which provides screening for the pool area.

Mr. Laramée stated his company has just thinned out the Areca Palms in that questioned area as depicted in the PowerPoint Presentation.

Vice Chair DeVore asked what is the maturity height for these palms.

Mr. Laramée replying 12 to 15 feet, and those palms are probably at maturity. He stated normally what is done with Areca Palms is they are trimmed, and anytime they exceed in height, they are removed and the lower plants are allowed to grow up.

Vice Chair DeVore stated by keeping them pruned, a natural view is maintained. So, as they grow, as long as they continue to be pruned, there is no screening necessarily, and stated Areca Palms are trees, not a hedge if properly maintained and pruned.

**Adam Jensen, 533 Harbor Drive North**, stated the applicants are great neighbors and spoke in support for the variance.

City Attorney Mora closed the public comment section.

Attorney Gill stated they have made clear what the intent was and a lot of people have said privacy, privacy, privacy, not the point. The point was to put up some trees to give some shade and to not have just an open backyard. She stated the Areca Palms did get bushy and the applicants did cooperate by contacting people, did trim back the palms, and will trim them back more.

City Attorney Mora stated it is the Board's responsibility to discuss the testimony. The Board is to remember to confine its consideration to the competent, substantial evidence of the factors for a variance as set forth in the City Code.

Chair Alvarez clarified that staff is recommending denial of the variance request.

Member DeVore stated Code Section 110-292(1)(b) prohibits hedges from exceeding 3 feet. Technically, Areca Palms are trees and not a hedge in his opinion.

City Attorney Mora stated that seems to be a matter of record and disputed in this case. Staff has opined one way, the applicants have opined in another way, and others have offered testimony. It is this Board's determination that will govern this hearing. There has been disputed evidence that the Board needs to consider and determine what is relevant in this application.



Chair Alvarez stated he is guided by a number of items, including the City Code, and one of the things in which he has been steadfast is when a potential variance is approved for one, a right of others may be reduced.

Chair Alvarez stated one of the things that concern him is if approved would the applicants maintain the Areca Palms by trimming and thinning them out properly and on a regular basis.

Member Watt stated he does not think the roots of the palm trees are a big concern. He thinks from an intent standpoint no one is supposed to screen within 15 feet from the setback line, and hedges, shrubs, plants, and fences all need to be no more than 3 feet high and see-through, and that is the intent of the City Code.

Member Labadie stated he has those palms and he does keep them cut, clean, and thinned out, and he does see-through them and does see the Intracoastal Waterway just fine. He does understand the ordinance that hedges need to be 15 feet from the rear property line and no taller than 3 feet high. He does think it is too bad that both parties cannot work it out and get along together.

***MOTION MADE BY MEMBER CLARK, SECONDED BY MEMBER LABADIE, TO RECOMMEND TO THE CITY COMMISSION DENIAL OF BOA CASE NO. 2020-03 A VARIANCE REQUEST FROM SECTION 110-292(1)(b) TO ALLOW FOR A HEDGE TO EXCEED THREE FEET IN HEIGHT WITHIN 15 FEET OF THE REAR LOT LINE FOR THE PROPERTY LOCATED AT 531 HARBOR DRIVE NORTH, INDIAN ROCKS BEACH, FLORIDA, AND LEGALLY DESCRIBED AS LOT 21, BROWNS ADDITION TO RE-REVISED MAP OF INDIAN BEACH.***

***ROLL CALL VOTE:***

***AYES: WATT, LABADIE, CLARK, ALVAREZ.***

***NAYES: DEVORE.***

***MOTION TO DENY CARRIED BY A VOTE OF 4 TO 1 WITH MEMBER DEVORE DISSENTING.***

## **7. OTHER BUSINESS.**

City Clerk O'Reilly advised that the Indian Rocks Beach City Commission will conduct public hearings on BOA Case No. 2020-01, BOA Case No. 2020-02, and BOA Case No. 2020-03 on March 10, 2020 at 7:00 P.M., or as soon as thereafter.

City Clerk O'Reilly announced that there will be no March Board of Adjustments and Appeals Meeting.

## **8. ADJOURNMENT.**

***MOTION MADE BY MEMBER CLARK, SECONDED BY MEMBER LABADIE, TO  
ADJOURN THE MEETING AT 8:09 P.M. UNANIMOUS APPROVAL.***

June 16, 2020  
Date Approved

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Rick Alvarez, Chair

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