



## Planning Board Staff Report

Meeting Date: August 7, 2020

**TO:** Marco Island Planning Board

**FROM:** Daniel J. Smith, AICP – Director of Community Affairs

**DATE:** July 30, 2020

**RE:** Boat Dock Encroachment Petition 20-000103 for a zero setback for their dock

### **OWNERS:**

James Schmunk Trust  
Kristen D Schmunk Trust  
2008 South State St.  
Ann Arbor, MI 48104

### **AGENT:**

Jeff Rogers  
Turrell, Hall & Associates  
3584 Exchange Ave.  
Naples, FL 34104

### **PROJECT ADDRESS:**

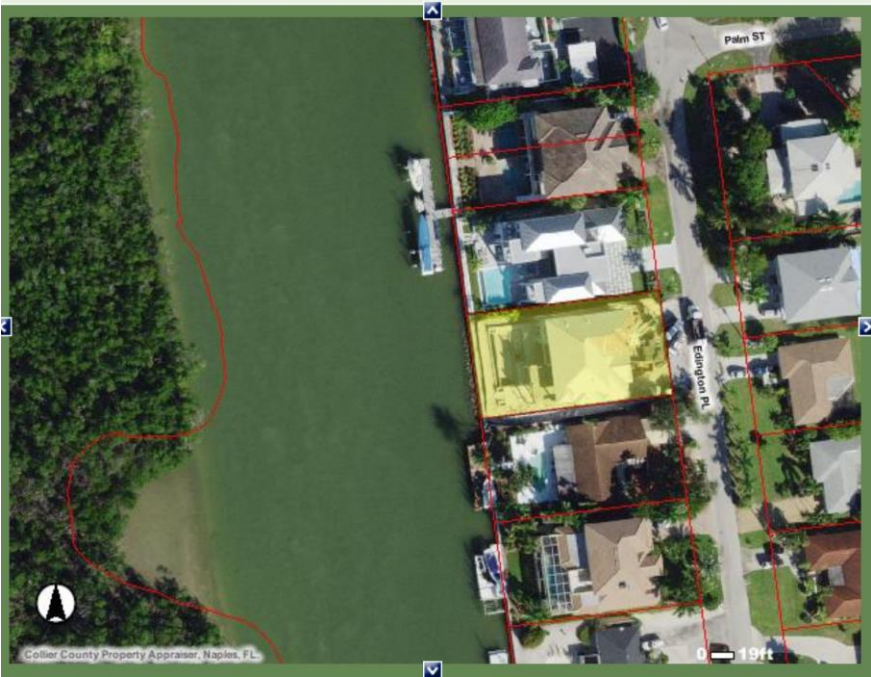
1152 Edington Place, Marco Island, FL 34145  
Lot 9, Block 1, Old Marco Village, Plat Book 6, Page 3, Public Records of Collier County, Florida  
Folio #: 64610120002

Zoning: R-4

### **SUBJECT PARCEL ZONING:**

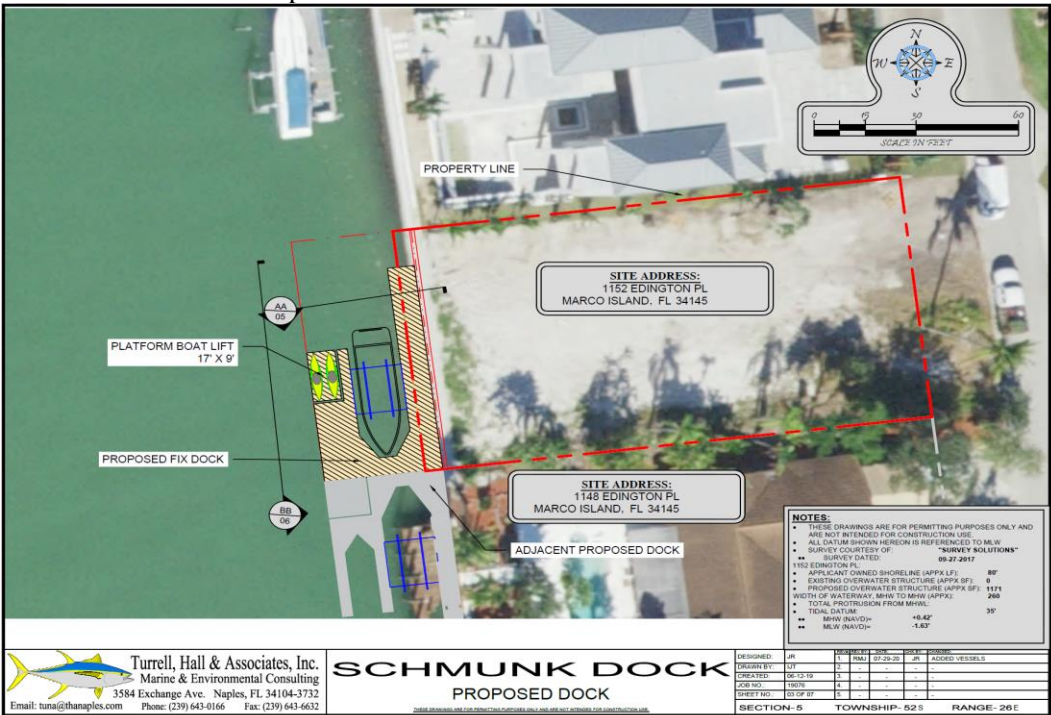


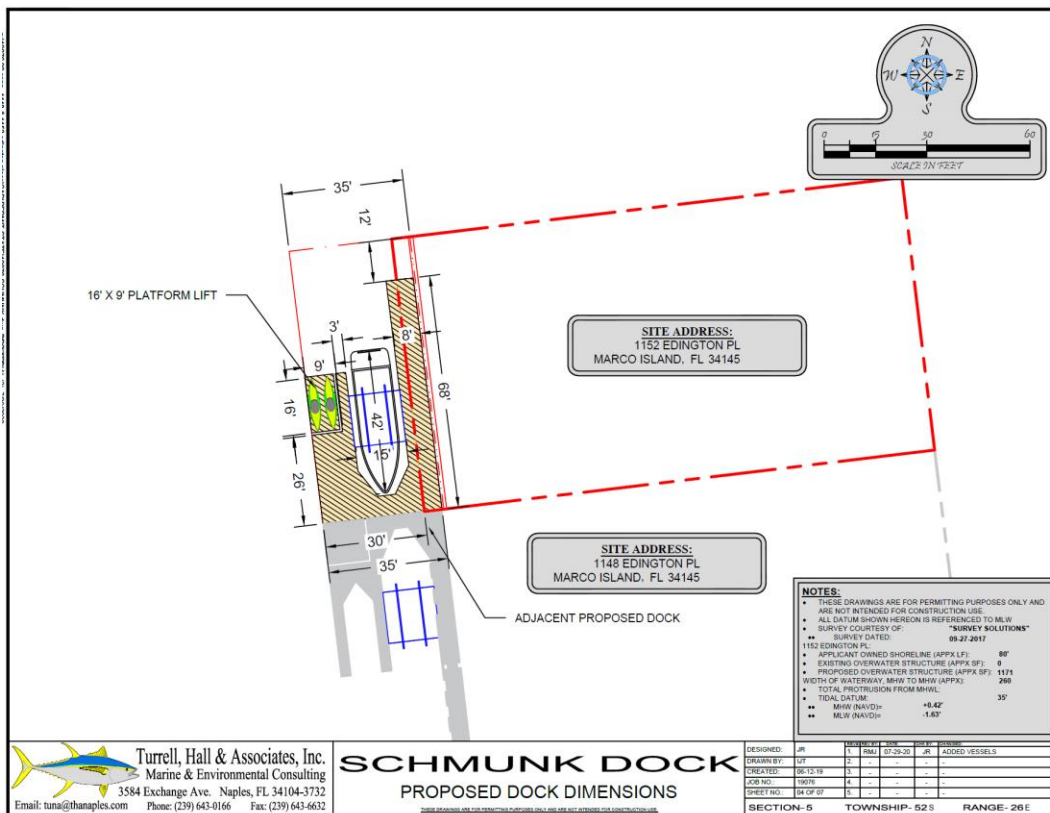
**SUBJECT PARCEL AERIAL:**



**PROJECT DESCRIPTION:**

The petitioners are asking for a 12-foot special permit (somewhat similar to a variance) to the required riparian setback (Sect. 54-111.(b)(1)) on the South end of their property along the waterfront for their dock having a 42-foot maximum size boat to have a zero-lot line setback. In conjunction with this request, the adjacent neighbor to the South is asking for the same setback for their dock and will also be considered at this meeting. The application, reasoning and plans are included in and attached to this report.





## PETITIONERS RESPONSE:

Please see below our response to Section 54-115 (f) criteria.

- 1.) Whether or not the proposed boat docking facility meets the other standards set forth in this article.

**The proposed docking facility does meet the other standards set forth in this article.**

- 2.) Whether or not the water depth where the proposed vessel(s) is to be located is sufficient (as a general guide, four feet mean low water is deemed to be sufficient) to allow for safe mooring of the vessel, thereby necessitating the extension, protrusion, or encroachment requested.

**The subject property waterway does meet the City's criteria for sufficient water depths and is not the driving factor for this request.**

- 3.) Whether there are special conditions related to the subject property or waterway which justify the proposed dimensions and location of the proposed boat docking facility.

The applicant needs to accommodate his vessel which is 42 feet in length. The neighbor to the north has an existing dock set back approximately 35 feet from the property line. If the applicant's dock was placed at the southern setback line 12 feet off of the north line then there would be only 20 feet of clearance to the north property line (80 feet - 12 feet - 6 feet of dock - 42 feet vessel = 20 feet). The industry recommended backing distance for motor vessels is 1 ½ times the vessel length. For a 42-foot vessel the backing distance should be around 63 feet. If the dock was placed consistent with the setbacks, the backing distance provided is only 32 feet, not even the full length of the boat. As proposed, the backing distance provided is 32 feet within the property and the 32 feet to the neighbor's dock or 64 feet. Still below the guideline but the best that can be provided.



- 4.) Whether or not the proposed boat docking facility and moored vessel(s) protrude greater than 25 percent of the width of the navigable waterway, and whether or not a minimum of 50 percent of the waterway width between boat docking facilities and moored vessel(s) on the opposite side of the waterway is maintained in order to ensure reasonable waterway width for navigation. This requirement shall only be applicable for extension or protrusion requests.

**The proposed dock does not protrude more than 25% of the water way since it is approximately 200 feet, as measured off the Collier County Appraisers GIS mapping. In addition, this request is not for a protrusion. The dock facility as proposed falls within the 30-foot allowed protrusion from the platted property line.**

- 5.) Whether or not the proposed boat docking facility is of the minimum dimensions necessary in order to adequately secure the moored vessel while providing reasonable access to the boat for routine maintenance without the use of excessive deck area.

**The docking facility proposed accommodates the applicant's vessels within the 30-foot allowed protrusion. The overall width of the dock is 68 feet for a 42-foot vessel. There is a portion of dock along the seawall that is consistent with the north setback allowance but is more for convenience than for the mooring of the vessels. This section of proposed dock could be modified making the dock overall 56 feet wide which would be the same width allowed between the 12-foot setbacks.**

- 6.) Whether or not the proposed boat docking facility is of minimal dimensions and located to minimize the impact of view to the channel by surrounding property owners.

**It would appear the location will minimize the impact on the south neighbor and the neighbor to the north is asking for a zero setback to abut to this proposed dock.**

- 7.) Whether or not 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. In the case of multifamily developments and public marinas, the 50 percent provision may be exceeded. This requirement shall only be applicable for extension or protrusion requests.

**The proposed vessel is 42 feet in length so is more than 50% of the width of the 80-foot-wide lot. However, this criterion is not applicable as the request is for a side yard setback variance and not an extension or protrusion request. The variance is requested so that a protrusion request is not needed.**

- 8.) Whether or not the proposed location and design of the boat docking facility and moored vessel(s) in combination is such that it may infringe upon the use of neighboring properties, including any existing boat docking facilities.

**This request is to have zero setback which will infringe upon the adjacent property to**

the south. However, the adjacent property to the south has provided their concurrence and is requesting the same setback for their north property line.

- 9.) Whether or not the seagrasses are located within 200 feet of the proposed boat docking facility.

A submerged resource survey was provided and showed that there are no seagrasses within 200 feet of the proposed dock.

- 10.) Whether or not the proposed dock is subject to the manatee protection requirements set forth in section 54-117.

The MPP requirements are not applicable to single family residential docks in this waterway.

**Response to the criteria listed in Chapter 30 of the Land Development Code:**

For variance requests for *proposed structure(s)*, please provide the following information:

**1. What is the proposed encroachment?**

The required side yard setback is 12' and as proposed the dock will provide a 0' setback from the south riparian line and a 12' setback from the north riparian line.

**2. Why is the encroachment is necessary?**

The proposed encroachment is necessary in order to accommodate the applicant's vessels on-site while not interfering with the neighbor's ingress/egress to their existing docking facility. The proposed design also provides safe access to the vessels from the dock.

**3. What extenuating circumstances exist related to the proposed structure encroachment?**

There are a few factors driving this request which include the total length of shoreline, the required side yard setbacks, as well as the existing neighboring docks and finally the size of the applicant's owned vessels. This request is required in order to provide safe access to the vessels as well provide safe ingress/egress to the proposed boat slips as well as maintaining access to the existing neighboring docking facilities.

**NATURE OF PETITION**

Please note that staff and the Marco Island Planning Board shall be guided in their recommendation to City Council acting as the Board of Zoning Appeals, and that City Council shall be guided in its determination to approve or deny a variance petition by the below listed criteria. Please provide a *narrative* response to the listed criteria and/or questions. Attach additional pages if necessary.

**1. Are there special conditions and circumstances existing which are peculiar to the location, size and characteristics of the land, structure or building involved?**

The applicant is proposing a 0' setback along his shared southern riparian line as that neighbor is the applicant's brother-in-law who is also proposing a 0' setback with his proposed docking facility. Based off their recorded agreement the setback will be met on the opposite property corner ensuring no interference with adjacent neighboring ingress/egress to their existing docking facility.

**2. Are there special conditions and circumstances which do not result from the action of the applicant such as pre-existing conditions relative to the property which is the subject of the variance request?**

The existing neighboring and proposed docking facilities limit design options that the applicant can propose that will fit within the required side yard setbacks and still provide enough area to moor/store 2 vessels on-site. The two neighboring docks and the existing width of waterway limit design options that will meet the City Code and still provide safe access as marginal mooring of the vessels is the only layout design that would be permitted by DEP, USACE and City of Marco Island due to protrusion limitations.

**3. Will a literal interpretation of the provisions of this zoning code work unnecessary and undue hardship or create practical difficulties on the applicant?**

Yes, the applicant would not be able to moor/store his vessels on-site. The subject property is a single-family residential lot and therefore per the permitting agency rules is allowed 2 boat slips on-site which is what the applicant is proposing to be moored/stored on-site. Without a variance the applicant would not be able to store his vessels on-site due to the length of shoreline and width of waterway limitations on dock design options which would accommodate the applicant's vessels.

4. Will the variance, if granted, be the minimum variance that will make possible the reasonable use of the land, building or structure and which promote standards of health, safety or welfare?

Yes, the requested setback variance for a 0' setback from the southern riparian line is the minimum variance the applicant can propose in order to accommodate his vessels, provide safe access to the vessels, and not interfere with the ingress/egress to the neighboring docking facility. The variance is for the southern riparian line setback as the proposed project is able to maintain the required setback from the northern riparian line.

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5. Will granting the variance requested confer on the petitioner any special privilege that is denied by these zoning regulations to other lands, buildings, or structures in the same zoning district?

Yes, the variance would grant the applicant approval to construct their dock within the required side yard setback. This would not provide any additional privilege to the subject property that is not feasible for any other adjacent property owner to propose as long as they went through the same variance process.

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6. Will granting the variance be in harmony with the intent and purpose of this zoning code, and not be injurious to the neighborhood, or otherwise detrimental to the public welfare?

Yes, granting the proposed variance would eliminate the required side yard setback from 12' to 0'. The applicant has had the directly affected adjacent property owner sign a recordable setback waiver to include with our submittal. This recorded agreement would then provide any future landowners with the option to modify the dock and void the agreement or leave it in place

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7. Are there natural conditions or physically induced conditions that ameliorate the goals and objectives of the regulation such as natural preserves, lakes, golf course, etc?

The limiting natural condition affecting this project is the width of waterway which limits the overall allowed protrusion of the dock.

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8. Will granting the variance be consistent with the growth management plan?

Yes, granting the proposed variance would be consistent with the growth management plan. By approving the variance would only allow the docking facility to be built within the side yard riparian line setback but the proposed structure and vessels storage are consistent with all other waterfront single-family zoned properties.

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## **STAFF ANALYSIS:**

The proposed dock will be independent of the other so that if one owner wished to move or change the dock configuration, it will not impact the other dock. In addition, the petitioner has provided two letters of concurrence from their adjacent neighbors.

Staff understands the reasoning for the request regarding access to the dock. However, the proposed dock will be 12 feet longer than what the code allows since the dock will span the length of the property line and comply with the required 12-foot setback on the north. Setbacks are meant to protect views, break up the massing of docks and at this location, the dock will be larger than typically allowed.

The applicant states the encroachment is needed to provide more maneuvering space for their boat. Even if the proposed encroachment is approved, there will not be enough maneuvering space as indicated by the applicant in their application. This makes us question why they could not angle the boat slips, comply with the setbacks, and have more maneuvering space.

The criteria used to review a special permit is identified in Section 54-115 (f) as shown below. However, their application reflects the criteria listed in Chapter 30, Land Development Code and Sect. 54-115. Staff has provided both responses for the Planning board review.

(f) The planning board and city council shall base its decision for approval, approval with conditions, or denial, on the following criteria:

(1) Whether or not the proposed boat docking facility meets the other standards set forth in this article.

**Staff Comment:** The dock will meet the other standards based on the information provided.

(2) Whether or not the water depth where the proposed vessel(s) is to be located is sufficient (as a general guide, four feet mean low water is deemed to be sufficient) to allow for safe mooring of the vessel, thereby necessitating the extension, protrusion, or encroachment requested.

**Staff Comment:** This is not applicable.

(3) Whether there are special conditions related to the subject property or waterway which justify the proposed dimensions and location of the proposed boat docking facility.

**Staff Comment:** There do not appear to be any special conditions related to the property or waterway.

(4) Whether or not the proposed boat docking facility and moored vessel(s) protrude greater than 25 percent of the width of the navigable waterway, and whether or not a minimum of 50 percent of the waterway width between boat docking facilities and moored vessel(s) on the opposite side of the waterway is maintained in order to ensure reasonable waterway width for navigation. This requirement shall only be applicable for extension or protrusion requests.

**Staff Comment:** The proposed dock does not protrude more than 25 % of the water way since it is approximately 200 feet, as measured off the Collier County Appraisers GIS mapping. In addition, this request is not for a protrusion.

(5) Whether or not the proposed boat docking facility is of the minimum dimensions necessary in order to adequately secure the moored vessel while providing reasonable access to the boat for routine maintenance without the use of excessive deck area.

**Staff Comments:** It is difficult to assess this criterion. It would appear so, but again, we question why it could not be angled and have the same or more maneuvering space.

(6) Whether or not the proposed boat docking facility is of minimal dimensions and located to minimize the impact of view to the channel by surrounding property owners.



**Staff Comments:** It would appear the location will minimize the impact on the north neighbor and the neighbor to the south is asking for a zero setback to abut to this proposed dock.

- (7) Whether or not 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. In the case of multifamily developments and public marinas, the 50 percent provision may be exceeded. This requirement shall only be applicable for extension or protrusion requests.

**Staff Comments:** Based on the measurements provided and the applicant's response, the vessel will exceed 50% of the length of the water frontage of the property.

- (8) Whether or not the proposed location and design of the boat docking facility and moored vessel(s) in combination is such that it may infringe upon the use of neighboring properties, including any existing boat docking facilities.

**Staff Comments:** This request is to have zero setback which will infringe upon the adjacent property to the south. However, the adjacent property to the south has provided their concurrence and is requesting the same setback for their north property line. It is difficult to say if it would be detrimental to any future owner but is something to keep in mind.

- (9) Whether or not the seagrasses are located within 200 feet of the proposed boat docking facility.

**Staff Comments:** The applicant indicated there are no seagrasses within 200 feet of the proposed dock.

- (10) Whether or not the proposed dock is subject to the manatee protection requirements set forth in section 54-117.

**Staff Comments:** Per the applicant's response, this is not applicable to single-family residential docks in this waterway.

### **STAFF RECOMMENDATION:**

Based on the criteria listed in Section 54-115 (f), Staff finds it difficult to offer a recommendation of approval. Staff understands that there is a demand for larger boats, however, 80-foot lots do have limitations. Therefore, Staff is offering a recommendation of denial based on the below findings:

### **Findings for Denial:**

1. There do not appear to be any special conditions related to the property or waterway.
2. The vessel will exceed 50% of the length of the water frontage.
3. This request is to have zero setback which will infringe upon the adjacent property and future owners to the North.

Should the Planning Board approve the requested special permit, Staff recommends the Planning Board create findings of approval and add the below conditions:

### **Conditions of Approval:**

- (1) The Owner/Developer/Petitioner is required to re-submit construction documents to the City's Building Department for review and approval prior to the commencement of development.
- (2) The Owner/Developer/Petitioner is responsible for any private deed restriction approvals with Marco Island Civic Association.
- (3) That issuance of this approval by the City does not in any way create any right on the part of the Owner/Developer to obtain a permit from a state or federal agency and does not create any liability on the part of the City for issuance

of the approval if the Owner/Developer/Petitioner fails to obtain the required approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in the violation of state or federal law. All applicable state and federal permits must be obtained before commencement of the Development. This condition is included pursuant to Section 166.033, Florida Statutes, as amended.

- (4) Boat shall not exceed lengths depicted on plans submitted.
- (5) That failure to adhere to the special permit approval and the approval terms and conditions contained in this Resolution shall be considered a violation of this Resolution and the City Code, and persons found violating this Resolution shall be subject to the penalties prescribed by the City Code. The Owner/Developer understands and acknowledges that it must comply with all other applicable requirements of the City Code before they may commence construction or operation, and that the foregoing approval in this Resolution may be revoked by the City at any time upon a determination that the Owner/Developer is in non-compliance with the City Code.

Daniel J. Smith, AICP  
Director of Community Affairs