

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION

BRIAN MYRBACK and
LORI MYRBACK, as Trustees of
THE MYRBACK FAMILY
REVOCABLE TRUST DATED
OCTOBER 15, 2015,

Petitioners,

Case No: 21-000014-AP
L.T. Case No: VAR-21-15

v.

JAMES P. DONOVAN; and
PINELLAS COUNTY, a political
subdivision of the State of Florida,

Respondents.

_____ /

PINELLAS COUNTY'S RESPONSE BRIEF

ANNE M. MORRIS, ESQ.
Florida Bar Certified in City, County, and
Local Government Law
Florida Bar No.: 087267
Assistant County Attorney
Primary E-mail: amorris@pinellascounty.org
Secondary E-mail:
eservice@pinellascounty.org
Pinellas County Attorney's Office
315 Court Street
Clearwater, Florida
(727) 464-3354; FAX (727) 464-4147
Attorney for PINELLAS COUNTY

PINELLAS COUNTY'S RESPONSE BRIEF

Respondent, Pinellas County, hereby files this Response to Petitioners', Brian Myrback and Lori Myrback, as Trustees of the Myrback Family Revocable Trust Dated October 15, 2015, Petition for First-Tier Writ of Certiorari.

PRELIMINARY STATEMENT

The Petitioners' Amended Petition for Writ of Certiorari will be referred to as the "Petition." Respondent, Pinellas County, will be referred to as "Pinellas County" or "County." Respondent, James P. Donovan, will be referred to as "Dr. Donovan." Petitioners, Brian Myrback and Lori Myrback, as Trustees of the Myrback Family Revocable Trust Dated October 15, 2015, will be collectively referred to as "Petitioners".

References to the Petitioners' Amended Appendix, filed on September 23, 2021 (A. 1-123) will be cited with page references ("A.") and, when applicable, line number ("L."). Citations to Pinellas County's Code will be made in the following form: PCC § ____.

Pursuant to Fla. R. App. P. 9.210(c), County elects to provide its own statement of the case and facts.

STATEMENT OF THE CASE AND FACTS

Petitioner is requesting first tier certiorari review of the Board of Adjustment and Appeal's ("Board") conditional approval of Dr. Donovan's request for a variance of the requirements of Section 58-555(b)(2) of the Code to allow the construction of a boat lift with a 4.7-foot setback from the south property line (adjacent to the Petitioners' property). (Petition, p. 2); (A. 5). The Petitioners do not challenge the Board's approval of Dr. Donovan's variance request to extend the existing dock to 50.5 feet; accordingly, this approval will not be addressed for purposes of this Response Brief.

Pinellas County Code Requirements and Procedures Applicable to Dr. Donovan's Variance Request

The construction, expansion, and/or repair of docks is governed by the requirements of Chapter 58, Article XV, Division 3 of the County's Code. PCC § 138-3311(a). As it relates to docks, the intent of Chapter 58 is to regulate the construction of private docking facilities in order to "... minimize the adverse impacts of such activities upon the natural resources and scenic beauty of the [C]ounty" and to apply these Code requirements in "a manner sensitive to both the property rights of the applicant and the rights of the citizens of the [C]ounty to enjoy the benefits of their natural resources." PCC § 58-504(e), (g). Section 58-555(a), Design criteria for private docks, states the following:

- (1) All criteria contained in section 58-554¹ shall also apply to private docks.
- (2) No building shall be permitted to be constructed over the waters of the county.
- (3) No dock structure or tie pole shall be allowed to project into the navigable portion of a waterway more than 25 percent of such waterway.
- (4) No dock shall extend waterward of the seawall, mean or ordinary high-water line more than 300 feet.
- (5) A dock shall not be designed or constructed to accommodate more than two boats for permanent mooring. No more than one structure shall be located at a private residential site.
- (6) Docks for the joint use of adjacent waterfront property owners may be centered on the extended common property line without being in variance to the setback requirements.
- (7) No portion of a docking facility shall encroach closer than 150 feet to the centerline of the Intracoastal waterway.
- (8) Personal watercraft lifts shall not be considered a boat slip and as such are exempt from the depth criteria of these rules. In addition, open grated personal watercraft lifts without outer piling shall not be considered when calculating dock dimensions or setbacks.

Of relevance to the legal challenges raised in the Petition, Section 58-555(b)(2) of the County Code requires private docks and boat lifts, excluding tie poles, to be constructed within the center one-third of the property or 50

¹ Section 58-554 sets forth the minimum construction specifications for all dock construction. The requirements of Section 58-554 are not at issue in this appeal.

feet from the adjacent property, whichever is less restrictive. This requirement may be waived by a signed statement of no objection from the property owners encroached upon. If the adjacent property owner refuses to sign the waiver, this requirement may be modified through the variance process. PCC § 58-555(b)(2); PCC § 58-539(a).

The County's variance process allows a property owner to seek relief, deviations, and/or adjustments from certain dimensional and technical provisions of the County's Code. PCC § 138-230(a); PCC § 58-539. Pursuant to Section 58-539(a) of the Code, a request for a variance from the criteria set forth in Section 58-555(b)(2) requires a public hearing before the Board.

The following are the relevant criteria for consideration by the Board in determining whether to grant a variance request:

(a) *Special conditions.* That special conditions and circumstances exist which are peculiar to the land, structure, or building involved.

(b) *Unnecessary hardship.* That literal interpretation of the provisions of this Code would deprive or make it practically difficult for the applicant to achieve the same proportion of development potential commonly enjoyed by other properties in the same zoning district under the terms of this chapter. The hardship shall not be self-imposed.

(c) *Minimum code deviation necessary.* That the granting of the request is the minimum code deviation that will make possible the reasonable use of the land, building, or structure.

(d) *Consistency with the land development code.* That the granting of the request will be in harmony with the general intent, purpose, and spirit of this Code.

(e) *Consideration of rezoning.* That a rezoning of the property has been considered and determined not to be appropriate and/or determined not to meet the objective of the request.

(f) *Consistency with Comprehensive Plan.* That the granting of the request will be consistent with the intent and limits of the Comprehensive Plan.

(g) *Detriment to public welfare.* That such request will not be injurious to the area involved or otherwise detrimental to the public welfare.

(h) *Circumvent Board approval.* That the granting of the request does not circumvent a condition placed upon the subject property by the Board of Adjustment and Appeals and/or the board of county commissioners. This shall not apply to new variances reviewed by the same board that originally placed the condition.

PCC § 138-231.

Variance hearings before the Board are governed by the procedures set forth in Section 134-14 of the Code. PCC § 134-14(b)(1). At all variance hearings, County staff with the Building and Development Review Services Department will prepare a staff report analyzing the request and recommend that the Board approve or deny said request. PCC § 134-14(c)(2); PCC § 134-14(d)(2). Staff recommendations or opinions, however, are not binding and the Board has the ultimate authority to grant or deny a variance request. PCC § 138-66(c), Table 138-77. Additionally,

it is the applicant that has the ultimate burden of producing competent and substantial evidence for the Board to make an informed decision and conclude that the applicable standards have been met. PCC § 134-14(e).

Dr. Donovan's Property

The property that is the subject of the Petition is a waterfront lot (Lot 21) located at 106 Harbor Drive, Palm Harbor ("Subject Property" or "Property"). (A. 7, 026). The County's Comprehensive Plan future land use map designates the Subject Property as Residential Low. (A. 017). In 2001, the County issued the prior owner of the Property a permit to construct a private residential 42.5-foot-long dock and boat lift on the southern portion of the Property ("2001 Dock and Boat Lift"). (A. 033). The location of the 2001 Dock and Boat Lift is well outside the center one-third of the Property (as required by Section 58-555(b)(2) of the Code). (A. 033). The record is silent as to why the prior owner selected this location for the 2001 Dock and Boat Lift.

Following the approval of the permit, the 2001 Dock and Boat Lift (totaling 486 square feet) was constructed. (A. 7, 016, 33). The 2001 Boat Lift is 15-feet wide, located on the south side of the Dock, and is approximately 4.7 feet from the south property line (immediately adjacent to the Petitioners' property). (A. 033, 059). In 2005, the prior owner of the

Property also constructed a lower landing on the 2001 Dock. (A. 008). The prior owner installed the lower landing without a permit or authorization from the County. *Id.*²

Dr. Donovan purchased the Subject Property in 2019. (A. 016, 026).

The Petitioners reside at 104 Harbor Drive (Lot 20), Palm Harbor. The Petitioners' property is located to the immediate south of the Subject Property. (A. 28); (A. 097, L. 16-18). The Petitioners have a dock 59.5 feet in length and two boat lifts (one on each side of the dock). (A. 028, 058); (A. 101, L. 13-20). The Petitioners' dock and boat lifts are located well outside the center one-third of their parcel, primarily in the northern portion of their property (which is immediately adjacent to the Subject Property). (A. 028, 058); (A. 101, L. 13-20).

² Dr. Donovan proposes to remove the unauthorized lower landing installed by the prior owners in 2005. (A. 54); (A. 95, L. 4-23).

The New Boat Lift

Following his purchase of the Property in 2019, Dr. Donovan desired to replace the 2001 Dock and Boat Lift. (A. 016). The proposed new dock and boat lift total 482 square feet of surface area. (A. 016). The new boat lift (“New Boat Lift”) is proposed for construction in relatively the same location and footprint as the 2001 Boat Lift, with the exception of moving it six (6) feet seaward. (A. 016). The New Boat Lift’s proposed location and distance will remain at 4.7 feet from the south property line – the same distance that was permitted by the County in 2001 and that has been in place for the last 20 years. (A. 016, 054, 083).



Even though the boat lift has been the same distance from the Petitioners' property for 20 years, Dr. Donovan was required to obtain a signed statement of no objection from the Petitioners in order to replace the New Boat Lift outside the center one-third of his Property. (A. 008); (A. 016-033); (A. 101, L. 13-16). Because the Petitioners would not provide Dr. Donovan with a signed statement of no objection, he proceeded with a variance request. (A. 008, 016).

The Variance Hearing for the New Boat Lift

Dr. Donovan's application for a variance to the requirements of Section 58-555(b)(2) for the New Boat Lift was presented to the Board at a public hearing on May 5, 2021. (A. 068-117).

At the hearing, County staff recommended that the Board deny Dr. Donovan's variance request to move the New Boat Lift six (6) feet seaward on the south side of the dock. (A. 007-009). Staff opined that a special condition and hardship did not exist because (1) the south side of the dock is a suitable habitat for seagrass growth and (2) Dr. Donovan would be able to relocate the boat lift to the north side of the dock without the need for a signature of no objection from the Petitioners. (A. 009). County staff did not opine, nor was it alleged at the hearing, that the New Boat Lift did not comply with the design criteria set forth in Section 58-555(a) (1)-(8) for private docks.

Despite their objection to Dr. Donovan's request, County staff opined that the New Boat Lift met several of the variance criteria set forth in Section 138-231, specifically:

Section 138-231(e) *Consideration of rezoning*: Rezoning will not reduce the need for a variance, as County Code Section 58-555 applies equally to the unincorporated areas regardless of zoning.

Section 138-231(g) *Detriment to public welfare*: Both the Dock and Boat Lift are not detrimental to the public welfare.

Section 138-231(h) *Circumvent Board approval*: Both the Dock and Boat Lift will not circumvent any previous Board approval.

(A. 009).

Staff did not opine, nor is there any allegation from the Petitioners, that the New Boat Lift is inconsistent with the requirements of the County's Comprehensive Plan. (A. 001-123).

At the hearing, Dr. Donovan reiterated his request to shift the New Boat Lift six (6) feet seaward, but to otherwise keep it in relatively the same location and footprint as the 2001 Boat Lift. (A. 110, L. 3-12). In support of his request, Dr. Donovan presented the testimony of Terri Skapik, the owner and president of Woods Consulting, a firm that specializes in marine design, engineering, and permitting. (A. 085, L. 5 – A. 091, L. 22). Ms. Skapik opined that the New Boat Lift should remain on the south side of the dock where it has been located for over 20 years due to the "...very robust grass beds..."

located on the north side of the dock that would be negatively impacted by the relocation of the New Boat Lift. (A. 087, L. 3-16); (A. 097, L. 12-23). Ms. Skapik also opined that shifting the New Boat Lift six (6) feet seaward would provide Dr. Donovan with an additional 9.5 inches of water depth. (A. 087, L. 16 – 22). The additional depth will provide navigational advantages in a relatively shallow area and allow for "... the lift with the bunks and the beams for the boat to ... [] .. be lifted out of the water." (A. 087, L. 23 – A. 088, L. 13).

The Board found that the testimony and evidence presented concerning the seagrass beds and water depths constituted sufficient evidence of hardships and special conditions that warranted granting Dr. Donovan's variance request. (A. 112-13). The Board noted that it "would be a real impact on seagrasses to force the applicant to go to the north side as opposed to just basically putting it in the same place that it is but pushing it out a little bit further." (A. 115, L. 21 – 116, L. 1). The Board also noted that the request was "de minimis" and that the variance request as proposed would not impact the ecosystem or the adjacent property owners. (A. 115, L. 6-13).

The Board conditionally approved the variance for the New Boat Lift by a unanimous vote at the hearing. (A. 116). The Board's approval of the

variance is conditioned upon Dr. Donovan obtaining all required permits (to include a County Water and Navigation Permit), to comply with all permit conditions, and to pay all applicable fees. (A. 005). On that same date, the Board issued a final order memorializing its approval of the variance. (A. 005).

STANDARD OF REVIEW

Petitioners seek the issuance of a writ of common law certiorari pursuant to Fla. R. App. P. 9.100(c). A circuit court's first tier certiorari review is limited to a determination of whether: (1) procedural due process was afforded; (2) the essential requirements of the law were observed; and (3) the administrative findings and judgment are supported by competent and substantial evidence. *Haines City Cmty. Dev. v. Heggs*, 658 So. 2d 523 (Fla. 1995).

SUMMARY OF THE ARGUMENT

In the instant appeal, Petitioners argue that the Board's approval of the variance for the New Boat Lift is a departure from the essential requirements of the law and is not based on competent and substantial evidence. Petitioners do not raise procedural due process allegations in their Petition.

The Petitioners' argument that the variance is a departure from the essential requirements of the law is without merit. The applicable regulation

to a variance request in Pinellas County is Section 138-231 of the Code. The Board correctly considered and applied Section 138-231 to the New Boat Lift variance request. This argument should be denied by this Court and the Board's approval of the variance for the New Boat Lift should be affirmed.

Petitioners' assertion that the record lacks competent and substantial evidence to support the Board's approval of the variance for the New Boat Lift ignores the evidence in the record supporting the Board's decision and instead, asks this Court to reevaluate the evidence presented and improperly rely on the statements of legal counsel at the hearing to serve as a basis to quash the Board's decision. It is black letter law that the arguments of legal counsel are not evidence – in any proceeding. Furthermore, for this Court to ignore the evidence supporting the Board's approval of the variance would constitute a departure from the essential requirements of the law. This argument should be denied by this Court and the Board's approval of the variance for the New Boat Lift should be affirmed.

LEGAL ARGUMENT

A. THE BOARD APPLIED THE CORRECT LAW, SECTION 138-231 OF THE COUNTY CODE, TO THE VARIANCE REQUEST FOR THE NEW BOAT LIFT.

The Petitioners assert that the Board's approval of the variance for the New Boat Lift is a departure from the essential requirements of the law.

A departure from the essential requirement of the law occurs when the lower tribunal violates a “clearly established principle of law” or fails to apply the correct law. **“A decision made according to the form of law and the rules prescribed for rendering it, although it may be erroneous in its conclusion as to what the law is as applied to facts, is not an illegal or irregular act or proceeding remediable by certiorari.”** (emphasis added); *Dep’t of Highway Safety & Motor Vehicles v. Chakrin*, 304 So. 3d 822, 826 (Fla. 2d DCA 2020) (citing *Haines*, 658 So. 2d at 525)); *State v. Jones*, 283 So. 3d 1259, 1266 (Fla. 2d DCA 2019); *Surf Works, L.L.C. v. City of Jacksonville Beach*, 230 So. 3d 925, 930 (Fla. 5th DCA 2017).

Yet, even in the event the lower tribunal departs from the essential requirements of the law in rendering its decision, this Court still “...cannot grant certiorari absent a showing that the failure to apply the correct law **resulted in a ‘miscarriage of justice.’”** (emphasis added); *Chakrin*, 304 So. 3d at 826 (citing *Dep’t of Highway Safety & Motor Vehicles v. Hofer*, 5 So. 3d 766, 826 (Fla. 2d DCA 2009)). A miscarriage of justice is more than just a simple legal error, it is an “inherent illegality or irregularity, an abuse of judicial power, or an act of judicial tyranny perpetrated with disregard of procedural requirements, resulting in a gross miscarriage of justice.” *Haines*, 658 So. 2d at 523; *Jones*, 477 So. 2d at 569.

It is undisputed by the parties that Section 138-231 of the County Code is the applicable law for Dr. Donovan's variance request. The Petitioners concede in their Petition that the Board applied Section 138-231 to the variance request for the New Boat Lift; however, they take issue with the evidence relied upon by the Board to find that an unnecessary hardship (required by Section 138-231(b)) exists. (Petition, p. 27-45). Such an argument is legally appropriate under the competent and substantial evidence criteria, but it has no applicability in this instance. A departure from the essential requirements of the law has not occurred simply because the Petitioners do not agree with the correctness of the Board's decision in its application of Section 138-231. As discussed above, the law is very well-settled in this regard. The Board applied the correct law, Section 138-231 of the County Code, to the variance request for the New Boat Lift. The Petitioners' argument is without merit and should be denied.

B. THE BOARD'S DECISION TO APPROVE THE VARIANCE IS SUPPORTED BY COMPETENT AND SUBSTANTIAL EVIDENCE.

Petitioners maintain that the Board's decision to grant the variance for the New Boat Lift is not supported by competent and substantial evidence. In support of this claim, Petitioners largely rely upon the statements of legal counsel at the variance hearing.

Whether the Board's decision is supported by competent and substantial evidence "involves purely a legal question: whether the record contains the necessary quantum of evidence." *Lee Cnty. v. Sunbelt Equities, II, Ltd. P'ship*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993). Thus, on certiorari review, it is not this Court's duty to reweigh the evidence, determine that contrary evidence was more persuasive, or substitute its judgment for that of the lower tribunal (as Petitioners suggest in their brief). *Haines*, 658 So. 2d at 530; *Dusseau v. Metro. Dade Cnty. Bd. of Cnty. Comm'rs.*, 794 So. 2d 1270, 1276 (Fla. 2001); *The School Bd. of Hillsborough Cnty. v. Tenney*, 210 So. 3d 130, 134 (Fla. 2d DCA 2016). Nor does it matter that the evidence presented at the hearing could have supported a different conclusion by the Board. *Tenney*, 210 So. 3d at 134; *Dusseau*, 794 So. 2d at 1276. "[A] circuit court applies the 'wrong' or 'incorrect' law when it reweighs or reevaluates conflicting evidence and decides the merits of the underlying dispute anew." *City of Satellite Beach v. Goersch*, 217 So. 3d 1143, 1145 (Fla. 5th DCA 2017) (citations omitted); *Miami-Dade Cnty. v. Brennan*, 802 So. 2d 1154 (Fla. 3d DCA 2001) (circuit court improperly reweighed evidence and substituted its judgment for that of the zoning board when it reversed the denial of the variance).

While this Court must only review the record of the underlying hearing for evidence that supports the Board's decision, that evidence must still be competent and substantial. Competent substantial evidence is that which is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached by the Board. *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957). "Surmise, conjecture or speculation" are not substantial evidence. *Id.*; *Katharine's Bay, LLC v. Fagan*, 52 So. 3d 19, 30 (Fla. 1st DCA 2010). Generalized statements by a neighbor in opposition to a land use proposal do not constitute competent and substantial evidence. *City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc.*, 857 So. 2d 202, 204 (Fla. 3d DCA 2003); *City of Apopka v. Orange Cnty.*, 299 So. 2d 657, 660 (Fla. 4th DCA 1974). And finally, arguments or legal analysis of attorneys who represent the parties (including the County's lawyers) do not constitute evidence – in any proceeding. *Kunsmann v. Wall*, 125 So. 3d 868, 870 (Fla. 4th DCA 2013); *Rimes v. Rimes*, 930 So. 2d 770, 771 (Fla. 2d DCA 2006) ("[I]t is black letter law that argument of counsel does not constitute evidence.").

The record of the May 5, 2021 variance hearing contains competent and substantial evidence to support the Board's unanimous determination

that Dr. Donovan's variance request for the New Boat Lift met the requirements of Section 138-231 of the County's Code:

Section (a) *Special Conditions* and Section (b) *Unnecessary hardship*.

The location of the current dock and boat lift was selected by the prior owner of the Subject Property and approved by the County in 2001. For 20 years, the current boat lift has been located 4.7 feet from the southern property line (the Petitioners' property). The Board's approval of the variance request for the New Boat Lift remains at 4.7 feet from the Petitioners' property.

Dr. Donovan's expert, Terri Skapik, opined that special conditions and an unnecessary hardship exist due to the location of the seagrass beds and the water depth in this location. Ms. Skapik opined that allowing the New Boat Lift to remain on the south side of the dock (where it has been located for over 20 years) will not negatively impact the seagrass located in that area or harm the "robust" seagrass on the north side of the dock. (A. 087, L. 3-16); (A. 097, L. 12-23). Ms. Skapik also opined that shifting the New Boat Lift six (6) feet seaward would provide Dr. Donovan with an additional 9.5 inches of water depth in an otherwise relatively shallow area. (A. 087, L. 16 - A. 088, L. 13). The Board found that the testimony and evidence presented

concerning the seagrass beds and water depths constituted sufficient hardships and special conditions. (A. 112-13).

Subsection (c) *Minimum code deviation necessary.*

The variance request for the New Boat Lift proposes the same 4.7-foot setback from the Petitioners property that was approved by the County in 2001 and that has been in place for the last 20 years. The Board found the request to be “de minimis” and that the evidence presented demonstrated that the variance request as proposed would not impact the ecosystem or the adjacent property owners. (A. 115, L. 6-13).

Subsection (d) *Consistency with the Land development code.*

Chapter 58 of the County Code applies to the construction and repair of residential docks. The variance request for the New Boat Lift is triggered by the Petitioners’ refusal to provide a signed statement of no objection to the requirements in Section 58-555(b)(2). The New Boat Lift otherwise complies with the design criteria set forth in Section 58-555(a) (1)-(8) and the intent of Chapter 58 to minimize the adverse impacts of docking activities on the natural resources (e.g., seagrass beds) of the County.

Subsection (e) consideration of rezoning.

County staff opined that rezoning will not reduce the need for a variance, as County Code Section 58-555 applies equally to the unincorporated areas regardless of zoning. (A. 009).

Subsection (f) Consistency with the Comprehensive Plan.

The County's Comprehensive Plan future land use map designation for the subject Property is Residential Low. (A. 016). The New Boat Lift is for personal watercraft in connection with a single-family home (a residential use). (A. 016). County staff did not opine, nor is there any allegation from the Petitioners, that the New Boat Lift is inconsistent with the requirements of the County's Comprehensive Plan.

Subsection (g) detriment to public welfare.

County staff opined that the New Boat lift is not detrimental to the public welfare. (A. 009).

Subsection (h) circumvent Board approval.

County staff opined that the Board's approval of the New Boat Lift will not circumvent any approvals by the Board of County Commissioners for Pinellas County. (A. 009).

The record contains ample competent and substantial evidence to support the Board's unanimous approval of the variance for the New Boat lift. The Petitioners' argument is without merit and should be denied.

CONCLUSION

The Petitioners' argument that the variance is a departure from the essential requirements of the law is without merit. The applicable regulation to a variance request in Pinellas County is Section 138-231 of the Code. The Board correctly considered and applied Section 138-231 to the New Boat Lift variance request. This argument should be denied by this Court.

Petitioners' assertion that the record lacks competent and substantial evidence to support the Board's approval of the variance for the New Boat Lift ignores the evidence in the record supporting the Board's decision and instead, asks this Court to reevaluate the evidence presented and improperly rely on the statements of legal counsel at the hearing to serve as a basis to quash the Board's decision. It is black letter law that the arguments of legal counsel are not evidence – in any proceeding. Furthermore, for this Court to ignore the evidence supporting the Board's approval of the variance would constitute a departure from the essential requirements of the law. This argument should be denied by this Court.

For the reasons stated above, this Court should deny the Petition and affirm the Board's approval of the variance for the New Boat Lift.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically filed with the Clerk of the Court and served on November 24, 2021 by e-mail pursuant to Fla. R. Jud. Admin. 2.516(b) to:

Shane T. Costello, Esquire
Florida Bar Certified, Business Litigation
Email: Shane.Costello@hwlaw.com
Melissa.Huff@hwlaw.com
RELit.STC@hwlaw.com

Katie E. Cole, Esquire
Email: Katie.Cole@hwlaw.com
Robyn.Moehring@hwlaw.com

A. Evan Dix, Esquire
Email: Evan.Dix@hwlaw.com
Bille.Wallis@hwlaw.com

Hill, Ward & Henderson, P.A.
101 East Kennedy Blvd., Suite 3700
Tampa, Florida 33602
Counsel for Respondent, James P. Donovan

Edward B. Cole
Email: colelaw@tampabay.rr.com
COLE LAW FIRM, P.A.
844 Wisconsin Avenue
Palm Harbor, Florida 34683
Co-Counsel for Petitioners

Nicholas A. Shannin, Esquire
Email: service@shanninlaw.com
SHANNIN LAW FIRM, P.A.
214 South Lucerne Circle East
Suite 200
Orlando, Florida 32801
Co-Counsel for Petitioners

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the brief complies with the applicable font and word count limit requirements set forth in the Florida Rules of Appellate Procedure.

/s/ Anne M. Morris, Esq.

ANNE M. MORRIS, ESQ.
Florida Bar Certified in City, County, and
Local Government Law
Florida Bar No.: 087267
Assistant County Attorney
Primary E-mail: amorris@pinellascounty.org
Secondary E-mail:
eservice@pinellascounty.org
Pinellas County Attorney's Office
315 Court Street
Clearwater, Florida
(727) 464-3354; FAX (727) 464-4147
COUNSEL for PINELLAS COUNTY