



**TOWN OF LAUDERDALE-BY-THE-SEA
TOWN COMMISSION
MEETING MINUTES
Jarvis Hall
4505 Ocean Drive
Tuesday, February 22, 2022
6:30 PM**

1. CALL TO ORDER

Mayor Chris Vincent called the meeting to order at 6:30 p.m. Also present were Vice Mayor Alfred "Buz" Oldaker, Commissioner Edmund Malkoon, Commissioner Elliot Sokolow, Commissioner Randy Strauss, Town Manager Linda Connors, Assistant to the Town Manager Neysa Herrera, Town Attorney Susan Trevarthen, Public Works Director Ken Rubach, Director of Finance and Budget Lucila Lang, Development Services Director Jhanelle Campbell, Planner Sue Leven, Special Events and Marketing Manager Debbie Hime, and Senior Code Compliance Inspector Bethany Banyas.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

3. INVOCATION

Rabbi Bentzion Singer gave the Invocation.

4. ADDITIONS, DELETIONS, DEFERRALS OF AGENDA ITEMS

Mayor Vincent requested that Item 18.a be heard immediately following the Public Safety Discussion.

5. PRESENTATIONS

a. Citizen Observer Patrol Annual Awards and Promotions – 25th Anniversary

Captain Tom Palmer of the Broward Sheriff's Office (BSO) explained that the Town annually recognizes participants in its Citizen Observer Patrol (COP) program for their volunteer work. In 2021, the COP program celebrated its 25th year of service to Lauderdale-By-The-Sea.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

Capt. Palmer recognized a number of honorees for their volunteer service hours as well as promotions in rank. Members and Commissioners were presented with commemorative anniversary pins.

6. PUBLIC COMMENTS

At this time Mayor Vincent opened public comment.

Barbara Cole, resident, advised that she had sent the Commission an email regarding a number of residential areas in the Town. She expressed concern that the minutes of a recent Planning and Zoning Board meeting were not included in the backup materials for the quasi-judicial item scheduled for tonight's meeting.

Howard Goldberg, resident, cautioned that there is some ambiguity in the information provided to prospective candidates, and requested that this information be clarified in the future. He also emphasized the importance of the Chamber of Commerce to the Town and requested that residents participate in the operation of the Visitors Center as well.

With no other individuals wishing to speak at this time, Mayor Vincent closed public comment.

7. PUBLIC SAFETY DISCUSSION

a. AMR January 2022 Report

Vice Mayor Oldaker made a motion, seconded by Commissioner Sokolow, to approve. Motion carried 5-0.

b. VFD January 2022 Report

Commissioner Strauss made a motion, seconded by Vice Mayor Oldaker, to approve. Motion carried 5-0.

The following Item was taken out of order on the Agenda.

18. QUASI JUDICIAL PUBLIC HEARINGS

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

Town Attorney Susan Trevarthen explained the procedures for the hearing of quasi-judicial items, and the Commissioners disclosed any ex parte communications on the Item, including discussions with neighboring property owners.

Town Attorney Trevarthen requested that any documentation submitted to the Town by a third party or their counsel be provided to the Applicant as well as to the Commission. Any individuals wishing to speak on the Item were sworn in at this time.

- a. Case Number 2021-V-01: 4403 Tradewinds Inc. (Applicant) Requests a Variance to Section 30-311(C) of the Town's Code of Ordinances (the Town Code) to permit construction of a boat dock to extend into the Intracoastal Waterway at a maximum distance between 11.4 feet to 13.5 feet from the property line, where the Town Code provides that a boat dock may be constructed or erected to extend into the Intracoastal Waterway at a maximum distance of eight (8) feet.**

Development Services Director Jhanelle Campbell provided a presentation on the Item, which is a dock variance request for a property located at 4403 to 4405 West Tradewinds Avenue. In September 2021, the Town received a variance request for the property which sought relief from Town Code Section 30-127. This would permit construction of a boat dock that would extend into the Intracoastal Waterway at a distance between 11.4 ft. and 13.5 ft. from the property line. Town Code states that a dock may be constructed at a maximum distance of 8 ft. from the property line.

The property is located in the B-1 zoning district on the west side of West Tradewinds Avenue, adjacent to the Intracoastal Waterway. Notice has been sent to all property owners within 300 ft. of the subject property. Notice was also posted on the property and the public hearing was advertised on the Town's website. The Town has received one letter of objection and 40 letters of support for the Application. A number of public comments were also made at the Planning and Zoning Board meeting at which this Application was discussed.

A citizen participation meeting was held on December 28, 2021, and a summary of this meeting was submitted on January 12, 2022. This summary was provided in the Commissioners' backup materials.

Seven criteria are evaluated when a variance application is reviewed:

- Special conditions and circumstances exist which affect the land, structure, or building involved, preventing the reasonable use of same

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

- Circumstances which cause the hardship are peculiar to the subject property and clearly constitute a marked exception to other properties in the district
- The literal interpretation of the provisions of applicable regulations would result in a particular hardship upon the owner, as distinguished from a mere inconvenience
- The hardship is not self-created or the result of mere disregard for or ignorance of the provisions of the regulation
- The variance is the minimum variance that will make reasonable use of the property possible, and will be in harmony with the general purposes and intent for applicable zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to public welfare
- Granting of the variance does not permit a use not generally permitted within the zoning district involved or expressly or by implication prohibited by the terms of regulation of the district in which the affected property lies
- Financial hardship is not a basis for granting the variance unless the failure to grant the variance would render the property unusable as permitted in its zoning district

Staff believes the first criterion has been met, as the ability to upgrade the dock and its supporting infrastructure will allow the Applicant to provide a safer docking area for customers. Expansion of the riprap and subsequent expansion of the dock also reduce the impact of passing boats and moving water. Staff also believes that the second criterion has been met, due to the proximity of the dock to the bridge, use of the dock by multiple boats during the course of the day, and the restaurant's use of the dock to serve customers on the Intracoastal Waterway.

Staff feels the third criterion has been met, as relevant federal, state, and County agencies have approved the proposed dock from a navigational and environmental perspective. Failure to permit construction of the larger dock would prevent compliance with agency approvals that have already been obtained and would result in unsafe conditions for mooring.

Staff believes the fourth criterion has been met due to the unique location of the property and the customer-serving use of the dock. The County has required all municipalities to adopt resiliency standards that encourage use of riprap as one way to address sea level rise. The fifth criterion has been met because the additional width of the dock will have no detrimental impact on neighboring properties or the public welfare. The variance will allow for safer conditions on the dock, and the proposed dock will eliminate an existing setback nonconformity.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

Staff believes the sixth criterion has been met because the proposed dock is a permitted use and its width is the minimum necessary to protect those using the dock from the riprap. Staff concludes that the seventh and final criterion has been met based on the safety of the dock structure, which will protect the seawall and absorb the waves. These objectives cannot be met without the variance.

Development Services Director Campbell stated that other agencies approving the dock request include the U.S. Army Corps of Engineers, the Florida Department of Environmental Protection, and the Broward County Environmental Protection Agency.

The Application was presented to the Town's Planning and Zoning Board on February 2, 2022. After evaluation of the Application and input from the Applicant, Staff, and the public, that Board recommended approval of the Application by a 4-1 vote. Staff also recommends approval of the Application.

Carlos Gianos, representing the Applicant, stated that the subject property applied for a zoning variance to protect its seawall from increased wave activity and to provide a safe environment for boaters visiting the property. An initial application was made to the U.S. Army Corps of Engineers, the Florida Department of Environmental Protection, the Broward County Environmental Protection Agency, and the Broward County Growth Management Department. These agencies have approved the application and issued permits allowing the expansion of the dock into the Intracoastal Waterway.

The initial permit application to Lauderdale-By-The-Sea was reviewed and the Applicant was advised that a variance would be necessary to expand the dock to the requested size. The variance Application was submitted in September 2021. In October, Staff informed the Applicant that the Town had issued a new Ordinance that required a citizens' participation meeting. This meeting was held in December 2021 according to the guidelines of the Ordinance, and the Applicant's team prepared a detailed report and provided it to Town Staff.

On February 2, 2022, the Application went before the Town's Planning and Zoning Board, which approved it by a 4-1 vote. Town Staff also provided the Applicant with a report recommending approval of the variance.

Tyler Chappell and Jena Robbins, representing consultant The Chappell Group on behalf of the Applicant, gave a presentation on the variance request. Ms. Robbins showed multiple views of the subject property, which currently includes a 318 linear ft.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

seawall and a 2440 sq. ft. wooden dock. The dock extends from 81.3 ft. to 81.8 ft. from the edge of the Intracoastal Waterway channel, which is regulated by the U.S. Army Corps of Engineers.

The Application includes a concrete cap over-pour atop the existing seawall as well as insulation provided by a concrete marginal dock. This marginal dock would extend approximately 77.1 to 78.3 ft. into the Intracoastal Waterway. Ms. Robbins characterized this as an insignificant difference from existing conditions in comparison to the overall width of the waterway, which is 300 ft. There are also existing mooring piles that extend 30 ft. into the waterway and do not impede navigation.

Circumstances leading to the variance request include:

- All structures and piles will not exceed 25% of the width of the waterway
- The proposed dock, riprap, and over-pour will not impede navigation
- The structures are necessary to protect the property against sea level rise and excessive wake action
- The structures alleviate the safety risk to patrons and boaters seeking access to the restaurant

One reason riprap is proposed as part of the Application is to provide habitat for marine life such as juvenile fishes, corals, sponges, and oysters. The riprap also absorbs wave energy: as waves approach the material, their energy becomes trapped between the individual boulders and slows the flow of water.

The Applicant proposes the dock at a maximum of 13.5 ft. from the property line. Since the property line is landward of the existing wet face of the seawall, the dock is actually less than 13.5 ft.; however, the distance from the wet face is needed due to the requirements of the Broward County Environmental Protection and Growth Management Department, which requires riprap to have a 2:1 slope to allow appropriate tidal flushing. If an 8 ft. dock is provided instead, the 2:1 slope would not be possible and boaters would be unable to moor beside the dock due to proximity to the riprap.

Broward County requirements for over-water structures include natural lime rock boulder riprap beneath the structure 1 ft. below mean high water at a 2 ft. horizontal to 1 ft. vertical slope ration; this means the riprap would need to extend 8 ft. to 10 ft. from the wet face of the seawall, which would in turn affect the width of the dock necessary to cover the riprap.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

Ms. Robbins provided a number of letters of support received from residences and businesses in the vicinity of the subject property.

Mayor Vincent requested that the Applicant's counsel address the supplementary information provided by a neighboring property owner with respect to riprap requirements for over-water structures and seawalls. Mr. Chappell advised that the riprap requirement for these structures includes the 2:1 slope referred to in the Applicant's presentation. Any over-water structure with a width greater than 8 ft. or length greater than 100 ft. must provide riprap beneath the structure. He emphasized that riprap would have been provided even if it were not required, due to the habitat it provides to marine life and its support to the seawall.

Mayor Vincent asked if there are also circumstances in which riprap is not required. Mr. Chappell explained that it is not required if the dock is less than 8 ft. wide; however, it is required for unconsolidated shorelines that do not have a seawall, as well as for docks greater than 100 ft. in length. The proposed dock is 318 ft. in length.

Vice Mayor Oldaker asked if riprap is becoming a standard on the Intracoastal Waterway. Mr. Chappell replied that it is one way to protect and stabilize shorelines in addition to seawalls. It may also be placed in front of seawalls, particularly on the Intracoastal Waterway, where wave energy can scour the bottom of the seawall. If the bottom of a seawall erodes, the material behind it can also begin to erode.

Vice Mayor Oldaker asked if the growing size and speed of modern boats has an effect on these structures. Mr. Chappell advised that not all boaters comply with No Wake Zones, and larger boats with more engines have greater impact.

Vice Mayor Oldaker observed that a number of businesses are typically located near the bridges in Broward County where this wake activity may occur. Mr. Chappell confirmed that there are businesses, including restaurants, in these areas. No Wake Zones are located in these areas in an attempt to protect the bridges as well as to improve boating safety.

Commissioner Strauss requested clarification of why the riprap needed to be extended beyond the 8 ft. width of the dock. Mr. Chappell confirmed that this was because the length of the dock is over 100 ft. He added that there is also a safety component to the riprap: the 2:1 slope is required in order to prevent exceeding the footprint of the dock, which could result in boaters striking rocks at the location. Another safety consideration is the breakup of constant wave energy by the riprap.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

Commissioner Strauss asked if the safety factor applies to smaller as well as larger boats. Mr. Chappell replied that this affects all vessels, although it is more important for smaller vessels, which are less stable in wave action.

Commissioner Sokolow asked if sinkholes have opened on the landward side of docks due to erosion at the bases of seawalls. Mr. Chappell confirmed that this is a concern both beneath the seawall and at the seam of two seawall panels.

Mayor Vincent noted that in the event of remediation or repairs, or if a new dock is constructed, the Town is required to follow recent County Code and build seawalls to a greater height. Mr. Chappell advised that the County's recommendation is for municipalities to require seawalls to be raised to greater heights. The existing dock on the subject property is a wooden structure coming off the seawall cap, which he characterized as needing to be replaced. It is not currently in ideal condition for boaters to exit onto or from a boat.

Ralph Brooks, counsel representing Steve and Debbie Nagy, asserted that at present, Town Code is permitted to be more stringent than the requirements of the federal government, the state of Florida, or Broward County, as it has not been preempted. He described the variance as providing the neighboring property with something that other properties along the Intracoastal Waterway would not be permitted to do.

Mr. Brooks addressed the Code criteria for variances, beginning with the requirement that special conditions prevent the reasonable use of land or structure. He did not believe this criterion has been met, as there is an existing dock on the property that has been in use for many years, including before the Applicant purchased the subject property.

With respect to the hardship criterion, Mr. Brooks continued that there are a number of properties along the Intracoastal Waterway that should also be permitted a variance if one is granted to the subject property. He pointed out that the shape of the lot is not unusual, and that all properties along the waterway are subject to the effects of wakes from passing boats.

Mr. Brooks stated that there is no particular hardship upon the subject property owner, reiterating that there is an existing dock on the property which is used as a base of operations for a chartered vessel. He noted that the dock also includes a seating area, which he characterized as a self-created hardship.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

Another criterion requires that the variance requested must be the minimum variance possible for the reasonable use of the land or dock. He asserted that the dock is currently being reasonably used by vessels of varying sizes, and that the economic disadvantage that may be experienced by the Applicant is not sufficient to constitute a hardship.

Mr. Brooks continued that the land, and not the nature of the project, must be unique and create the hardship. He stated if a purchaser buys land with the Code requirement in place, they are only entitled to the variance to which their predecessor was also entitled.

Mr. Brooks concluded that the Applicant has proved that the existing dock can already be used by vessels, as they have provided aerial photographs showing vessels docked at the subject location. He added that fact-based testimony from laypersons, including neighbors, may be considered competent substantial evidence.

Mr. Brooks also noted that Broward County's guidance regarding use of riprap may be adopted by the Town if it is applied to all and not used solely for the granting of variances. He pointed out that over-water structures with a width of less than 8 ft. do not require riprap, regardless of their length. Natural riprap may be placed under the proposed structure beginning at 1 ft. below the mean high water line and continue in the required 2:1 ratio. The requirement to place this material 1 ft. above the mean high water line does not apply unless a new seawall is being installed.

Mr. Brooks suggested that the Commission may wish to revisit Town Code and determine whether or not they would like to retain its existing requirements related to length, riprap, variance criteria, or other considerations. He did not believe it was appropriate to permit a single property that is similarly situated to others to depart from Code. He concluded that the Application does not meet the requirements for a variance.

Vice Mayor Oldaker commented that Mr. Brooks had described the proposed changes to the subject property as a repair rather than a new seawall. Mr. Brooks confirmed that this was his understanding of the issue, as there is an existing seawall which will be replaced and raised 1 ft. in height to combat sea level rise.

Commissioner Strauss referred to a document listing Broward County's requirements for riprap in use with over-water structures and seawalls, which was provided to the Commission by Mr. Brooks. Mr. Brooks requested that he also be permitted to provide

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

the Commission with aerial photographs and a benthic survey. Town Attorney Trevarthen directed Mr. Brooks to provide copies to the Applicant as well.

Commissioner Strauss noted that one of the bullet points in this documentation addressed over-water structures with a width of less than 8 ft., stating that this structure would not require riprap regardless of its length. Mr. Brooks noted that there may be some discrepancy in how 8 ft. is measured by the Town as opposed to by Broward County. He advised that the existing dock is within 8 ft. of the wet face of the seawall.

Commissioner Strauss continued that the subject dock is both more than 100 ft. in length and more than 8 ft. in width, which meant the criteria for structures less than this width and length would not apply to the subject dock. Mr. Brooks stated that the Applicant wishes to include riprap and has submitted that they must have a larger dock in order to provide it.

Mr. Brooks stated that while the Commissioners may believe that the issue before them is one of safety with regard to the provision of riprap, the issue is more accurately a Code violation. Mayor Vincent observed that this is not accurate: the proposed variance is prohibited by Code, but would not constitute a violation unless it is constructed without approval or permits.

Vice Mayor Oldaker asked if the use of the dock at its current size and configuration is considered to be safe, recalling the earlier discussion of different types of boats that may access the structure. Mr. Brooks replied that if the 8 ft. width is not considered to be safe, it should not be accepted as the standard all along the Intracoastal Waterway.

Steve Nagy, neighbor to the Applicant, stated that he objected to the variance request. He felt Town Code is intended to protect residents from the construction of prohibited projects, and characterized the variance request as the Applicant asking to have jurisdiction outside the 8 ft. permitted by Code.

Mr. Nagy referred to the Broward County documentation regarding riprap which was provided to the Commission, pointing out that it states over-water structures of less than 8 ft. do not require riprap, regardless of their length. He also referred to a benthic survey of the area which shows there is currently no riprap at the subject location.

Mr. Nagy also referred to an email from Broward County's Department of Environmental Permitting, which he had provided to the Commission among other documentation. He

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

asserted that the email states that a new dock 8 ft. wide or less, measured from the wet face of the seawall and longer than 100 ft., does not require riprap.

Mr. Nagy concluded that approval of the request would result in the issue going to court, and recommended that approving another configuration of the dock farther away from his own property would be "of great advantage" to all parties involved. He added that there is no buffer between the subject commercial property and his own residential property.

Debbie Nagy, neighbor to the Applicant, also stated her opposition to the variance request, noting that her own dock extends only 8 ft. into the waterway. She felt there were nonconforming issues on the Applicant's property which would factor into the proposed dock expansion, and cited a number of traffic and waterway issues occurring on the subject property. She felt the expansion would only exacerbate these existing issues.

Mrs. Nagy continued that she believed the Code issues on the subject property demonstrate indifference to the Applicant's neighbors. She cited the variance request as an example of this indifference, and pointed out that there is nothing necessitating a larger dock at this time.

Mrs. Nagy showed a video of a large charter boat docked next door to her property, pointing out that the vessel created significant noise. She provided photos of charter vessels docked there as well as videos. She advised that the view from her home has been impeded by large boats.

Mrs. Nagy continued that there is no limit to the size of boats permitted to dock at the subject property as long as they do not impede navigation. She was concerned that the proposed dock expansion would eventually become a bigger problem. She also noted that manatees and dolphins frequent the area where the expansion would occur, and expressed concern for marine wildlife. She concluded that the Applicant could construct a new conforming dock on their property and continue to operate their business at full capacity.

Town Attorney Trevarthen advised that the next step in tonight's process is to hear public comments in support of the Application, followed by public comments in opposition to the Application. Opportunities for rebuttal will be afforded later in the procedure.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

At this time Mayor Vincent opened public comment.

Ed Smoker, resident of Fort Lauderdale, stated that he is a boater who regularly uses the Intracoastal Waterway and has often visited the Applicant's restaurant. He described the Applicant as environmentally sensitive, which contributed to her decision to implement riprap to dampen the effects of waves. He also noted that it can be difficult to access the restaurant's existing dock from a boat, and that the structure is failing.

Ben Bittner, resident, commented that there are already a number of issues related to traffic, parking, and noise at the subject property with its existing dock. He expressed concern that granting the variance would only exacerbate these issues. These problems include delivery vehicles parking on West Tradewinds Avenue, charter boats docking behind 4419 West Tradewinds Avenue, buses, and parking in general. He concluded that he would like to see these concerns formally addressed as part of the variance process.

Barbara Cole, resident, emphasized the residential nature of the Town, and encouraged the Commissioners to ensure a negative precedent is not set.

Development Services Director Campbell clarified that the Town does not have regulations addressing riprap, as Broward County's regulations are preemptive. While the Applicant's engineer has opined that riprap is required due to the length of the dock, it is important to note that the subject property is commercial and not residential. The Town has not denied any other prospective applicant the opportunity to submit a variance application in their own right.

Commissioner Strauss asked if the Town has inspected the current condition of the Applicant's dock. Development Services Director Campbell replied that no such formal inspection has been made.

Mayor Vincent asked if any other docks on the Intracoastal Waterway are larger than 8 ft. Development Services Director Campbell advised that she did not have this information and would look into it further.

It was clarified that Mr. Gianos' firm has handled cases in which wakes contributed to damaged boats. Mr. Gianos added that he has witnessed boaters having difficulties accessing the dock at the subject property, which were affected by passing vessels on the Intracoastal Waterway.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

Mr. Gianos continued that charter vessels have docked at the subject property since before Mr. and Mrs. Nagy purchased their property. He added that the U.S. Army Corps of Engineers provided a package to neighboring properties including these materials. He also noted that wakes created by boat traffic on the Intracoastal Waterway have caused damage to boats, and that portions of the dock have been replaced.

Mr. Gianos continued that the subject dock existed prior to the Applicant's purchase of the property, and riprap was already present, although minimal, at the site. The Applicant's intent is to ensure the seawall is sound by preventing leakage or erosion. He confirmed that the width of the subject dock is between 6 ft. and 8.4 ft.

Mr. Nagy stated that the Town measures the length of a dock from the property line, while the County measures this length from the wet face of the seawall. He felt the existing seawall should be replaced rather than repaired; in addition, the platform of the dock could be any length if it were extended eastward.

Commissioner Strauss requested clarification of the age of the existing dock and seawall on the subject property. Mr. Chappell, representing the Applicant, replied that he did not know how long these structures have been present.

Commissioner Strauss asked how long it would take to replace the existing dock if the variance is granted. Glenn Bryant, also representing the Applicant, replied that this would take two months. He emphasized that the existing seawall is sound, although there has been seepage that was previously addressed by a contractor. He added that the riprap recommended for the project would provide a manatee habitat.

Vice Mayor Oldaker asked if the Applicant's team was familiar with the maximum height of boat wakes permitted by law. Mr. Chappell replied that the signage provided by the Florida Fish and Wildlife Commission specifies that wakes may be no higher than 15 in. in 25 miles per hour (MPH) zones.

Vice Mayor Oldaker also requested additional information on the difference between wakes and waves, including their effects on seawalls. Mr. Chappell stated that both conditions have the same effect, although they are created by different forces. A wake or wave striking a seawall will push water down, contributing to erosion at the base of the wall. Riprap can mitigate this erosion.

Vice Mayor Oldaker asked if, considering recent trends toward larger and faster boats, there is a trend toward the type of construction proposed by the variance as a possible

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

future Code standard. Mr. Chappell replied that while he could not opine on Code, the size of the dock and riprap proposed by the Applicant are smaller than those proposed for most other docks on the Intracoastal Waterway. He also pointed out that residential properties on this waterway have the option of implementing boat lifts to protect their vessels, while this is not an option for a commercial property.

Commissioner Malkoon advised that if there are existing Code issues on the subject site, these may be addressed with Town Staff or Code Enforcement. He asked if the Applicant would be able to construct a new 8 ft. dock with no or minimal riprap. Mr. Chappell confirmed that if a dock is less than 8 ft., riprap is not required; however, he pointed out that the riprap is proposed in part due to environmental and wake concerns. It was further clarified that the Applicant's property has not received any Code violations for charter boats or other issues since its inception.

The Commission took a brief recess from 9:19 p.m. until 9:32 p.m.

Mayor Vincent asked if the size of the proposed dock is standard for businesses of a similar size to the Applicant's restaurant, with the raising of the seawall and protection of the marine environment taken into consideration. Mr. Chappell replied that the standard docks installed by his company for Broward County restaurants, as well as for residential properties, are 10 ft. docks, which may be extended to 20 ft. if located in a wider portion of the waterway and depending upon the client's wishes.

Mayor Vincent asked if constructing these docks in other municipalities required variance requests. Mr. Chappell stated that most of these docks were not limited to 8 ft., and seawalls are often higher than the standard in order to anticipate further sea level rise. He advised that when the Town's 8 ft. Code limitation was established, its intent was likely to focus on residential properties.

At this time Mayor Vincent closed the public hearing and brought the discussion back to the Commission.

Commissioner Sokolow stated that Town Staff, as well as the Planning and Zoning Board, has considered this issue at length and determined that the Application meets the requirements necessary for a variance. He also noted that the documentation provided by the third party includes the statement that an over-water structure with a width greater than 8 ft. would require riprap beneath the entire length of that structure, although this was not discussed as part of the presentation.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

Commissioner Sokolow continued that most of the opposition to the Application addressed other issues, such as parking, traffic, and noise, which he characterized as typical on the Intracoastal Waterway. He concluded that the Applicant has met requirements for the variance request.

Mayor Vincent observed that while he had not approached this Item with a predetermined conclusion, he agreed with Commissioner Sokolow that Town Staff and the Planning and Zoning Board have examined the issue. In addition, the subject property is commercially zoned and the proposed design appears to be “the way of the future” for the protection of seawalls on the Intracoastal Waterway.

Commissioner Strauss commented that all the concerns raised at tonight’s meeting were valid, including the need for a new dock at the subject property. He noted that modern docks are required to be built higher and better to meet sea level rise specifications. He felt all the concerns raised by neighbors of the subject property can be addressed by the Applicant, or if not, brought to the attention of Code Enforcement.

Vice Mayor Oldaker recalled that one suggestion made by the third party was that the Applicant extend the dock on its north end, farther away from the residential property than the required 5 ft. setback. He proposed that any motion on the Item take this possibility into consideration.

Commissioner Malkoon noted the importance of the subject property to the Town, as well as the Applicant’s interest in investing in the protection of this property.

Commissioner Sokolow made a motion to approve the variance request.

Town Attorney Trevarthen noted that this **motion** would also include the recommendations of Staff, with their findings on the variance criteria. Commissioner Sokolow confirmed that this was his intent.

Vice Mayor Oldaker seconded the motion. Motion carried 5-0.

8. TOWN MANAGER REPORT

a. Town Manager Report for February 22, 2022

Town Manager Linda Connors introduced Assistant Development Services Director Chris Suneson. She also reminded all present that early voting in the upcoming election

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

will begin on February 26, 2022, and will run through March 6, 2022. The closest location for early voting will be Larkins Community Center in Pompano Beach.

Town Manager Connors also reminded the public that the Town is seeking applicants for the Planning and Zoning Board, Audit Committee, and Firefighters' Pension Board of Trustees. She encouraged interested individuals to fill out applications for consideration at an April 2022 Commission meeting.

Town Manager Connors recalled that a walking audit was held the previous week in conjunction with the Florida Department of Transportation (FDOT). Town Staff met with FDOT Staff and contractors as well as BSO Captain Palmer. The audit identified safety issues along A1A, including the need for more crosswalks on this roadway, as well as portions of damaged sidewalks. The need for crosswalks was strongly emphasized to FDOT, and Staff will follow up with the Broward Metropolitan Planning Organization (MPO) to determine whether or not there may be other alternatives to construct crosswalks in the Town.

With respect to Anglin's Pier, Town Manager Connors confirmed that the property owner has a permit and has begun construction on this structure. The issue has gone back to the Special Magistrate, and \$53,000 in fines has accrued on the property. The Special Magistrate has required a monthly meeting between the Building Official, Code Enforcement Officer, and contractor for the pier in order to provide regular updates to the Town on their progress.

Another structure of interest to the Town is the Sea Lord Annex building. The Building Official has issued a Stop Work order for the roof and exterior of this building, although work is permitted to continue on the interior. The work originally approved for the building's roof has changed, which led to the Stop Work order. The contractor must now provide the Town with information on the new plans for the roof and how these plans meet Town Code. The property has been cited and will go before the Special Magistrate on Thursday, February 24, 2022.

Town Manager Connors advised that the Town recently received a \$150,000 check from Pompano Beach to be used toward the Palm Club project. The Town is still working to secure funds for this project from Broward County as well. She concluded that the Town is seeking volunteers to assist with the Visitors Center.

9. TOWN ATTORNEY REPORT

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

Town Attorney Trevarthen stated that a bill that would restore municipalities' ability to regulate smoking on beaches and parks seems to be headed for approval in the Florida Legislature. Other bills continue to challenge home rule.

Town Manager Connors noted that the Town's lobbyist recently addressed a proposed bill that would have mandated a two-day turnaround for review in conjunction with Certificates of Occupancy (COs). The lobbyist worked with local representatives and other organizations to make significant amendments to this bill, which now proposes two working days for single-family homes that have paid all fees and ten working days for all other COs.

10. APPROVAL OF MINUTES

a. Approval of Minutes: January 10, 2022 Special Commission Meeting & January 11, 2022 Commission Meeting

At this time Mayor Vincent opened public comment.

Gary Grisco, resident, addressed a permit for a single-family home at 4112 El Mar Drive, which was discussed at the January 10, 2022 Commission meeting. He pointed out that the final motion made on p.25 of the minutes refers to conditions that were submitted and amended by the plan and features that were entered by the Seaward property's architect, as well as the phrase "referred to earlier in this evening." He requested clarification that these conditions were taken into consideration, pointing out that only the architect's drawings were available at that time and did not rise to the standard of plans for any proposed changes.

Town Attorney Trevarthen explained that the Town regularly videotapes all its Commission and advisory body meetings in order to maintain an exact record of the proceedings. The minutes are intended to be a summary document rather than a complete statement of all activity. Mr. Grisco's concerns would be addressed in the final development order for the subject property, on which his and the Applicants' attorneys have been engaged with the Town.

Vice Mayor Oldaker made a motion, seconded by Commissioner Strauss, to approve. Motion carried 5-0.

11. CONSENT AGENDA

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

a. 2022 Club Car Carryall 710 LSV Lease

**b. Special Event Application for LBTS VFD Annual Easter Egg Hunt
Saturday, April 16, 2022**

Commissioner Sokolow made a motion, seconded by Commissioner Strauss, to approve all of the Consent Agenda. Motion carried 5-0.

12. OLD BUSINESS

None.

13. NEW BUSINESS

a. Application for Relief of Code Compliance Lien at 5000 N Ocean Boulevard, Unit #1711 (Sea Ranch Club B)

Senior Code Compliance Inspector Bethany Banyas presented the application for relief of Code Compliance lien #15110003 for the property at 5000 N Ocean Boulevard, Unit #1711. The current property owner's representative requests 100% mitigation of the fines.

The violation that occurred was work without permits on a kitchen and flooring remodel. It was found on November 5, 2015, at which time a Stop Work order was posted by the Fire Marshal during a routine fire inspection of the Sea Ranch Club B building. A notice of violation was also issued by a Code Officer. The property came into compliance on August 10, 2021. The permit for the work was obtained in August of 2016 but was not closed until August 2021. The fine of \$200/day ran for 2025 days, totaling \$405,000 in Code fines.

Under the Town's procedures for relief from Code Enforcement liens, the Commission is required to consider all relevant factors to determine what relief is appropriate. The criteria include:

- Nature and gravity of the violation
- Direct impact of violation on the building itself
- Length of the time of violation

Senior Code Inspector Banyas explained that work without a permit is a serious violation, as the Town cannot know whether or not construction was completed properly

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

and requirements of Florida Building Code were met. There were no complaints lodged against the subject property by surrounding units. The violation existed for 2025 days from its issuance to the date upon which it was cured, and 285 days until the permit was issued. \$4305.15 was recorded in out-of-pocket expenses by the Town. There have been no other violations on the property.

Senior Code Inspector Banyas recommended that if the Commission determines that fines should be reduced, Staff asks that these be paid within 30 days, which would be by March 24, 2022. The mitigation application fee and hearing costs have been paid.

Commissioner Strauss requested clarification of what occurred with the property's contractor, as well as whether or not the work was completed properly. Senior Code Inspector Banyas explained that a letter from the property owner states that he had not received notification of an expired permit. She could not confirm whether or not the contractor received communications from the Town, although she noted that the contractor may have been referring to an expired permit notice, which is sent via regular mail from the Building Department to the contractor and owner. This notice is sent to the address of the owner on file with the Broward County Property Appraiser's Office as well as to the contractor's mailing address.

With regard to inspections, work began on the property, permits were obtained, and inspections were made until January 2017, at which time inspection notices began to be issued from the Building Department. The Building Department did not receive any communication to request a final structural inspection. The permit was not extended. No action occurred until the permit was renewed on May 25, 2021. Senior Code Inspector Banyas pointed out that the Town was very short-staffed for approximately one month due to the COVID-19 pandemic, which may have contributed in part to the delay.

The permit has been closed out and all work was done properly. The Town's expense of \$4305.15 occurred in double permit fees and a renewal fee, as so much time had passed when the permit was renewed that revisions were necessary to bring some items up to Code.

Mayor Vincent observed that from the time of the notice of violation until one year later, all but two inspections were passed; however, there was no communication from the property for roughly two and a half years. Senior Code Inspector Banyas advised that she did not have any information on this time period.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

Dieter Aranda, general contractor representing the Applicant, stated that he was not the original contractor who worked on the property. The owner had purchased the unit and work was being done on the apartment when the Fire Marshal informed her that permits were necessary. The owner is a resident of Peru and was not aware of permitting requirements. She then contacted Mr. Aranda, who pulled permits for the work in 2016.

The owner passed away and the unit was inherited by her son, who contacted Mr. Aranda when he was made aware of the Town's issues with the property. The permit was reopened and then closed.

Mayor Vincent noted that the \$200/day fine began to accrue on January 25, 2016, when a Special Magistrate hearing was held. The Special Magistrate certified a lien on the property, including unpaid hearing costs. No respondent representing the owner or contractor appeared at the hearing. He asked if the issuance of a permit on September 2 brought the property into compliance under Florida Statutes. Senior Code Inspector Banyas replied that she did not have this information at hand but could research it further if that is the Commission's desire.

Mayor Vincent explained that his concern was for the amount of fines accrued, which may be significantly less for the time between the Special Magistrate hearing and the issuance of the permit. Senior Code Inspector Banyas stated that if the fines had stopped on the day the permit was pulled, the fine would have accrued for 203 days, totaling \$40,600.

Mayor Vincent emphasized that some of the fines are the responsibility of the contractor, who had an obligation to his client as a licensed contractor. Commissioner Strauss agreed, also noting that \$40,600 appeared to be a more accurate amount from which to calculate potential mitigation than \$405,000. Commissioners Sokolow and Malkoon also agreed with this figure, with Commissioner Sokolow estimating that a 20% mitigation of \$8120 would be appropriate.

Vice Mayor Oldaker made a motion, seconded by Commissioner Strauss, to mitigate the fine amount to \$8120, with no additional costs and/or fees, to be paid within 30 days. Motion carried 4-1 (Commissioner Malkoon dissenting).

It was noted that if the mitigated fine is not paid within 30 days, it would revert back to the estimated amount of \$40,600.

b. Renewal of Town Contracts

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

Town Manager Connors explained that each year, Staff brings forward contracts that are up for renewal. The Commissioners' backup materials included continuing contracts with renewal periods as well as other contracts recommended for renewal. Staff is also working on a number of contracts that do not have renewal periods, which will be brought forth over the coming year.

Commissioner Malkoon made a motion, seconded by Vice Mayor Oldaker, to approve. Motion carried 5-0.

14. COMMISSIONER COMMENTS

Vice Mayor Oldaker and Commissioner Strauss encouraged residents to vote in the upcoming election.

Commissioner Strauss recalled that the recent A1A marathon had been a good advertisement for the Town.

Mayor Vincent thanked Commissioner Sokolow for his eight years of service to the Town. All present recognized the Commissioner's contributions to the Town with a round of applause. Commissioner Sokolow thanked the Mayor for his comments.

Commissioner Malkoon also recognized Commissioner Sokolow for his service to Lauderdale-By-The-Sea.

15. ORDINANCES 1ST READING

None.

16. ORDINANCES 2ND READING

- a. Ordinance 2022-01 – AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES BY CREATING CHAPTER 9, "FLOOD PREVENTION AND CONTROL," ARTICLE XI, "RESILIENCY STANDARDS FOR TIDAL FLOOD PROTECTION" TO ESTABLISH TIDAL FLOOD PROTECTION AND BARRIER INFRASTRUCTURE STANDARDS THAT ACCOUNT FOR PROJECTED SEA LEVEL RISE, AND PROVIDE FOR ABATEMENT OF NUISANCE FLOODING AND

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

REAL ESTATE SALE DISCLOSURES; PROVIDING FOR SEVERABILITY, PROVIDING FOR CONFLICTS, AND PROVIDING FOR AN EFFECTIVE DATE.

At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Commissioner Sokolow made a motion, seconded by Vice Mayor Oldaker, to approve. Motion carried 5-0.

17. RESOLUTIONS – PUBLIC COMMENTS

- a. **RESOLUTION NO. 2022-08 – A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, APPROVING A WORK AUTHORIZATION WITH HUGH JOHNSON LANDSCAPE ARCHITECTURE INC. DBA ARCHITECTURAL ALLIANCE LANDSCAPING; AUTHORIZING THE TOWN MANAGER TO EXECUTE A WORK AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

At this time Mayor Vincent opened public comment.

Ann Marchetti, resident, recommended that the company which worked on the Downtown redevelopment in 2014 be retained for the permanent extension of outdoor dining and continued use of Connie Hoffmann Plaza. The work is expected to take five weeks for conceptual design and 10 weeks for schematic design, and is estimated to cost \$26,600. She emphasized the importance of timely progress on this work and estimated that these provisions should be complete by late May 2022, with construction to begin in the fall.

Barbara Cole, resident, stated that she hoped the proposed design would not negatively impact affected businesses and ensure a smooth transition.

With no other individuals wishing to speak at this time, Mayor Vincent closed public comment.

Commissioner Sokolow made a motion, seconded by Commissioner Malkoon, to approve. Motion carried 5-0.

Lauderdale-By-The-Sea
Regular Town Commission Meeting
February 22, 2022

- b. RESOLUTION NO. 2022-09 – A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, ACCEPTING A GIFT IN THE AMOUNT OF \$25,000 FROM THE AMENDED AND RESTATED ALICE J. RUTTEN TRUST UAD 11-16-2017; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE RECEIPT FOR THE GIFT; AND PROVIDING FOR AN EFFECTIVE DATE.**

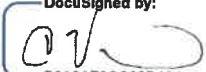
At this time Mayor Vincent opened public comment, which he closed upon receiving no input.

Town Manager Connors explained that the Town received \$25,000 from the trust of Alice J. Rutten for the use of the Community Center. Approval is required to receive these funds. A budget transfer will be made at a later date, and there will be additional discussion of how the funds will be used.

Commissioner Strauss made a motion, seconded by Vice Mayor Oldaker, to accept \$25,000. Motion carried 5-0.

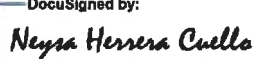
19. ADJOURNMENT

With no other business to come before the Commission at this time, the meeting was adjourned at 10:48 p.m.

DocuSigned by:

80A8AE8CC88D4A1...

Mayor Chris Vincent

ATTEST:

DocuSigned by:

512DAB8A7F69D4E8...

Town Clerk

3/25/22

Date