



Myrback Appeal of WND-20-00231REV

Section 58-536(b):

“Any person, including the state, aggrieved by the county’s findings of fact and determination under this article may, within 30 days of such findings and determination, petition for a hearing, stating in such petition the grounds upon which the county has erred in its findings and wherein such person is aggrieved by such findings. The board may, in its discretion, grant or deny such hearing.”

Petition and Notice Requirements



Section 58-536(b):

A Petition for Hearing filed by Brian and Lori Myrback was considered by this Board on October 17, 2023. The Petition concerns a dock and boat lift authorized by Private Dock Construction Permit WND-20-00231REV at Dr. James Donovan's residence, which is directly north of the Myrbacks' residence. The Petition was approved and this Hearing was scheduled.

Section 58-535(a):

Adequate notice for this hearing was timely mailed to all owners of property within 500 feet of the docking facilities authorized by WND-20-00231REV.

Property Location



Property Location

WND-20-00231REV APPEAL

Subject Property:
106 Harbor Drive

Appellant Property:
104 Harbor Drive



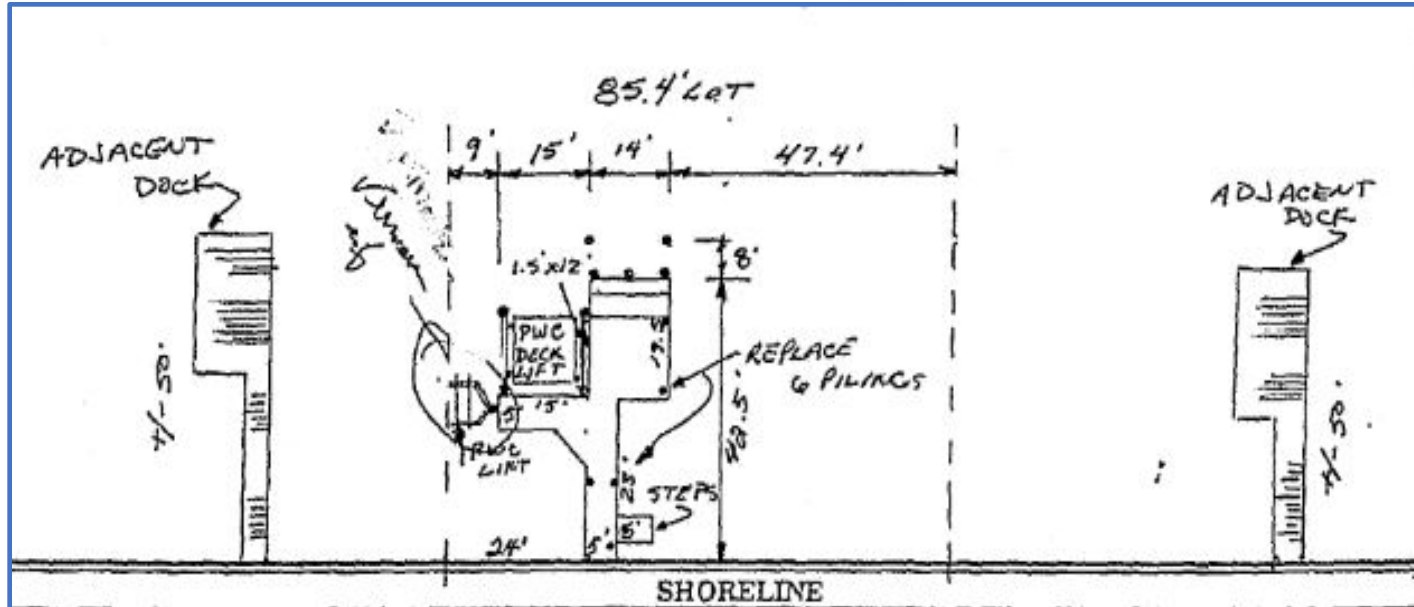
106 Harbor Drive, Palm Harbor



Previously Approved Permit (P30636-01)



IV. PROJECT DESCRIPTION:	(OFFICIAL USE ONLY)
A. Nature and Size of Project: <u>REPLACE 6 DOCK PILING ON</u>	
<u>EXISTING DOCK (REMOVE PWC LIFT)</u>	
Square feet: <u>EXISTING-</u>	



The undersigned does not object to the proposed dock and requested variances as drawn in the space provided above.

Left Owner: <u>FEINSTEIN</u>		Right Owner	
Signature <u>[Signature]</u>	Date <u>9/13/01</u>	Signature <u>N/A</u>	Date
Municipality Approval		Water and Navigation Approval	

Approved Plan: WND-20-00231

- In December 2020, Dr. Donovan applied for a permit to modify the dock and boat lift authorized by the 2001 Permit. Specifically, he sought to extend the dock by 8 feet and shift the boat lift ~6 feet seaward.
- A variance to both (i) (south) side setback and (ii) length was required, which the Board of Adjustment and Appeals (BOAA) considered on May 5, 2021.
- The BOAA approved both variances, and WND-20-00231 was approved reflecting the approved variances on May 18, 2021.



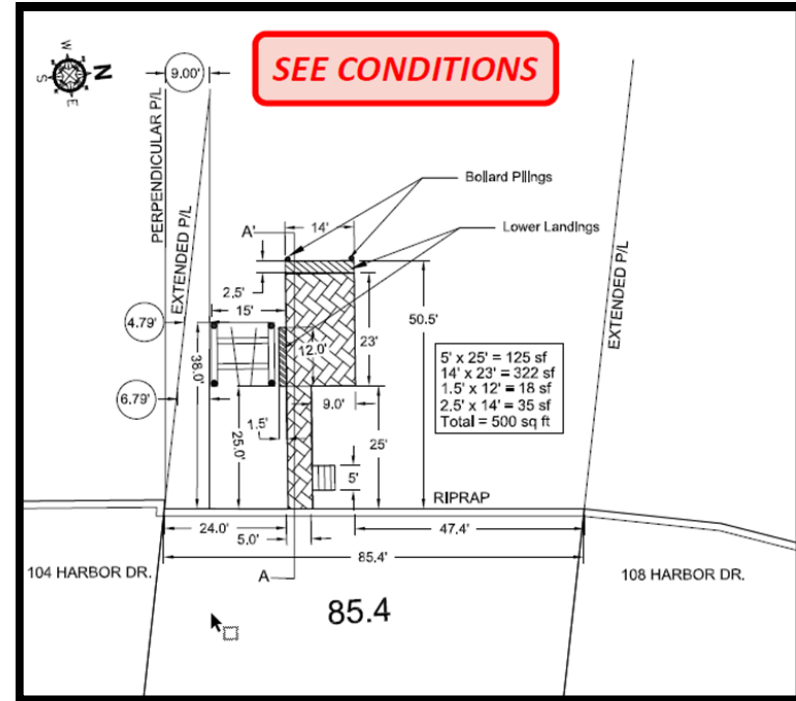
Circuit Court Appeal



- On June 4, 2021, the Myrbacks filed an appeal with Circuit Court seeking to overturn the BOAA's ruling pertaining to the boat lift.
- Significantly, the Myrbacks did not challenge the BOAA's ruling pertaining to the dock length.
- On August 2, 2022, the Circuit Court ruled in favor of the Myrbacks, thus quashing the variance that allowed the boat lift to shift ~6 feet seaward.
- On September 8, 2022, in light of the Circuit Court's ruling, Dr. Donovan applied to revise WND-20-00231.

Approved Plan: WND-20-00231REV

- The revision includes the 50.5-foot-long dock (reflecting the 8-foot extension approved by the BOAA not challenged on appeal) shown in WND 20-00231 but shifts the boat lift ~6-feet landward to the same location shown in the 2001 Permit.
- The revision was approved by Staff on April 28, 2023, thereby creating WND-20-00231REV



Appeal Overview



A Petition for Hearing (Notice of Appeal) concerning WND 20-00231REV was timely submitted by the Myrbacks on May 26, 2023, amended on June 1, 2023, and supplemented on November 9, 2023.

The Myrbacks' position is summarized as follows: Any part of the dock or boat lift extending outside the center one-third of Dr. Donovan's property's waterfront width must either:

- Match the 2001 Permit**
- Receive a (new) variance from the BOAA or BCC**

The Myrbacks primary concern is that a larger vessel can utilize the boat lift due to removal of a "stub out" in front of the boat lift shown in the 2001 Permit. Most of the stub out was removed circa 2007 by a prior owner, and the remainder was removed by Dr. Donovan after the May 5, 2021 BOAA Hearing.

Appeal Overview



- **The County Code does not require permits for removal of docking facilities. Thus, the removal of the stub out was/is not illegal.**
- **Generally, the County Code does not govern the type or size of vessels that utilize docking facilities. Thus, the type and size of vessel that Dr. Donovan and future owners place on the boat lift is not only speculative, but outside of Staffs' regulatory purview.**
- **Placing the boat lift in the same location shown in the 2001 Permit is consistent with County Code Section 58-544(a)(2)e. (governing repair/replacement/reconfiguration of docking facilities).**
- **The Myrbacks did not appeal the BOAA Variance allowing the extended dock. Consequently, the extended dock must be permitted by Staff absent other factors warranting denial (e.g., environmental) not present here.**

Staff recommends:

Upholding the issuance of Private Dock Construction Permit WND-20-00231REV authorizing a dock and boat lift at the single-family residence owned by Dr. James P. Donovan located at 106 Harbor Drive, Palm Harbor.



Questions