

**INDIAN RIVER COUNTY, FLORIDA
M E M O R A N D U M**

TO: Jason E. Brown, County Administrator

THROUGH: Phillip J. Matson, AICP
Community Development Director

FROM: Steven S. Hitt, M.S.
Principal Environmental Planner

DATE: October 17, 2022

SUBJECT: Consideration of a Request by David L. Cox, Ph.D., to Amend Land Development Regulation (LDR) Section 932.07, Piers, Docks and Boat Slips, by Revising the Size Restrictions on Unwalled Boat Shelters to be Consistent with Florida Department of Environmental Protection (FDEP) and Other Jurisdictional Agency Requirements [LDRA-22-05-01 / 2022020086-91934]

It is requested that the data herein presented be given formal consideration by the Board of County Commissioners at its regular meeting of November 1, 2022.

BACKGROUND

In 2019 planning staff received a request to amend the County Land Development Regulations (LDRs) from Mr. Garrett Guidroz, owner of a lot at 13380 North Indian River Drive, who was seeking to remove criteria in LDR Section 932.07 that limited the size of unwalled shelters over boatslips to a maximum of 400 square feet. The request also sought to make County LDRs more consistent with jurisdictional agency requirements. Prior to submitting the request, Mr. Guidroz had obtained a Florida Department of Environmental Protection (FDEP) general permit to modify the existing dock on his property and to construct a 976 square foot unwalled shelter over two combined boatlifts. Due to the 400 square foot size limitation, Mr. Guidroz was unable to construct his dock improvements consistent with the FDEP approved plans.

Under 2019 and current Florida Statutes (Section 258.42; Attachment 1), boat slips at private residential single-family docks, located within an aquatic preserve, may not be enclosed with walls, but may be roofed "...if the roof does not overhang more than 1 foot beyond the footprint of the lift and the boat stored at the lift." Additionally, Florida Administrative Code Section 62-330.427 (Attachment 2) allows a roof to be built over any portion of a vessel mooring area, boat lift and terminal platform as long as the total area of these structures, and all existing structures on the shoreline of the property, are limited to 2,000 square feet over surface waters.

At a public hearing held on May 9, 2019, the Planning and Zoning Commission (PZC) voted 4 to 1 to recommend the Board of County Commissioners (BCC) adopt the LDR amendments submitted by Mr. Guidroz, through his representative Dr. David Cox. The PZC added a recommendation that staff "analyze the possible solutions to limit the overall size of the boat shelter to something that is not obtrusive or unreasonably large" (see PZC minutes, Attachment 3). Based on the PZC recommendations, the proposed ordinance was revised to allow unwalled shelters up to 1,000 square feet in size if they did not exceed 50% of the combined total surface area of the dock structure. The 400 square foot maximum size for unwalled shelters remained in the ordinance, as it was still applicable to smaller docks. The revised ordinance was adopted by the Board of County Commissioners (3-2 vote) at its regular meeting on July 2, 2019 (see BCC minutes, Attachment 4).

Dr. David Cox of Cox Pinson Environmental, LLC, has applied to amend the County's LDRs to remove the 400 square foot / 1,000 square foot unwallled shelter size criteria due to unintended consequences created by the adoption of the 2019 LDR Section 932.07 revisions. The Board is now to consider the proposed LDR amendment and is to adopt, adopt with modifications, or deny the proposed amendment.

PLANNING & ZONING COMMISSION RECOMMENDATION

The PZC, at a public hearing held on September 22, 2022, voted unanimously (5 to 0) to recommend that the Board of County Commissioners adopt Section 932.07 revisions removing the current unwallled boat shelter maximum size limitations in order to be more consistent with state and federal permitting requirements (See Attachment 5).

ANALYSIS

At the 2019 PZC hearing commission members expressed concerns that size limits were necessary to prevent abusive and/or out-of-scale construction of unwallled boat shelters within coastal communities, primarily those with man-made canals. According to the applicant; however, adoption of the 2019 LDR amendments has created unintended consequences:

1. Demand for the construction of unwallled shelters over boat slips has increased. For larger docks that are located in "open water" (i.e. non-canal) locations, the current ordinance ties the allowable total square footage of an unwallled shelter to dock size. Adoption of the 2019 LDR Section 932.07 amendments has, thus, incentivized single-family residential riparian property owners to build the largest docks possible so they can legally build two unwallled shelters over their boat slips/mooring areas. Under state and federal regulations shelter size is not tied to dock size, there is simply the 2,000 square feet total area over surface waters criteria.
2. Under the 2019 LDR Section 932.07 amendments, unwallled shelters must not overhang more than 1 foot beyond the footprint of a boat stored at the boat slip. For single-family residential riparian property owners in canal locations, particularly those with marginal docks (as defined in Chap. 18-21.003(35), F.A.C., Attachment 6). This added criteria arguably creates a disparate impact on boat lifts with 400 square foot unwallled shelters by effectively reducing the dimensions of vessels that can be moored, often to unreasonable and undesirable sizes. Hence, "Marginal Docks" in residential canal systems are now subject to new regulation under the current LDR Section 932.07.

The applicant's proposed LDR changes include removal of the 400 square foot / 1,000 square foot unwallled shelter size criteria. If the LDRs are revised as requested, they will be consistent with FDEP and other jurisdictional agency permitting requirements and will reduce or eliminate unintended consequences created by the previous LDR revisions. With regard to unwallled boat shelters outside of aquatic preserves, the County has other existing regulations in Section 932.07 which limit dock projections into manmade canals to account for navigation and riparian rights. These existing regulations are not proposed to be changed and effectively deter the potential for "abusive size" of unwallled shelters in canals. That, coupled with FDEP's overall size limit of dock structures over surface waters (not to exceed 2,000 square feet), addresses the size limit concern. With respect to environmental impacts, both the County and State have other existing regulations that require unwallled shelters and other dock components to be designed in a manner that minimizes impacts to aquatic resources (such as avoiding or limiting the potential for blocking sunlight from reaching submerged aquatic vegetation).

As proposed, staff supports the LDR changes as they will make the County's unwallled boat shelter size limit more consistent with other jurisdictional agency requirements, will reasonably enhance but adequately regulate

dock construction, and will result in minimal environmental impacts due to other existing County and State requirements that will continue to apply.

RECOMMENDATION

Staff recommends that the Board of County Commissioners adopt the proposed ordinance revising unwallled boat shelter size restrictions.

ATTACHMENTS

1. Florida Statutes Section 258.42
2. Florida Administrative Code Section 62-330.427
3. PZC 5/9/2019 Meeting Minutes
4. BCC 7/2/2019 Meeting Minutes
5. PZC 9/22/2022 Meeting Minutes
6. Chapter 18-21.003(35), F.A.C.
7. Proposed Ordinance