

**MINUTES — SEPTEMBER 14, 2021  
CITY OF INDIAN ROCKS BEACH  
REGULAR CITY COMMISSION MEETING**

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The Indian Rocks Beach Regular City Commission Meeting was held on **TUESDAY, SEPTEMBER 14, 2021**, in the City Commission Chambers, 1507 Bay Palm Boulevard, Indian Rocks Beach, Florida.

Mayor-Commissioner Kennedy called the meeting to order at 7:01 p.m., followed by the Pledge of Allegiance and a moment of silence.

**PRESENT:** Mayor-Commissioner Joanne Moston Kennedy, Vice Mayor-Commissioner Joe McCall, Commissioner Philip J. Hanna, Commissioner Hoofnagle, and Commissioner Denise Houseberg.

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

**ABSENT:** City Manager Mims.

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

**1A. REPORT OF Pinellas County Sheriff's Office.**

The Pinellas County Sheriff's Office submitted a written crime analysis report for the month of July 2021.

**1B. REPORT OF Pinellas Suncoast Fire & Rescue District.**

The Pinellas Suncoast Fire and Rescue District submitted a written report for the month of August 2021.

Commissioner Hoofnagle stated Chief Michael Burton is retiring, and Fire Commissioner David Ardman is resigning in October.

Commissioner Hoofnagle stated suggested the City notify its residents that there is an opening for a Fire Commissioner, and if they are interested, they should contact the Fire Department.

Mayor-Commissioner Kennedy stated she will reach out to the Fire Chief, and she will ask him how he would like to handle the vacancy on the Fire Board.

## **2. PUBLIC COMMENTS.**

**Don House, 2104 Beach Trail**, expressed his concern with the amount of trash being generated and with garbage cans laying around by short-term vacation rentals on the west side of Gulf Boulevard. He would like the City to adopt a program for rentals that do not have an on-site property manager, rent for less than a month, and do not have dumpsters. Then those rentals are subject to an extra \$10.00 weekly fee to allow for backyard pickup.

Mr. House stated during the August BIG-C Meeting, Mayor-Commissioner Kennedy said she and Pinellas County are going to put together a list of everything that has been done to inform individuals that have not signed the perpetual beach easements. Mr. House stated he would like for her to start with the two questions about what was wrong with the beach renourishment pamphlet, authored by Attorney Hugh Smith.

**Linda Newton, 438 Harbor Drive North**, expressed concern about the flooding problem on the North Harbor Drive area. She learned that some of the culverts were cleaned out some time in July. However, the culvert at 428 is halfway covered with oysters and needs to be cleaned out.

**John Ballock, 436 Harbor Drive North**, stated the City is well aware of the flooding problem on Harbor Drive North. The Public Services Director forwarded him a study wherein the engineers said the drains are insufficient. The drains are 12 inches, and they should be 24 inches. There are already cost estimates, and the American Recovery Act has granted the City \$1.2 Million for projects like this. He stated that the area has an immediate problem with flooding. He would like for the City Commission to act on that as opposed to wait for another study.

**Tom Marinelli, 430 Harbor Drive North**, stated he hears this project is on the 5-Year Capital Improvement Plan, and asked what does that mean.

Mayor-Commissioner Kennedy stated the budget has to be approved, the City is waiting on funding, and the City still has more to do with the engineering studies.

Mr. Marinelli stated he got the impression from the Public Services Director that even though the City has the funding, the project would not begin for another year or so. He asked if there was any reason that those funds could not be released sooner than that.

City Attorney Mora stated that Mr. Marinelli spoke about the procurement process for a local government and explained the procurement process for local governments.

## **3A. REPORTS OF THE CITY ATTORNEY: No Report.**

**3B. REPORTS OF THE CITY MANAGER:** No Report.

**3C. REPORTS OF THE CITY COMMISSION:**

**COMMISSIONER HOOFNAGLE:**

- Stated it took five years to correct the flooding of the sidewalks in the The Narrows when it rained. It takes a long time and asked the resident in the Harbor Drive North area to be patient.
- Stated he is the Chairperson for Oktoberfest, October 23, 2021, from Noon to 6:00 p.m., in Kolb Park. Action 2000, Inc., is sponsoring the event and are looking for volunteers.

**VICE MAYOR/COMMISSIONER McCALL:**

- Stated it is great to see the investment that is coming back into the City. The City currently has three new restaurants that are coming in to improve old buildings that have needed it for a very long time. He loves to see the personal and private investments from the different business coming into the City and ultimately rehab it and make it better.

**MAYOR-COMMISSIONER KENNEDY:**

- Announced the following events:
  - October 30, 2021 Halloween
  - October 31, 2021 Historical Museum Potluck Luncheon
  - Taste of IRB sponsored by the IRB Homeowners Association is being held in November, and are looking for volunteers.

**4. ADDITIONS/DELETIONS.** None.

**5. CONSENT AGENDA:**

- A. APPROVAL OF August 10, 2021 Regular City Commission Meeting Minutes.**
- B. CONFIRMING ACTION taken during the September 8, 2021 Special City Commission Meeting.**
- C. AUTHORIZE the City Manager to dispose of surplus property/equipment which has become unnecessary or unfit for the City's use.**
- D. AUTHORIZE the City Manager to sign a one year renewal agreement with Public Risk Management (PRM) of Florida for property, casualty, and workers' compensation, and flood coverages for FY 2021-22.**

City Attorney Mora read the Consent Agenda, consisting of Agenda Item Nos 5A through 5D, by title only.

**MOTION MADE BY COMMISSIONER HOOFNAGLE, SECONDED BY COMMISSIONER HANNA, TO APPROVE THE CONSENT AGENDA, CONSISTING OF AGENDA ITEM NOS. 5A THROUGH 5D AS SUBMITTED. UNANIMOUS APPROVAL BY ACCLAMATION.**

**6A. CONDEMNATION PROCEEDINGS — 2004 GULF BOULEVARD, INDIAN ROCKS BEACH.** The garage (structure) on the property located at 2004 Gulf Boulevard, Indian Rocks Beach, Florida 33785, more particularly described as Indian Beach Re-Revised, Block 11, Lots 14 & 15 less RD R/W on E, in the most recent recording in the Pinellas County Official Records Book 9358 Page 2398, has been declared unsafe and a nuisance pursuant to Sections 14-301 and 14-321 of the Indian Rocks Beach Municipal Code, and is subject to condemnation proceedings under Section 14-309 of the Indian Rocks Beach Municipal Code.

*[Beginning of City Attorney Erica Augello Memorandum to the City Commission.]*

“This memorandum is to provide you with a recitation of the relevant code enforcement actions the City has taken against this property in an effort to gain compliance with the City’s Codes. While this property has been the subject of various Code violations over the years, this memorandum is focused solely on the garage structure located on the property. Ultimately, the property owner, Ms. Thelma Smith (hereinafter “Property Owner”), has failed to comply with the City’s Codes and the garage structure has been declared unsafe and a nuisance by the City’s Code Enforcement Officer Mike Kelley, pursuant to Sections 14-301 and 14-321 of the City’s Code of Ordinances.

Section 14-301 of the City’s Code allows the City Manager or his designee to declare any building “which is so damaged, decayed, dilapidated, unsanitary, unsafe, or vermin-infested that it creates a serious hazard to the health and safety of the occupants or the public” unfit for occupancy and to be a nuisance, and to allow for condemnation of such a building.

Section 14-321 of the City’s Code prohibits unsafe buildings and defines same as “all residential buildings or structures used which are unsafe, unsanitary, unfit for human habitation, or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment”.

The narrative below and associated documents more than demonstrate the garage structure meets and exceeds the definition of an unsafe building and should be declared condemned.

On October 25, 2017, the City's previous Code Enforcement Officer, the late Jack Ouimette, issued the Property Owner a Notice to Appear to County Court for violating City Code Section 14-262(1) for failing to maintain the property constituting a blighting factor for adjoining properties. The Property Owner was served a Notice of Arraignment in Court Case Number 17-16020-MO, and entered a written plea of not guilty. Though the Property Owner pleaded not guilty to the violation, she ultimately chose to pay the \$93 fine and was adjudicated guilty by the judge. However, the property failed to come into compliance.

On June 25, 2019, the City's current Code Enforcement Officer, Mike Kelley, issued a Code Enforcement Violation Notice (City Code Enforcement Case No. 200102661) for violating City Code Section 14-262 for failing to properly maintain the property, noting the garage was in a state of disrepair with the windows, doors, and soffits being rotted, constituting a blighting factor for neighboring properties as well as posing safety issues to the general public, and constituting an attractive nuisance. Mr. Kelley allotted ten (10) calendar days to correct or abate the violations.

On August 7, 2019, after inspection and finding that the Property Owner failed to bring the structure into compliance, Mr. Kelley issued another Notice of Violation (City Code Enforcement Case No. 2001026760) for violating City Code Sections 14-262 and 14-321, for failing to properly maintain the structure allowing the garage to be in a state of disrepair with the windows and doors rotted, missing, or boarded up, the soffits rotted, and evidence of rats and other rodents, and for continuing to be a blighting factor for neighboring properties as well as safety and health hazard. Mr. Kelley allotted ten (10) calendar days to correct or abate the violations.

On August 22, 2019, after inspection and finding the violations on the property still outstanding, Mr. Kelley issued a Notice to Appear to County Court for violating City Code Sections 14-262 and 14-321. The Property Owner was served a Notice of Arraignment in Court Case Number 19-14257-MO, and entered a plea of not guilty. Again, though the Property Owner pleaded not guilty, she opted to pay the fine of \$250 and the judge adjudicated her guilty. The garage, however, remained in a state of disrepair and dilapidation.

On December 13, 2019, Mr. Kelley, after inspection, issued a Notice to Appear to County Court for violating City Code Section 14-321, as the garage structure in its state of disrepair was deemed a prohibited unsafe building. The Property Owner was served a Notice of Arraignment in Court case Number 19-20080-MO, and entered a plea of not guilty. This case made it as far as a pre-trial hearing in February 2020, however, to avoid going to trial, the Property Owner paid the \$495 fine and was adjudicated guilty by the judge. Unfortunately the garage structure continued to be in a state of disrepair and was rapidly deteriorating.

On December 4, 2020, upon inspection, Mr. Kelley issued a Notice of Violation for violation of City Code Sections 14-263 (a) and (e), as the garage was continuing to deteriorate, had a large hole in the roof, was rodent and vermin infested, and constituted a severe blight to neighboring properties. Mr. Kelley allotted ninety (90) days to abate or correct.

After years of issuing notices of violations, unsuccessful court intervention, continued discussions with the property owner with promises of correction but no action, and City action at a cost to taxpayers to abate the structure, on March 9, 2021, Mr. Kelley issued a Notice of Violation pursuant to City Code Section 14-322 citing that the garage was continuing to deteriorate with a large hole in the roof, it was rodent-infested, and there were broken and boarded windows. Mr. Kelley determined the garage was an unsafe structure and allotted thirty (30) days to correct or abate or the City would pursue condemnation proceedings seeking to demolish the structure pursuant to City Code Sections 14-301 and 14-309. This notice was posted on the property as well as sent Certified Mail Return Receipt Requested to the Property Owner.

The Property Owner failed to correct or abate the violation within the thirty days, and did not appeal the determination as per City Code Section 14-308. Therefore, on August 6, 2021, pursuant to City Code Section 14-309, Mr. Kelley issued a Notice of Hearing which was both posted at the property and sent to property owner via Certified Mail Return Receipt Requested. The Notice specified that all interested parties are required to show cause as to why the occupant, owner, or both should not comply with the Code Violation Notice dated March 9, 2021. This Notice of Public Hearing was published in the Tampa Bay Times on August 25, 2021 and September 1, 2021, as required by the City's Code.

Section 14-309 (b) of the City's Code provides: *Action by City Commission*. If at the public hearing designated in the notice under subsection (a) of this section no objections are filed or presented, or if objections filed or presented shall be deemed insufficient by the City Commission, it shall then by resolution order that the repair, alteration or improvement or vacation or closing of the building, or the removal or demolition of the building, be completed by the occupant or owner thereof within 30 days after the passage and adoption of the resolution. If the occupant or owner of the property fails to comply with the resolution in accordance with the terms thereof, the City Commission shall cause the correction, repair, alteration or improvement, or vacation or closing of such building, or the removal or demolition of the building, to be done in accordance with the requirements of the minimum building or housing code.

To date, the property owner has failed to comply with the City's Code and the garage remains unsafe and in disrepair. The City has received no evidence from the Property Owner as of the submission of this memorandum that shows cause as to why the garage structure should not be condemned and demolished."

*[End of City Attorney Erica Augello's Memorandum to the City Commission.]*

City Attorney Mora read Agenda Item No. 6A by title only.

City Attorney Mora inquired of the Members if they 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 all Members responding in the negative.

The City Attorney duly swore in all persons planning to give testimony during the quasi-judicial hearing.

Mayor-Commissioner Kennedy opened the public hearing.

Code Enforcement Officer Kelley introduced the Agenda Item and reviewed City Attorney Erica Augello's Memorandum, which details the City's action over the past five years. The City has received no evidence from the Property Owner as of the City Attorney's memorandum submission that shows cause as to why the garage structure should not be condemned and demolished.

Code Enforcement Officer Kelley stated that the garage continues to deteriorate with a large hole and other holes in the roof. It is rodent-infested, a homeless structure, and there are broken and boarded windows. He continued by stating there is stuff, like furniture and equipment, in the garage structure that has just been sitting there getting ruined by the weather.

Code Enforcement Officer Kelley stated he has determined the garage structure is an unsafe structure. He advised the Property Owner that she has 30 days to correct or abate the garage structure, or the City would pursue condemnation proceedings seeking to demolish the garage structure according to City Code.

Code Enforcement Officer Kelley stated staff is seeking to demolish the garage structure under Section 14-309 (b) of the City's Code.

City Attorney Mora noted for the record that Thelma Smith, her agent, or a representative was not and asked if there was anybody specifically here on Ms. Smith's authorization.

City Attorney Mora stated the City is in receipt of the following letter from Thelma Smith, postmarked September 7, 2021:

From:  
*"T. Smith*  
*12596 Lucas Lane*  
*Anchorage, KY 40224"*

To:  
"City of Indian Rocks Beach  
1507 Bay Palm Boulevard  
Indian Rocks Beach, Florida 33785"

"Sept. 6, 2021

Re: 2004 Gulf Blvd.

*I am getting estimates for repairs on my barn - roof.*

*I am doing regular repair on the house. Plans for roof repairs.*

*I need 90 days to complete.*

Thanks

Thelma Smith

over→

*I am working with Historic Preservation to keep my buildings."*

**Andy Hyde, 2006 Beach Trail**, stated his property abuts the subject property. He stated that Ms. Smith is always saying that she will do something, and she never seems to do anything. The structure in question is not a garage. She calls it a barn. It is some structure, it is for storage. It is full of junk. To his knowledge and his neighbor's, it has never been used as a garage. That may seem to be semantics, but that is important to them because of what happens to the property after it is condemned. He does not understand why the house has not been condemned because it is probably worse than the garage.

Mr. Hyde stated that the property had a curb cut on Gulf Boulevard for access to the actual garage of the house. He said that property is going to be purchased at some point, and it will be redeveloped into a four or six-unit development. If there is no access from Gulf Boulevard, the access will be from Beach Trail. Beach Trail is a tiny road, maybe 80 feet long, 8 feet wide.

Mr. Hyde stated whenever there is a storm, pieces of the structure and roof fly into his and his neighbor's driveway, yards, and onto Beach Trail.



**Don House, 2104 Beach Trail**, asked why the house was not being condemned and demolished at the same time. The house was built in 1925, and it is beyond repair. He would like to see both the house and the garage structure condemned and demolished.

**Evelyn Adikes, 2004 Beach Trail, #B**, stated Ms. Smith has a garage that is part of the house that she converted into living quarters in 2000. She does not even know if this work was permitted. She stated that Ms. Smith talked the City Commission into allowing her to use Beach Trail to access her residence.

Ms. Adikes stated the access to her residence does not matter now, but when the property is redeveloped, the ingress and egress will count to the abutting property owners.

Ms. Adikes stated she and her neighbors are asking for the City Commission to consider giving Ms. Smith's Gulf Boulevard curb cut back for further reasons.

City Attorney Mora closed the public hearing.

City Attorney Mora read Section 14-309(b): *"If at the public hearing designated in the notice under subsection (a) of this section no objections are filed or presented, or if objections filed or presented shall be deemed insufficient by the City Commission, it shall then by resolution order that the repair, alteration or improvement or vacation or closing of the building, or the removal or demolition of the building, be completed by the occupant or owner thereof within 30 days after the passage and adoption of the resolution. If the occupant or owner of the property fails to comply with the resolution in accordance with the terms thereof, the City Commission shall cause the correction, repair, alteration or improvement, or vacation or closing of such building, or the removal or demolition of the building, to be done in accordance with the requirements of the minimum building or housing code."*

City Attorney Mora stated a resolution had been given to the City Commission should the City Commission make findings that warrant a resolution. The resolution is structured for condemnation or destruction because that is what staff requested and the substantive motion beyond the Whereas Clauses read as follows:

*"Section 1. The Property Owner shall demolish and remove the garage structure on the Property within thirty (30) days after the passage and adoption of this resolution, including securing all necessary permits and approvals for the removal of the structure by lawful means.*

*Section 2. Upon the Property Owner's failure to timely comply with this Resolution, City staff is hereby directed to cause the demolition and removal of the structure, to be done in accordance with the requirements of the minimum building or housing code. In the event the City causes the demolition and removal of the structure, the City hereby reserves its*

*right to seek remuneration and impose a lien for the actual incurred costs, to the extent permitted by the applicable law.*

*Section 3. This resolution shall become effective immediately upon adoption by the City Commission."*

Commissioner Hoofnagle stated as a point of order, some of the residents brought up some questions that are not germane to what the City Commission is evaluating here in a quasi-judicial capacity. He stated any issues with the driveway and apron adjoining Gulf Boulevard and Beach Trail would be done during the site plan review of any development project. That is a separate approval. It would be done at that time. He stated the residents' concern is heard and understood. That is why the City has a Planning Consultant and City staff to ensure that when a development project takes place, there is an approval process to ensure that the traffic flow and everything else is appropriate.

Commissioner Hoofnagle stated the City started issuing notices of violation in 2017, and Ms. Smith has been communicating with the City although she has been biding time. He said taking someone's property and destroying it is a pretty significant step for a municipal body. He believes if the City Commission condemns the property, it should be subject to a 90-day wait as she has requested, but on day 91, the order would come effective.

Mayor-Commissioner Kennedy stated the City has been dealing with Ms. Smith on this issue.

Code Enforcement Officer Kelley stated the City had sent notices of violation to Ms. Smith since 2017. For the last two and half years, he has sent notices of violation to her, specifically on the garage structure, and her reply is, *"it is going to get done."* However, she has not corrected any of the violations. He has stayed in contact with her over the years.

Code Enforcement Officer Kelley stated the City has given Ms. Smith 30 days, 60 days, and 90 days to come into compliance, and he receives the same response: *"It is going to get done. I need more time,"* and still she has not come into compliance.

Code Enforcement Officer Kelley said the last time she was down, she made the beds, painted one of the inside rooms, and swept the floors inside the main house, and that was her idea of fixing the place up. He stated nothing was done to the exterior of the home or to the garage/barn structure.

Commissioner Hanna clarified the issue tonight is the garage structure only and not the house, and inquired if down the road the City would be having another meeting about condemning the house.

City Attorney Mora responded potentially, yes, that prospect exists. The hearing before the City Commission tonight is specifically concerning the garage structure.

Commissioner Hoofnagle stated Ms. Smith is current with her property taxes. He would be happy to impose a lien for all the costs that the City has incurred, including the demolition of the garage structure, if the City Commission decides to demolish the garage structure.

Commissioner Hoofnagle stated he would like the demolition of the garage structure to be 90 days from receipt of the certified letter versus 30 days.

City Attorney Mora stated that Commissioner Hoofnagle is giving her 90 days to either remediate or remove. A remediate would be a sufficient remedy in the City's estimation. Upon failure to either remediate to the satisfaction of the City or remove the structure within those 90 days immediately after that, the City would proceed with demolition and removal of the structure.

Commissioner Hoofnagle stated yes, and with the placing of a lien on the property.

The City Commission discussed 90 days versus 30 days as outlined in the City Code and that the City has been dealing with this situation with Ms. Smith since 2017. The City Commission spoke about the neighbors' having to deal with rodents, garbage, stuff flying off her roof, illegal activity, and so forth. The City Commission's responsibility is to all the neighbors abutting her.

Commissioner Hoofnagle stated the City would be destroying Ms. Smith's private property. When a government comes in and backhoes a person's property, the City has a responsibility to diligently discuss and make sure the City has given that person every opportunity to rectify the situation.

Commissioner Hoofnagle stated he agrees with 30 days if the rest of the City Commission agrees that 30 days is enough time. He said in her letter, she asked for 90 days.

Commissioner Hanna stated if approved, this means the property is condemned. It does not mean action to destroy that property has to happen the very next day.

Commissioner Hoofnagle stated that is a fair point.

Vice Mayor-Commissioner McCall stated he is okay with 30 days. Ms. Smith has been notified multiple times with no corrective action taken. He said he is a property-rights guy, but the City has to stop notifying people and take action at some point.

City Attorney Mora stated the next step after demolition would be to file a lien against the property for the assessment amount according to Section 14-309, Subsection (c), Creating of the Lien/Payment of the Lien, Code of Ordinances.

**MOTION MADE BY COMMISSIONER HOOFNAGLE, SECONDED BY COMMISSIONER HOUSEBERG, TO APPROVE RESOLUTION NO. 2021-08, FINDING THE GARAGE/BARN STRUCTURE AT 2004 GULF BOULEVARD, INDIAN ROCKS BEACH, FLORIDA, UNSAFE, AND AMENDING SECTION 1 OF THE RESOLUTION TO READ AS FOLLOWING: SECTION 1: THE PROPERTY OWNER SHALL REMEDIATE TO STRUCTURALLY SAFE STATUS AS DEFINED AND INSPECTED PURSUANT TO LOCAL BUILDING CODES OR DEMOLISH AND REMOVE THE GARAGE STRUCTURE ON THE PROPERTY WITHIN THIRTY (30) DAYS AFTER THE PASSAGE AND ADOPTION OF THIS RESOLUTION, INCLUDING SECURING ALL NECESSARY PERMITS AND APPROVALS FOR THE REMOVAL OF THE STRUCTURE BY LAWFUL MEANS.**

**ROLL CALL VOTE:**

**AYES: McCall, HANNA, HOUSEBERG, HOOFNAGLE, KENNEDY**

**NAYS: NONE**

**MOTION CARRIED UNANIMOUSLY.**

**6B. BOA CASE NO. 2021-08 — 351-12<sup>TH</sup> AVENUE**

**Considering a variance request from Section 94-87 of the Code of Ordinances for an additional 16 feet 4 inches to the previously granted variance of 6 feet (BOA Case No. 2020-01) extending the dock a total of 22 feet 4 inches beyond the maximum dock length of 50 feet when there is less than 3 feet of water from the end of the dock at mean low water for a total dock length of 72 feet 4 inches from the seawall at its maximum projection, for the property located at 351-12<sup>th</sup> Avenue, Indian Rocks Beach, Florida, and legally described as Second Addition to Re-Revised Map of Indian Beach, Block 89, Lot 13 (See Map S06-30-15). Parcel #: 06-30-15-42066-089-0130.**

*[Beginning of Staffing Report.]*

**SUBJECT: BOA CASE NO. 2021-08:** A variance request from Section 94-87 of the Code of Ordinances for an additional 16 feet 4 inches to the previously granted variance of 6 feet (BOA Case No. 2020-01) extending the dock a total of 22 feet 4 inches beyond the maximum dock length of 50 feet when there is less than 3 feet of water from the end of the dock at mean low water for a total dock length of 72 feet 4 inches from the seawall at its maximum projection, for the property located at 351-12th Avenue, Indian Rocks Beach, Florida, and legally described as Block 89, Lot 13, Second Addition to Re-Revised Map of Indian Beach. Parcel #06-30-15-42066-089-0130

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

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

**BACKGROUND:**

On February 18, 2020, the City Commission granted variances for Patricia Jordan, the applicant, 351-12th Avenue to extend the dock length 56 feet from the seawall and to encroach into the side yard setback by 11 feet 4 inches through BOA Case No. 2020-01.

The dock has been installed. At 56 feet, there was less than 3 feet of water at mean low water due to the natural occurrence of existing mangroves, seagrass, sandbar, and shallow water.

Patricia Jordan, the applicant, is requesting an additional 16 feet 4 inches to the previously granted variance of 6 feet (BOA Case No. 2020-01) extending the dock a total of 22 feet 4 inches beyond the maximum dock length of 50 feet when there is less than 3 feet of water from the end of the dock at mean low water for a total dock length of 72 feet 4 inches from the seawall at its maximum projection.

**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 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 and utilized.*
- 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 use 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.*

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

**BOARD OF ADJUSTMENTS AND APPEALS RECOMMENDATION:** Motion carried by a vote of 3 to 1.

**PUBLIC NOTICE:** Notice was mailed by first class mail to the property owners within 150 feet in any direction of the subject property and posted on subject property on August 30, 2021. (Sec. 2-149 of the Code of Ordinances.)

**CORRESPONDENCE RECEIVED:** No correspondence was received.

**LEGAL ADVERTISEMENT:** A legal notice was published in the September 1, 2021-edition, of the St. Pete Times Section of the Tampa Bay Times, for a public hearing that has been scheduled on September 14, 2021, for BOA Case No. 2021-10.

*[End of Staffing Report.]*

Commissioner Hoofnagle stated that since Agenda Item No. 6B, BOA Case No. 2021-08, and Agenda Item No. 6C, BOA Case No. 2021-09, are substantially the same, could the City Attorney read the next case, and could the City Commission deliberate them in conjunction.

The City Attorney suggested that all testimony be taken under this case, and he can read both titles, and incorporate that separately, and that way, the City Commission can make separate determination as to each.

City Attorney Mora read by title only Agenda Item No. 6B, BOA Case No. 2021-08, 351-12<sup>th</sup> Avenue, and Agenda Item No. 6C, BOA Case No. 2021-09, 353-12<sup>th</sup> Avenue.

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

City Attorney Mora inquired of the City Commission if any of them had done a site visit for the limited purpose of evaluating this case, with all members responding in the negative.

The City Attorney duly swore in all persons planning to give testimony during the quasi-judicial proceeding.

Planning Consultant Harmon stated on February 18, 2020, the City Commission granted variances for a dock to exceed the maximum 50-foot length by 6 feet and to encroach into the required 12-foot side yard setback by 11 feet 4 inches.

Planning Consultant Harmon stated the dock had been built. However, due to low water levels at 56 feet, the dock is unusable. The applicant is requesting to extend the dock length by an additional 16 feet for a total dock length of 72 feet 4 inches.

Planning Consultant Harmon presented a PowerPoint Presentation showing aerial views of the property, which depicts the seagrass, mangroves, build-up of sand, how shallow the water is at 32 feet, and beach shore, a photo with the applicant, Mr. Jordon, at low tide, the dock plan, and the dock profile.

Planning Consultant Harmon stated the Board of Adjustments and Appeals approved this BOA Case by a 3 to 1 vote.

**Joe Place, Enterprise Marine, 8165-46<sup>th</sup> Avenue North, St. Peterburg, appearing on behalf of the property owner/applicant, Patricia Jordan, 351-12<sup>th</sup> Avenue,** stated his company did build the dock previously. They were not able to measure the water depths without the structure as accurately as they have now. The Jordans do not have the electric hooked up on their boat lift because it is basically inoperable except at extreme high tides. The dock had to be raised because of government intervention, the Army Corps of Engineers and Pinellas County, wanting the sun to reach the seagrass, and that is why the dock was raised. There is a requirement that docks be raised 5 feet above the mean high water over the seagrass.

Mr. Place stated the issue is the water depth. Now that the dock is built, he can see where the water depths are and was able to take more exact measurements. As depicted in the picture, he stated that Mr. Jordan, the applicant, is standing in water up to his knees where the boat lift is located.

Mr. Place stated for the applicant to utilize their boat lift, the dock length would need to extend out 16 feet more for a total dock length of 72 feet 4 inches.

Mayor-Commissioner Kennedy opened the public hearing. Seeing and/or hearing no one wishing to speak, the public hearing was closed.

**MOTION MADE BY COMMISSIONER HOOFNAGLE, SECONDED VICE MAYOR-COMMISSIONER McCALL, TO APPROVE BOA CASE NO. 2021-10, A VARIANCE REQUEST FROM SECTION 94-87 OF THE CODE OF ORDINANCES FOR AN ADDITIONAL 16 FEET 4 INCHES TO THE PREVIOUSLY GRANTED VARIANCE OF 6 FEET (BOA CASE NO. 2020-01) EXTENDING THE DOCK A TOTAL OF 22 FEET 4 INCHES BEYOND THE MAXIMUM DOCK LENGTH OF 50 FEET WHEN THERE IS LESS THAN 3 FEET OF WATER FROM THE END OF THE DOCK AT MEAN LOW WATER FOR A TOTAL DOCK LENGTH OF 72 FEET 4 INCHES FROM THE SEAWALL AT ITS MAXIMUM PROJECTION, FOR THE PROPERTY LOCATED AT 351-12<sup>TH</sup> AVENUE, INDIAN ROCKS BEACH, FLORIDA, AND LEGALLY DESCRIBED AS SECOND ADDITION TO RE-REVISED MAP OF INDIAN BEACH, BLOCK 89, LOT 13 (SEE MAP S06-30-15). PARCEL #: 06-30-15-42066-089-0130.**

Commissioner Hoofnagle stated this is the minimum variance, and the hardship is coming from both the shallow water and the natural vegetation around it.

Vice Mayor McCall stated it is more of an environmental concern than anything. He stated it looks like the boat lift will be placed to the side of the dock just from a channel prospective there. The dock does not seem to jar out too far into the channel.

**ROLL CALL VOTE:**

**AYES: HOUSEBERG, HANNA, McCALL, HOOFNAGLE, KENNEDY**

**NAYS: NONE**

**MOTION CARRIED UNANIMOUSLY.**

**6C. BOA CASE NO. 2021-09 — 353-12<sup>TH</sup> AVENUE**

**Consideration a variance request from Section 94-87 of the Code of Ordinances for an additional 16 feet 4 inches to the previously granted variance of 6 feet (BOA Case No. 2020-02) extending the dock a total of 22 feet 4 inches beyond the maximum dock length of 50 feet when there is less than 3 feet of water from the end of the dock at mean low water for a total dock**



length of 72 feet 4 inches from the seawall at its maximum projection, for the property located at 353-12<sup>th</sup> Avenue, Indian Rocks Beach, Florida, and legally described as Second Addition to Re-Revised Map of Indian Beach, Block 89, Lot 14 (See Map S06-30-15). Parcel #:06-30-15-42066-089-0140.

**SUBJECT: BOA CASE NO. 2021-09:** A variance request from Section 94-87 of the Code of Ordinances for an additional 16 feet 4 inches to the previously granted variance of 6 feet (BOA Case No. 2020-02) extending the dock a total of 22 feet 4 inches beyond the maximum dock length of 50 feet where there is less than 3 feet of water from the end of the dock at mean low water for a total dock length of 72 feet 4 inches from the seawall at its maximum projection, for the property located at 353-12<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. Parcel #06-30-15-42066-089-0140

**OWNER** Adam & 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:**

On February 18, 2020, the City Commission granted variances for Adam and Deborah Probst, the applicants, 353-12<sup>th</sup> Avenue to extend the dock length 56 feet from the seawall and to encroach into the side yard setback by 9 feet 4 inches through BOA Case No. 2020-02.

The dock has been installed. At 56 feet, there was less than 3 feet of water at mean low water due to the natural occurrence of existing mangroves, seagrass, sandbar, and shallow water. The applicants are requesting an additional 16 feet 4 inches to the previously granted variance of 6 feet (BOA Case No. 2020-02) extending the dock a total of 22 feet 4 inches beyond the maximum dock length of 50 feet when there is less than 3 feet of water from the end of the dock at mean low water for a total dock length of 72 feet 4 inches from the seawall at its maximum projection.

**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 and utilized.*
- 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 use 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.*

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

**BOARD OF ADJUSTMENTS AND APPEALS RECOMMENDATION:** Motion carried by a vote of 3 to 1.

**PUBLIC NOTICE:** Notice was mailed by first class mail to the property owners within 150 feet in any direction of the subject property and posted on subject property on August 30, 2021. (Sec. 2-149 of the Code of Ordinances.)

**CORRESPONDENCE RECEIVED:** No correspondence was received.

**LEGAL ADVERTISEMENT:** A legal notice was published in the September 1, 2021-edition, of the St. Pete Times Section of the Tampa Bay Times, for a public hearing that has been scheduled on September 14, 2021, for BOA Case No. 2021-10.

*[End of Staffing Report]*

*[Please see Agenda Item No. 6B for testimony.]*

**MOTION MADE VICE MAYOR-COMMISSIONER MCCALL, SECONDED BY COMMISSIONER HANNA, TO APPROVE BOA CASE NO. 2021-09, A VARIANCE REQUEST FROM SECTION 94-87 OF THE CODE OF ORDINANCES FOR AN ADDITIONAL 16 FEET 4 INCHES TO THE PREVIOUSLY GRANTED VARIANCE OF 6 FEET (BOA CASE NO. 2020-02) EXTENDING THE DOCK A TOTAL OF 22 FEET 4 INCHES BEYOND THE MAXIMUM DOCK LENGTH OF 50 FEET WHEN THERE IS LESS THAN 3 FEET OF WATER FROM THE END OF THE DOCK AT MEAN LOW WATER FOR A TOTAL DOCK LENGTH OF 72 FEET 4 INCHES FROM THE SEAWALL AT ITS MAXIMUM PROJECTION, FOR THE PROPERTY LOCATED AT 353-12<sup>TH</sup> AVENUE, INDIAN ROCKS BEACH, FLORIDA, AND LEGALLY DESCRIBED AS SECOND ADDITION TO RE-REVISED MAP OF INDIAN BEACH, BLOCK 89, LOT 14 (SEE MAP S06-30-15). PARCEL #:06-30-15-42066-089-0140.**

**ROLL CALL VOTE:**

**AYES: HOOFNAGLE, HOUSEBERG, HANNA, McCALL, KENNEDY**

**NAYS: NONE**

**MOTION CARRIED UNANIMOUSLY.**

**6D. BOA CASE NO. 2021-10 — 300-10<sup>TH</sup> AVENUE**

**Considering a variance request variance request from Section 110-344(7)(f) of the Code of Ordinances to allow for a waterfall structure to exceed the 6-foot length requirement by 6 feet, for the property located at 300-10<sup>th</sup> Avenue, Indian Rocks Beach, Florida, and legally described as First Addition to Re- Revised Map of Indian Beach Subdivision, Block 86, Lot 22, recorded in Plat Book 23, Page 11 of the Public Records of Pinellas County. Parcel #: 01-30-14-42048-086-0220.**

**SUBJECT: BOA CASE NO. 2021-10:** Variance request from Sec. 110-344 (7)(f) to allow for a waterfall structure to exceed the 6-foot length requirement by 6 feet, for the property located at 300 10th Avenue Indian Rocks Beach, Florida, and legally described as Lot 22, Block 86, First Addition to Re- Revised Map of

Indian Beach Subdivision recorded in Plat Book 23, Page 11 of the Public Records of Pinellas County. Property ID # 01-30-14-42048-086-0220

**OWNER:** All D Nuts, LLC, Trudi Holthouse  
**PROPERTY LOCATION:** 300-10<sup>TH</sup> Avenue  
**ZONING:** Single-Family Residential

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

**BACKGROUND:**

Ms. Holthouse is requesting a variance to build a waterfall 4 feet high, 12 feet long in the rear yard setback. Section 110-344 (7)(f) applies to decorative waterfalls where they are constructed as part of or integrated into a spa or swimming pool, provided the length or diameter of the improvement does not exceed 6 feet. The proposed waterfall would exceed the 6 feet length requirement by 6 feet.

**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 applicant has designed a waterfall rock feature that tapers down to grade and exceeds the length allowed by City Code.*
- b. The special conditions and circumstances do not result from the actions of the applicant. *The applicant has proposed a waterfall design that incorporates a rock formation rather than a waterfall wall.*
- 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 that is not allowed by the Land Development Code to other lands, structures, or buildings in the same zoning district.*
- 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/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. *Granting of this variance would allow the applicant to have a unique waterfall design without impacting the neighbors.*
  - 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 not be injurious to the area involved or detrimental to the public welfare.*

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

**BOARD OF ADJUSTMENTS AND APPEALS RECOMMENDATION:** Motion failed with a 2-2 vote. The Board did recommend changing the Land Development Code to allow waterfalls up to 12 feet in length.

**PUBLIC NOTICE:** Notice was mailed by first class mail to the property owners within 150 feet in any direction of the subject property and posted on subject property on August 30, 2021 (Sec. 2-149 of the Code of Ordinances.)

**CORRESPONDENCE RECEIVED:** No correspondence was received.

**LEGAL ADVERTISEMENT:** A legal notice was published in the September 1, 2021-edition, of the St. Pete Times Section of the Tampa Bay Times, for a public hearing that has been scheduled on September 14, 2021, for BOA Case No.2021-10.

*(End of Staffing Report)*

City Attorney Mora read by title only Agenda Item No. 7, BOA Case No. 2021-10, 300 10<sup>th</sup> Avenue.

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

City Attorney Mora inquired of the City Commission if any of them had done a site visit for the limited purpose of evaluating this case, with all members responding in the negative.

The City Attorney duly swore in all persons planning to give testimony during the quasi-judicial proceeding.

Planning Consultant Harmon stated the applicant is requesting a variance from Section 110-344(7)(f) of the Code of Ordinance to allow a waterfall structure to exceed the 6-foot length requirement by 7 feet for property located at 300-10<sup>th</sup> Avenue. Waterfalls are permitted 4 feet high and 6-foot long. The applicant is requesting a 13-foot long waterfall.

Planning Consultant Harmon presented a PowerPoint presentation showing aerial views, a property survey, a site plan, and photos of the proposed pool and waterfall location.

Planning Consultant Harmon stated the Board of Adjustments and Appeals on this application grid-locked at a 2 to 2 vote. She stated there was no hardship, and stated the City Code needed to be amended to accommodate these requests.

Planning Consultant Harmon stated the Board to recommend to the City Commission to consider amending Section 110-344(7)(f) of the Code of Ordinances by allowing a maximum waterfall wall length of 12 feet.

**Steve Buscema, Sunsation Pools & Spas, 10945 Ulmerton Road, Largo, Florida, appearing on behalf of the property owner/applicant, Trudi Holthouse, 300-10<sup>th</sup> Avenue**, explained the variance request and asked the City Commission if they had any questions of him.

Mr. Buscema asked the City Commission to amend the City Code by allowing a maximum waterfall wall length from 6 feet to 12 feet.

City Attorney Mora stated the City Commission is considering a variance application based on the testimony and evidence that the City Commission has been given. He stated City Code reconsideration and revisions would have to be on another agenda. He stated amending the maximum length of the waterfall wall to 12 feet was also independently raised the Board of Adjustments and Appeals.

***MOTION MADE BY COMMISSIONER HOOFNAGLE, SECONDED BY COMMISSIONER HOUSEBERG, TO APPROVE BOA CASE NO. 2021-10, A VARIANCE REQUEST VARIANCE REQUEST FROM SECTION 110-344(7)(F) OF THE CODE OF ORDINANCES TO ALLOW FOR A WATERFALL STRUCTURE TO EXCEED THE 6-FOOT LENGTH REQUIREMENT BY 6 FEET, FOR THE PROPERTY LOCATED AT 300-10<sup>TH</sup> AVENUE, INDIAN ROCKS BEACH, FLORIDA, AND LEGALLY DESCRIBED AS FIRST ADDITION TO RE-REVISED MAP OF INDIAN BEACH SUBDIVISION, BLOCK 86,***

**LOT 22, RECORDED IN PLAT BOOK 23, PAGE 11 OF THE PUBLIC RECORDS OF PINELLAS COUNTY. PARCEL #: 01-30-14-42048-086-0220.**

Commissioner Hoofnagle stated he would like the record to reflect that the City Commission deliberated this variance. This it has done through a board and has had substantial costs related to legal review, and the City may be able to save costs in the future, if the City were to amend its land development code to permit aesthetic waterfalls.

**AYES:        McCALL, HANNA, HOUSEBERG, HOOFNAGLE, KENNEDY**  
**NAYS:        NONE**

**MOTION CARRIED UNANIMOUSLY.**

7.    **OTHER LEGISLATIVE MATTERS:** None.
8.    **WORK SESSION ITEMS [DISCUSSION ONLY]:** None.
9.    **OTHER BUSINESS.**

Commissioner Hoofnagle stated he will be absent from the September 22, 2021 Special City Commission Meeting.

**10.    ADJOURNMENT.**

**MOTION MADE BY COMMISSIONER HANNA, SECONDED BY COMMISSIONER HOUSEBERG, TO ADJOURN THE MEETING AT 8:10 P.M. UNANIMOUS APPROVAL BY ACCLAMATION.**

October 12, 2021  
Date Approved

/DOR