

reconstruction shall occur in the front 75 feet of an area immediately adjacent to and including the normally recognized bank of a water, except for one deck per parcel located at the top of the bank no larger than 200 square feet and a boardwalk no wider than five feet to provide reasonable pedestrian access to water dependent structures such as docks..”

A variance requested pursuant to section 120.542, Florida Statutes, must demonstrate that the purpose of the underlying statute will be or has been achieved by other means; and that application of the rule would create a substantial hardship or would violate principles of fairness. Furthermore, pursuant to the District’s Statement of Agency Organization and Operation, the agency decision deadline for variance requests will be reduced from 90 days to 45 days if the request is demonstrated by the petitioner to be an emergency situation that will cause immediate adverse impacts.

Staff determined that the petitioner had failed to demonstrate any unusual hardship to keep the concrete cap and tie backs as constructed. The hardship the petitioner is asserting is self-imposed as the petitioner constructed the seawall, cap, and tiebacks without permits or consultation with District staff.

The petitioner has also not provided an alternative means of meeting the underlying purpose of the rule by proposing to offset the impact of the unpermitted concrete by removing grandfathered concrete. Although the petitioner requests that 802 square feet remain, the petitioner does not include the sidewalks that have been allowed to remain. Including these areas, the actual amount of impervious to remain within the 75-foot setback would be 1041, leaving no net reduction of impervious surfaces within the 75-foot setback.

Denial of the emergency variance request will require, as part of the after-the-fact permit, all concrete to be removed from within the 75-ft. setback, with the exception of a 5 ft. wide path to access stairs and a 5 ft. wide cap/access along the seawall. Granting of the variance will allow the concrete to remain in the 75-ft. setback as part of the after-the-fact permit.