

ATTACHMENT A - (5270 Indian Ct.)

**DOCK VARIANCE STANDARDS FOR
GAETTA PARTNERS LP APPLICATION FOR VARIANCE**

The Planning Commission may grant variances only upon finding that the request meets the seven standards set forth in Land Development Code Section 82-140. Describe how your request meets each requirement for a variance from:

Sec. 126-875. - Waterward extension.

Docks, boat davits and boat lifts shall not be extended waterward (from the approximate mean high-water line) to a distance greater than is necessary to provide reasonable use of the facility based upon the following standards:

(1) For properties located on natural bodies of water:

a. For properties with lawfully existing, nonconforming seawalls, or alternative shoreline stabilization, no such structure (including mooring pilings) on land having navigable access to state waters (including Clam Bayou and Old Blind Pass) *shall be extended waterward more than 30 feet or 20 percent of the width of the waterway, whichever is less, provided such structures can be located where the water depth is greater than three feet above the bottom surface at mean low water.* [Emphasis added].

b. For shorelines with extensive mangrove vegetation, *such structures may extend up to 15 feet waterward past the roots of the mangroves from which the structure projects; provided such structures can be located where the water depth is greater than three feet above the bottom surface at mean low water and the dock with a moored boat or a boat lift does not encroach into the existing navigable channel.* [Emphasis added].

Sec. 126-876. Relation to mean low water level.

Docks, boat davits, and boat lifts, except for such structures located on or adjacent to manmade canals, shall be located so as to provide boat docking or mooring *where the appropriate mean low water level is at least three feet above the bottom surface.* [Emphasis added].

INTRODUCTION

5270 Indian Ct., Sanibel, Florida 33957, is located on Kesson Bayou. The property is fringed with mangroves along the waterfront portion. A single-lift dock historically served the property but in recent years has been rendered virtually unusable due to the shallow water depths now present along the bank where the previous dock was located. The applicant, on behalf of the owner, Gaetta Partners LP, seeks approval to construct a new dock with two boat lifts to serve the residential property. The proposed dock configuration includes a straight four foot (4') wide walkway extending from the shoreline to an angled, T-Head terminal platform. The boat lifts are located on the waterward side of each of the terminal platform extensions.

The proposed dock requires variances from LDC §126-875(1) and §126-876 to allow for lifts that extend as far as possible into usable water depths while adhering to Florida Department of Environmental Protection (FDEP) restrictions and minimizing impacts to vegetation along the shoreline of the property. LDC §126-876 requires that boat lifts be located where the appropriate mean low water line is at least 3 feet below the bottom of the surface (-3' MLW). However, FDEP prohibits extension into a depth of four feet below the bottom of the surface (-4' MLW). There is not adequate

space between the -3' MLW line and the -4' MLW line for the proposed lifts to be located entirely within the -3' MLW area without extending past -4' MLW. Therefore, the applicant requests a variance from LDC §126-876 to allow the lifts to be partially located at a depth of less than -3' MLW as shown on the plans. The Applicant seeks a variance from LDC §126-875(1)(a) for the southern dock to angle approximately two feet, seven inches (2'-7") beyond 20% of the canal width to allow the southern boat lift to extend as far as it can into the -3' MLW depth without encroaching into the -4' MLW depth. The northern boat lift also extends slightly more than past 20% of the waterway, but remains within 15', of the mangrove root line present by this section of the dock, so a variance from the is not being requested, per LDC §126-875(1)(b).

- 1. A literal enforcement of the particular regulations (waterward extension into the canal per LDC §126-875 and the water depth requirement of LDC §126-876) would result in undue and unnecessary hardship to a property owner because the particular shape, size, location, or topography of a lot or parcel, or of a structure thereon, would cause practical difficulties that would deprive the owner of reasonable use and enjoyment of said lot or parcel in the same manner as other properties similarly situated:**

A literal enforcement of LDC §126-876 would prevent construction of the new lifts because the FDEP restriction hinders both lifts from being located completely in water of at least -3' MLW, and thus deprive the owners of the reasonable use and enjoyment of the parcel in the same manner as other lots in the area. Due to the reduced water depths, a literal enforcement of LDC §126-875 would keep the lifts from maximizing the portion of the lifts that are able to be located within the -3' MLW area and would require greater adverse impacts to mangroves and vegetation. Approval of the requested variances will facilitate reasonable use and enjoyment of the property by allowing the two lifts to be located in the deepest water possible while limiting environmental impacts to the mangroves and complying with FDEP restrictions.

- 2. That the special conditions relate to unusual conditions peculiar to the specific lot or parcel or relate to special conditions of the structure involved, and are not generally applicable to other lands or structures similarly situated:**

The special conditions relate to the submerged land and reduced water depths associated with the property and that the -3' MLW area exists so close to the -4' MLW depth. These property-specific conditions limit the feasible placement and orientation of a dock and lift structures and distinguish the property from other waterfront parcels where the -3' MLW is located closer to shore and farther from -4' MLW. Additionally, the mangroves and vegetation across this property line limit areas where a dock can be built without impacting or with minimal impacts to vegetation and particularly the mangrove root systems. Utilizing the existing opening in the mangroves from the previous dock and extending and angling the proposed lifts as requested helps avoid significant mangrove and vegetation impacts.

- 3. That the special conditions and circumstances do not result from actions taken by the applicant or proposed by the applicant, and are not otherwise self-imposed:**

The special conditions and circumstances are attributable solely to natural conditions present along this part of the property and are not the result of the applicant/property owner's actions.

4. That the applicant has taken all reasonable steps to mitigate or eliminate the requested variance by the acquisition of adjacent lands or the relocation or redesign of the structure involved:

The design team evaluated multiple alternative dock configurations, reduced structural dimensions where practicable, and adjusted lift placement to place as much of the lifts in the required depth as possible, without encroaching into the depth prohibited by FDEP and to limit impacts to mangroves and vegetation along the shore. The design team met with FDEP to request permission for the lifts to extend into -4' MLW depth and this request was denied. Alternative relocation or redesign would not achieve compliance with the code requirements due to the limited distance between the -3' MLW and -4' MLW depths. Adjacent lands are not currently available for acquisition and acquisition of them would not eliminate the depth issue.

5. That the development or use of the subject parcel in some other manner than that proposed, in accordance with the applicable requirements, is not feasible:

Due to the water depths and heavy vegetation present along the bank, development of the property in full compliance with the applicable requirements is not feasible. The dock walkway is located within an existing opening in the mangroves to avoid additional mangrove and native vegetation impacts. Alternative placements would either require increased vegetation impacts and/or increased square footage over water beyond the 160 square feet permitted by LDC §126-877(3)(a).

6. That the requested variance will not be adverse to the developed neighborhood scheme and will not adversely affect the plan and scheme set forth in this Land Development Code, and will not cause the proposed development to be inconsistent with The Sanibel Plan nor adverse to the health, safety and general welfare of the community:

Approving the variances to allow construction of the dock and lifts as proposed will allow continued use of the lot in a manner that is historically compatible with other properties and not adverse to the existing neighborhood scheme. Many of the waterfront properties on Kesson Bayou are developed with docks and boat lifts of comparable size and scale and the subject property has historically had a dock and a boat lift. The canal the subject property is located on is not a through canal and only two properties are located to the southeast of the subject property on the canal. The proposed dock is located at one of the wider sections of the canal and leaves more than 53 feet for vessel navigation, so the extension of the proposed dock will not impede the access or safe navigation of other lot owners the canal. The proposed dock and lift placement minimizes environmental impact by utilizing an existing shoreline opening to avoid clearing additional mangroves for a walkway, and the proposed lifts keep the boats out of the water to avoid water quality impacts from bottom paint if lifts were not allowed to be used consistent with the overall scheme of the Land Development Code and goals of the Sanibel Plan.

7. That the variance is granted is the minimum necessary to mitigate the hardship demonstrated:

These variances are the minimum needed to extend the dock to an adequate water depth to accommodate two boats and comply with state restrictions.