

106 Harbor Drive

Approved Dock Permit

Applicant: Dr. James Donovan

Representative: Katie Cole, Esq. and Shane Costello, Esq. / Hill Ward Henderson, P.A.

Request

- BOCC to **uphold an approved / issued permit**
 - Permit to repair/replace existing dock and boatlift footprint
 - Additional length per **previously approved** variance
- Dock/boatlift existed in **same footprint** since at least 1995
 - Additional length was constructed prior to 2006, properly permitted 2023

Background

- Owner sought to **repair existing dock** (damaged in 2020)
 - Staff flagged additional length (in location of approved tie poles)
 - Staff interpretation of angle of waterfront lines different than in 2001 when original dock permitted
- Owner received variance and permit approvals in 2021
 - Neighbor appealed as to **side setback variance only**, not as to length variance
 - Owner revised dock plans and **received permit approval in 2023**

Timeline of Approvals and Construction

- Sept. 2001: **Original dock permit**
 - ~2006: additional length built
- March 2020: dock damaged
- May 2020: discussions with staff & Applicant's dock consultant (Woods Consulting)
- Dec. 2020: repair/replace permit filed
- Feb. 2021: staff advised variances needed
 - For existing additional length and, subsequently, for boatlift shifting waterward
- May 2021 Board of Adjustment APPROVES variances
- May 2021: Permit issued for reconstruction of existing dock that includes relocation of lift waterward and length extension
- Sept. 2021: Petition of Certiorari filed by neighbor over **side setback only** (not length variance)
- Aug. 2022: court decision
- Sept. 2022: new repair/replace permit filed
 - With **approved additional length** (removed waterward lift location)
 - **Reconstruction 2001** dock otherwise
- April 2023: permit approved
- May 2023: neighbor appealed issuance of permit



2020 Damage to Dock triggering application for approval



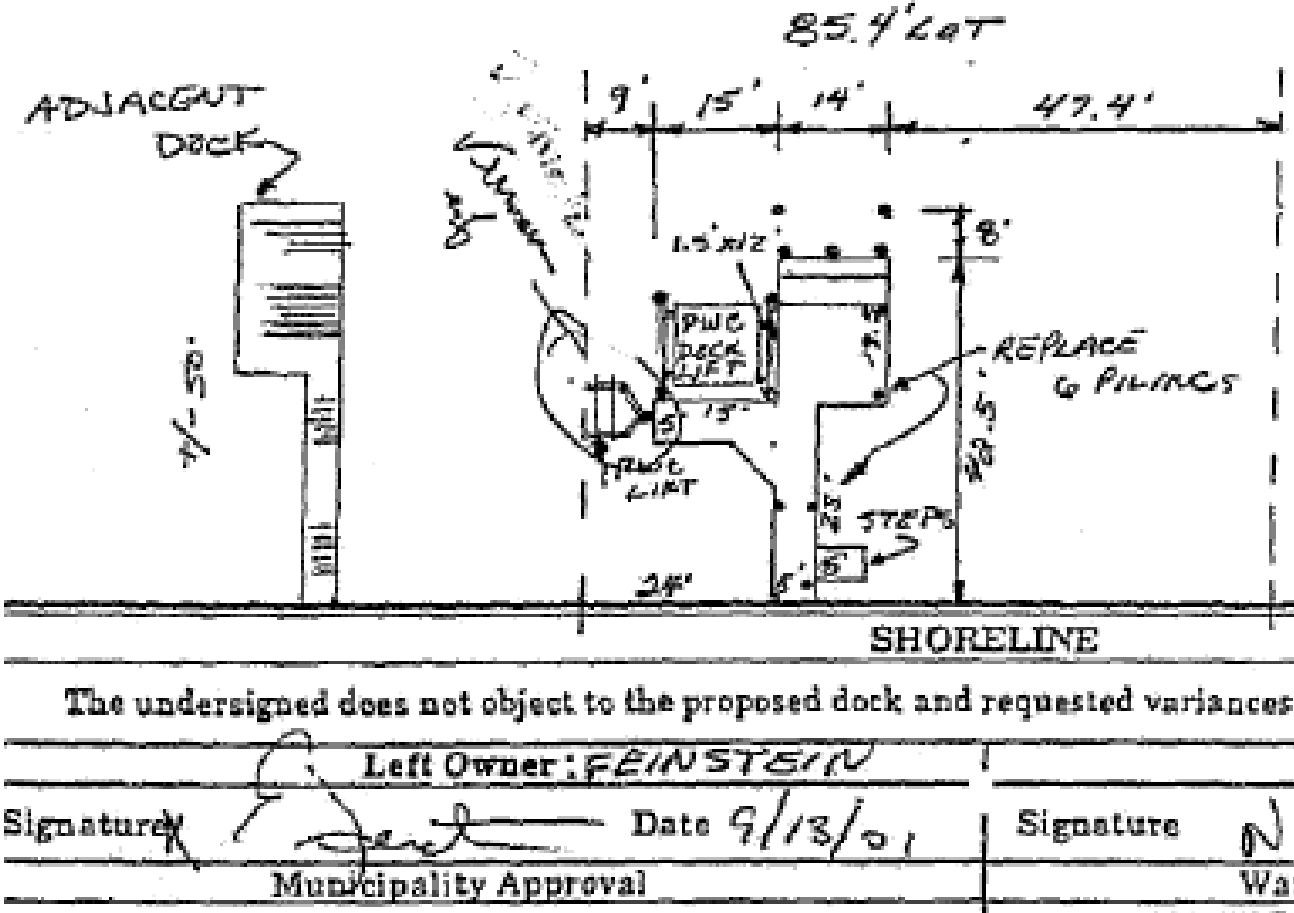


2020 Damage to Dock triggering application for approval



2001 Dock Permit

- Replaced existing dock that had no permit on file
- Dock/boatlift encroached into south side setback
 - Adjacent neighbor approved variance
 - Narrowest point 4.79' from waterfront line (angled)



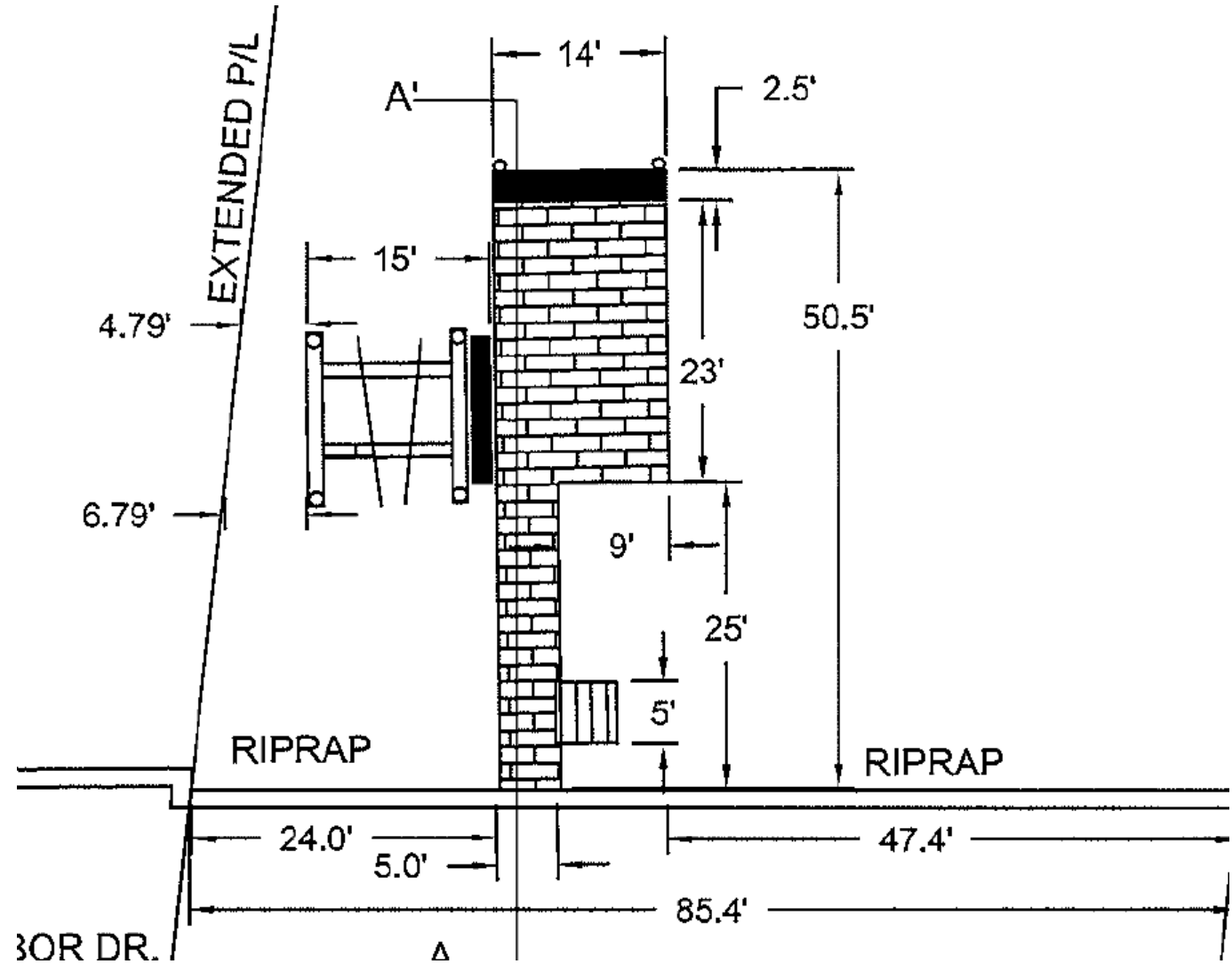
Footprint of dock as permitted in 2001
 2001 Approved Dock
 (variance for side setback)

2023 Approved Dock

(prior footprint + additional length)

LDC 58-544 permits
repair/reconstruction of
existing permitted dock

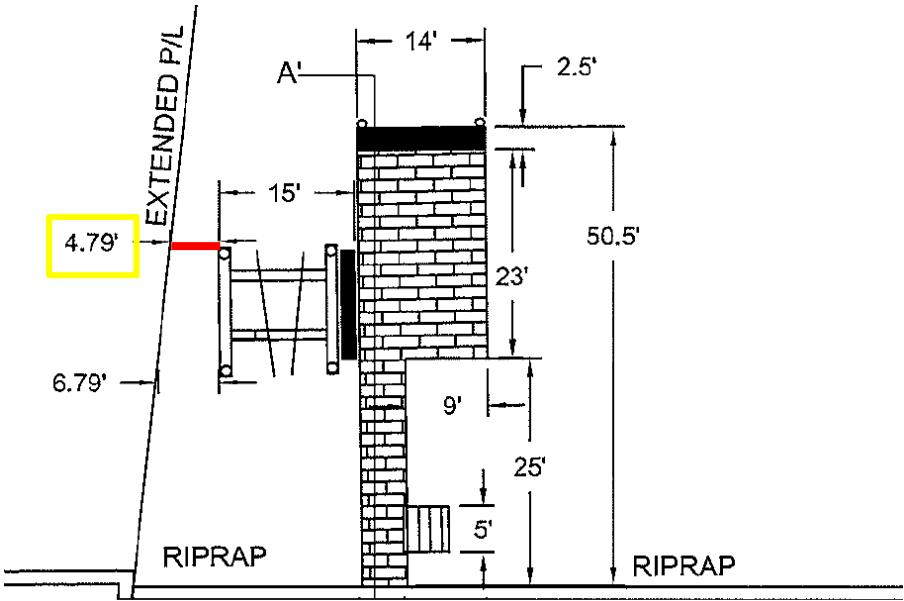
No permit required to
remove portions of dock
(prior stub-out)



Dock Footprint



2001 Dock (red arrow = stub-out portion removed)



2023 Dock (previously approved length variance)

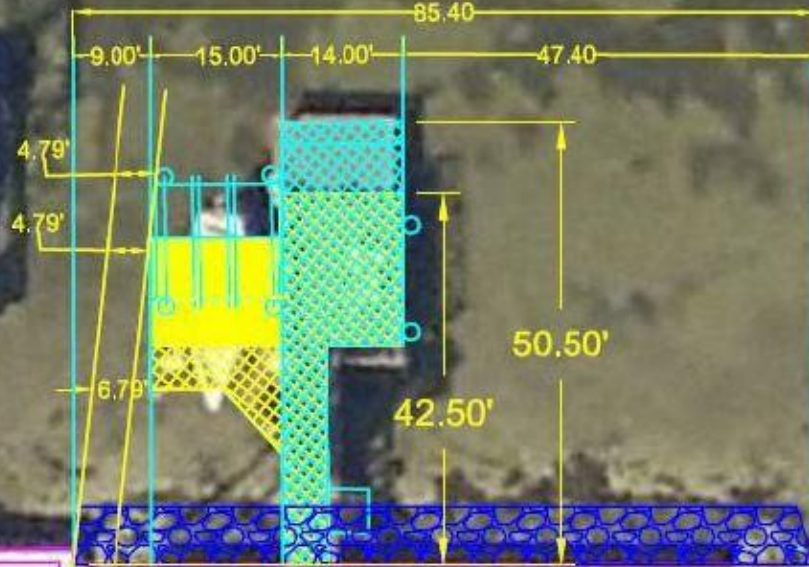


PROPOSED DOCK

25' x 5' = 125 SF

25.5' X 14' = 357 SF

482 SF TOTAL



85.4

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.

Code sec. 58-544(a)(1)

- “Where **any dock permit** was previously issued under this article, a variance . . . shall not be required for the county to issue a permit for repair, replacement, or reconfiguration [if]:
 - The dock is reconstructed in the same configuration approved in said permit.”
- Dock and boatlift structure = **same footprint as always**
 - Only additional length required new variance (as previously approved and not challenged)
 - 2001 Permit = reconstructed footprint
 - 2023 Permit = additional length

Code sec. 58-544(a)(2)

- “Where **any dock permit** was previously issued under this article, a variance . . . Shall not be required for the county to issue a permit for repair, replacement, or reconfiguration [if]:
 - [prior permit] demonstrates **nonconformance with . . . dock length and setback** in the unincorporated county [and]
 - the dock is reconstructed . . . such that there are **no new structures** located **beyond the applicable setback and length** limits required in the unincorporated county[.]”
- **Applicable Setback and Length are established**
 - Setback = prior footprint (including prior variance)
 - Length = approved variance (previously approved and not challenged)

Historic Aerials



1995



2002

Historic Aerials



2006 – additional length built



2008 – majority of stub-out removed

Historic Aerials



2010

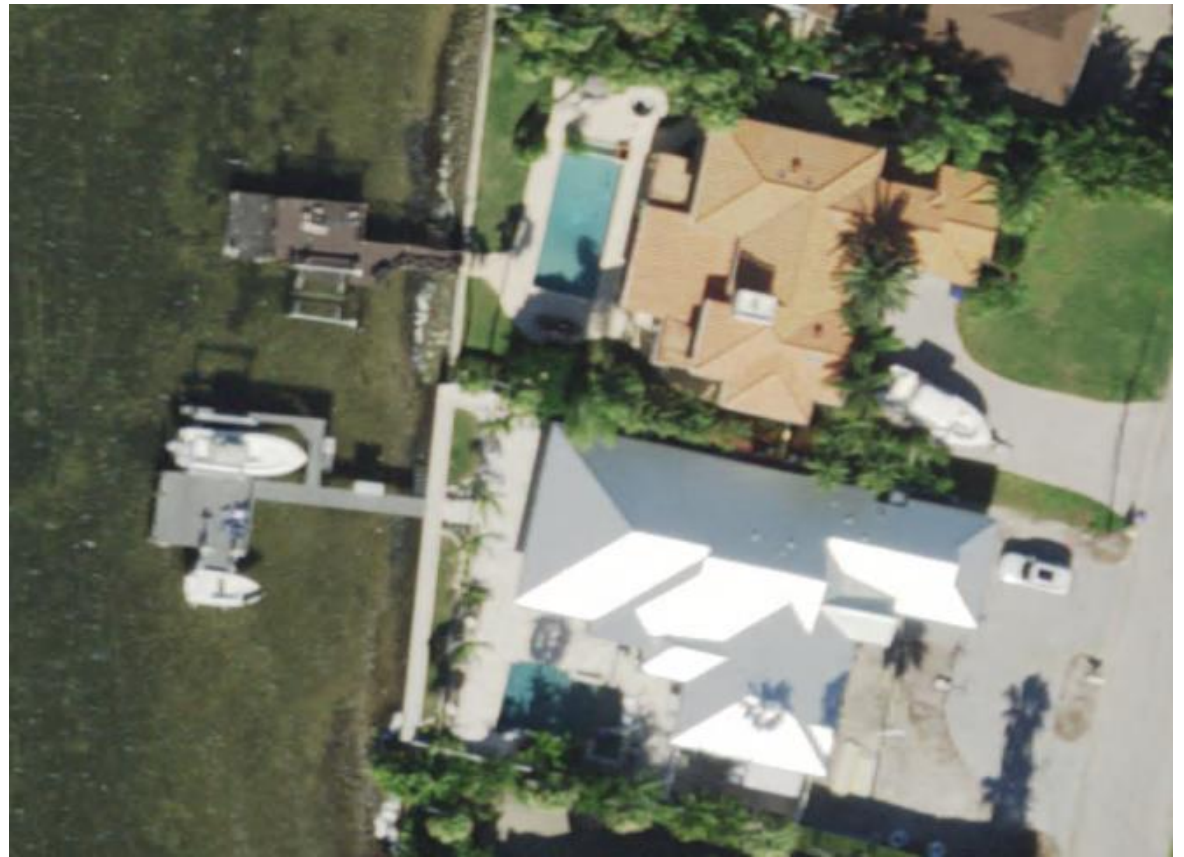


2016

Historic Aerials



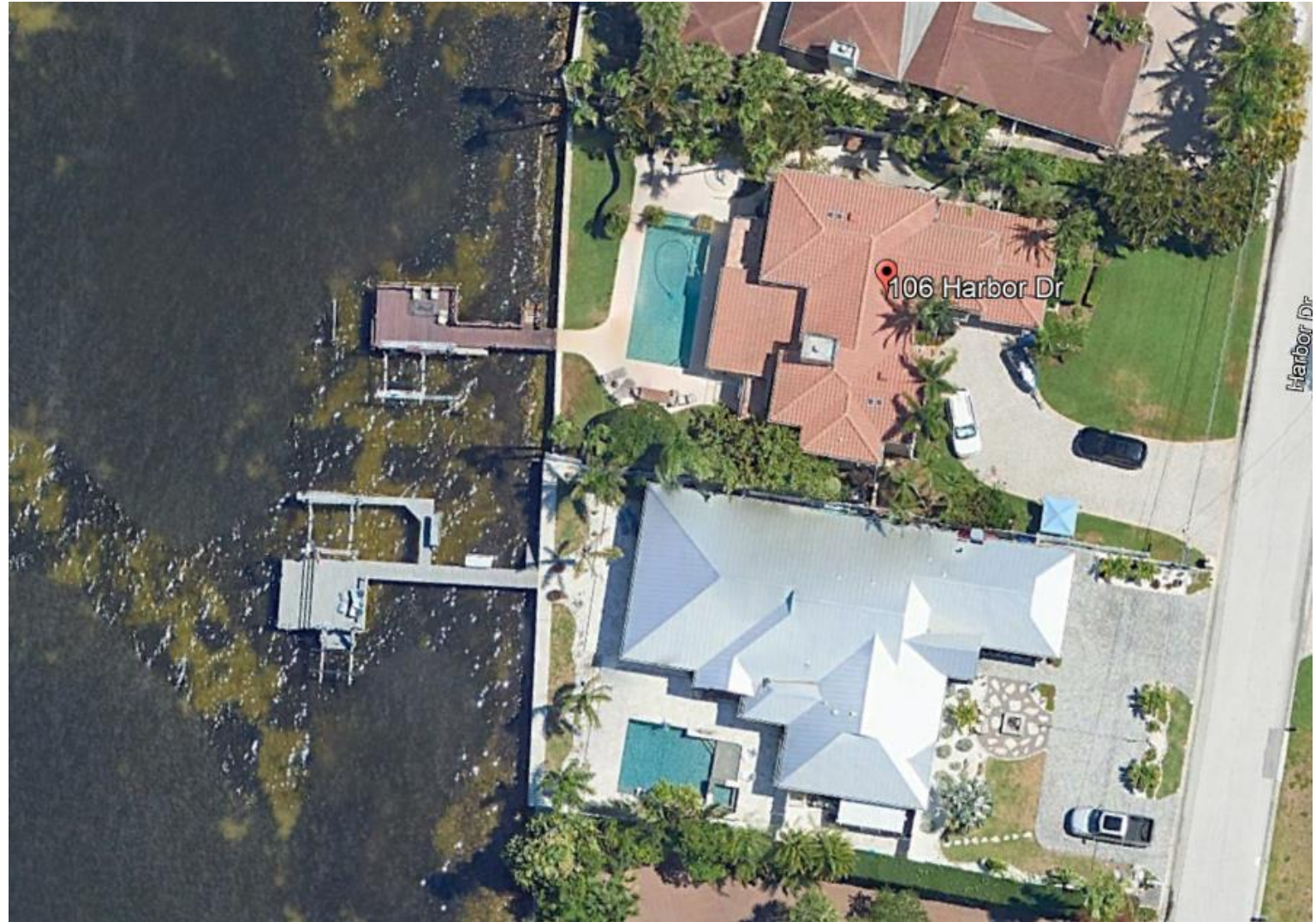
2017



2020

2023 Aerial

Additional length *previously approved per variance* and 2023 permit – reconstruction to commence pending appeal



2021 Variance

- Owner requested variances for repaired dock design
 - Shift boatlift to 4.7' from side setback where 4.79' previously approved in 2001
 - Vest existing additional length at 50.5'
- Board of Adjustments approved both variance requests
- Permit was issued, neighbor appealed as to the boat lift side setback **only** (length variance was not challenged)

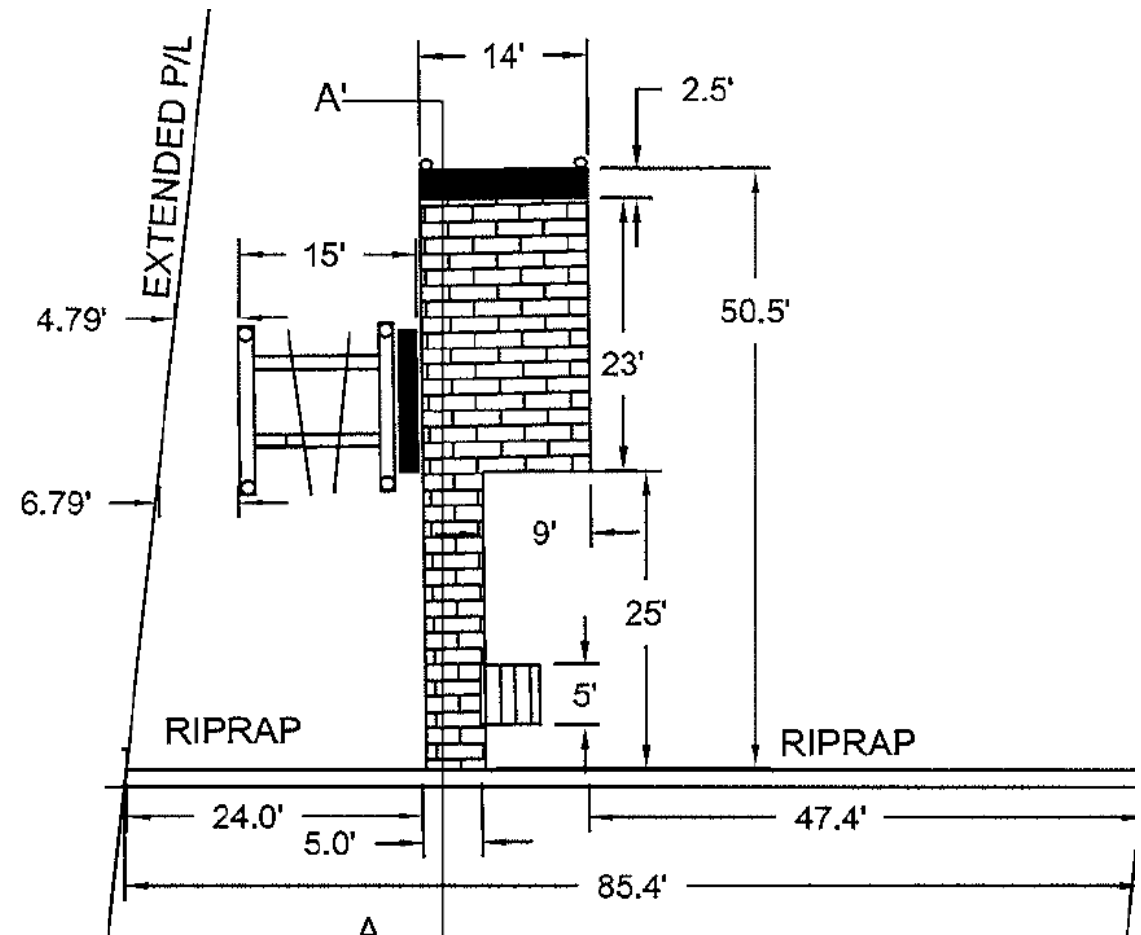
2022 Circuit Court Decision

- Neighbor sued over side setback variance
 - Circuit Court issued decision quashing 4.7' setback variance
 - **Length variance remained unchallenged / approved**

both the dock length and the boat lift variances. This decision was reduced to a written order dated May 5, 2021 (“the Variance Order”).³ Petitioners subsequently filed a timely petition for writ of certiorari contesting only the boat lift variance granted by the Board. The dock length variance is not at issue in this action.

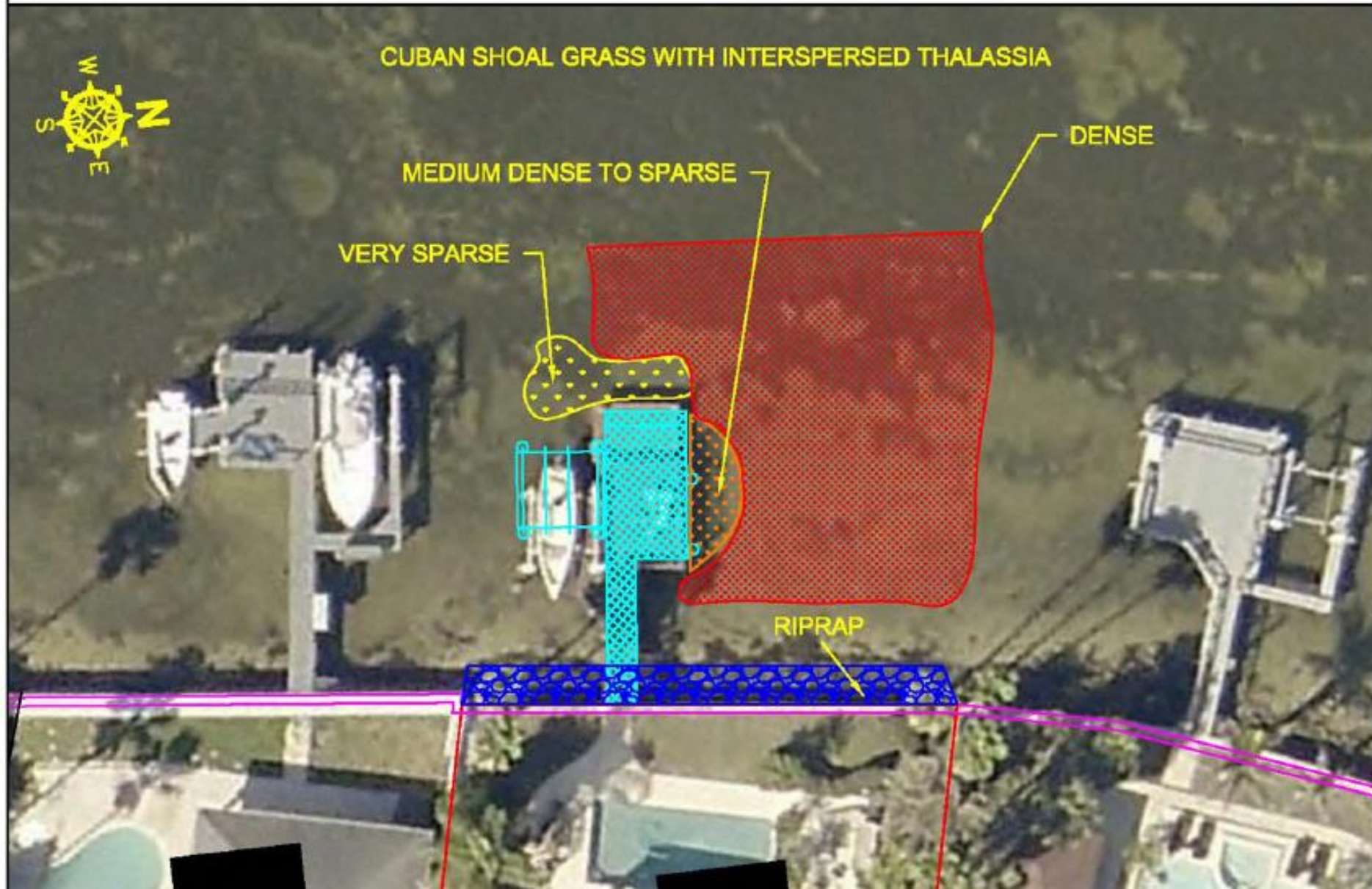
2023 Permit

- New dock/boatlift plans in accordance with Court decision
 - 50.5' dock length (per 2021 variance)
 - Boatlift in same footprint as 2001 boatlift (per 2001 variance)
 - Stub-out not reconstructed
- **Location of 2001 dock/boatlift = unchallenged / approved**
- **Length addition in 2021 = unchallenged / approved**



SCALE: 1" = 30'

SEA GRASS SURVEY EXHIBIT
SURVEY DATE 08-04-20



Neighbor Appealed 2023 Permit

- Sec 58-536 Appeals
 - (b) Any person, including the state, **aggrieved by the county's findings of fact and determination under this article**, may, within 30 days of such findings and determination, petition for a hearing, stating in such petition the grounds upon which the county has **erred in its findings** and wherein such person is aggrieved by such findings. The board may, in its discretion, grant or deny such hearing.

Neighbor Appeal of 2023 Permit

- Neighbor already litigated side setback, did not challenge length or removal of stub-out
 - Neighbor's challenge to issued 2023 permit = **attempt to challenge length and footprint after the fact**
 - Length established by variance which can no longer be appealed
 - No stub-out = dock is smaller in footprint / no permit required to *remove* portions
- Neighbor argues view impacted
 - Code does not regulate size of boat
 - Code does not regulate height of lift
 - Code does not regulate view
 - Right to view limited, **no right to your neighbor's view**

MLS Listing of Neighbor's Property Prior to Ownership = Neighbor's View at the Time of Purchase in 2015

104 HARBOR DR

PALM HARBOR, Florida 34683-5403

MLS #: U7733637

 Map  

\$1,100,000

Sold



● LAST SOLD ON OCT 23, 2015 FOR \$1,100,000



Donovan's View = Includes Neighbor's Dock





Neighbor's Pattern of Interference

- 2021 Lawsuit challenging side setback variance
- 2022 Complaint to FDEP regarding size and location of dock (which is smaller than neighbor's own dock)
 - Neighbor falsely accused dock contractor of being unlicensed
 - FDEP advises they do not regulate boatlifts
 - FDEP finds no violation of Donovan dock
- 2023 Appeal of issued dock permit
- Frequent "issues" raised to County Staff throughout permitting
 - complaint when size of dock *was reduced*
 - complaint re: unfinished pilings / stopped work because of *his own appeal*
 - complaint re: potential impact to seagrass which is reason *for the boatlift's current location*
 - complaints and monitoring of every stage of dock repair/construction

Right to View – Case Law

- Structure constructed at angle across neighbor's straight-out view, rather than perpendicularly to the shoreline, can interfere with right to a view (Lee County v. Kiesel)
- Per established case law, neighbor has a right to the view of the water body he has rights on, but not a right to the view of adjacent water bodies (Mickel v. Norton)
- Supreme Court of Florida affirmed that riparian rights extend to the water “opposite” the upland owner's holdings (Broward v. Mabry)