

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

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

Petitioners,

v.

Circuit Court Case No: 21-000014-AP-88B
Lower Tribunal Case No: VAR-21-15

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

Respondents.

**AMENDED APPENDIX TO
AMENDED PETITION FOR WRIT OF CERTIORARI**

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Co-Counsel for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 23, 2021, I electronically filed the foregoing with the Clerk of Pinellas County by utilizing the Florida Courts E-Filing Portal which will send a notice of electronic filing and a true and correct copy of the foregoing to the following:

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/s/ Nicholas A. Shannin
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May 5, 2021

James Donovan
106 Harbor Drive
Palm Harbor, FL 34683

Re: Board of Adjustment and Appeals Case No. VAR-21-15
Parcel No. 10/28/15/65124/000/0210

Dear Applicant:

Please be advised that by action of the Pinellas County Board of Adjustment and Appeals on May 5, 2021, your request for a variance to allow for the construction of a private residential dock extending a total length of 50.5 feet from the seawall, for the property located at 106 Harbor Drive in Palm Harbor, was conditionally approved based on the Board's concurrence with staff's findings and recommendation.

In addition, your requested variance to allow for the construction of a private residential boat lift with a 4.7 foot setback from the south property line was conditionally approved based on the Board's determination that the request meets the criteria for granting variances found in Section 138-231 of the Pinellas County Land Development Code and Section 58-539 of the Pinellas County Code.

The conditions of approval are as follows:

1. Applicant must obtain all required permits – most notably a County Water and Navigation Permit – and pay all applicable fees.
2. Any conditions in any such permits must be adhered to.

The applicant is notified that the Decision Letter Addendum (attached) explains standard Board conditions, policies and procedures which are a part of the official decision and conditions regarding your Board of Adjustment and Appeals case. If you have specific questions, please feel free to contact us.

Sincerely,

The Pinellas County Housing and Community Development Department

cc: Katie Cole
Attachment
VAR-21-00011

DECISION LETTER ADDENDUM
BOARD OF ADJUSTMENT & APPEALS LETTER

STANDARD TIME LIMITS

The Applicant is hereby notified that, pursuant to Pinellas County Land Development Code Sections 138-230 (d) and 138-240 (d), all approvals granted by the Board shall be valid for two years, unless the Board prescribes an alternative time limit consistent with the Pinellas County Land Development Code. Therefore, all rights and privileges granted herein shall become void if all applicable permits and clearances required by Pinellas County have not been obtained and construction commenced within two years from the date of Board approval.

EXTENSION OF TIME LIMITS

Pursuant to Pinellas County Land Development Code Sections 138-230 (e) and 138-240 (e), the Zoning Manager may grant an extension of one year for a variance or Type 2 Use approval upon a showing of good cause, provided the request for extension is submitted in writing stating the reason for extension and is received prior to the approval expiration date.

VACATING OR ABANDONMENT OF INTENT

Pursuant to Pinellas County Land Development Code Section 138-204 (f), all Type 2 Use approvals granted by the Board shall be deemed to automatically expire in the event a structure or use of land which is the subject of the Type 2 Use approval has been discontinued or removed for a period of 90 consecutive days.

APPROVED PLANS

Pursuant to Pinellas County Land Development Code Section 138-240 (b), a proposed site development diagram (concept plan) shall be submitted with each request for a Type 2 Use approval. The concept plan, once approved, shall become a condition upon which the use and structures shown thereon are permitted. Modifications to approved plans are subject to the provisions of Pinellas County Land Development Code Chapter 138, Article II, Division 9.

REVOCAION OF APPROVAL

Pursuant to Pinellas County Land Development Code Section 138-233, the Board may modify or revoke a previously granted variance or Type 2 Use approval if the Board finds that the use of the variance or Type 2 Use approval: (1) Is or has become detrimental to the general health, safety or welfare; (2) Does not meet the letter or the intent of the original standards required for such approval; or (3) Does not meet the letter or the intent of the special standards or conditions attached by the Board in its approval of the application.

ADDITIONAL LAWS AND REGULATIONS

Please be advised that any approval or conditional approval does not eliminate the necessity of compliance with other governmental regulations including local, State or Federal laws.

Revised 1/1/19

WORKSHEET AND RECOMMENDATION
BOARD OF ADJUSTMENT AND APPEALS HEARING
BA CASE NUMBER: VAR-21-15

ADMINISTRATIVE HEARING: April 5, 2021 @ 9:00 A.M. - Virtual ZOOM Meeting with Water and Navigation Staff

DRC MEETING: April 12th, 2021 @ 9:00 A.M. - 1st Floor, Housing and Community Development Department Conference Room

BOA HEARING: May 5th, 2021 @ 9:00 A.M. - Magnolia Room, Florida Botanical Gardens

OWNER/ADDRESS: James Donovan
106 Harbor Drive
Palm Harbor, FL 34683

REP/ADDRESS: Katie Cole
600 Cleveland Street
Clearwater, FL 33755

PROPERTY ZONING: R-3, Single Family Residential District

LAND USE DESIG: Residential Low

TYPE APPLICATION: Variance

CASE DESCRIPTION: A variance to allow for the construction of a private residential dock extending a total length of 50.5 feet from the seawall, where only 42.7 feet is allowed absent both neighbors' signatures of no objection, for the property located at 106 Harbor Drive, in unincorporated Palm Harbor.

A variance to allow for construction of a private residential boat lift with a 4.7 foot setback from the south property line, where 28.4 feet is required absent the south neighbor's signature of no objection, for the property located at 106 Harbor Drive, in Unincorporated Palm Harbor.

PARCEL ID NUMBER: 10/28/15/65124/000/0210

NOTICES SENT TO: James Donovan, BCC & Surrounding Owners (See Attached List)

DISCLOSURE: N/A

VAR-21-15 RECOMMENDATION: CONDITIONAL APPROVAL OF THE RESIDENTIAL PRIVATE DOCK AND DENIAL OF THE BOAT LIFT.

The subject property is a waterfront lot with an existing single-family home and a waterfront width of 85.4 feet. An existing dock and boat lift were constructed in 2001.

The existing dock and boat lift are 50.5 feet long, which requires signatures of no objection from both the north and south neighbors per County Code Section 58-555(b)(1); these signatures were obtained. However, the front of the existing dock includes an unauthorized 8' by 14' lower landing, which was installed by the previous owner around 2005.

The existing dock and boat lift are outside of the center 1/3rd of the property (or less than 28.4 feet from the south property line), which requires a signature of no objection from the south neighbor per County Code Section 58-555(b)(2); this signature was obtained.

Staff has no objection to the approval of the proposed residential private dock (the "Dock"), as it appears to meet the criteria in Section 138-231 of the Pinellas County Land Development Code. Additionally, the Dock is in the same location as the exiting dock with essentially the same dimensions.

However, Staff objects to the proposed installation of the boat lift (the "Boat Lift"), as it does not appear to meet the same variance criteria. In short, there are no special conditions or unnecessary hardships justifying the Boat Lift. Significantly, the Boat Lift can be placed on the north side of the Dock without the north neighbor's signature of no objection (or a variance to this signature requirement). Additionally, placing the Boat Lift on the north side of the Dock presents minimum impacts to seagrass.

Significantly, no variance for the Dock would be required if the applicant obtained signatures of no objection from the north and south neighbors per County Code Section 58-555(b)(1). However, the applicant failed to obtain these signatures. It follows that the variance sought for the Dock is technically a waiver from the requirement to obtain both neighbors' signatures.

Likewise, no variance for the Boat Lift would be required if the applicant obtained signatures of no objection from the south neighbor per County Code Section 58-555(b)(2). However, the applicant failed to obtain this signature. It follows that the variance sought for the Boat Lift is technically a waiver from the requirement to obtain the south neighbor's signature.

Staff recommends approval of the Dock subject to the following conditions:

1. Applicant must obtain all required permits – most notably a County Water and Navigation Permit – and pay all applicable fees.
2. Any conditions in any such permits must be adhered to.

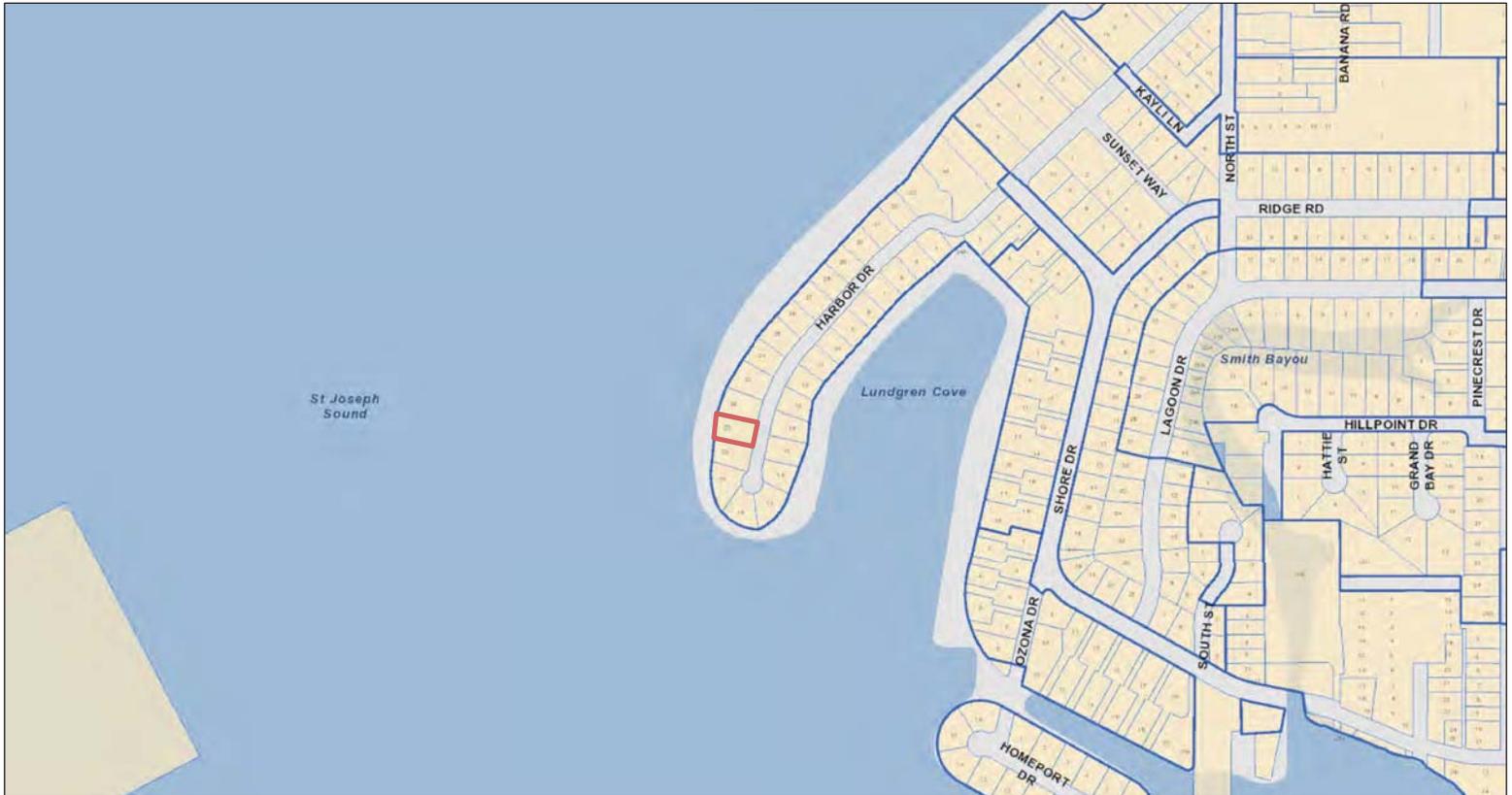
Staff recommends denial of the Boat Lift.

Criteria for Granting Variances Pinellas County Land Development Code Section 138-231
a. <i>Special conditions.</i> That special conditions and circumstances exist which are peculiar to the land, structure, or building involved:
Staff response: Regarding the Dock: <i>Because the Dock is in the same location of the existing dock, Staff has no objection.</i> Regarding the Boat Lift: <i>There are no special conditions present on the property justifying the Boat Lift. The Boat Lift can be placed on the north side of the Dock without the need for the north neighbor's signature of no objection (or a variance to this signature requirement). Although there is seagrass on the</i>

<p><i>north side of the Dock (which again, closely mirrors the footprint of the existing dock), the shading from the Dock makes it harder for seagrass to grow – hence why seagrass is sparse here. The south side of the Dock provides much better habitat for seagrass to prosper, as this side receives an abundance of sunlight with little to no shading from the Dock.</i></p>
<p>b. <i>Unnecessary hardship.</i> That literal interpretation of the provisions of the 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. The hardship shall not be self-imposed:</p>
<p>Staff response: Regarding the Dock: <i>Because the Dock is in the same location of the existing dock, Staff has no objection.</i> Regarding the Boat Lift: <i>There is no unnecessary hardship justifying the Boat Lift; other homes in the neighborhood have the same length and setback restrictions for docks and boat lifts. Property owners in the neighborhood that built docks or boat lifts obtained signatures from impacted neighbors where required. Moreover, as established above, the applicant can still enjoy a boat lift on the north side of the Dock.</i></p>
<p>c. <i>Minimum code deviation necessary.</i> That the granting of the request is the minimal code deviation that will make possible the reasonable use of the land, building or structure:</p>
<p>Staff response: Regarding the Dock: <i>Because the Dock extends just as far as the existing dock, Staff has no objection.</i> Regarding the Boat Lift: <i>No deviation is necessary for the Boat Lift. As established above, the applicant can still enjoy a boat lift on the north side of the Dock.</i></p>
<p>d. <i>Consistency with the Land Development Code.</i> That the granting of the request will be in harmony with the general intent, purpose and spirit of the Code:</p>
<p>Staff response: <i>Pertaining to the dock length: the request is consistent with Section 138-3311(a) pertaining to the construction of docks and piers. Pertaining to the boat lift: the request is inconsistent with Section 138-3311(a) pertaining to the construction of docks and piers.</i></p>
<p>e. <i>Consideration of rezoning.</i> 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:</p>
<p>Staff response: <i>Rezoning the subject property is not appropriate, as it is located within an established R-3 zoned single-family residential area. Rezoning also would not reduce the need for a variance, as County Code Section 58-555 applies equally to all unincorporated areas regardless of zoning.</i></p>
<p>f. <i>Consistency with the Comprehensive Plan.</i> That the granting of the request will be consistent with the intent and limits of the Comprehensive Plan:</p>
<p>Staff response: <i>The dock request is consistent with the Pinellas County Comprehensive Plan Future Land Use & Quality Communities Element Objective 1.2 and Coastal Management Element Objective 4.1 and related policies.</i></p>
<p>g. <i>Detriment to the Public Welfare.</i> That the request will not be injurious to the area involved or otherwise detrimental to the public welfare:</p>
<p>Staff response: <i>Both the Dock and Boat Lift are not detrimental to the public welfare.</i></p>
<p>h. <i>Circumvent Board Approval.</i> 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:</p>
<p>Staff response: <i>Both the Dock and Boat Lift will not circumvent any previous Board approval.</i></p>

Reference #: VAR-21-00011

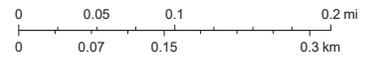
VAR-21-15



3/24/2021, 11:25:46 AM

Site Address

1:4,514



<http://www.pcpao.org>

Pinellas County

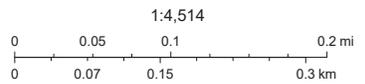
VAR-21-15



3/24/2021, 11:53:25 AM

- Site Address
- Zoning
- Future Land Use Unincorporated
 - Residential Rural – 0.5 du/ac (dwelling units per acre) - 0.30 FAR
 - Residential Estate – 1.0 du/ac - 0.30 FAR
 - Residential Suburban – 2.5 du/ac - 0.30 FAR

- Residential Low – 5.0 du/ac - 0.40 FAR
- Residential Urban – 7.5 du/ac - 0.40 FAR
- Residential Low Medium – 10.0 du/ac - 0.50 FAR
- Residential Medium – 15.0 du/ac - 0.50 FAR
- Residential High – 30.0 du/ac - 0.60 FAR
- Commercial Neighborhood – 0.30 FAR
- Commercial General – 24 du/ac - 1.2 FAR
- Commercial Recreation – 10 du/ac – 0.35 FAR, 0.50 FAR for marinas
- Residential/Office/Limited – 7.5 du/ac – 0.20 FAR
- Residential/Office/General – 15.0 du/ac – 0.50 FAR



Use of this PARCEL MAP is subject to terms of use at: http://www.pcpao.org/Terms_of_Use.html

Pinellas County

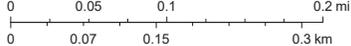
VAR-21-15



3/24/2021, 11:50:57 AM

Site Address

1:4,514



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Pinellas County

3/26/2021

Record Details

VAR-21-00011 - VAR-21-15

Menu Reports Help

File Date: [03/23/2021](#)

Application Status: [In Review](#)

Application Type: [Variance](#)

Application Detail: [Detail](#)

Description of Work: [The Applicant requests relief from the criteria of Section 58-555\(b\). Specifically, the Applicant requests a dock length of 50.5', which is 7.8' longer than permitted under Section 58-55\(b\)\(1\). The Applicant also requests that the dock and lift be allowed to remain sited southward as permitted in 2001.](#)

Application Name: [VAR-21-15](#)

Site Address: [106 HARBOR DR, PALM HARBOR, FL 34683](#)

Owner Name: [DONOVAN, JAMES P LIV TRUST](#)

Owner Address: [106 HARBOR DR, PALM HARBOR, FL 34683](#)

Parcel No: [102815651240000210](#)

Contact Info: Name	Organization Name	Contact Type	Contact Primary Address	Status
Katie Cole	Hill Ward Hende...	Attorney		Active

Licensed Professionals Info: Primary	License Number	License Type	Name	Business Name	Business License #

Total Fee Assessed: [\\$375.00](#)

Total Fee Invoiced: [\\$375.00](#)

Balance: [\\$0.00](#)

Custom Fields: Zoning Variance

Entity

-

Contract for Sale

[No](#)

Option to Purchase

[No](#)

Has there been a previous application in the last 2 years?

[No](#)

Applicant own property Contiguous to Subject Property

[No](#)

Is this after the fact?

[No](#)

Is there an existing violation?

[No](#)

Non-Residential/Residential

[Residential](#)

Current Structures/Improvements on Property

[Single family home and dock](#)

Contract Status

-

DRC Meeting Date

[04/12/2021](#)

BAA Hearing Date

[05/05/2021](#)

If yes then what is the case number

-

Hearing Held in Whose Name

-

Nature of Hearing

-

If Yes, what is the parcel number

-

If Yes, provide code violation number

-

Provide Violation Detail

-

Existing Density

[5.0 upa](#)

Existing Density

[5.0 upa](#)

Date Property Acquired

[06/25/2009](#)

Detriment to public welfare?

[The variance is not injurious to the area involved and allows for natural habitat to be maintained and avoided.](#)

Minimum Variance Necessary

[This is the minimum code request that avoids grasses, provides depth necessary and meets the navigational needs of the applicant. While other dock configurations may exist, they do not meet the above standards.](#)

Consistency with land development code

[The request is in the general harmony with the Code as the variance is within that which could otherwise be approved by staff. Unfortunately, the applicant's neighbor objects to the variance while the variance is reflective of the same relief that benefits the objecting neighbor. Therefore, the request must come before the Board.](#)

Special Conditions

[The literal interpretation of the Code will](#)

Consideration of Rezoning

[There is no specific request to accommodate a](#)

Is it consistent with comprehensive plan?

[The request is consistent with that which is permissible by Code](#)

3/26/2021

Record Details

[The literal interpretation of the Code will require the removal of an existing structure as well as a dock which infringes with the natural grasses and depths of the Property.](#)

[There is no rezoning necessary to accommodate a dock.](#) [The variance is consistent with that which is permissible by Code.](#)

Unnecessary Hardship
[The area docks are shown in general conformance with the request.](#)

Circumvent board approval?
[The Property does not have any conditions prohibiting the grant of this variance.](#)

STRUCTURES

Proposed Structure Occupied by Present Structure

[SFR with dock](#) SFR with dock

SURROUNDING PROPERTY

Direction	Land Use	Zoning	Existing Use
East	RL	R-3	SFR
North	RL	R-3	SFR
South	RL	R-3	SFR

Workflow Status:	Task	Assigned To	Status	Status Date	Action By
	Application Intake		Received	03/24/2021	Chris Young
	Completeness Review	Chris Young	Complete	03/24/2021	Chris Young
	Zoning Manager Review	Glenn Bailey			
	Admin Support Review				
	DRC Meeting				
	Staff Report and Recom...				
	Notifications				
	BAA Public Hearing				

Condition Status:	Name	Short Comments	Status	Apply Date	Severity	Action By
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Documents:	File Name	Document Group	Category	Description	Type	Document Status	Document Status Date
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[Show all](#)

Application Comments:	View ID	Comment	Date
	PLNDF22@B...	Water & Navigation Variance request to section ...	03/24/2021

Initiated by Product: ACA

Scheduled/Pending Inspections:	Inspection Type	Scheduled Date	Inspector	Status	Comments
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Resulted Inspections:	Inspection Type	Inspection Date	Inspector	Status	Comments
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Record



VAR-21-00005



VAR-21-00003



More

VAR-21-000...	STATUS	LOCATION	CONTACT	WORKFLOW
VAR-21-15 The Applicant re...	> In Review 03/24/2021 b...	> 106 HARBO... PALM HARB...	> Katie Cole	> 8 total Task ● 3 completed ○ 1 active

VAR-21-00011 - VAR-21-15

Submit Reset Cancel Help

Comment Standard Comment

Water & Navigation Variance request to section 58-55 (b)(1) to allow for the construction of a residential private dock and boat lift having a 4.7-foot setback from the south property line where 28.4 feet is required and a total length of 50.5 feet from the seawall where only 42.7 feet is allowed, for the property located at 106 Harbor Drive in Palm Harbor.

**Project Narrative and Variance Request
Dock and Boatlift – 106 Harbor Drive, Palm Harbor**

Mr. James Donovan (the “Applicant”) proposes a dock with a total of 482 square feet of surface area, at his home at 106 Harbor Drive, Palm Harbor (the “Property”). The dock will be 14’ in width at its widest point, and a total of 50.5’ in length. The proposed dock will include a boatlift on its south side, where there is currently a boatlift on the existing dock at the Property. The proposed dock is depicted on Exhibit A, attached hereto.

The proposed dock will meet all construction criteria of Section 58-554 of the Pinellas County Water and Navigation Regulations Code (the “Code”). Pursuant to the applicable criteria of Section 58-555(a) of the Code, the dock structure:

- Shall not extend more than 25% into the navigable portion of the adjacent waterway;
- Shall not extend more than 300 feet waterward of the mean high water line; and
- Shall not be designed to accommodate more than 2 boats for permanent mooring

The Applicant requests relief from the criteria of Section 58-555(b). Specifically, the Applicant requests a dock-length of 50.5’, which is 7.8’ longer than permitted under Section 58-55(b)(1). The Applicant also requests that the dock and lift be allowed to remain sited southward as permitted in 2001.

These requests for relief from the Code are justified for the following reasons. The Applicant purchased the Property in 2019, which included the existing dock on-site. The property was originally permitted for a dock of 42.4’ in length, with tie poles at 50.5’, and with the configuration depicted in Exhibit B, attached hereto. Per Section 58-555(b)(1), waterfront property-owners may construct docks with a length up to 50% of the lot’s waterfrontage. The Property’s waterfront is 85.4’, and therefore the dock length allowed by Code would be 42.7’ long. Since a 42.4’ dock was originally permitted with tie poles at 50.5’, and surrounding property owners have docks longer than the Code’s formula allows, it is clearly not a provision that has been adhered to in the surrounding area. The extra length is not only consistent with the surrounding area, but necessary based upon the depth of the water and the general navigational parameters of the area. Please see Exhibit C for dock lengths of surrounding neighbors, and Exhibit D for a breakdown of same.

The as-built dock on the Property is not located as far southward as permitted in 2001, since the permit plans show a boat lift even further southward and almost to the south boundary line. Cuban shoal grass and thalassia populate the north side of the as-built dock, and the location of the proposed new dock. To avoid impacts to this vegetation, and to allow a functional boatlift and boat ingress/egress, the dock and boatlift must therefore remain sited southward of this vegetated area. The proposed boat lift will be located in essentially the same footprint of the existing boat lift – the new boat lift will be shifted further waterward to achieve better depth for boat ingress/egress, but its distance from the south boundary line will remain the same, which is in line with what was permitted in 2001. Please see the attached permit from 2001, attached hereto as Exhibit F. The adjacent neighbor to the south has a dock of similar length, with a boatlift on the north side of said dock that extends further northward than permitted by Section 58-555(b)(2).

To deny the Applicant the requested relief from Section 58-555(b) would be to deny the Applicant rights afforded to the vast majority of other property owners in the surrounding area. The existing dock on the Property does no harm to the adjacent property owners and is reflective of the

general development pattern in the area. The dock proposed by this Application is substantially the same as that in existence, with a boatlift in greater conformity with that which was originally permitted.

Finally, the proposed dock is in conformity and consistent with Sections 58-530 and 58-533 of the Code. Specifically, the proposed dock will have no adverse effects upon navigation, water flow, natural beauty of the area, erosion control, uplands, or aquatic habitats. The proposed dock is also consistent with the Pinellas County Comprehensive Plan, as the future land use designation on the Property is RL, and the proposed dock is for personal watercraft in connection with a single family home.

Direct all correspondence to:

Clerk, Water and Navigation, 5th Floor
315 Court Street
Clearwater, FL 33756

Application # _____
(OFFICIAL USE ONLY)

PRIVATE DOCK PERMIT APPLICATION

PINELLAS COUNTY WATER AND NAVIGATION

I. PROPERTY OWNER INFORMATION:

- A. Applicant's Name: JAMES DONOVAN
- B. Mailing Address: 106 HARBOR DR.
City: PALM HARBOR State: FL Zip: 34683
- C. Telephone No: 513-617-9249 E-mail Address: donovanjim11@yahoo.com

II. AGENT INFORMATION:

- A. Name: TERRI SKAPIK, PRESIDENT WOODS CONSULTING
- B. Address: 1714 COUNTY ROAD 1, SUITE 22
City: DUNEDIN State: FL Zip: 34698
- C. Telephone No: 727-786-5747 E-mail Address: terriskapik@woodsconsulting.org

III. SITE INFORMATION:

- A. Construction Site Address: 106 HARBOR DR.
City: PALM HARBOR State: FL Zip: 34683
- B. Parcel ID Number: 10 / 28 / 15 / 65124 / 000 / 0210
- C. Incorporated: Unincorporated:
- D. Affected Water Body: ST JOSEPH'S SOUND
- E. Previous Permits: P30636-01
- F. Date applicant assumed property ownership: JULY 2019 month/year
- G. Obstructions: (Dogs, Fences, etc.) FENCE
- H. Attach 8 1/2" X 11" vicinity map showing specific project location.
- I. All other information pursuant to Section 166-328, Pinellas County Code, as needed.
- J. For projects requiring a public hearing, attach a copy of the complete legal description.

IV. PROJECT DESCRIPTION:

A. Nature and Size of Project: WRECK AND REMOVE EXISTING DOCK AND REPLACE WITH 25' X 5' WALKOUT TO 23' X 14' PLATFORM AND 2.5' X 14' LOWER LANDING WITH BOAT LIFT ON LEFT SIDE OF DOCK Square Feet: 482

B. Variance: Yes No
Amount in variance: Length: 7.8' Width: _____
Setbacks: Left: *SEE NOTE Right: _____

Other: *EXISTING DOCK TO REMAIN IN SAME FOOTPRINT, WITHIN LEFT SIDE SETBACK, LIFT ALREADY WITHIN LEFT SIDE SETBACK WOULD BE MOVED WATERWARD OF CURRENT LOCATION

NOTE: It is the applicant's responsibility to clearly demonstrate that any requested variances are consistent with the variance criteria of Section 166-291 of the Pinellas County Code. The applicant must demonstrate that a literal enforcement of the regulations would result in an extreme hardship due to the unique nature of the project and the applicant's property. The hardship must not be created by action(s) of the project owner(s). The granting of the variance must be in harmony with the general intent of the regulations and not infringe upon the property rights of others. The variance requested must be the minimum possible to allow for the reasonable use of the applicant's property. Should the applicant fail to demonstrate that any variance request is consistent with the criteria outlined in the regulations, staff cannot recommend approval of the application.

V. CONTRACTOR INFORMATION:

I, CONTRACTOR NOT YET SELECTED, a certified contractor, state that the dock has not been constructed and that it will be built in compliance with all requirements and standards set forth in the Pinellas County Code, and in accordance with the attached drawings which accurately represent all the information required to be furnished. In the event that this dock is not built in accordance with the permit or the information furnished is not correct, I agree to either remove the dock or correct the deficiency.

Signed: _____ Cert No.: _____

Company Name: _____ Telephone No: _____

City: _____ State: _____ Zip: _____

E-mail Address: _____

VI. OWNER'S SIGNATURE:

I hereby apply for a permit to do the above work and state that the same will be done according to the map or plan attached hereto and made a part hereof, and agree to abide by the criteria of the Pinellas County Code for such construction and, if said construction is within the corporate limits of a municipality, to first secure approval from said municipality. I further state that said construction will be maintained in a safe condition at all times, should this application be approved, that I am the legal owner of the upland from which I herein propose to construct the improvements, and that the above stated agent/contractor may act as my representative. I understand that I, not Pinellas County, am responsible for the accuracy of the information provided as part of this application and that it is my responsibility to obtain any necessary permits for the proposed activities on either private or sovereign owned submerged lands.

11/6/2020 _____
Date Signature

CERTIFICATION

I hereby certify that I am the owner and record title holder or trustee of the property described herein; that I have read and understand the contents of this application, and that this application, together with all supplemental data and information is a true representation of the facts concerning this request; that this application is made with my approval, as owner and applicant, as evidenced by my signature appearing below. It is hereby acknowledged that the filing of this application does not constitute automatic approval of the request; that the burden is on the undersigned to provide substantial and competent evidence to show that relevant criteria is met prior to any approval being granted; and further that if the request is approved, I will obtain all necessary permits and comply with all applicable orders, codes, conditions, and rules and regulations pertaining to the use of the subject property. I further understand that any misrepresentation of the facts contained herein may render action on this request by Pinellas County to be null and void.

James Donoran
Signature of Owner or Trustee
*(See note below)

Date: 11/9/2020
STATE OF FLORIDA; COUNTY OF ~~PINELLAS~~ PASCO
The foregoing instrument was acknowledged before me this 9th day of November,
20 20 by James Donoran who is known to me or has produced
_____ as identification and who did (did not) take an oath.



TRACEY SAYLOR
Commission # GG 352995
Expires September 1, 2023
Bonded Thru Budget Notary Services

Tracey Saylor
Notary Public
(seal)

*Applications which are filed by corporations must bear the seal of the corporation over the signature of an officer authorized to act on behalf of the corporation.

Application # _____
(OFFICIAL USE ONLY)

DISCLOSURE FORM

In order to alleviate any potential conflict of interest with Pinellas County staff, it is required that the County be provided with a listing of PERSONS being party to a trust, corporation, or partnership, as well as anyone who may have beneficial interest in the application which would be affected by any decision rendered by the County (attach additional sheets if necessary).

A. PROPERTY OWNERS:

Name: DONOVAN, JAMES P Name: _____
Address: 106 HARBOR DR. Address: _____
PALM HARBOR, FL 34683

Name: _____ Name: _____
Address: _____ Address: _____

B. REPRESENTATIVES:

Name: KATIE COLE, HILL WARD HENDERSON Name: TERRI SKAPIK, WOODS CONSULTING
Address: 600 CLEVELAND STREET, SUITE 800 Address: 1714 COUNTY RD. 1 SUITE 22
CLEARWATER, FL 33755 DUNEDIN, FL 34683

Name: _____ Name: _____
Address: _____ Address: _____

C. OTHER PERSONS HAVING OWNERSHIP INTEREST IN THE SUBJECT PROPERTY:

Interest is: contingent absolute

Name: _____ specific interest held: _____

D. DOES A CONTRACT FOR SALE EXIST FOR THE SUBJECT PROPERTY? YES NO

If so, the contract is: contingent absolute

Name of parties to the contract: _____

E. DOES AN OPTION TO PURCHASE EXIST FOR THE SUBJECT PROPERTY? YES NO

Name of parties to the option: _____

F. OWNER'S SIGNATURE

I hereby _____ re is complete, accurate, and true to the best of my
knowle

X _____ *James Donovan* _____ Date 11/6/2020

From: [Zoning, Planning](#)
To: [Whisennant, Denise A](#)
Subject: FW: 106 Harbor dr.
Date: Thursday, April 1, 2021 7:50:02 AM

From: Geoff Kress <Geoff.K@gwdeck.com>
Sent: Wednesday, March 31, 2021 4:44 PM
To: Zoning, Planning <zoning@co.pinellas.fl.us>
Subject: Re: 106 Harbor dr.

CAUTION: This message has originated from **Outside of the Organization**. Do Not Click on links or open attachments unless you are expecting the correspondence from the sender and know the content is safe.

Again I have no problem with this at all.

Geoff Kress
Vice President
300 Scarlet Blvd.
Oldsmar, FL 34677
Geoff.k@gwdeck.com
(C) 727-463-3074
(P) 813-891-9849



On Mar 31, 2021, at 4:38 PM, Geoff Kress <Geoff.K@gwdeck.com> wrote:

I live across the street at 115 Harbor and I have no problem at all with the new dock or set backs. When they do that it will improve the way the dock looks currently and bring up all the property values.

Geoff Kress
Vice President
300 Scarlet Blvd.

From: marc.sokol
To: [Zoning, Planning](#)
Subject: comments re case no. var-21-15 James Donovan, Applicant 106 harbor drive palm harbor fl
Date: Sunday, April 4, 2021 4:04:32 PM

CAUTION: This message has originated from **Outside of the Organization**. Do Not Click on links or open attachments unless you are expecting the correspondence from the sender and know the content is safe.

To Zoning Board of Adjustment & Appeals,

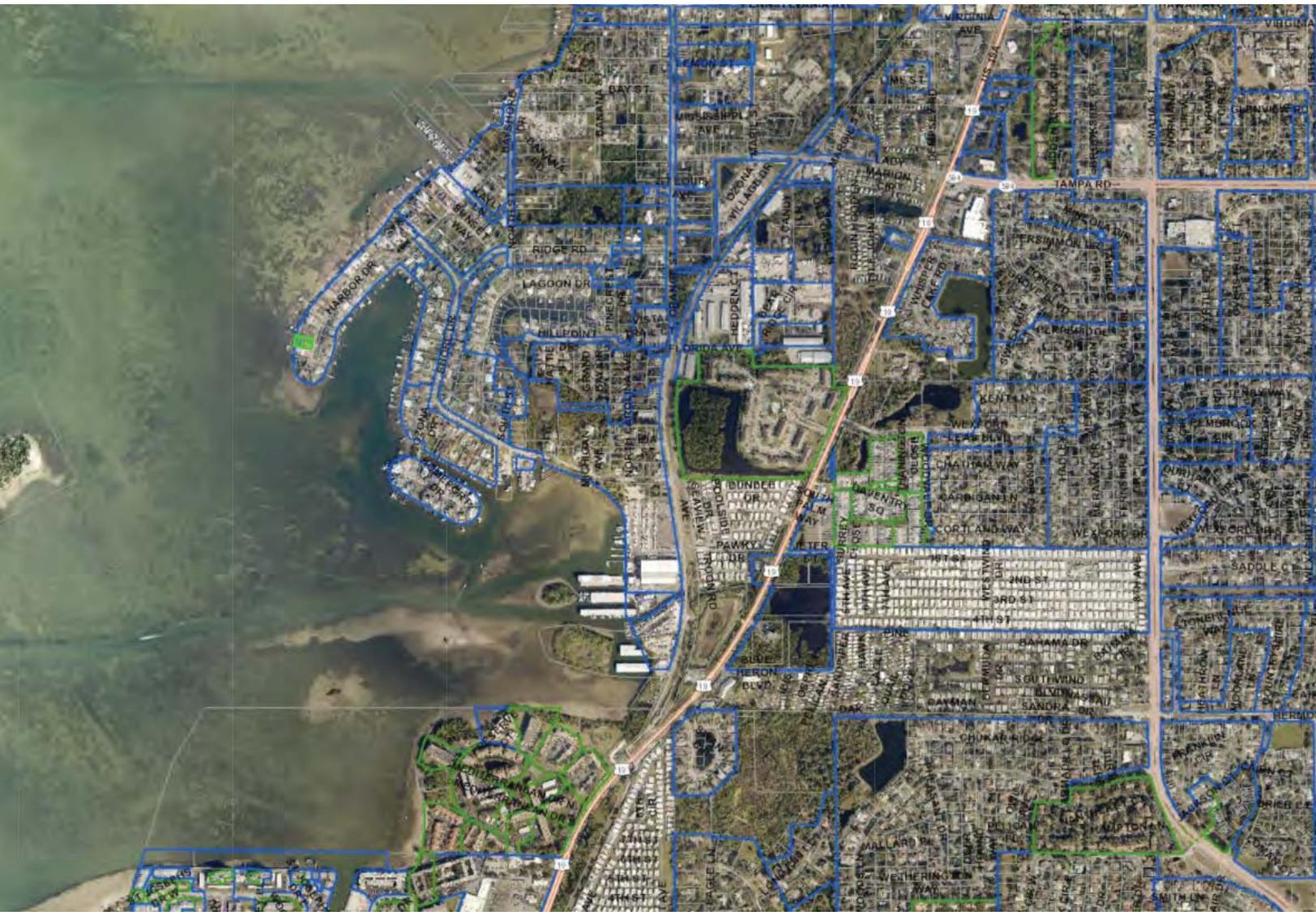
I understand that a neighbor is requesting a variance to allow the construction of a residential private dock and boat lift with a 4/7 foot setback from their south property line.

We feel strongly that the Pinellas County Board of Adjustment and Appeals (BOA) should NOT grant this variance. Allowing this property owner to construct this dock so close to the neighbors' property line will set an unfair precedent and could allow other property owners to move their docks to locations that obscure the water view of their neighbors. The current code requiring docks to be near the mid-point of their sea wall is fair and does not impose an undue hardship on neighbors on either side. The applicant should live with the rules that their neighbors have abided by and construct their dock at the center of their sea wall.

Yours,

Deirdre & Marc Sokol
100 Harbor Drive
Palm Harbor FL 34683
marc@sokol.com
312 952-7732





Prepared by and Return To:

Michele Williams
Fidelity National Title of Florida, Inc.
28059 US Highway 19 North, Suite 100
Clearwater, FL 33761

Order No.: FTPA19-74274

APN/Parcel ID(s): 10/28/15/65124/000/0210

WARRANTY DEED

THIS WARRANTY DEED dated July 1, 2019, by David J. Linesch and Jan S. Linesch, husband and wife, hereinafter called the grantor, to James P. Donovan, a single man, whose post office address is 106 Harbor Drive, Palm Harbor, FL 34683, hereinafter called the grantee:

(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

WITNESSETH: That the grantor, for and in consideration of the sum of Ten And No/100 Dollars (\$10.00) and other valuable consideration, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys, and confirms unto the grantee, all the certain land situated in the County of Pinellas, State of Florida, to wit:

Lot 21, Fourth Addition to Ozona Shores, according to the map or plat thereof, as recorded in Plat Book 49, Page(s) 46, of the Public Records of Pinellas County, Florida.

Subject to easements, restrictions, reservations and limitations of record, if any.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining.

TO HAVE AND TO HOLD the same in Fee Simple forever.

AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land; that the grantor hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2018.

WARRANTY DEED
(continued)

IN WITNESS WHEREOF, the undersigned have executed this document on the date(s) set forth below.

Signed, Sealed and Delivered in the presence of:

[Signature]
Witness Signature

Daniela Carrión
Print Name

[Signature]
Witness Signature

Rachel Durant
Print Name

[Signature]
David J. Linesch

[Signature]
Jan S. Linesch

Address: 106 Harbor Drive
Palm Harbor, FL 34683

State of Florida
County of Pinellas

The foregoing instrument was acknowledged before me this 25 day of June, 2019, by David J. Linesch and Jan S. Linesch, to me known to be the person(s) described in or who has/have produced _____ as identification and who executed the foregoing instrument and he/she/they acknowledged that he/she/they executed the same.

Witness my hand and official seal in the County and State last aforesaid this 25 day of June, 2019.

[Signature]
NOTARY PUBLIC
My Commission Expires:

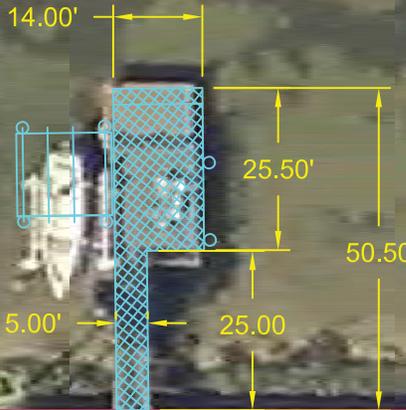


SCALE: 1" = 30'

PROPOSED DOCK



PROPOSED DOCK
 25' x 5' = 125 SF
 25.5' X 14' = 357 SF
 482 SF TOTAL



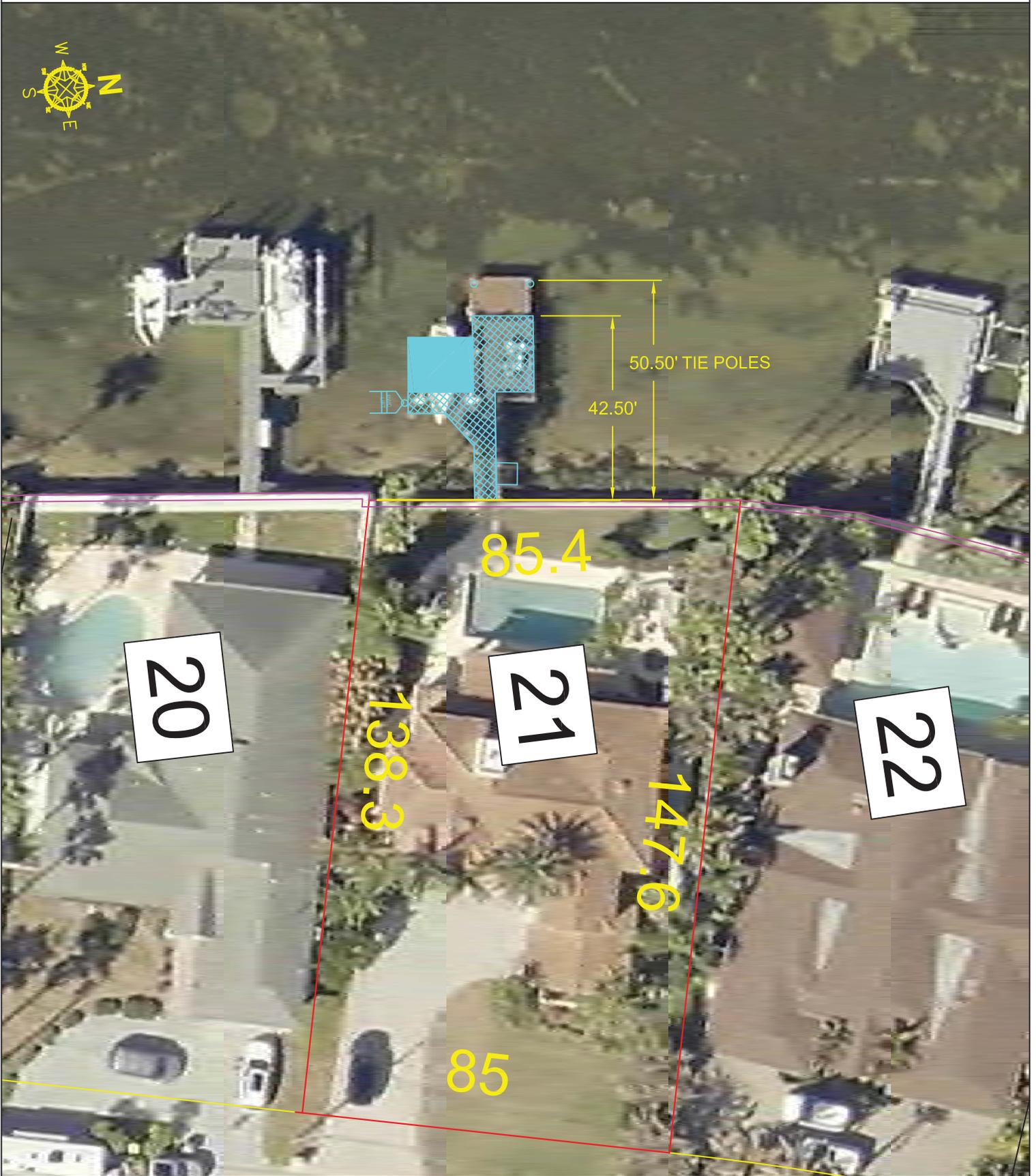
9/9/2020 1:54 PM F:\Users\tskapik\Documents\Project Drawings\Donovan Exhibits\DONOVON MASTER 09-09-20.dwg

Donovan Residence
 106 Harbor Dr., Palm Harbor

WOODS CONSULTING
 1714 COUNTY ROAD 1, SUITE 22
 DUNEDIN, FL 34698
 PH. (727) 786-5747
 FAX (727) 786-5748
A. 028

SCALE: 1" = 30'

ORIGINAL PERMITTED DOCK



12/3/2020 11:22 AM F:\Users\tskapik\Documents\Project Drawings\Donovan Exhibits\DONOVON MASTER 09-09-20.dwg

Donovan Residence
 106 Harbor Dr., Palm Harbor

WOODS CONSULTING
 1714 COUNTY ROAD 1, SUITE 22
 DUNEDIN, FL 34698
 PH. (727) 786-5747
 FAX (727) 786-7449
A. 029

SCALE: 1" = 150'

SURROUNDING DOCK LENGTHS



9/9/2020 1:54 PM F:\Users\tskapi\Documents\Project Drawings\Donovan Exhibits\DONOVON MASTER 09-09-20.dwg

Donovan Residence
 106 Harbor Dr., Palm Harbor

WOODS CONSULTING
 1714 COUNTY ROAD 1, SUITE 22
 DUNEDIN, FL 34698
 PH. (727) 786-5747
 FAX (727) 786-5747
A. 030

LOT NUMBER	Address HARBOR DRIVE	Length of Waterfrontage	Length Allowed by Code (50% of WF)	Length of Dock As Built
5	129	85	42.5	45
6	127	72.6	36.3	66
7	125	82.9	41.45	50
8	123	80	40	58
9	121	84.9	42.45	58
10	119	80	40	60
11	117	78.8	39.4	60
12	115	75	37.5	62
13	113	75	37.5	54
14	109	75	37.5	100
15	107	84.5	42.25	74
16	105	100	50	63
17	103	169	84.5	102
18	100	148.9	74.45	NO DOCK
19	102	186.2	93.1	NO DOCK
20	104	80	40	59.5
21	106	85.4	42.7	50.5
22	108	97.7	48.85	54
23	110	110.8	55.4	71
24	114	96.3	48.15	102
25	116	98.3	49.15	DOCK REMOVED
26	118	80	40	82
27	120	90	45	47.5
28	122	80	40	39
29	124	85	42.5	32
30	126	93.8	46.9	43
31	128	90.5	45.25	68
32	130	80	40	90

SCALE: 1" = 30'

SEA GRASS SURVEY EXHIBIT
SURVEY DATE 08-04-20

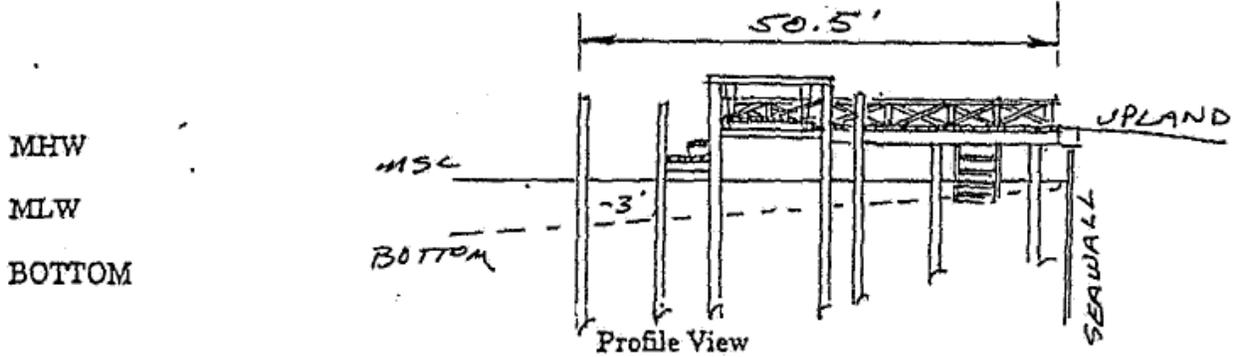


Donovan Residence
106 Harbor Dr., Palm Harbor

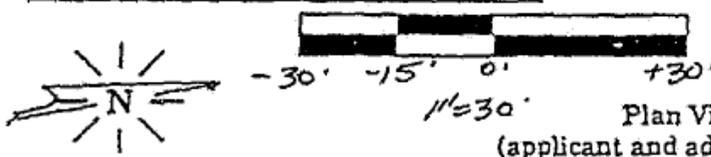
WOODS CONSULTING
1714 COUNTY ROAD 1, SUITE 22
DUNEDIN, FL 34698
PH. (727) 786-5747
FAX (727) 786-5747
A. 032

PRIVATE DOCK

Application # P 30636-01
(OFFICIAL USE ONLY)

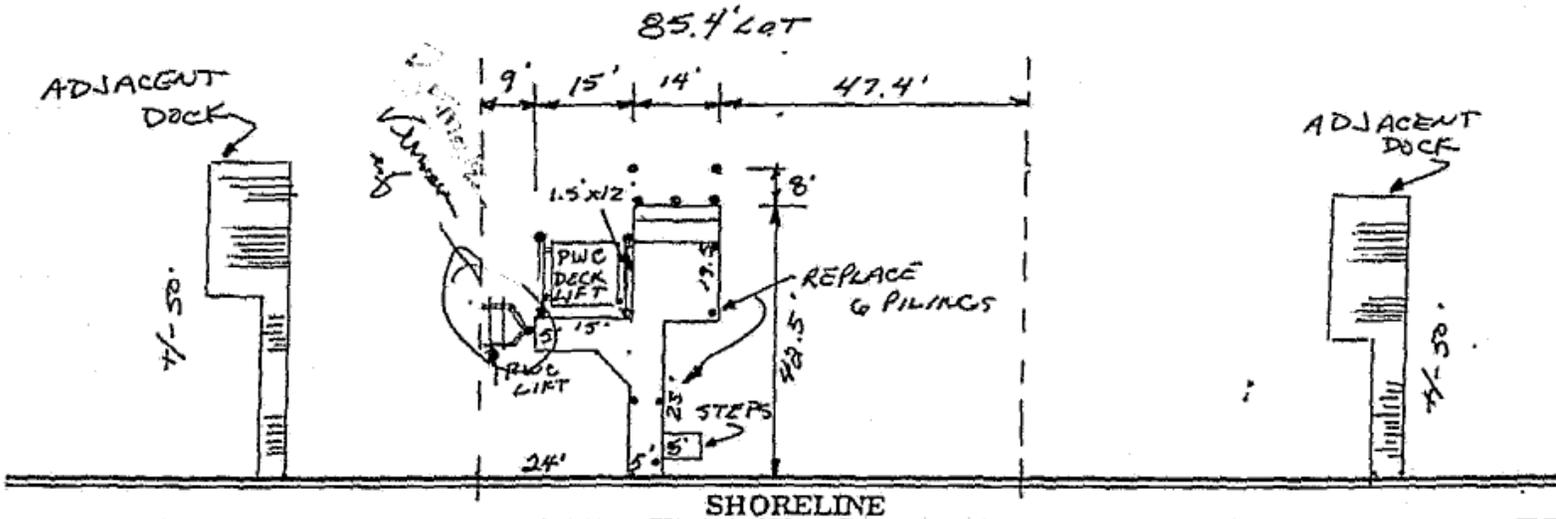


ENG. SCALE: 1" =



TOTAL SQUARE FEET	486
NEW SQUARE FEET	0
WATERWAY WIDTH	OPEN
WATERFRONT WIDTH	85.4'

- SCOPE OF WORK:
- ALL STRUCTURES ARE EXISTING
 - REPLACE 6 DOCK PILING



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

Left Owner: FEINSTEIN

Signature: [Signature] Date: 9/13/01

Municipality Approval

Right Owner

Signature: N/A Date

Water and Navigation Approval

APPROVED

PINELLAS COUNTY
ENVIRONMENTAL MANAGEMENT

DPW Form 9-27-01 A. 033
FOR WILLIAM M. DAVIS, DIRECTOR

048W0011EN VMOUHT/PIAAS 42694



VAR-21-15 (Donovan)



Site Location: 106 Harbor Drive



Aerial from Pinellas
County WebGIS

A. 035



Landward View of 106 Harbor Drive



Previously Approved Permit (P30636-01)

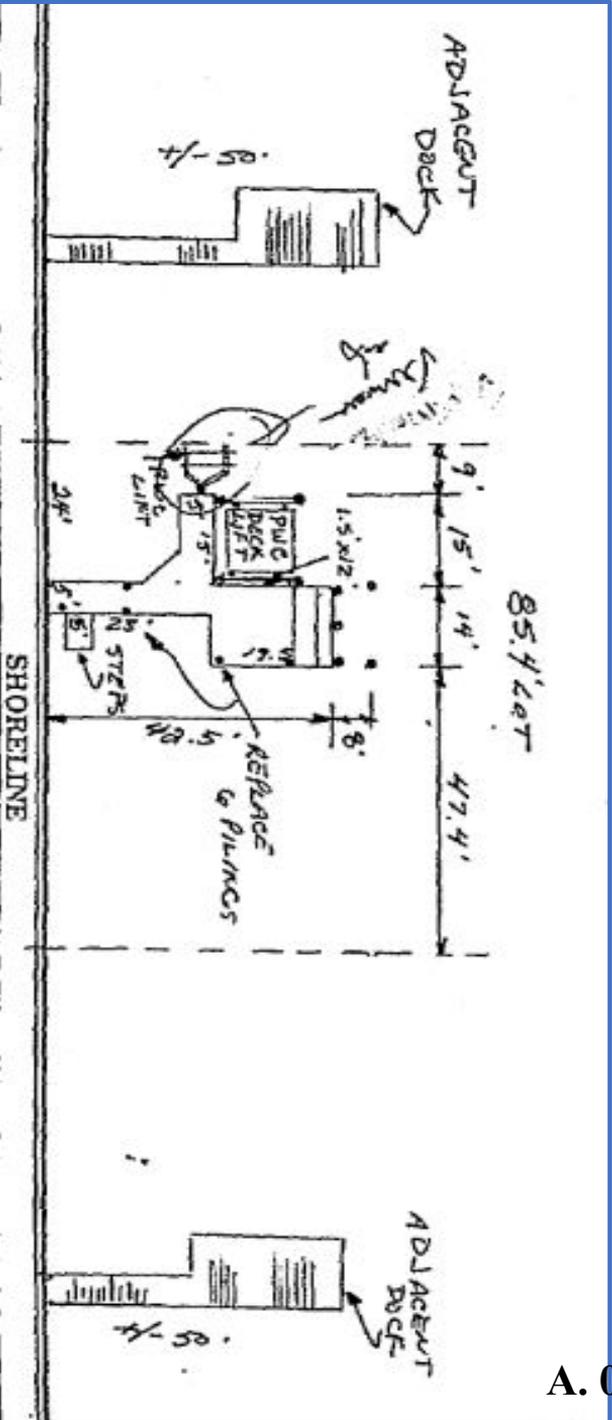


A. 037

TV. PROJECT DESCRIPTION: _____ (OFFICIAL USE ONLY)

A. Name and Street Project: Kelene & dock houses on
EXISTING Dock (KELNE PVC, LFT)

_____ Square feet: 960 sq. ft.



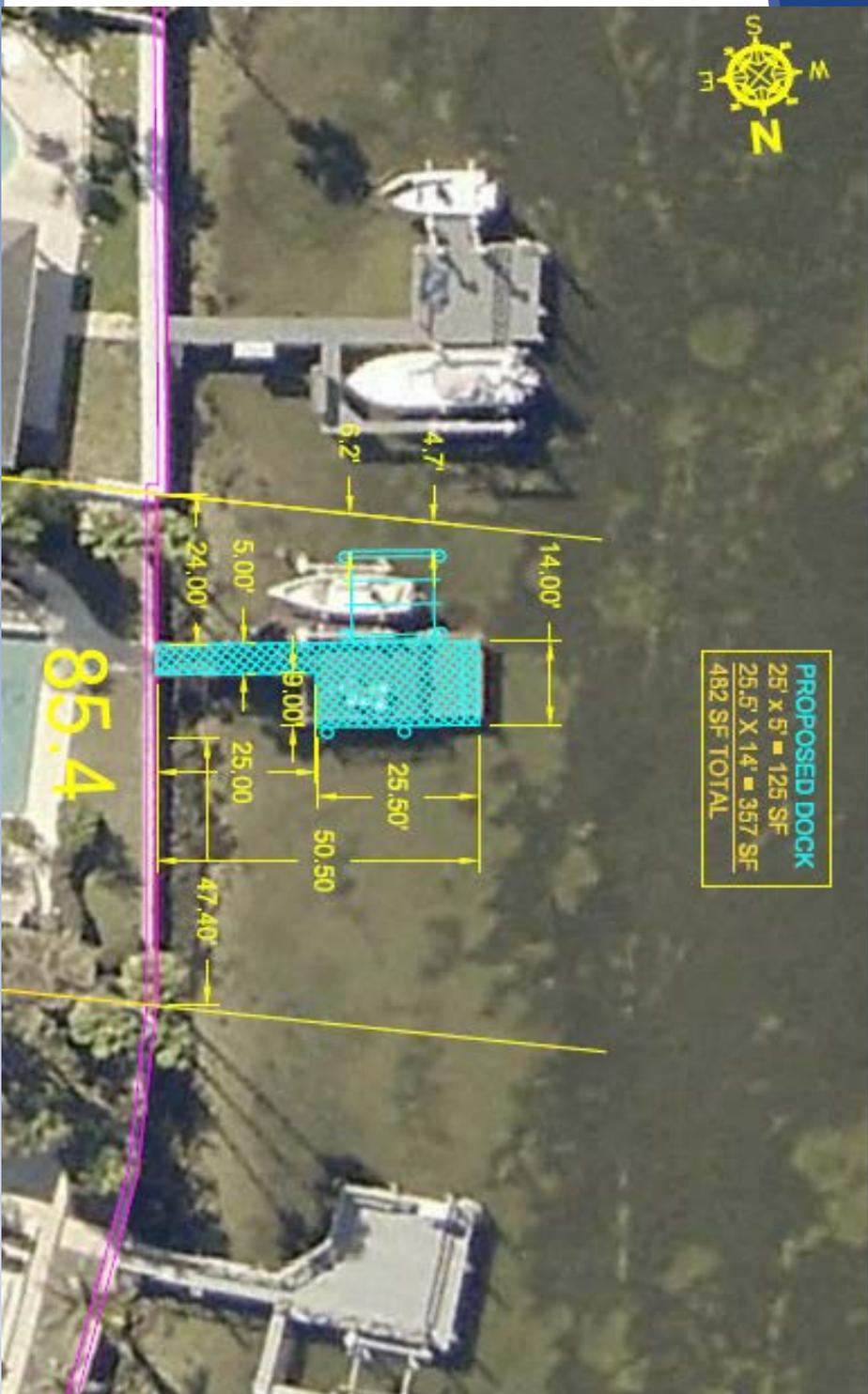
The undersigned does not object to the proposed dock and requested variances as drawn in the space provided above.

Left Owner: FEINSTEIN Right Owner: _____

Signature: [Signature] Date: 9/13/01 Signature: N.A. Date: _____

Municipality Approval: _____ Water and Navigation Approval: _____

Dock Proposal



A. 038

Photo from Woods Consulting

Design Criteria: Center 1/3rd & Maximum Length



A. 039



BLUE LINE: Proposed dock outline

PURPLE LINE: Proposed boat lift outline

GREEN SHADED AREA: Center 1/3rd of the property and the maximum length allowed

ORANGE DOTTED LINE: Property lines

Pinellas County Seagrass Survey



A. 040



Aerial from Pinellas
County WebGIS



The north side of the dock receives the most shading due to the sun's east to west rotation.

A. 041



Water depths (in feet)



- ❖ Measurements taken during on-site meeting on 12/23/2020
- ❖ Tide Range – 1.9 feet
- ❖ Depths corrected for Mean Low Water

Site Photos of Existing Dock

Photo taken from the
southern property line



Site Photos of Existing Dock

View from the seawall



Site Photos of Existing Dock

Photo of proximity to neighbor's dock to the south



Site Photos of Existing Dock

Photo of proximity to neighbor's dock to the north



Questions?



A. 047

Field Report

Permit #: WND-20-00231

Address: 106 Harbor Drive, Palm Harbor

Date: 12/15/2020

Reviewer: Kaitlin

Date of Field Visit: 12/23/2020

Time of Field Visit: 1115

Tide: 2.0 below

Tide Range: 1.9

Notes:

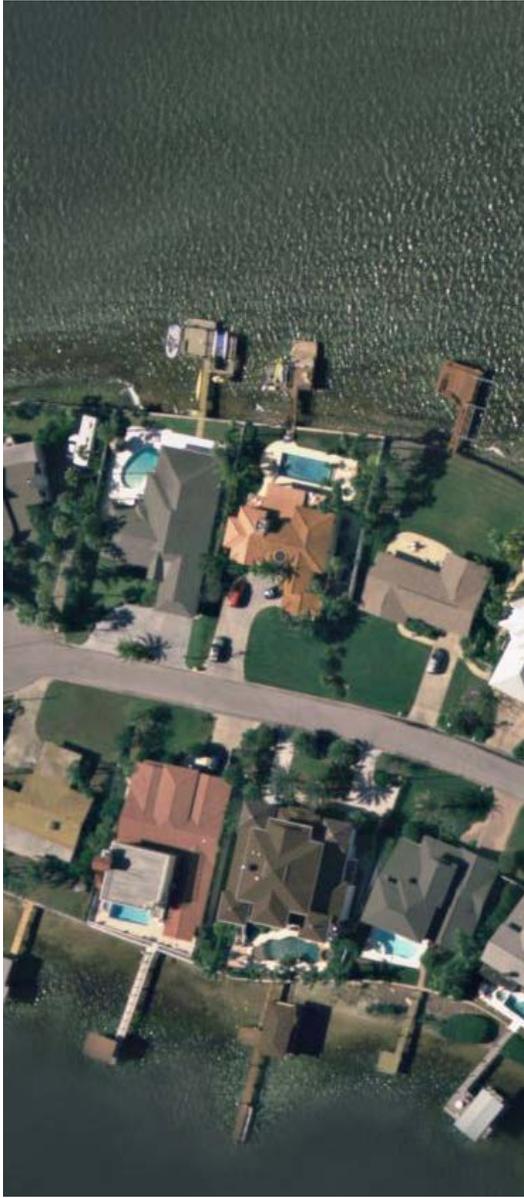
- Waterfront width – 85'6"
- Concrete seawall with rip rap out to ~8.5'
- Total dock length – 52'2"
- Tide @ 11:33AM – 2 below
- Grass off R side of dock
 - End of dock -1'6" – T sparse
 - End of head – 1'6" – t sparse
 - @ 41'8" – no grass, @8' away from dock, T ~ 2 feet behind
 - @ 37'6" – very sparse H; @ 12' away from dock
 - @31' – very sparse H, @7' away from dock
 - @21' – sparse H, ~20' away from dock
- Grass off L side of dock
 - @ 22' – sparse H; 2' away from lift
- Dock measurements:
 - Total length – 52'2"
 - Stairs – 3'9" to 7' 9"
 - Flare in front of lift 13'11" to 24'9"
 - End of walkout – 23'3"
 - Long piling on L side 19'8"
 - Lift poles 23'7" to 36'11"
 - Lower landing on L side 13'11" to 36'2"
 - End of head 41'7"
- From L p/r
 - Line pole 7'8"
 - Most waterward lift pole 7'
 - Edge of flare – 20'
 - R lift poles 23'
 - Walkout 25-30'
 - Stairs 30' to 38'
 - R side of head – 38'3"

Variance 21-15

106 Harbor Drive

Existing Conditions & Request

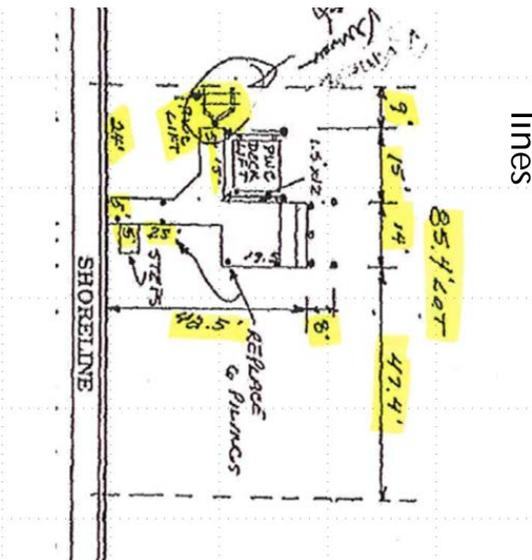
- ▶ Existing dock construction in 2001
- ▶ Modified in 2005 to fill in platform
- ▶ Personal Watercraft Lift area utilized as Boat Lift
- ▶ REQUEST - Reconstruct dock in its existing location
 - ▶ Bring existing length into compliance for length to reflect existing length
 - ▶ Bring boat lift into compliance for lift (instead of PWC) in existing location
 - ▶ NO change in side setback
 - ▶ NO change in length (from permitted the poles) and 2006 condition



Existing Conditions Dock and Lift



9 ft .setback - straight lines



9 ft .setback - straight lines



9 ft .setback - straight lines



Whether Straight or Angled Lines - setback to lift and setback to dock = NO CHANGE from original permitted conditions to what is proposed now.

Woods Consulting's Submerged Aquatic Vegetation (SAV) Survey August 4, 2020



Aerial view of the survey area showing the transect line and surrounding vegetation.



Aerial view of the survey area showing the transect line and surrounding vegetation.



LENGTH

- Requested length - 50.5 feet from seawall where 42.7 ft. otherwise permitted
- Reach greater depths
- Consistent with neighborhood
- Reflects as is condition from 2006
- Reflects anticipated mooring at the poles at this length

Surrounding Docks and Overall Lengths



Side Setback

- ▶ Existing dock is currently located in side setback (located at 24 feet where 28 feet is required)
- ▶ Current platform and PWC lift located at 4.7 feet
- ▶ Depth differences to navigate at this location already established
- ▶ Grass impacts at this location already established
- ▶ No new impact to neighbor
- ▶ Moving lift to other side:
 - ▶ Still has dock located in south 1/3 of lot
 - ▶ Impacts grasses
- ▶ Requires new navigational path

County's SAV Survey December 23, 2020

Field Report

Permit #: WND-20-00231

Address: 106 Harbor Drive, Palm Harbor

Date: 12/15/2020

Reviewer: Kaitlin

Date of Field Visit: 12/23/2020

Tide: 2.0 below

Tide Range: 1.9

Time of Field Visit: 1115

Notes:

- Waterfront width – 85'6"
- Concrete seawall with rip rap out to ~8.5'
- Total dock length – 522"
- Tide @ 11:33AM – 2 below
- Grass off R side of dock
 - End of dock -1'6" – T sparse
 - End of head – 1'6" – T sparse
 - @ 41'8" – no grass, @8' away from dock, T ~ 2 feet behind
 - @ 37'6" – very sparse H, @ 12' away from dock
 - @ 31' – very sparse H, @ 7' away from dock
 - @ 21' – sparse H, ~20' away from dock
 - @ 22' – sparse H, 2' away from lift
- Grass off L side of dock
 - @ 22' – sparse H, 2' away from lift
- Dock measurements:
 - Total length – 522"
 - Stairs – 3'9" to 7'9"
 - Flare in front of lift 13'11" to 24'9"
 - End of walkout – 23'3"
 - Long piling on L side 19'8"
 - Lift poles 23'7" to 36'11"
 - Lower landing on L side 13'11" to 36'2"
 - End of head 41'7"
- From L to R
 - Line pole 7'8"
 - Most waterward lift pole 7'
 - Edge of flare – 20'
 - R lift poles 23'
 - Walkout 25-30'
 - Stairs 30' to 38'
 - R side of head – 38'3"

Water Depths

Depth: @ 16' from L p/I

Distance from seawall	Depth	Depth corrected	comments
10'	0.6'	0.7'	Scattered oysters/rocks, no grass
15	1.1	1.1	Silt/mucky 0.1-0.2 silt; oysters rocks
20	1.1	1.2	Scattered oysters, same bottom; no grass, corg filling
25	1.2	1.3	Same bottom; lit; starts
35	2.0	2.1	0.2 silt; edge weak, scattered oysters
38			End of lift
40	2.1	2.2	Same bottom 0.2 silt; oysters; small patch of H to right around 2 feet from lift
45	2.1	2.2	Start of sparce T; sparse up to side of sparce H; moderate H and lots of drift algae
50	2.1	2.2	Moderate H to right
52.1	2.5	2.6	End of dock; start of mud T
60	1.5	1.6	Large patch of drift algae; silt T
70	2.3	2.1	Moderate T
80	2.3	2.4	Moderate T
90	2	2.1	Dense T
100	2	2.1	Dense T

Depth: @ end of dock

- Small patch of S around 2 feet off from dock
- Small amount ~4-5 feet off end on R side

Distance from dock	Depth	Depth corrected	comments
3.5'			space H - quality patchy to moderate T
5	2	2.1	Moderate T; sparce H
10	2	2.1	Same grass
12.8'			H stops
15	1.8	1.9	Same T
25	1.9	2.0	Mud; dense T
30	1.8	1.9	Same T
35	2	2.1	Same T
40	2.1	2.2	Same T
50	2.2	2.3	Same T
60	2.0	2.1	Same T

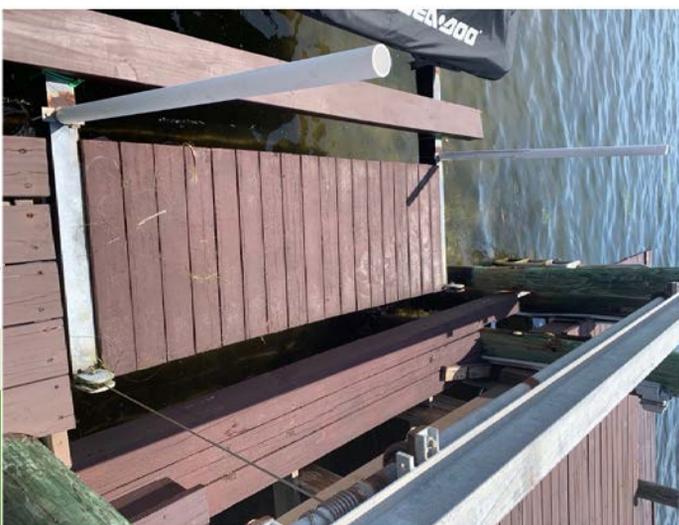
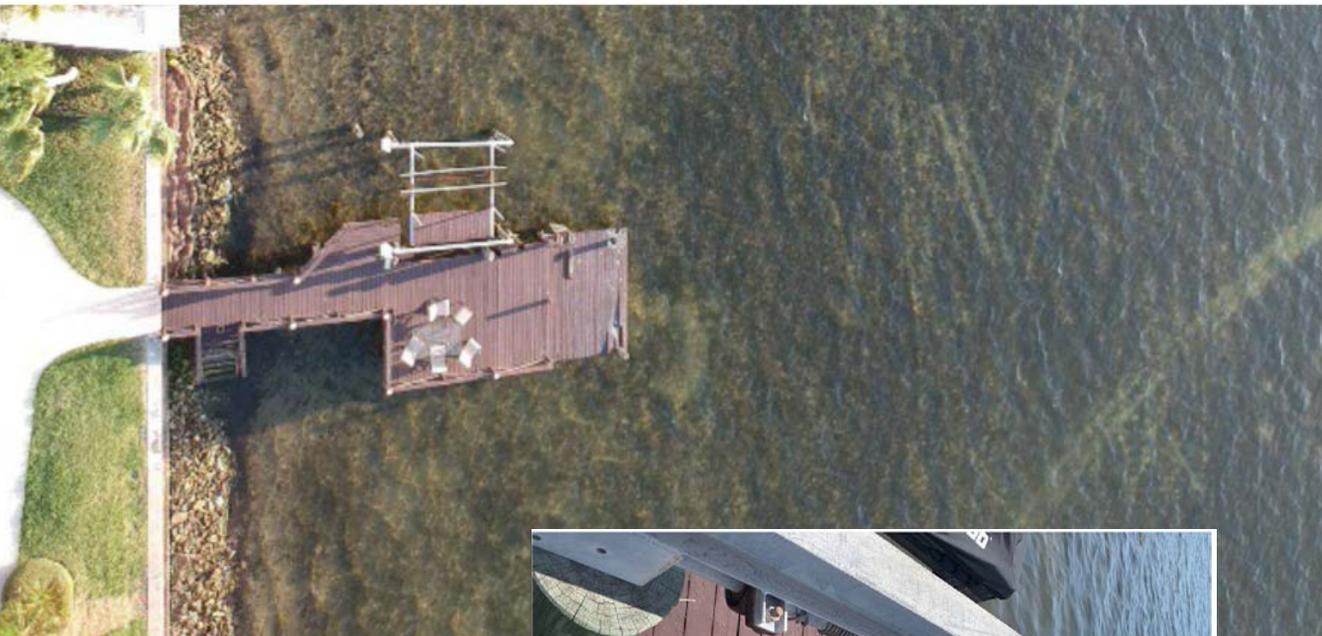
Depth: @ 45' from L p/I

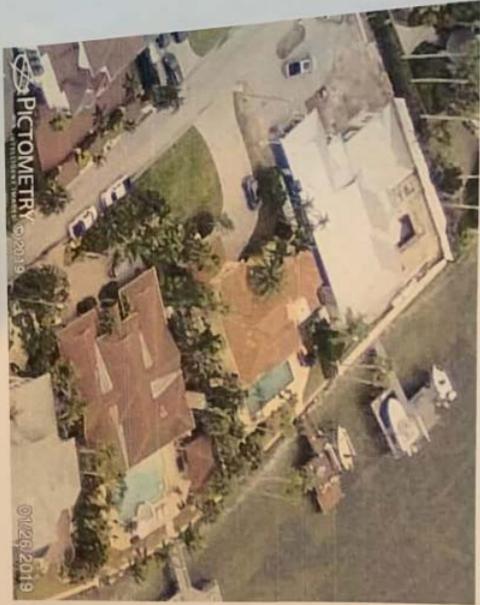
Distance from seawall	Depth	Depth corrected	comments
5'	0.8	0.9	End of rip rap
15	1.1	1.1	Scattered oysters; 0.2 drif
20	1.3	1.4	Scattered oysters, no grass
25	1.5	1.6	Same bottom
26			Very sparse H starts
30	1.6	1.7	Sparce H; 0.2-0.3 silt
35	1.7	1.8	Bit of sparce H
40	2.0	2.1	Very muddy; scattered and sparce
45	2	2.1	Start of T; sparce towards dock; moderate waterward
50	2	2.1	Moderate T to left; sparce to left; moderate T
60	1.9	2.0	Moderate T
70	2.0	2.1	Moderate T
80	2.0	2.1	Moderate T
90	2.0	2.1	Dense T waterward

Depth: @ 60' from L p/I

Distance from seawall	Depth	Depth corrected	comments
10	0.6	0.7	End of rip rap
15	0.8	0.9	grass
18			Same bottom
20	1.1	1.2	H starts; sparce to mud
23.10'			Same grass
25	1.2	1.3	Patch of H ends
30	1.5	1.6	Sparce T ends
35	1.6	1.7	Sparce T
40			End of sparce T; start of mud H
45	1.8	1.9	0.2 silt; moderate H
48.10'	2.0	2.1	Start of sparce; sparce H
50	2.1	2.1	Moderate T starts
55	2	2.1	Sparce T; tons of algae
60	2.1	2.1	Still in algae; sparce T
70	2.2	2.2	Moderate T; end of dock to R
80	1.9	2.0	Moderate T; patches of H
90	1.8	1.9	Moderate T

* Woods Consulting measured same "highlighted" deeper area at end of lift





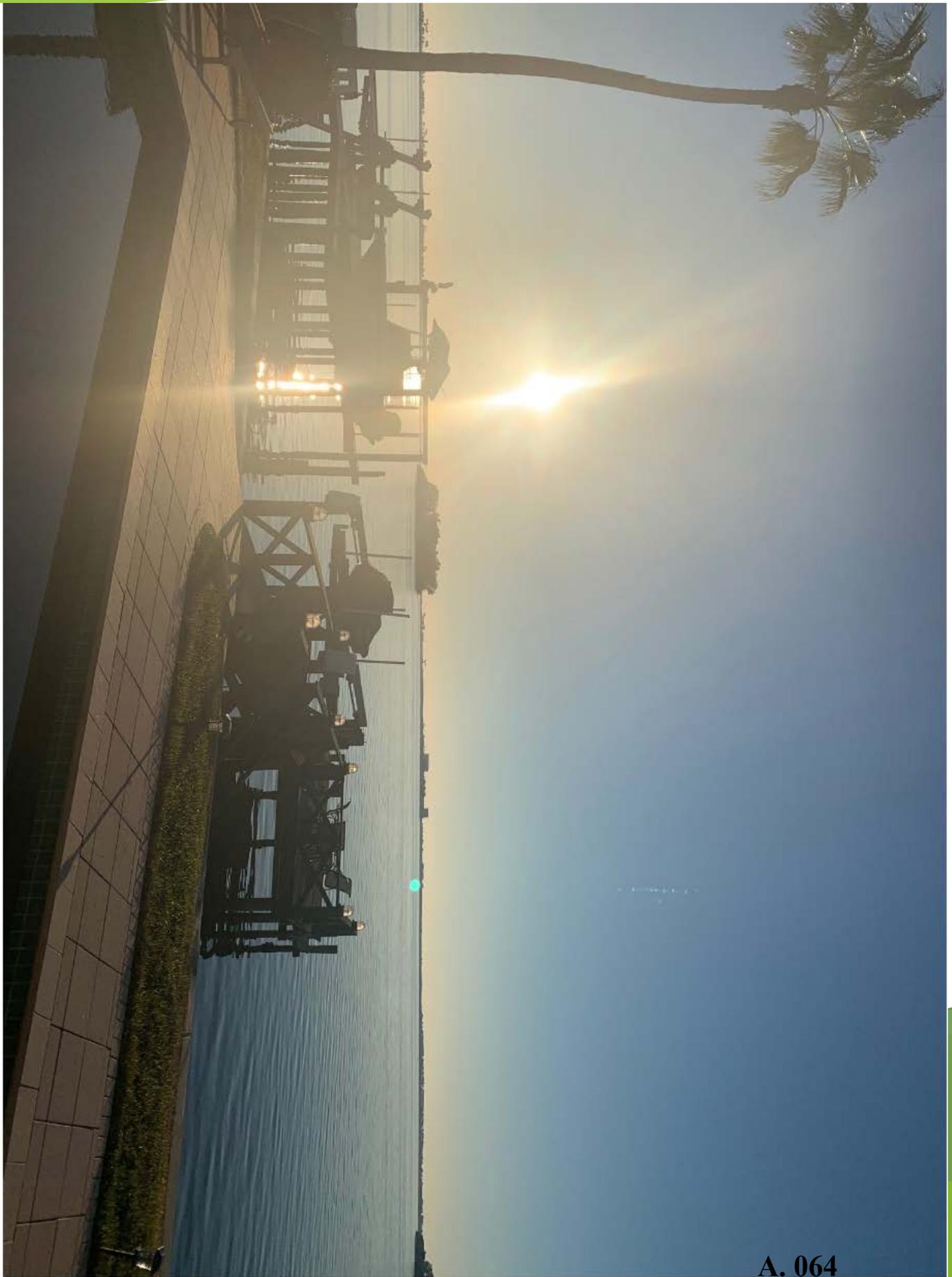
North Side



South Side



West Side



Terri L. Skapik
Woods Consulting
1714 County Road 1, Suite 22
Dunedin, Florida 34698
727-786-5747
terriskapik@woodsconsulting.org

WORK HISTORY

- Oct. 2008 – **President and Owner, Woods Consulting**
Oversees all projects including those related to marine design and permitting such as municipal projects; marinas and other commercial dockage for hotels, resorts and restaurants; multi-family dockage for townhome, condominium and subdivision developments; dredge and fill projects; environmental resource permitting; and environmental mitigation.
- 2004-Oct. 2008 **Project Manager, Woods Consulting**
Project management, including but not limited to, proposal writing, coordinating field studies, data interpretation, reviews of engineering design for conformance with applicable development codes, developing permitting strategies, feasibility studies, submerged land use and oversight of all project related permitting. Expertise in water quality studies, environmental studies, submerged resource surveys, interpretation of water related permitting regulations, State and Federal water permitting requirements, Florida's Aquatic Preserves permitting requirements and permitting regulations as regards to activities on state-owned or privately owned submerged lands.
- 2001-2004 **Hydrogeologist, Project Manager, N.S. Nettles Associates, Inc.**
Responsible for overseeing and coordinating with personnel, all aspects of subsidence investigations, water quality monitoring, submerged resource (benthic) surveys, groundwater modeling, aquifer performance testing, and water permitting.
- 1998-2001 **Geologist, N.S. Nettles & Associates, Inc.**
Responsibilities include: Residential subsidence investigations utilizing Multi-Electrode Electrical Resistivity (MER) surveys and Standard Penetration Test (SPT) borings; water quality monitoring; submerged resource (benthic) surveys; groundwater modeling; Aquifer Performance Testing; Water Permitting for production/injection wells; computer proficiency in Excel, Word, Digitizing programs (Didger, Rockware, Rockworks), Contouring programs (Surfer, Rockware, Rockworks), MER transect software.
- 1992-1998 **Science Lab Instructor, St. Petersburg Junior College**
Establish curriculum for science labs including; Zoology, Microbiology, Biology I and II, Anatomy and Physiology I and II, and General Chemistry I and II.

EDUCATION

- 1986-1988 *Associate of Arts*, St. Petersburg Junior College, Tarpon Springs, Florida, May 1988
- 1988-1992 *Bachelor of Science in Biology*, University of South Florida, Tampa, Florida, May 1992
- 1994-1995 *Masters Program*, Microbiology and Molecular Biology, University of Central Florida, Orlando, Florida
- 1998-2001 *Master of Science in Hydrogeology*, University of South Florida, Tampa, Florida, December 2001

*Guidance on Surveys
for Potential Impacts
to Submerged Aquatic Vegetation*

**Office of Resilience and Coastal Protection
Florida Department of Environmental Protection**

Dec. 8, 2020



functions (Arroyo and Bonsdorff 2016); however, areas without any seagrass or rhizophytic macroalgae that contain only drift algae are not considered SAV for the purpose of this document.

The distribution of SAV is not static. Seagrass patches migrate and unvegetated areas between patches are important to the management and conservation of these resources (Fonseca et al. 1998).

Accordingly, this document defines “SAV habitat” as areas that are currently vegetated by SAV as well as currently unvegetated areas adjacent to SAV that have historically supported SAV and are capable of supporting SAV based on current conditions such as the water environment, sediment characteristics and light availability.

Please be advised, while this document is primarily intended to provide guidance for projects with marine and estuarine SAV, at the department’s discretion, this guidance may also be applied to/adapted for use on projects with freshwater SAV resources (e.g., *Vallisneria american*).

2.0 Survey Protocols

2.1 Timing of Surveys

Surveys should be completed during the peak growing season to capture the maximum spatial extent and cover of SAV. This is particularly important in portions of the state where seagrasses senesce over the winter. To be consistent with federal requirements, the department recommends surveys be completed between June 1 and Sept. 30. However, in some circumstances the department may allow surveys to be completed at other times during the growing season. For example, under some circumstances, the department may accept SAV surveys from April to October in most of the state and year-round surveys may be acceptable in Monroe County and southern Dade County. Applicants are strongly encouraged to coordinate with the department prior to initiating field work to schedule joint site inspections; early coordination is especially important if an application will be submitted outside of the growing season; it is imperative department staff have an opportunity to verify site conditions during the growing season.

2.2 Surveys for Planning and Permitting

All SAV resources within the influence of the project should be investigated (identified, mapped and characterized as prescribed in Sections 2.2.1 – 2.2.3) during the project planning and permitting process. A detailed description of the methods used to investigate SAV resources in the project area should be provided along with the information obtained through these efforts in the permit application. The results

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

Circuit Court Case No: 21-000014-AP-88B
v. Lower Tribunal Case No: VAR-21-15

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

V.

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

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TRANSCRIPT OF DIGITALLY-RECORDED
BOARD OF ADJUSTMENTS AND APPEALS

CASE VAR-21-15

DATE: May 5, 2021

TRANSCRIBED BY: AMERICAN HIGH-TECH TRANSCRIPTION

1 (The audio quality is poor in places and broken up and the
2 parties talk over each other drowning out many words, and
3 voices were very garbled in places.)

4 **Board of Adjustment and Appeals**

5 Wednesday, May 5, 2021 • 9:00 A.M. • Pinellas County
6 Extension Office, 12520 Ulmerton Road, Largo, FL

7 **PRESENT:**

8 Alan C. Bomstein, Chairman; Cliff Gephart, Vice-
9 Chairman; Joe C. Burdette, Vincent Cocks, John Doran,
10 and Deborah J. White

11 **NOT PRESENT:**

12 Jose Bello

13 **OTHERS PRESENT:**

14 Glenn Bailey, Zoning Manager; Michael D. Schoderbock,
15 Principal Planner; Christopher Young, Program Planner;
16 Gina Berutti, Code Enforcement Project Coordinator;
17 Chelsea Hardy, Assistant County Attorney; Brendan
18 Mackesey, Assistant County Attorney; Shirley Westfall,
19 Board Reporter; Other interested individuals

20 **CALL TO ORDER:**

21 **ALAN BOMSTEIN:** Good morning. It is 9:00 and
22 we're going to call the meeting of the Pinellas County
23 Board of Adjustments and Appeal to order. Please turn
24 off your cell phones or place them on silent mode. We
25 also have people -- we have people here in person

1 today. We also have people who may be appearing
2 virtually on the screen, as well. We've received your
3 cases in advance. We've studied them. In some cases
4 we visited the site. Please understand that this --
5 these -- this board does not bring these cases. We
6 are merely the judges, and we have specific criteria
7 guiding our decision making. We have no personal
8 interest or stake in these cases except for the overall
9 good of the community.

10 The Staff has made a recommendation on each case.
11 That recommendation is input only and may not
12 necessarily be the opinion of this board. If you're
13 planning to speak for or against any application, you
14 must be sworn in prior to testifying. If you have not
15 yet been sworn in, please do so now with the clerk at
16 that table in the rear.

17 This is how we will proceed: The Staff will make
18 a presentation after a case is called by Mr. Bailey,
19 and the County will make their presentation. The
20 applicant will then have the opportunity to come to
21 the podium and -- and -- and address this board with
22 -- and present their case. If there are opponents,
23 the opponents may then follow up with -- with their --
24 with their time allowed and -- and opponents may speak
25 in opposition to the case. After the opponents speak,

1 the applicant has the opportunity to rebut. The
2 applicant will then return to the podium solely to
3 rebut the comments of the opponents. May not bring
4 any new information of testimony at that time. So
5 it's the applicant, then the opponents, and then the
6 applicant can return again for a rebuttal.

7 At that time the -- after that time, the board
8 will close the public hearing. We will discuss the
9 case and make a motion and vote. When providing
10 testimony, please provide specific reasons for your
11 position rather than just general expressions of
12 support or opposition. Further, it is preferred that
13 speakers present new information for the record rather
14 than repeat prior testimony from others. It is also
15 preferred that large groups of speakers choose a
16 spokesperson to speak for the group. With that, Mr.
17 Bailey, would you call the first case.

18 **GLENN BAILEY:** The next is case number VAR-21-
19 15, James Donovan requests a variance to allow for
20 construction of the a private residential dock
21 extending a total of 50.5 feet from seawall where only
22 42.7 feet is allowed. Absent both neighbors
23 signatures and no objection for property located at
24 106 Harbor Drive in Unincorporated Palm Harbor. Also
25 variance to allow construction of a private

1 residential boat lift with a 4.7-foot setback on the
2 south property line where 28.4 feet is required.
3 Absent the south neighbor's signature of no objection
4 for property located at 106 Harbor Drive in
5 unincorporated Palm Harbor. Recommendation: the
6 conditional approval of the residential private dock
7 and denial of the boat lift.

8 **JULEE SIMS:** All right. So as Glenn said, Dr.
9 Donovan is requesting a variance to both of those
10 sections (b)(1) related to the -- the dock itself, the
11 length of the dock. And then (b)(2) for a side setback
12 distance related to the lift. We'll go to the next
13 slide. So this is an aerial. This is in unincorporated
14 Palm Harbor, and the orange arrow depicts the subject
15 property. Next slide. This is an aerial off of
16 Pictometry that shows you what is currently existing.
17 And you can see all the seagrass in the area there.
18 Next slide. This is the previously approved permit
19 prior to Dr. Donovan purchasing the property. So the
20 previously approved permit from 2001 includes a five-
21 foot-wide walk-out which turns into a small, flared
22 section there on the left, a five-foot -- a five-foot-
23 wide walkway on the left, a head with a lower landing,
24 tie poles waterward of the head, a decked PWC lift,
25 some steps there at the very beginning on the right,

1 and then you'll see a PWC lift circled that was to be
2 removed. I would like to note that the area between
3 the end of the dock and those tie poles was filled in
4 with decking by previous owner sometime between 2005
5 and 2006 without a permit. Dr. Donovan purchased the
6 property in 2020 so he was not the one to do that.

7 **ALAN BOMSTEIN:** The lower landing portion? Is
8 that what you're --

9 **JULEE SIMS:** The -- it's actually the space
10 between where that lower landing is --

11 **ALAN BOMSTEIN:** Yeah.

12 **JULEE SIMS:** -- and the very waterward tie poles
13 that was filled in with decking, so a little bit --
14 yeah, right there.

15 **ALAN BOMSTEIN:** The outward -- the outward tie
16 poles?

17 **JULEE SIMS:** Yeah, right there.

18 **ALAN BOMSTEIN:** Okay. So that -- that now has
19 decking?

20 **JULEE SIMS:** Yes sir.

21 **ALAN BOMSTEIN:** At a lower level. At the same
22 level as a --

23 **JULEE SIMS:** It's -- it's still --

24 **ALAN BOMSTEIN:** -- as the step down?

25 **JULEE SIMS:** -- it's still a lower landing?

1 **ALAN BOMSTEIN:** Yes.

2 **JULEE SIMS:** Yes. All right. Next slide.

3 **ALAN BOMSTEIN:** Can you tell me what the --

4 **JULEE SIMS:** Yeah.

5 **ALAN BOMSTEIN:** -- dotted lines on either side

6 represent, the --

7 **JULEE SIMS:** Those are projected property lines

8 which were incorrect in the past.

9 **ALAN BOMSTEIN:** Okay.

10 **JULEE SIMS:** They actually should have been more

11 of a diagonal towards the right.

12 **ALAN BOMSTEIN:** Okay.

13 **JULEE SIMS:** Next slide. So this plan from Woods

14 Consulting shows what is proposed. And it's -- they're

15 proposing a five-foot-wide walk-out with a 14-foot-

16 by-25.5-foot head which is what's existing out there,

17 and then they're proposing to move the -- change the

18 PWC lift to a boat lift and move it a bit waterward.

19 And you'll see the total length is that 50.5 and then

20 the side setback. At its closest there at the very

21 waterward side of the proposed boat lift is 4.7, and

22 you'll see the yellow projected property lines which

23 are now in the correct position. Next slide.

24 The water -- waterfront width for this property

25 is 85.4 feet. To remain in the center

1 one-third for any new additions, the required side
2 setback distance to each adjacent property should be
3 28.4 feet. The required length which is 50 percent of
4 the shoreline width is 42.7 feet. And this is denoted
5 by that green shaded-in area.

6 The proposed plan indicates the setback from the
7 boat lift to the property to the south is 4.7 feet,
8 with the total length of the structure at 50.5. The
9 setback encroachment requires the neighbor to the
10 south to sign a letter of no objection, which they
11 could not get, and the length increase requires both
12 adjacent neighbors to sign a letter of no objection,
13 which again, they -- they could not get on that one.
14 Next slide.

15 **JOE BURDETTE:** They got one and not the other?

16 **ALAN BOMSTEIN:** No, they didn't get it from
17 either.

18 **JULEE SIMS:** Say that again. I'm sorry.

19 **JOE BURDETTE:** (Unintelligible).

20 **UNIDENTIFIED SPEAKER:** The variance.
21 (Unintelligible).

22 **JULEE SIMS:** No.

23 **UNIDENTIFIED SPEAKER:** Neither.

24 **JULEE SIMS:** This is a -- an aerial with the
25 seagrass survey that Staff did on December 23rd, 2020,

1 and the different colors depict the different species,
2 location and density of seagrass that we found on that
3 day. No seagrass was found under the existing PWC
4 lift, and due to shading from the existing dock, no
5 seagrass was found on the north side adjacent to the
6 head. So from the beginning of the head you'll see
7 there's no green or purple in that area. At the
8 beginning of the head, the grass starts approximately
9 seven feet from the edge of the dock. At the end of
10 the head, which is approximately 37 and a half feet
11 from the seawall, the grass begins approximately 12
12 feet away from the edge of the dock.

13 Next slide. This aerial clearly shows the
14 shading that's caused by the existing dock on that
15 north side. Requiring the boat lift to be flipped to
16 the north side of the existing structure will only
17 cause de minimis impacts to seagrass on that side.
18 Due to the south side of the property receiving full
19 sun, Staff believes seagrass will fill in the area the
20 existing PW -- PWC lift is, thus mitigating for any de
21 minimis impacts on that north side. So it would
22 literally just be flipped to that other side and --

23 **ALAN BOMSTEIN:** Is that what the request is or is
24 that what Staff is -- I'm sorry.

1 **JULEE SIMS:** That's what Staff is recommending,
2 since they can't get a signature from the neighbor.

3 **ALAN BOMSTEIN:** So do you -- Staff is saying take
4 that boat lift, flip it to the other side of the dock
5 head?

6 **JULEE SIMS:** Yes, sir.

7 **ALAN BOMSTEIN:** The applicant wants to leave it
8 where it's at?

9 **JULEE SIMS:** He wants to leave it and push it
10 waterward just a little bit. Right.

11 **JOE BURDETTE:** We'll ask him, I guess.

12 **ALAN BOMSTEIN:** Okay.

13 **JULEE SIMS:** Next slide. This shows water depths
14 at the mean low water for both sides of the dock.
15 Water navigation regulations requires a boat slip to
16 have a minimum of 1.5 feet of water depth at mean low
17 water. As you can see, there would be adequate water
18 depth on that north side of the dock, if the lift was
19 in that area. Next slide.

20 These last few slides are just site pictures that
21 we took that day, so this photo was taken from the
22 southern property line looking at the existing
23 structure. Next slide. And this is a view from the
24 seawall looking waterward. Next slide. And this is
25 looking at the neighbor's dock to the south. 1:19:04

1 You can see the edge of the existing PWC lip on -- PWC
2 slip on Dr. Donovan's property. Next slide.

3 **ALAN BOMSTEIN:** The -- the --

4 **JULEE SIMS:** Sorry.

5 **ALAN BOMSTEIN:** -- the neighbor to the south, he
6 -- he clearly is within the -- out -- out of his center
7 third, correct?

8 **JULEE SIMS:** Correct. Next slide. And this is a
9 photo looking to the north at the other neighbor. And
10 with that, that's the end of my presentation and I'm
11 happy to answer any questions,

12 **ALAN BOMSTEIN:** So the -- the lift that they want
13 to move seaward a few feet is a -- a personal
14 watercraft lift. Not a boat lift?

15 **JULEE SIMS:** It is a boat lift.

16 **ALAN BOMSTEIN:** Oh.

17 **JULEE SIMS:** They're changing from a PWC lift to
18 a boat lift.

19 **ALAN BOMSTEIN:** Oh.

20 **JULEE SIMS:** It'll still be the same width and
21 length from what I've been told, but it's just changing
22 from the PWC to the boat lift.

23 **ALAN BOMSTEIN:** Okay. Boat lifts are usually
24 larger than jet ski lifts but I --

1 **CLIFF GEPHART:** Is there currently a boat on that
2 lift?

3 **JULEE SIMS:** There is a PW -- a personal
4 watercraft lift up there right now.

5 **UNIDENTIFIED SPEAKER:** Right now there's no
6 (unintelligible).

7 **CLIFF GEPHART:** Right. Right.

8 **JULEE SIMS:** Before they bought it someone did
9 put a boat on it.

10 **CLIFF GEPHART:** Okay.

11 **JULEE SIMS:** But they have a personal watercraft
12 lift on it right now.

13 **ALAN BOMSTEIN:** All right. All right. Let's
14 hear from the applicant.

15 **KATIE COLE:** Good morning. Katie Cole with the
16 law firm of Hill Ward Henderson representing Dr. and
17 Mrs. Donovan on their request for variance. And we do
18 have a PowerPoint this morning. Usually not so formal
19 before this board, but we know there's a lot of
20 discussion about this application. So I think Chris
21 is going to control that for us. Lucky you all.

22 **ALAN BOMSTEIN:** A competing PowerPoint.

23 **KATIE COLE:** So as Staff has indicated, this is
24 a variance -- and you can go to the next slide, Chris.
25 The existing dock was constructed in 2001, and it was

1 per the permit where the -- both neighbors on the north
2 and south signed off on the variances that were
3 required to both locate the dock itself on the south
4 side, as well as the lift that exists on the south
5 side. But there was not a length variance requested.
6 It was modified in 2005, as Staff indicated, that
7 filled in the area between the end of the dock and the
8 tie poles that were previously permitted. So the dock
9 length didn't change from the tie pole length. It
10 simply filled in -- in that tie pole area.

11 The request, Dr. Donovan called originally
12 because he just simply wanted to reconstruct what he
13 had. And it was upon research that we learned that
14 what he had isn't what was necessarily permitted, but
15 what he had was a 50-foot dock, and that's what he
16 wanted to build, and that he also wanted to confirm he
17 could put a boat lift on the south side and so the PWC
18 area. So that is the same request that we have before
19 you today. I want to be clear that the Pinellas County
20 code -- I know you all don't see these docks very
21 often. There is a repair and reconstruction provision
22 in the code that allows an owner to rebuild exactly
23 what was previously permitted. So Dr. Donovan could
24 build exactly what was previously permitted, but that
25 would mean the dock would be eight feet shorter than

1 it exists today and exists as it -- as it was when he
2 purchased the house. So, Chris?

3 As Miss Sims showed you, this is the original
4 dock permit and how it was constructed upon permitting
5 in 2002. And then the next photo is an aerial on this
6 next slide and the aerial that shows in 2005 after
7 there was construction. And you can see the end of
8 the platform was filled in between the platform and
9 the tie poles. You can move on, Chris.

10 This is similar to the graphic that was in the
11 Staff PowerPoint, but I thought it was important to
12 show that based on the permit you see the nine-foot
13 setback between the horizontal property line and the
14 PWC lift. And Mr. Bomstein, to your question with
15 respect to the size of the lift, this was permitted
16 with both a deck, a five-foot-wide deck that went out
17 to the south, and then a smaller PW -- PWC platform on
18 top of it. And so to Mr. Gephardt's question, there
19 has been boats put on this lift in the past because of
20 the significant width that was both permitted. And
21 that's actually a boat there. Not Mr. -- Dr.
22 Donovan's, that you can see that that's a boat. So,
23 next.

24 Next thing. There. It's slow. This -- this is
25 an exhibit. I'm sorry it's a little fuzzy for some

1 reason, but, um, this is really the best exhibit to
2 show. I don't -- not sure why it's so fuzzy.

3 That shows the permitted dock versus the
4 requested dock. And so you can see the lines. We
5 wanted to show that while the request is for a four-
6 foot-seven-foot setback, that's because the County now
7 interprets its code -- well, at some point in the past,
8 docks were permitted for some reason in this area as
9 a -- a perpendicular line from the seawall, and so
10 there was a straight line. So it was reflected as a
11 nine-foot setback on the permit. In actuality, if you
12 use the extended property lines, the setback was
13 permitted at 4.7 feet, which is what's being asked for
14 today. And there is no change. The only change is --
15 oh, there we go -- is moving the boat lift seaward
16 about two feet, and that's to capture that depth that
17 Miss Sims showed in her presentation that's about a
18 half-foot difference, depth difference there, just in
19 that very small, small movement seaward. So again,
20 without this variance, the exact same thing could be
21 constructed with a boat lift on the same location, but
22 because of the water depths, Dr. Donovan has requested
23 to move that lift seaward a couple feet, still within
24 the 4.7-foot setback, to take advantage of that
25 navigational benefit.

1 **ALAN BOMSTEIN:** And what is Dr. Donovan's
2 objection to flipping it to the other side of the dock
3 as the County has suggested?

4 **KATIE COLE:** We will get there, and I have Miss
5 Skapik here to speak to that.

6 **ALAN BOMSTEIN:** But -- yeah.

7 **KATIE COLE:** So again, this is a -- a -- a
8 pictorial example of what was permitted and what's
9 being proposed. And my apologies. The photo on the
10 right was the original permitted location, 'cause
11 obviously the deeper the water, the better. But in
12 conversations with Staff, the Donovans did agree to
13 move it closer to the seawall. And with that I'd like
14 to introduce TERRI SKAPIK with Woods Consulting. Oh,
15 you want to go back a little?

16 **TERRI SKAPIK:** (Unintelligible) would be good.

17 **KATIE COLE:** Yeah. We'll be this -- Miss Skapik
18 is an expert in navigation and water management and
19 dock construction and permitting. And I believe she's
20 appeared before this board, probably not in some time.
21 I do have her résumé, but we would like to ask for her
22 to be qualified as an expert with regard to the
23 seagrass, the navigation, the water depths, the
24 symmetry, dock construction and permitting. Would you

1 like her résumé? I think many of you are familiar
2 with her.

3 **ALAN BOMSTEIN:** We'll recognize her.

4 **KATIE COLE:** Thank you. I will provide one to
5 the clerk. So --

6 **TERRI SKAPIK:** Good morning. My name is Terri
7 Skapik. I'm owner and president of Woods Consulting.
8 We are a firm that specializes in marine design and
9 engineering, permitting. We are primarily for
10 multifamily projects, commercial projects, and I also
11 have several municipal contracts. So we were actually
12 brought in for this particular case. We do get
13 involved with single-family projects when there are
14 certain complexities to permitting that they need some
15 guidance and advice on. In this instance, we were asked
16 to evaluate the best options for this dock. Obviously,
17 the -- the dock was built as it is today by a previous
18 owner. It was not permitted, but there was an area of
19 decking that was filled in. That was done by previous
20 owner, not by Mr. -- or Dr. Donovan.

21 The -- the PWC lift has always been on the left
22 side or on the south side. And I -- and I do think it
23 is important to note that, you know, when there is an
24 existing structure and there's been existing and long-
25 term use of a boat slip on a certain side of a dock,

1 it definitely has an impact on the environmental
2 condition of the area. So when we're talking about
3 setbacks, you know, ideally, we are already working
4 within a side setback that we are not encroaching any
5 further into. That is a very important point to make.
6 But also this seagrass exhibit here. Those grass beds
7 that you see to the left and the right of our larger
8 exhibit are the seagrass beds that we surveyed in
9 August of 2020.

10 I want to point out that the survey that was
11 prepared by the County Staff was in December of 2020.
12 And you'll recall -- recall we had a rather chilly
13 winter. And the reason why we did our survey in August
14 of 2020 is 'cause that is when that is the approved
15 seagrass survey season. We have a guidance document
16 that I believe Katie has put into the record that
17 provides guidance on when these seagrass surveys
18 should be prepared. The federal agencies will only
19 approve or accept surveys performed between June 1st
20 and the end of September. The State is a little bit
21 more lenient and will accept surveys that begin as of
22 April 1st. So to -- to say that the -- the -- the lift
23 where there are no seagrass beds presently should be
24 moved to the right side -- where you can see that red
25 hatched area is the seagrass beds that we found, and

1 those are the actual photographs from our August
2 survey.

3 It makes absolutely no sense in my mind to take
4 an area that has been used as a lift for over 20 years
5 and then relocate it to another side of the -- of the
6 dock that has very robust grass beds and have it be
7 located there. Because, you know, the thought is,
8 well, we'll go ahead and kill off the side on the north
9 side 'cause we're thinking that it's going to grow in
10 on the left side. Well, that makes -- that makes
11 absolutely no sense, and just based on the grass
12 survey, having been done in December, again, would not
13 even be anything that we could even submit to the state
14 or federal agency for an approval.

15 So we -- we really firmly believe that the lift
16 should remain on the left side. And the next reason
17 why -- we have shown the lift to be moved out slightly.
18 The -- the depth exhibit that the County had shown,
19 that Miss Sims had shown, there is a depressed area
20 exactly where the center of that lift is now located.
21 It's a .8-foot difference. That is nine and a half
22 inches difference. If you looked at her depth transect
23 on the right side of the dock, it was shallower. So
24 what we're trying to achieve here is just to move that
25 lift slightly out far enough to capture that nine-and-

1 a-half-inch depth difference so that the lift with the
2 bunks and the beams for the boat to come up on top of
3 to be able to be lifted out of the water, every inch
4 counts when you're talking one and a half feet of water
5 depth which is the minimum depth to have a lift be
6 permitted. But if you can have 2.1 feet in that space
7 versus 1.5, which is on the right side at the same
8 location, it makes all the sense to keep it there. So
9 the points being that it should be swapped over for
10 the purpose of seagrass beds, I'm going to refute that
11 for the purpose of not allowing it to be moved farther
12 out. Trying to catch that extra depth makes all the
13 sense in the world.

14 Now, going back to these side setbacks, the --
15 the side setbacks were originally drawn perpendicular
16 for both the dock at Dr. Donovan's location and for
17 the neighbor to the south. So in the permanent record
18 for the last 20 years there have been perpendicular
19 lines drawn in. The setback, whether you draw it in
20 with perpendicular lines or slanted lines, has not
21 changed. And that's a very important point to make.
22 Obviously the neighbor to the south has already
23 positioned his boat in his lift in the outside of his
24 center one-third, but into the north one-third. So
25 now with Mr. Donovan -- if Dr. Donovan's dock stays

1 where it's at, the lift stays where it's at, all of --
2 all of that activity from boat action is all occurring
3 in the same area. Moving these structures around,
4 moving the lift to another location is only going to,
5 I believe in my experience and my knowledge, my science
6 degrees, that it makes no sense to move the lift but
7 to keep it where it is. And did you want me to
8 elaborate on anything else?

9 What about the length? Well, they're not arguing
10 the length, right? Okay. So we're just going to
11 continue on, then, with the PowerPoint presentation.
12 So -- so basically the length -- Miss Sims mentioned
13 this and it was briefly mentioned at the beginning of
14 this PowerPoint. The requested length is 50 and a
15 half feet from the seawall. That is the distance out
16 where the original tie poles were permitted in 200 1.
17 There is, allowed by the width of waterfront owned,
18 42.7 feet maximum length allowed. So there is this
19 variance being requested to allow the dock to remain
20 where the previous owner had filled in that section of
21 lower landing out to 50 and a half feet. This does
22 allow the lift to also be moved out to get that better
23 depth.

24 Here's an exhibit that shows the surrounding
25 docks and the overall lengths of the immediate area

1 of Dr. Donovan's dock. You can see that there are
2 docks much longer than Dr. Donovan's. These docks
3 obviously are longer. They were signed off by both
4 adjacent property owners. It just happens to be in
5 this particular case Dr. Donovan was not able to obtain
6 the setbacks from his neighbors for whatever reason.
7 These -- these docks with their lengths are not
8 encroached on any type of navigation channel. The
9 nearest navigation channel is very far away. It would
10 be -- the ICW is the nearest navigation channel. And,
11 you know, you can see some of these docks are 100 feet,
12 120 feet. Up to the north, you've got one, I believe,
13 that's 140 feet long in length. All of these lots
14 have approximately 70 to 85 linear feet of shoreline
15 which means they would be allowed to have docks that
16 are 50 percent that length. So, you know, they would
17 all be probably closer to half the length, and it just
18 happens to be that because of neighbors not being
19 willing to sign off.

20 The -- this is just going farther into the side
21 setback issue. I mentioned that. Whether we're using
22 the straight lines that were in the original permit
23 record or the slanted lines, just for the purpose of
24 discussion, they're extensions of the side property
25 lines. You know, going back to what the County said,

1 well, because it changed from nine feet from a straight
2 line to 4.7 feet to a slanted line, that just by that
3 instance alone we were having to request a variance.
4 Even though in the real world, it was still the same
5 distance. So these are the water depths from the
6 County. We did measure those same depths. We -- we --
7 we had measured those depths back in August, and we
8 had found that slightly depressed area, which is why
9 we moved the dock out so that was confirmed in the
10 County's water depths from their field visit in
11 December. And then these are some photographs of Dr.
12 Donovan's dock now.

13 The -- the platform itself is -- is actually going
14 to be rebuilt. It's -- it's in very poor shape right
15 now. It needs to be repaired/replaced and there's --
16 you actually see there's a little bit of a lower
17 landing next to one of the high beams of the boat lift.
18 That is actually going to be removed so everything is
19 actually coming closer to the edge of the main dock,
20 so we're not -- we're not, by any means, going to be
21 encroaching into a side setback or creating a smaller
22 setback with this work.

23 **KATIE COLE:** Thank you, Terri. These are just
24 some pictures from 2019 that show the dock at the
25 adjacent neighbor's home compared to the Donovans'

1 dock, as well. Go to the next one, Chris. You can go
2 to the next one. Okay.

3 **UNIDENTIFIED SPEAKER:** Sorry.

4 **KATIE COLE:** Yeah. And -- and this is just an
5 example of a photo from the Donovans' back yard where
6 you do see the neighbor to the south and his dock there
7 together with the personal watercraft that is raised
8 on the lift. So I want -- I want to be extremely
9 precise because we've kind of gone around and around
10 with Staff. Unintentionally I think that looking at
11 old permits and how they've measured them in the past
12 versus how this team is measuring things now caused a
13 bit of confusion when we first submitted our requests
14 so want to be very clear that the request is for the
15 length of the dock to extend the -- the dock to 50.5
16 feet, where it would currently otherwise be permitted
17 at 42.5. The tie poles that were already permitted
18 are already at 50.5.

19 The second request is to move the boat lift two
20 feet seaward. Six feet? Oh, is it six feet? I'm
21 sorry. Six feet seaward remaining within the same
22 side setbacks, so there is no proposed change to the
23 side setbacks. If this board did not want to approve
24 the relocation of the boat lift seaward by any amount,
25 then I believe Dr. Donovan would -- would prefer just

1 to withdraw that request, and -- and we'll leave the
2 boat lift exactly where it is, still located on the
3 south side for all of the reasons that Miss Skapik
4 already opined to.

5 So I think with the evidence, I -- I know that
6 this board bases its decisions on competent
7 substantial evidence, and I feel as though that both
8 the application and Miss Skapik's testimony today
9 provides ample evidence as to why the lift should
10 remain on the south side together with the depths
11 showing why it should move seaward.

12 So with that, we'll reserve any other time to
13 respond, 'cause I do know that there is an opponent
14 here. I also -- there were additional letters of
15 support that were provided. I don't know if you all
16 receive those. I know one or two came through in your
17 packet, but several more were provided to the County
18 yesterday and I do have those here. We received them
19 from Staff yesterday.

20 **ALAN BOMSTEIN:** Thank you.

21 **KATIE COLE:** And then also I provided for the
22 record the DEP guidance on surveys for potential
23 impacts of submerged aquatic vegetation, which states
24 as Miss -- as Miss Skapik said from the top of her
25 head that the department recommends surveys be

1 completed between June 1st and September 30th, with some
2 exceptions from April to October. So --

3 **UNIDENTIFIED SPEAKER:** Have questions?

4 **ALAN BOMSTEIN:** Questions?

5 **JOHN DORAN:** Yes.

6 **ALAN BOMSTEIN:** John?

7 **JOHN DORAN:** Either one of you. And I probably
8 should be able to figure this out for myself, but I'm
9 going to make you do it for me.

10 **KATIE COLE:** Sure.

11 **JOHN DORAN:** The boat lift that you propose, is
12 it simply being pushed out?

13 **UNIDENTIFIED SPEAKER:** Yeah. That's probably
14 what it is.

15 **JOHN DORAN:** Or is it being extended?

16 **KATIE COLE:** Simply being pushed out.

17 **JOHN DORAN:** Same -- same size, different
18 location?

19 **KATIE COLE:** Probably actually slightly --

20 **TERRI SKAPIK:** It's actually about a foot
21 narrower.

22 **JOHN DORAN:** Okay.

23 **TERRI SKAPIK:** The lift itself because there's a
24 one-foot strip of --

25 **JOHN DORAN:** Uh-huh.

1 **TERRI SKAPIK:** -- decking that I was showing
2 there.
3 **JOHN DORAN:** Okay.
4 **TERRI SKAPIK:** That one exhibit of the
5 photograph. That one-foot deck area there is being
6 removed. So now it's all coming flush against the
7 main dock.
8 **JOHN DORAN:** Right. No bigger, smaller.
9 **TERRI SKAPIK:** Correct.
10 **JOHN DORAN:** Just further out.
11 **TERRI SKAPIK:** Correct.
12 **JOHN DORAN:** Thank you.
13 **DEBORAH WHITE:** And same boat lift? Same boat
14 lift?
15 **KATIE COLE:** It will be a new boat lift But --
16 **DEBORAH WHITE:** But -- but it'll be exact
17 dimensions or whatever?
18 **KATIE COLE:** Yes. It --
19 **TERRI SKAPIK:** Right.
20 **KATIE COLE:** Within the --
21 **DEBORAH WHITE:** Within --
22 **KATIE COLE:** -- within the previously approved
23 side setback, yes.
24 **DEBORAH WHITE:** Okay.
25 **ALAN BOMSTEIN:** Any other questions of the --

1 **VINCENT COCKS:** Yes, Alan. I have a question.

2 Alan?

3 **ALAN BOMSTEIN:** Yes.

4 **VINCENT COCKS:** I have a question.

5 **ALAN BOMSTEIN:** Vince.

6 **VINCENT COCKS:** Of -- is it Miss Skapik, your --

7 your name?

8 **TERRI SKAPIK:** Skapik, yes.

9 **VINCENT COCKS:** Okay.

10 **KATIE COLE:** Here.

11 **TERRI SKAPIK:** Sorry.

12 **VINCENT COCKS:** And based on your testimony, the

13 reason it would be advantageous to keep this on the

14 south side, I'm understanding, there's greater water

15 depth on that side, as well as the impact on the

16 aquatic vegetation, which would be diminished on the

17 north -- the other side of the dock. Am I correct?

18 **TERRI SKAPIK:** Correct. So right now and also in

19 August of 2020, there was no seagrass beds on the left

20 side which is where the lift is located now. And there

21 is the better depth on the left side. Moving a lift

22 to the right side or the north side would impact the

23 seagrass beds that are present in the growing season.

24 **VINCENT COCKS:** Okay. Thank you.

1 **ALAN BOMSTEIN:** If there's no other questions of
2 the presenter, I will ask if there's anybody here in
3 opposition that wishes to speak. Yes, come forward.
4 Give us your name and address, please.

5 **BRIAN MYRBACK:** Good morning. My name is Brian
6 Myrback, 104 Harbor Drive. Got a few handouts that I
7 was going to give to Chris.

8 **ALAN BOMSTEIN:** So you are the neighbor to the
9 south?

10 **BRIAN MYRBACK:** Yes sir.

11 **ALAN BOMSTEIN:** Okay.

12 **BRIAN MYRBACK:** I have prepared something to say
13 this morning, and then I also have a few comments about
14 what we just heard.

15 **ALAN BOMSTEIN:** Okay.

16 **BRIAN MYRBACK:** As I just stated, my name is Brian
17 Myrback. I reside at 104 Harbor Drive, the adjacent
18 property to the south of the applicant. I'm here this
19 morning in support of the County's objection to the
20 proposed variance. As stated in the BOA hearing
21 worksheet, and to second the County's position as
22 outlined in a February 23rd, 2021 email sent from
23 Pinellas County Water Navigation to the applicant's
24 representation where the County stated, and, and I
25 quote, "At this time, County Water Navigation Staff

1 does not have adequate reason to support the variance
2 request here as there is no obvious hardship that
3 requires your client to build the proposed design."
4 In reviewing Pinellas County code section 138-231 also
5 outlined by the County in the BOA worksheet, this
6 table's reading reads -- excuse me, heading reads,
7 quote, "In order to authorize any variance waiver
8 and/or administrative adjustments to the terms of the
9 code, the authorized reviewing body shall determine
10 the following criteria have been satisfied,
11 specifically referring back to the County email
12 aforementioned on February 23rd, 2021, where the County
13 found," and I'll paraphrase, "There is no obvious
14 hardship."

15 To that point I elaborate, during the December
16 15th, 2020, field visit by the County, they gathered a
17 bevy of information including grass density and water
18 depths around the existing dock as follows. Seagrass
19 to the right or north side of the dock, six points of
20 data recorded are as follows: sparse, sparse, no
21 grass, very sparse, very sparse and sparse.

22 On a side note, I would like to add a personal
23 comment to the testimony you just heard: I've lived
24 here and fished here my whole life. I've lived on the
25 water for 14 years. I have never seen Kokua [phonetic]

1 or shoal grass come and go with the seasons. I have
2 pictures that I just pulled up on my phone that I'd be
3 happy to supply if interested that I've taken both
4 under my dock and under the applicant's dock from my
5 dock at various times throughout the year. I do not
6 see a difference in the grass. I would state that the
7 County's findings were accurate, that there was no
8 environmental impact or would be no environmental
9 impact to the grass if this dock, per the County's
10 recommendation, were moved to the right or north side
11 of the dock.

12 The County also pulled 10 points of data for water
13 depths as follows. From the current approximate lift
14 depth out to 100 feet, which is 50 feet past the
15 current end of dock, the water depths were as follows:
16 2.1, 2.2, 2.2, 2.6, which their representative had
17 said there was a drop-off. We refer to that as a prop
18 pocket. So when you start your boat and you lower into
19 the water, the prop makes a hole directly under where
20 the boat resides on the lift. If you go two feet past
21 that it goes right back up to the 2.1 mark, which can
22 be found all the way out to 100 feet. So essentially,
23 right under where any boat is stored, when you lower
24 it, that prop pocket is created over a period of time,
25 because that is the entry point for the vessel.

1 Additionally, during our April 5th preliminary
2 call, a question was brought up. Somebody was not
3 sure what the big deal was in asking for a few feet as
4 it pertained to this side variance. Again, I -- I
5 heard the question brought up again this morning in
6 regards to the side variance and what the issue would
7 be with moving -- correct me if I'm wrong. It was
8 moving this boat lift six feet seaward. I've provided
9 you all with a map. As shown in that map, the
10 applicant -- the applicant's lot line, which is lot
11 21, they point northwest. And I know there was some
12 discussion about old lot lines, new lot lines. I
13 looked back as far as I could find. I have never seen
14 a lot line that extended out that it was not in a
15 direct straight line, cohesive with the property
16 lines. Meaning property lines are in the northwest
17 angle. They extend out past the docks at the same
18 northwest angle. Thus, every foot that boat lift moves
19 west, it gets closer to the property line. As I
20 mentioned, I reside in lot 20, making this well outside
21 the center third and not in accordance with Pinellas
22 County code section 58-555(b)(2) which reads, "Private
23 docks and boat lifts, excluding tie poles, must be
24 constructed within the center one-third of the
25 applicant's waterfront property or 50 feet from the

1 adjacent property, whichever is less restrictive." I
2 would also like to make a note: There was some
3 discussion about the location and positioning of my
4 dock and my lift. I would like to go on record and
5 let everybody know that I do have the appropriate
6 signatures to have that structure in place.

7 In closing, I want to thank you for your time and
8 consideration regarding this very important matter.
9 If there are any questions I might answer, be happy to
10 do so at this time. I've also handed Chris -- I'm
11 guessing you all have it now -- an objection letter
12 from an immediate neighbor.

13 **ALAN BOMSTEIN:** So you did obtain or -- or someone
14 obtained permission from the neighbor to the north of
15 you to have your dock outside of the middle third, yet
16 you're not willing to do the same in return?

17 **BRIAN MYRBACK:** It was rebuilt exactly where the
18 old one was, and I got signatures from both the
19 previous owner to the north and the current owner to
20 the south.

21 **ALAN BOMSTEIN:** Thank you. Any questions from
22 the board?

23 **VINCENT COCKS:** Yeah. I'll -- Mr. Chair, I have
24 a question.

25 **ALAN BOMSTEIN:** Yeah, Vince.

1 **VINCENT COCKS:** Sir, you mentioned about a prop
2 pocket where the boat goes down and it makes it lower,
3 but is that not a jet ski that's on that lift right
4 now?

5 **BRIAN MYRBACK:** In all likelihood created by the
6 skiff, which is a small boat from the previous owner.

7 **VINCENT COCKS:** Right. Okay.

8 **BRIAN MYRBACK:** Two to three foot in diameter,
9 maybe an extra six to eight inches of depth.

10 **VINCENT COCKS:** All right. And then my next
11 question would be, regarding the lift, the lift is
12 actually going closer to the present dock; is that not
13 correct?

14 **BRIAN MYRBACK:** It's my understanding that the
15 setback that is there now is greater than what it would
16 be. I think they have it at 4.7 inches once
17 constructed.

18 **VINCENT COCKS:** Uh-huh.

19 **BRIAN MYRBACK:** And that would definitely be
20 closer than it is now, based on their submitted drawing

21 **VINCENT COCKS:** Okay. Right. But it's going
22 further north. If I'm not mistaken here, that the
23 lift is actually going away from you. The new lift is
24 going away from you; is that not correct?

1 **BRIAN MYRBACK:** That's not correct according to
2 the drawing they've submitted, which you have there.

3 **VINCENT COCKS:** Okay.

4 **BRIAN MYRBACK:** It would be at that outside so
5 it'd be the southwest post of the new proposed lift -

6 **VINCENT COCKS:** Okay.

7 **BRIAN MYRBACK:** -- as their proposed drawing
8 shows would be at 4.7 inches from the property line.
9 The current structure is further than 4.7 inches
10 currently.

11 **VINCENT COCKS:** Well, okay. We'll address that
12 later. Okay. Thank you. That's all I have.

13 **BRIAN MYRBACK:** Sure.

14 **ALAN BOMSTEIN:** Anybody else? Any other
15 questions?

16 **DEBORAH WHITE:** Yes, I have -- I have a -- I have
17 a question.

18 **ALAN BOMSTEIN:** Yes. Go ahead.

19 **DEBORAH WHITE:** What does it -- well, they could
20 just build it, leave it where it is, correct? I mean,
21 they could just leave it right now where it is.

22 **BRIAN MYRBACK:** In speaking with the County,
23 actually, that would not be an option, either. Two
24 issues there: One, as you guys have heard, the lower
25 landing was not permitted. Secondly, there is

1 actually no record of a permit pulled for the four-
2 post lift. Their 1986 permit goes from a dock; The
3 2001 permit, a lift appears on the drawing, but it was
4 never actually permitted. So in order to apply and
5 get approved without this process for what they call
6 a reconstruction or a rebuild permit, you have to go
7 into the identical footprint. Thus, this would not
8 qualify without signatures because the existing
9 structure and lift is not permitted.

10 **DEBORAH WHITE:** We'll follow up on that. Thank
11 you.

12 **ALAN BOMSTEIN:** Any other questions?

13 **BRIAN MYRBACK:** Thank you for your time.

14 **ALAN BOMSTEIN:** Thank you. Thank you. Is there
15 any other speakers in objection? Is there anyone
16 online who wishes --

17 **DENISE WHISENNANT:** We do have one person online.
18 If they would like to speak -- if they would go ahead
19 and do so. Okay. I don't think they would
20 (unintelligible) just listening,

21 **CHELSEA HARDY:** Mr. Chair, just a couple minor
22 points of procedure, given that there are still quite
23 a few number of folks in the audience calling for
24 proponents or others to be heard, not just opponents,
25 and then also given multiple references to Staff

1 conversations, eliciting whether Staff wants a
2 response in summary, before the applicant finally has
3 their final rebuttal.

4 **ALAN BOMSTEIN:** Thank you. Okay. What was the
5 verdict on the online?

6 **UNIDENTIFIED SPEAKER:** No. (Unintelligible)
7 listening.

8 **DENISE WHISENNANT:** No comment.

9 **UNIDENTIFIED SPEAKER:** No comment.

10 **ALAN BOMSTEIN:** All right. Are there other
11 objectors here that wish to speak in objection to this
12 case? Are there -- are there other proponents here
13 who wish to speak to this case? Would the Staff like
14 to make any comments in response to the comments made
15 by the opponent? How am I doing Chelsea?

16 **CHELSEA HARDY:** Wonderful. Thank you.

17 **BRENDAN MACKESEY:** Hi there. Brendan Mackesey,
18 Assistant County Attorney. First I'd like to address
19 a question that came up a minute ago. County Staff
20 has no objection to the boat lift remaining in its
21 current position. In fact, you heard Miss Cole allude
22 to the possibility of a repair permit being issued for
23 that lift earlier. Staff does not object to a repair
24 permit being applied for and ultimately submitted so

1 long as the lift is reconstructed in the exact same
2 footprint it is today.
3 Now, in rebuttal to a few of the points raised by the
4 applicant, I want to be clear. Seagrass is not the
5 dispositive issue here. The Water Navigation
6 regulations provide other provisions that County Staff
7 can rely on to deny a lift or a dock or other
8 activities in waters of the county based on seagrass
9 impacts. Again the reason county Staff is objecting
10 to the variance request here is simply because Mr.
11 Myrback [sic] did not provide a signature.

12 So really I think the question for this board is,
13 is there special conditions present on the land that
14 warrant moving that lift six feet out waterward in its
15 current location, and I just don't think we've heard
16 those today. As far as the undue hardship piece is
17 concerned, Staff isn't telling the applicant that he
18 can't have a lift. Again, you know, I think the
19 argument might be a little bit stronger if we -- if he
20 was being told that he can't have a lift. But again,
21 It's true. Other people along -- in that neighborhood
22 along the waterway there do enjoy a boat lift, but the
23 applicant here has two avenues to enjoy a boat lift:
24 He can leave the lift where it currently is or he can
25 even move it to the north side. And finally, to the

1 extent that the applicant is claiming that the
2 seagrass on the north side of the dock presents special
3 conditions warranting the variance, that would allow
4 moving the lift six feet waterward on the south side.
5 Again, you heard from Miss Sims earlier, Staff
6 strongly objects to those contentions. Thank you. Any
7 questions?

8 **CLIFF GEPHART:** Yeah. We've heard things about
9 -- excuse me -- perpendicular lot lines and extending
10 out into the waterway. Have there been instances where
11 the lines were more perpendicular and straight than
12 they are, like, diagonal now?

13 **BRENDAN MACKESEY:** Honestly, I -- I'm not sure.
14 I have no reason to believe that what Miss Cole said
15 earlier is inaccurate, that in the past, permits might
16 have --

17 **UNIDENTIFIED SPEAKER:** (Unintelligible) Mr.
18 Myrback (unintelligible).

19 **BRENDAN MACKESEY:** It -- so, yes.

20 **CLIFF GEPHART:** Did -- okay.

21 **BRENDAN MACKESEY:** But as you heard from Miss
22 Sims from Staff's position, those -- the property
23 lines should have gone out diagonally. I don't want
24 to equate the right -- two riparian lines because
25 that's something that this board probably shouldn't be

1 getting into, in my opinion, but that's how Staff
2 treats property lines today, at least.

3 **ALAN BOMSTEIN:** Thank you.

4 **BRENDAN MACKESEY:** Yep. Anything else?

5 **ALAN BOMSTEIN:** I don't think so, but you never
6 know. Hang around. Are you here to wrap?

7 **KATIE COLE:** Yes, sir, unless you have more
8 questions. I was anticipating your call for me to
9 conclude.

10 **ALAN BOMSTEIN:** Yes.

11 **KATIE COLE:** I -- I think, well, there's a lot
12 of interesting things. To answer some of the questions
13 specifically. With respect to the perpendicular
14 lines, I'm happy to share this. This is a copy of Mr.
15 Myrback's permit which shows it was measured from
16 perpendicular lines. On the PowerPoint that the
17 applicant shared as part of our testimony, we showed
18 the applicant's prior permit from 2001 which also
19 showed the measurement from perpendicular lines.
20 Included in that PowerPoint was an exhibit that showed
21 two lines. It showed the same exhibit that Mr. Myrback
22 has provided to you which is our exhibit that shows
23 now if the lines are shifted, where that is. And I
24 don't know if it'd be helpful for Mr. Young to bring
25 out bring out -- bring up that picture. But again, I

1 think it's very important to note there is no change
2 in the distance between the previously approved side
3 setback and the proposed side setback. The lift is
4 getting more narrow. We're removing a one-and-a-half-
5 foot platform and asking to have the lift pushed
6 seaward a few feet.

7 Um, Mr. Myrback relied heavily on a County Staff
8 email saying that the Staff didn't view that there was
9 a hardship. Well, as you all are well aware, the Staff
10 is not the arbiter of these decisions for variances.
11 This board is. And the board must weigh competent
12 substantial evidence to base this decision that there
13 is a hardship and an undue burden to meet the code.
14 Miss Skapik, who is an expert in this field, offered
15 her expert opinion of the special conditions. The
16 special conditions include both the depth --
17 ironically, the prior two variances that this board
18 just approved for longer depth docks was based
19 primarily with respect to the depth of the water. And
20 the Board found that depth was an appropriate hardship
21 to reach further. Having a lift at a deeper area is
22 important to be able to get a boat on a lift.

23 The second reason that is a hardship is to --
24 well, the seagrass is the reason why, from an expert

1 standpoint, it is inappropriate to move the lift from
2 its location.

3 So I want to be clear that the request is for the
4 additional length to which the Staff has expressed its
5 support. And then to move the boat lift six feet
6 seaward as reflected in the exhibit that was both in
7 the Staff report and that Mr. Myrback helpfully
8 provided to you all. There is no request to modify
9 the side setback from what was previously approved in
10 2001. It would just change a PWC lift to a boat lift,
11 which is -- would otherwise be an administrative
12 decision by the Staff.

13 So with that, we will conclude. I do want to
14 reiterate procedurally that in conferring with Staff,
15 and Mr. Mackesey reiterated this, that the applicant
16 can rebuild its dock as it is so if this board chose
17 not to allow this boat lift to move seaward, that is
18 what Dr, Donovan and his wife would choose to do
19 because of the importance of both the depth, the
20 navigational patterns, and the seagrass situation.

21 **ALAN BOMSTEIN:** Any questions of counsel?

22 **VINCENT COCKS:** Mr. Chair?

23 **ALAN BOMSTEIN:** Yes.

24 **VINCENT COCKS:** I have a question. And this goes
25 back to the depth and the gentleman that had stated

1 about the prop pocket that had occurred and that it
2 was probably attributed to the stiff -- or the skiff
3 that was there at one time. How long have the Donovans
4 live at this residence?

5 **KATIE COLE:** About a year and a half.

6 **VINCENT COCKS:** Okay. Thank you.

7 **KATIE COLE:** You're welcome.

8 **ALAN BOMSTEIN:** Any other questions of Miss Cole?
9 Thank you, Katie.

10 **KATIE COLE:** Thank you.

11 **ALAN BOMSTEIN:** Board?

12 **CLIFF GEPHART:** Would anybody like to view this
13 that I have?

14 **ALAN BOMSTEIN:** -- I'm viewed to death here.

15 **CLIFF GEPHART:** Huh?

16 **ALAN BOMSTEIN:** What is that?

17 **CLIFF GEPHART:** This is just showing the
18 perpendicular lines of the permit.

19 **ALAN BOMSTEIN:** Okay. Pass it around. So --
20 beautiful. In summation, the Staff is comfortable
21 with extending the dock. The applicant would
22 additionally like to move the boat lift slightly
23 forward and leave it in place. Staff would prefer
24 that the boat lift be moved to the other side of the
25 dock. The neighbor who is here in opposition basically

1 seems to be opposed to pretty much all of it. I would
2 ask the board for thoughts, concerns. Anybody want to
3 make a motion? Anybody want to talk about this?

4 **JOHN DORAN:** I'm going to talk before I make a
5 motion, I think.

6 **ALAN BOMSTEIN:** Go right ahead.

7 **JOHN DORAN:** And that's not to say someone else
8 can't make the motion. With respect to the provisional
9 approval the (unintelligible). When the time comes,
10 if I need to, I'll make that motion to approve what
11 the Staff has recommended for all the right reasons,
12 including the fact that there are special conditions
13 and there is an undue hardship with respect to the
14 boat lift. I understand that reasonable people and
15 experts can have differences of opinion, which is my
16 shot at experts. The fact remains that this is a board
17 decision, and we have to listen to the evidence
18 presented and the -- and the testimony and make a
19 decision about what we believe to be true and to be in
20 the best interest of the community and to follow the
21 spirit of the code.

22 Based on the evidence that I've heard and seen,
23 I think I'm persuaded that there are, in fact, special
24 conditions that would support the proposal to push the
25 boat lift further out and make it narrower.

1 And then the -- but in the -- basically the same
2 footprint. I am persuaded that there is evidence that
3 the depths of the water would support that as a
4 proposition. I'm also persuaded that we can pretty
5 much conclude with some certainty that leaving it
6 where it is won't impact the seagrasses that are there
7 because there aren't any, and that it would, in fact,
8 impact the seagrasses on the north side where there
9 are seagrasses. Well, I'm persuaded that the -- the
10 -- there are conditions, and there are hardships that
11 would allow me to, at some point, make a motion to
12 approve both the dock and the proposed boat lift.

13 **VINCENT COCKS:** And Mr. Chair, I'll second that
14 motion.

15 **ALAN BOMSTEIN:** Hey, what -- what -- were you --
16 can -- making that a motion?

17 **JOHN DORAN:** I want other people to speak.

18 **ALAN BOMSTEIN:** That was that was commentary as
19 opposed to seconding a motion.

20 **VINCENT COCKS:** Oh, I thought it was -- okay --
21 it was a motion.

22 **ALAN BOMSTEIN:** As -- as opposed to a motion but,
23 I mean --

24 **VINCENT COCKS:** Okay. But I -- I totally concur
25 with what

1 **ALAN BOMSTEIN:** Yeah.

2 **VINCENT COCKS:** ' -- Mr. Doran had to say there,
3 that there are mitigating circumstances. It's not
4 being pushed any closer to the other property, and we
5 -- just going out and it's still a boat lift, and it's
6 going a little further away, so that's my comment.

7 **CLIFF GEPHART:** As someone who lives on the water
8 and has a very odd-shaped lot, at some point, if -- if
9 my lot had to follow lot lines I wouldn't be able to
10 get a fishing pole through it at some point, you know?
11 And -- and I realize as a boat owner in shallow water
12 sometimes an inch does matter. It matters if your
13 family can get out at a certain time, if you can get
14 back at a certain time, one inch really does matter.
15 And I feel like I -- I would be inclined to allow this,
16 because I think that one inch does matter. It doesn't
17 look like it can encroach. He's not asking for this
18 dock to go out any farther than the neighbor's dock
19 who opposes this, in my visual evidence here.

20 So it's difficult for me to say that the person
21 that's opposing this is farther out. And if the lines
22 were perpendicular, it would be -- I mean, his boat
23 looks like it could go 20 feet farther, you know, and
24 they're asking for six or whatever it is. So I
25 certainly don't oppose this. If anybody would like to

1 make a motion or if you'd like me to make the motion,
2 I'll go ahead and do that.

3 **JOE BURDETTE:** It's funny, I was going to say
4 exactly what Mr. (unintelligible).

5 **DEBORAH WHITE:** And I was, too.

6 **ALAN BOMSTEIN:** Yeah, I -- I -- I-- honestly I
7 think the whole issue is somewhat de minimis. I -- I
8 don't think we're -- we're -- in -- in granting the
9 request, I -- I just don't see that there is a
10 magnitude of order here that is impactful to either
11 the ecosystem or to -- or to the neighbors. So I --
12 I -- I'm probably in concurrence, as well. John, you
13 want to formalize that into some good verbiage?

14 **JOHN DORAN:** Sure. Yeah. Sure. Based on the
15 evidence that's been presented, the Staff report, and
16 the testimony that we've heard here today, I'm going
17 to move for conditional approval of both the
18 residential private dock and the boat lift as proposed
19 by the applicant, specifically in the special
20 conditions.

21 I would go back to what I said earlier, which is
22 the -- I think that there is a -- would be a real
23 impact on seagrasses to force the applicant to go to
24 the north side as opposed to just basically putting it
25 in the same place that it is, but pushing it out a

1 little bit further. And because of the depth of the
2 water. I'm not a boater, but I accept the premise
3 that deeper is better for boaters. And so I think
4 those two special conditions are just the ones that
5 I'm going to cite, but there may be others.

6 **ALAN BOMSTEIN:** Okay.

7 **JOHN DORAN:** And so I would apply the same
8 condition to the boat lift as I would to the private
9 dock which is to require -- to obtain all required
10 permits and that any conditions in the permits must be
11 adhered to. That's my motion.

12 **VINCENT COCKS:** Yeah. I'll second that motion.

13 **ALAN BOMSTEIN:** Motion by Mr. Doran, a second by
14 Mr. Cocks. Is there any further discussion by the
15 board? All in favor of the motion signify aye.

16 **IN UNISON:** Aye.

17 **ALAN BOMSTEIN:** Opposed? Motion carries
18 unanimously. You have your variances on both issues.

19 (END OF REQUESTED PORTION OF AUDIO)

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CERTIFICATE

I, Lewis Segal, certify that the recording of The Board of Adjustment Hearing was transcribed as recorded and that the transcribed pages, numbered 1 through 49 inclusive are a true and accurate transcription. I further certify that the foregoing constitutes a true transcript of the electronically-recorded interview to the best of my abilities, recognizing those limitations inherent in electronically-recorded proceedings.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties hereto, nor a relative or employee of such attorney or counsel, nor do I have an interest in the outcome or the events of the action.

**E-SIGNED by Lewis Segal
on 2021-09-20 08:42:38 EST**

Proofer signature

Signed this 17th day of September 2021.
Pinellas County, Florida

Sec. 138-231. Criteria for granting of variances, waivers and/or administrative adjustments.

In order to authorize any variance, waiver, and/or administrative adjustment to the terms of the Code, the authorized reviewing body shall determine the following criteria have been satisfied:

Table 138-231.a — Criteria for Granting of Variances, Waivers and/or Administrative Adjustments			
Criteria	Variance	Waiver	Administrative Adjustment
(a) <i>Special conditions.</i> That special conditions and circumstances exist which are peculiar to the land, structure, or building involved.	X		
(b) <i>Unnecessary hardship.</i> 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.	X		
(c) <i>Minimum code deviation necessary.</i> That the granting of the request is the minimum code deviation that will make possible the reasonable use of the land, building, or structure.	X	X	X
(d) <i>Consistency with the land development code.</i> That the granting of the request will be in harmony with the general intent, purpose, and spirit of this Code.	X	X	X
(e) <i>Consideration of rezoning.</i> 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.	X		
(f) <i>Consistency with Comprehensive Plan.</i> That the granting of the request will be consistent with the intent and limits of the Comprehensive Plan.	X		
(g) <i>Detriment to public welfare.</i> That such request will not be injurious to the area involved or otherwise detrimental to the public welfare.	X		
(h) <i>Circumvent Board approval.</i> 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	X		

county commissioners. This shall not apply to new variances reviewed by the same board that originally placed the condition.			
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(Ord. No. 18-36 , § 3(Att. B), 10-23-18)

Sec. 58-539. Variances.

- (a) The board may review and decide whether to grant variances to all permitting criteria under this article. Additionally, the board of adjustment and appeals shall have the authority to review and decide whether to grant variances to subsections 58-555(b)(1), 58-555(b)(2), and 58-556(b)(1) of this article.
- (b) The county administrator, or his or her designee, may grant variances to subsections 58-532(a), 58-532(b), 58-543(f), 58-543(g), 58-543(l), 58-543(m), 58-546(1), 58-546(4), 58-546(5), 58-546(7), 58-555(a)(2), 58-555(a)(3), 58-555(a)(4), and 58-555(a)(7).
- (c) In deciding whether to grant a variance, the board, board of adjustment and appeals, or county administrator, or his or her designee, shall make a positive finding of fact to all of the criteria set forth in section 138-231, Pinellas County Land Development Code, as applicable, and any variance issued shall be subject to the following:
 - (1) A variance shall be necessary prior to the issuance of a permit for any project that does not comply with the criteria of this article. The granting of any variance shall not be deemed as automatic approval for any such permit.
 - (2) A variance in construction materials or the minimum construction specifications may be approved by the county when, based on acceptable engineering criteria, such materials are equivalent to, or better than, that which is specified in this article.
 - (3) In granting any variance, appropriate conditions, time limits, and safeguards, may be prescribed.
 - (4) Variances shall not be deemed to set precedence for other applications should they be either standard applications or those requiring variances.
- (d) On all proceedings held before the board or board of adjustment and appeals, the county shall review the application and file a report on each item. Such reports shall be received by the board or board of adjustment and appeals prior to final action on any item and shall be part of the record of the application.
- (e) All public hearings conducted by the board or board of adjustment and appeals shall be noticed pursuant to section 58-535. An applicant's failure to appear at such public hearing may be sufficient cause to deny the requested variance.

(Ord. No. 11-12, § 2, 4-26-11; Ord. No. 18-38, § 1, 10-23-18)

Sec. 58-544. Dock repair and reconstruction.

- (a) Where any dock permit was previously issued under this article, a variance granted under section 58-539 shall not be required for the county to issue a permit for repair, replacement, or reconfiguration of the dock where either subsection (a)(1) or (a)(2) below is satisfied:
- (1) The dock is reconstructed in the same configuration approved in said permit.
 - (2) Said permit demonstrates nonconformance with any one or more of the following subsections in this article:
 - a. Depth under subsection 58-543(f), 58-543(g), or 58-546(7); or
 - b. Length under subsection 58-546(1), 58-555(a)(3), 58-555(a)(4), or 58-555(a)(7); or
 - c. Dock and slip limits under subsection 58-546(3), 58-546(4), 58-555(a)(5); or
 - d. Prohibited structures under subsection 58-543(k), 58-543(l), 58-543(m), 58-546(5), or 58-555(a)(2); or
 - e. Dock length and setback in the unincorporated county under subsection 58-555(b)(1), 58-555(b)(2), or 58-556(b)(1); or
 - f. Commercial and multiuse private dock width in the unincorporated county under subsection 58-556(b)(1); and

The dock is reconstructed subject to the following condition(s) relevant to any of the applicable subsections identified in this subsection (a)(2) above:

- a. Depth of the slips is not decreased;
- b. Total length of the dock is not increased;
- c. Total nonconforming number of docks and/or slips is not increased;
- d. Square footage of each category of prohibited structure is not increased;
- e. The dock is reconstructed such that there are no new structures located beyond the applicable setback and length limits required in the unincorporated county;
- f. Width of the multiuse or commercial dock in the unincorporated county is not increased.

This subsection (a)(2) does not permit nonconformance with any criteria, requirements, or restrictions not explicitly listed in this subsection (a)(2) above, including but not limited to the criteria set forth in section 58-530.

- (b) Where no dock permit was previously issued under this article, a variance granted under section 58-539 shall not be required for the county to issue a permit for repair or replacement of that dock where the dock was originally constructed on or prior to February 26, 1990, remained in existence until two years or less prior to application submittal, and is reconstructed in the same configuration as existed on February 26, 1990. For the purposes of this subsection (b), a dock shall be considered to have "remained in existence" if at least 75 percent of the dock's pilings remain.
- (c) Repairs to or replacements of permitted boat lifts shall not require a permit under this article from the county unless pilings are to be replaced. Such boat lifts are to be reconstructed without enclosed sides.
- (d) Repairs to or replacement of deck boards only do not require a permit under this article from the county. This exemption does not apply to any support structure such as stringers, caps or floaters and all deck boards must meet the minimum construction criteria of subsection 58-554(7).

(Ord. No. 11-12, § 2, 4-26-11; Ord. No. 16-17, § 2, 3-29-16; Ord. No. 18-38, § 1, 10-23-18)

(Supp. No. 109)

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Sec. 58-555. Design criteria for private docks.

- (a) Design criteria for all private docks shall be as follows:
- (1) All criteria contained in section 58-554 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.
- (b) The following additional design criteria shall apply only to those private docks in the unincorporated areas of the county:
- (1) Private docks to be constructed in the waters of the county shall be constructed so that the length of the dock, excluding tie poles, shall not extend from the mean high water line or seawall of the property further than one-half the width of the property at the waterfront. This requirement may be waived by the county provided that signed statements of no objection from both adjacent waterfront property owners have been submitted.
 - (2) Private docks and boat lifts, excluding tie poles, must be constructed within the center one-third of the applicant's waterfront property or 50 feet from the adjacent property, whichever is less restrictive. This requirement may be waived by the county, provided that signed statements of no objection from the property owners encroached upon have been submitted.

(Ord. No. 11-12, § 2, 4-26-11; Ord. No. 18-38, § 1, 10-23-18)