

REPLY TO STAFF'S RECOMMENDATION

Gary and Lorraine McBride
Property Owners of:
980 Sundrop Court

VIA ELECTRONIC MAIL

August 31, 2021

Marco Island Planning Board
50 Bald Eagle Dr.
Marco Island, FL 34223

**Re: Reply to Staff's Recommendation regarding Boat Dock Extension
Application for 986 Sundrop Ct., Marco Island, FL, 34145, Folio No. 56942480004 –
Reference No. BD-21-000177**

To Planning Board Members Finkle, Bailey, Vergo, Honig, Fahringer, Rivera, and Hogan:

We humbly apologize but we are unable to physically be present at the September 3, 2021 meeting of the Planning Board. We were informed by Ms. Mary Holden that we were unable to participate electronically in the meeting, so we are relying on your review of our written objections.

First, the Planning Board cannot currently grant the application as § 54-115(b)(2) has not yet been satisfied. § 54-115(b)(2) requires that “notice of public hearing(s) shall be provided to all property owners within 300 feet of the subject petition.” To date, we have received no “first class U.S. mail” with any such notice, even though our property is within 300 feet of the petitioner’s property. *Id.* We imagine this goes for other property owners as well. Indeed, none of the currently three active objecting property owners has heard about this meeting through the mandated statutory notice. While Ms. Sherry Kirsch (a Planner in the city staff) posted a legal notice of the meeting in the Naples Daily News on August 19, 2021, that alone is insufficient under the statute. The relevant code section expressly provides that it is the petitioner who “shall be responsible for, and bear such costs for” public notices which includes *both* “newspaper advertisements in a newspaper of general circulation” *and* “mailing by first class U.S. mail of public notices to all property owners within 300 feet.” *Id.* As none has appeared in the record, we question whether the city staff received “proof of advertising and mailing” from the petitioner before placing the “subject boat dock extension” on the Planning Board’s agenda. *Id.* Thus, before the Board does anything, it must ensure that the appropriate notices were posted and sent *by the petitioner* within a reasonable time to all property owners within 300 feet. It would be an abuse of discretion or otherwise inconsistent with the jurisdictional prerequisites to consider this proposal without first finding good proof that this notice provision has been satisfied. Without first satisfying this notice provision, there are also constitutional due process concerns.

Second, the city staff has misinterpreted the general requirements for obtaining a boat dock extension under the relevant statute. Ms. Holden asserts that § 54-115(b)(1) is demonstrated through meeting the factors in § 54-115(b)(7) but has not shown any support for that assertion. § 54-115(b)(1) clearly puts the burden on the petitioner to demonstrate

justification for the proposal, not on us to demonstrate lack of justification for the proposal. That code section indicates that this type of petition is not granted by right. This type of application is the exception to the rule, not the rule. The rule is in § 54-111, which describes the “dimensional standards” for all boat docks. This exception was designed as a failsafe by the City Council in the event that the Council did not foresee certain “special” circumstances of particular lots. *See* § 54-115(b)(1). Special justification under § 54-115(b)(1) must be exhibited before proceeding further to the review of additional factors in § 54-115(f). The proper analysis, in line with the text and structure of the statute, reveals the significant burden that must be met to obtain a boat dock extension under the statute.

Third, the city staff has erred in claiming that there are special conditions related to the subject property which justify the application. The city staff cite two factors which they claim are “special” conditions. They first say that the lot contains six lot lines rather than four. However, this fact in itself does not explain why this is special to justify an extension that exceeds the standard limits in § 54-111. The fact that there are six lot lines rather than four may be a distinction, but it is a distinction without a difference. The fact that this is a peninsular lot with six lines may justify building a dock with a differently shaped dock, but it does not justify an extension outward by 10 feet, which has no real bearing to the lot lines, and this extension request for a dock to shelter a mega-yacht would have been made regardless of the lot lines. *See* § 54-115(f)(3) (mandating, not just consideration of special conditions, but consideration of special conditions “*which justify* the proposed dimensions and location of the proposed boat docking facility”). The second reason given by the city staff is that the lot is at the end of canal. This reason was already rebutted in our Addendum to our letter of objection and we need not belabor the point. We note that the staff has stated any reason why our interpretation is incorrect.

Fourth, the city staff improperly weigh the factors, and the decision is statutory left to the Planning Board. The city staff fault us for complaining about the mega-yacht, rather than solely the boat dock extension. They might have a good point if the statute did not expressly provide for this type of scenario and heed the legitimate concern of neighbors that an abnormally large vessel would obstruct views. § 54-115(f)(7) provides that the Planning Board must consider if “the proposed vessel(s) are in excess of 50 percent of the length of the water frontage on the subject property such that the extension of the boat docking facility may adversely impact the view to the channel by surrounding property owners.” Both petitioner and the city staff admit that this is the case. The city staff says the proposed dock and vessel will be: “well in excess of 50% of water frontage.” Amazingly, the city staff discount this fact and say that we will “maintain views of the Marco River,” even though they admit that we will lose some views (which they further discount as being only important to us).¹ The city staff cite no provision of the statute why their opinion should weigh heavier than ours as the property owners. Moreover, the statute does not mandate that we should have a total view loss before our rights are respected. All property views matter and all diminished views affect property values, and so, yes, the “certain views important to the neighbors” *do* matter. *See* § 54-100 (“It is the intent and purpose

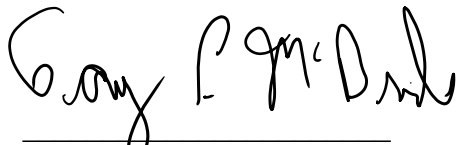
¹ While not stated in the city staff’s report, the petitioner asserts that because the proposed dock would not wrap around the corner, our view would be “completely unobstructed.” Petitioner Application Attachment 1 at 4. This misses the point that we are not complaining about the proximity of the dock to our property line, we are legitimately asserting that our *views* of a significant portion of the Marco River will be adversely affected.

of this article to provide for...the use and view of the waterway by surrounding property owners.”).

Fifth, other than the points related to the view, the city staff fail to respond or address any of the multiple reasons we raise why the application should not be granted. In addition to noting an inconsistency with the Comprehensive Plan, we noted an inconsistency with Chapter 30 of the Land Development Code, if the Planning Board grants the application. Approval of the application will not just affect the surrounding property owners and the character of the island, it stands to reduce property values across the island. Preservation of views are only protected by statutes such as the one at issue here and approval of this application would signal that other similar applications would be given the green light. Thus, the preservation of views would be put at risk and that instability itself could cause a reduction of property values. *See* Addendum to Letter of Objection (citing sources that explain that risks that views are unprotected, in itself, decreases property values and approval here would be creating a new risk). The Planning Board should consider the potential effect that granting this application would have on the city’s property values, as property views are exceptionally important in lot values. *See* § 30-2 (explaining that the purpose of the land development code is to “respect [the] rights of private property owners”).

Even though the city staff erred in multiple regards, we entrust the Board will reach the right decision.

Sincerely,



Gary McBride



Lorraine McBride