



Interoffice Memorandum

AGENDA ITEM

September 2, 2019

TO: Mayor Jerry L. Demings
-AND-
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director
Planning, Environmental, and Development
Services Department

CONTACT PERSON: David D. Jones, P.E., CEP, Manager
Environmental Protection Division
(407) 836-1406

SUBJECT: October 8, 2019 – Consent Item
Environmental Protection Commission Recommendation for
Requests for Waiver and Two Variances for the Jeffrey and
Rachelle Szukalski Dock Construction Permit BD-19-05-044

Jeff and Rachelle Szukalski are requesting approval of a dock construction permit with a waiver to Orange County Code (Code), Chapter 15, Article IX, Section 15-342(b) (terminal platform size), a variance to Section 15-343(a) (side setback distance), and a variance to Section 15-342(h) (more than one dock per residential lot). The project site is located at 219 W 2nd Avenue, Windermere, Florida 34786. The parcel ID number is 17-23-28-9336-04-231. The subject property is located on Lake Butler in District 1.

On May 20, 2019, the Environmental Protection Division (EPD) received an Application to Construct a Dock on the subject property with requests for a waiver and a variance. Upon review of the application, EPD notified the applicants that an additional variance was required. The applicants are requesting:

- A waiver to construct a dock with a terminal platform that measures 568 square feet in lieu of the 400 square feet maximum allowed by Code.
- A variance to reduce the side setbacks on both projected property lines to nine feet in lieu of the 10-foot minimum required by Code.
- A variance to allow one more dock structure on the property than allowed by Code. A fixed platform in the lake is located within the applicants' projected property lines. The platform was constructed prior to December 19, 1988, the date when the dock code was established, and therefore is considered "grandfathered." In the request for variance, the applicants' agent noted that the platform is not used by the Szukalskis, but has been used by the neighbors for many years.

Pursuant to Orange County Code, Chapter 15, Article IX, EPD staff evaluated the proposed waiver and variance applications and required documents. The additional shading impacts from the larger-than-allowed terminal platform were evaluated by EPD staff using the Uniform Mitigation Assessment Method, and the applicant has agreed to provide mitigation for the additional shading with a payment of \$188.50 to the Conservation Trust Fund (CTF).

In accordance with Orange County Code, Chapter 15, Article IX, Section 15-347(a), on May 24, 2019, a Notice of Application for Waiver to Section 15-342(b) (terminal platform size), and Variance to Section 15-343(a) (side setback distance) was sent to all shoreline property owners within a 300-foot radius of the property. No objections were received. On July 19, 2019, a Notice of Application for Variance to Section 15-342(h) (more than one dock per residential lot) was sent to all shoreline property owners within a 300-foot radius of the property. No objections to any of the notices have been received.

Based on documentation and justifications provided by the applicants, the recommendation of the Environmental Protection Officer (EPO) was to approve the requests for waiver to terminal platform size and variance to side setback due to the support from adjoining neighbors (as evidenced by letters of no objection), and the non-self-imposed hardship presented by the narrow configuration of the platted property lines. In addition, the Orange County Sheriff's Office conducted a navigational hazard assessment of the proposed dock location and determined that there is no navigational issue. Regarding the variance for more than one dock per residential lot, the EPO recommended to approve the variance because the swimming platform is "grandfathered" and has been in the same location for many years, and the adjacent property owners have not expressed any objections to the request.

During the August 28, 2019 public hearing, the Environmental Protection Commission (EPC) voted to:

- Uphold the recommendation of the EPO and recommend approval of the request for waiver to Section 15-342(b) (terminal platform size) with the condition that the applicants pay \$188.50 to the Conservation Trust Fund as mitigation;
- Uphold the recommendation of the EPO and recommend approval of the request for variance to Section 15-343(a) (minimum side setback); and
- Uphold the recommendation of the EPO and recommend approval of the request for variance to Section 15-342(h) (more than one dock per residential lot).

ACTION REQUESTED: **Acceptance of recommendation of the Environmental Protection Commission to approve: 1) Request for waiver to Orange County Code, Chapter 15, Article IX, Section 15-342(b) (terminal platform size) with the condition that the applicant pay \$188.50 to the Conservation Trust Fund within 60 days of the decision of the Board of County Commissioners, 2) Request for variance to Section 15-343(a) (side setback), and 3) Request for variance to Section 15-342(h) (one dock per residential lot) for the Jeff and Rachelle Szukalski Dock Construction Permit BD-19-05-044. District 1**

JVW/DJ: mg

Attachments

Dock Construction Application for Variances and Waiver



Dock Construction Application for Variances and Waiver

BD-19-05-044

District #1

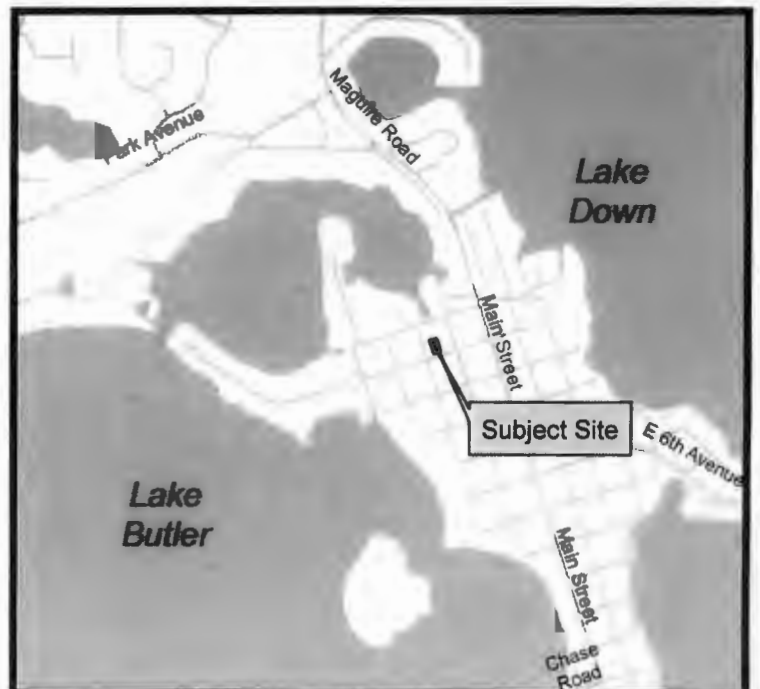
Applicant: Jeffrey & Rachelle Szukalski

Address: 219 W 2nd Avenue

Parcel ID: 17-23-28-9336-04-231

Project Site 

Property Location 





ENVIRONMENTAL PROTECTION DIVISION
 David D. Jones, P.E., CEP, Manager
 3165 McCrory Place, Suite 200
 Orlando, FL 32803
 407-836-1400 • Fax 407-836-1499
 www.ocfl.net

ENVIRONMENTAL
 PROTECTION
 COMMISSION

ORANGE COUNTY
 ENVIRONMENTAL PROTECTION COMMISSION
 August 28, 2019

Johnathan Huels
 Chairman

PROJECT NAME: Jeffrey & Rachelle Szukalski

Mark Ausley
 Vice Chairman

PERMIT APPLICATION NUMBER: BD-19-05-044

Oscar Anderson

LOCATION/ADDRESS/LAKE: 219 W 2nd Avenue/Lake Butler

Perry Barnas

RECOMMENDATION:

Horman Blackburn

Mark Corbett

Theodore Geltz

PURSUANT TO ORANGE COUNTY CODE, CHAPTER 15, ARTICLE IX, SECTION 15-350(b), APPROVE THE REQUEST FOR WAIVER TO SECTION 15-342(b) (TERMINAL PLATFORM SIZE) WITH THE CONDITION THAT THE APPLICANT PAY \$188.50 TO THE CONSERVATION TRUST FUND WITHIN 60 DAYS OF THE DECISION OF THE BOARD OF COUNTY COMMISSIONERS; APPROVE THE REQUEST FOR VARIANCE TO SECTION 15-343(a) (SIDE SETBACK); AND APPROVE THE REQUEST FOR VARIANCE TO SECTION 15-342(h) (ONE DOCK PER RESIDENTIAL LOT) FOR THE JEFFREY & RACHELLE SZUKALSKI DOCK CONSTRUCTION PERMIT BD-19-05-044.

EPC AGREES WITH THE ACTION REQUESTED, AS PRESENTED

EPC DISAGREES WITH THE ACTION REQUESTED, AS PRESENTED AND HAS MADE THE FOLLOWING RECOMMENDATION:

Signature of EPC Chairman: _____

EPC Recommendation Date: _____

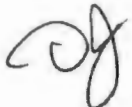
[Handwritten Signature]
 8/28/19



Interoffice Memorandum

August 14, 2019

To: Environmental Protection Commission

From: David D. Jones, P.E., CEP, Manager
Environmental Protection Division 

Subject: **Jeff and Rachelle Szukalski Request for a Waiver and Two Variances for Dock Construction Permit BD-19-05-044**

Reason for Public Hearing

The applicants, Jeff and Rachelle Szukalski, are requesting approval of a waiver to Orange County Code (Code), Chapter 15, Article IX, Section 15-342(b) (terminal platform size), a variance to Section 15-343(a) (side setback distance), and a variance to Section 15-342(h) (more than one dock per residential lot).

Location of Property/Legal Description

The project site is located at 219 West 2nd Avenue in Windermere, Florida. The Parcel ID number is 17-23-28-9336-04-231. The subject property is located on Wauseon Bay (Lake Butler) in District 1.

Background

On May 20, 2019, the Environmental Protection Division (EPD) received an Application to Construct a Dock for the subject property. The application package included an Application for Waiver to Section 15-342(b) to increase the terminal platform size by 168 square feet more than the maximum allowed by Code, and an Application for Variance to Section 15-343(a) to reduce the side setbacks to one foot less than required by Code. On July 14, 2019, EPD received an additional Application for Variance to Section 15-342(h) to allow one more dock on the property than allowed by Code.

Public Notifications

In accordance with Orange County Code, Chapter 15, Article IX, Section 15-347(a), on May 24, 2019, a Notice of Application for Waiver to Section 15-342(b) (terminal platform size), and Variance to Section 15-343(a) (side setback distance) was sent to all shoreline property owners within a 300-foot radius of the property. To date, EPD has received no objections to the requested waiver or variance.

On July 19, 2019, a Notice of Application for Variance to Section 15-342(h) (more than one dock per residential lot) was sent to all shoreline property owners within a 300-foot radius of the property. To date, EPD has received no objections to the requested variance.

The applicants and their agent were notified of the August 28, 2019 meeting of the Environmental Protection Commission in accordance with the requirements of Orange County Code, Chapter 15, Article IX.

Terminal Platform Size Waiver

Chapter 15, Article IX, Section 15-342(b) of the Code states, "The maximum square footage of the terminal platform shall not exceed the square footage of ten times the linear shoreline frontage for the first seventy-five (75) feet of shoreline and five times the linear shoreline frontage for each foot in excess of seventy-five (75) feet, not to exceed a maximum of one thousand (1,000) square feet." The applicants' shoreline measures approximately 40 linear feet at the Normal High Water Elevation (NHWE), allowing for a maximum terminal platform size of 400 square feet. The applicants are requesting a terminal platform size of 568 square feet.

Pursuant to Section 15-350(a)(2), "The applicant shall also describe (1) how this waiver would not negatively impact the environment, and (2) the effect of the proposed waiver on abutting shoreline owners."

To address Section 15-350(a)(2)(1), the applicants' agent states, "*The terminal platform will be constructed over open water, so there will not be any impact to wetland vegetation. The proposed terminal platform is only 168 square feet over the allowed limit.*"

To address Section 15-350(a)(2)(2), the applicants' agent states, "*The proposed structure will not adversely affect the adjacent property owner's view or navigability. LONOs from both neighbors are attached.*"

The additional shading impacts from the larger-than-allowed terminal platform were evaluated by EPD staff using the Uniform Mitigation Assessment Method. The applicants have agreed to provide mitigation for the additional shading with a payment of \$188.50 to the Conservation Trust Fund.

Variance to Side Setback

Chapter 15, Article IX, Section 15-343(a) states, "On lots or parcels having a shoreline frontage of less than seventy-five (75) feet, docks, including designated mooring areas, shall have a minimum side-setback of ten (10) feet from the projected property line." The applicants have a shoreline that measures approximately 40 linear feet at the NHWE, therefore the minimum side setback is 10 feet from the projected property lines. The applicants have requested a side setback of nine (9) feet from the projected property lines.

Section 15-350(a)(1) *Variances* states, "A variance application may receive an approval or approval with conditions when such variance: (1) would not be contrary to the public interest; (2) where, owing to special conditions, compliance with the provisions herein would impose an unnecessary hardship on the permit applicant; (3) that the hardship is not self-imposed; and (4) the granting of the variance would not be contrary to the intent and purpose of this article."

Pursuant to Section 15-350(a)(1), "the applicant shall also describe (1) how strict compliance with the provisions from which a variance is sought would impose a unique and unnecessary hardship on the applicant – the hardship cannot be self-imposed; and (2) the effect of the proposed variance on abutting shoreline owners."

To address Section 15-350(a)(1), the applicants' agent states, "*These parcels were platted with very narrow shorelines, because this area is on a cove. It is very difficult to construct even an average sized boathouse within the required setbacks.*"

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August 28, 2019 - Environmental Protection Commission

Jeff and Rachelle Szukalski Request for Waiver and Two Variances for Dock Construction Permit BD-19-05-044

To address Section 15-350(a)(2), the applicants' agent states, "*There is no navigational hazard or view obstruction, as evidenced by the attached LONOs.*"

At the request of EPD, the Orange County Sheriff's Office (OCSO) conducted a navigational hazard assessment of the proposed dock location on August 11, 2019. The OCSO determined that there is no navigational issue with the proposed location of the dock.

Variance to One Dock Per Residential Lot

During review of the applicants' request, staff reviewed aerial photographs of the property and identified a fixed swimming platform in the lake, located within the applicants' projected property lines. Due to a previous complaint in 2017, staff previously reviewed the permitting history of the structure and determined that the platform was constructed prior to December 19, 1988 (sometime in the 1950s-60s), and therefore, was considered "grandfathered." However, since the swimming platform is within the limits of the projected property lines of the applicants' lot, and the Florida Department of Environmental Protection has determined that this cove of Lake Butler is not sovereignty waters, staff has interpreted the proposed dock to be a second dock structure. Therefore, a variance to Chapter 15, Article IX, Section 15-342(h) (more than one dock per residential lot) is required.

Chapter 15, Article IX, Section 15-342(h) states, "Generally, the construction of more than one dock per residential lot is not permitted. However, one dock may be permitted on each water body to which a residential lot has frontage if there is no navigable connection between the water bodies."

The applicants submitted an Application for Variance to Section 15-342(h) on July 14, 2019. To address Section 15-350(a)(1), the applicants' agent states "*The second small structure has been there for many years and is used by people other than the owner. He doesn't want to remove it and cause problems with the neighbors.*"

To address Section 15-350(a)(2), the applicants' agent states "*Several of the neighbors would [sic] quite upset if the second small structure were removed, after being there SO long.*"

Response to Notifications

EPD has not received any objections to the requests. EPD received Letters of No Objection (LONOs) from both adjacent property owners. The letters stated that the dock construction plans have been reviewed and there are no objections.

Enforcement Action

There has been no enforcement action by EPD on this property.

Staff Recommendation

Based on the documentation and justifications provided by the applicants, the recommendation of the Environmental Protection Officer (EPO) is to approve the waiver to Section 15-342(b) (terminal platform size) and variance to Section 15-343(a) (side setback) due to the support from the adjoining neighbors (as evidenced by the LONOs), and the non-self-imposed hardship presented by the narrow configuration of the platted property lines. Regarding the variance to more than one dock per residential lot, although the applicants have not been able to demonstrate that all the criteria in Section 15-350 have been met (i.e., keeping the swimming platform in place is a self-imposed hardship), the EPO also recommends approval

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August 28, 2019 - Environmental Protection Commission

Jeff and Rachelle Szukalski Request for Waiver and Two Variances for Dock Construction Permit BD-19-05-044

of the variance to Section 15-342(h) because the platform is “grandfathered” and has been in the same location for many years, and the adjacent owners have not expressed objections to the request.

ACTIONS REQUESTED: Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(b), approve the request for waiver to Section 15-342(b) (terminal platform size) with the condition that the applicant pay \$188.50 to the Conservation Trust Fund within 60 days of the decision of the Board of County Commissioners, and approve the requests for variance to Section 15-343(a) (side setback) and Section 15-342(h) (more than one dock per residential lot) for the Szukalski Dock Construction Permit BD-19-05-044. District 1.

ER/~~MT~~/TMH/ERJ/DJ: mg

Attachments



**APPLICATION TO CONSTRUCT A BOAT DOCK
APPLICATION FOR WAIVER**

(Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(a)(2))

Mail or Deliver To: Orange County Environmental Protection Division
800 Mercy Drive, Suite 4
Orlando, Florida 32808
(407) 836-1400, Fax (407) 836-1499

I Sheila Cichra on behalf of Jeff Szukalski (if applicable) pursuant to Orange County Code Chapter 15, Article IX, Section 15-350(a)(2) am requesting a waiver to section (choose and circle from the following: 15-342(b), 15-343(b), 15-344(a) and 15-345(a)) of the Orange County Dock Construction Ordinance.

1. Describe how this waiver would not negatively impact the environment:

The terminal platform will be constructed over open water, so there will not be any impact to wetland vegetation. The proposed terminal platform is only 168 square feet over the allowed limit.

2. Describe the effect of the proposed waiver on abutting shoreline owners:

The proposed structure will not adversely affect the adjacent property owner's view or navigability. LONOs from both neighbors are attached.

The environmental protection officer and the board may require of the applicant information necessary to carry out the purposes of this article.

By signing and submitting this application form, I am applying for a waiver to the Section indicated of the Orange County Dock Construction Ordinance identified above, according to the supporting data and other incidental information filed with this application. I am familiar with the information contained in this application, and represent that such information is true, complete, and accurate. I understand this is an application and not a permit, and that work conducted prior to approval is a violation. I understand that this application and any permit issued pursuant thereto, does not relieve me of any obligation for obtaining any other required federal, state, or local permits prior to commencement of construction. I understand that knowingly making any false statements or representation in this application is a violation of Sections 15-341 & 15-342, Orange County Code.

Name of Applicant: Sheila Cichra
Signature of Applicant/Agent *Sheila Cichra* Date: 05/22/2019
Corporate Title (if applicable): President, Streamline Permitting, Inc.



APPLICATION TO CONSTRUCT A DOCK APPLICATION FOR VARIANCE

(Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(a)(1))

Mail or Deliver To: Orange County Environmental Protection Division
800 Mercy Drive, Suite 4
Orlando, Florida 32808
(407) 836-1400, Fax (407) 836-1499

Enclose a check for \$409.00 payable to The Board of County Commissioners

I Sheila Cichra on behalf of Jeff Szukalski (if applicable) pursuant to Orange County Code Chapter 15, Article IX, Section 15-350(a)(1) am requesting a variance to section 15-343 (a) & 342 (h) of the Orange County Dock Construction Ordinance.

1. Describe how strict compliance with the provisions from which a variance is sought would impose a unique and unnecessary hardship on the applicant (the hardship cannot be self-imposed):

These parcels were platted with very narrow shorelines, because this area is on a cove. It is very difficult to construct even an average sized boathouse within the required setbacks.

The second small structure has been there for many years and is used by people other than the owner. He doesn't want to remove it and cause problems with the neighbors.

2. Describe the effect of the proposed variance on abutting shoreline owners:

There is no navigational hazard or view obstruction, as evidenced by the attached LONOs.

Several of the neighbors would quite upset if the second small structure were removed, after being there SO long.

Notice to the Applicant:

The environmental protection officer, environmental protection commission and the Board of County Commissioners may require additional information necessary to carry out the purposes of this article.

A variance application may receive an approval or approval with conditions when such variance: (1) would not be contrary to the public interest; (2) where, owing to special conditions, compliance with the provisions herein would impose an unnecessary hardship on the permit applicant; (3) that the hardship is not self-imposed; and (4) the granting of the variance would not be contrary to the intent and purpose of this article.

By signing and submitting this application form, I am applying for a variance to the Orange County Dock Construction Ordinance identified above, according to the supporting data and other incidental information filed with this application. I am familiar with the information contained in this application, and represent that such information is true, complete, and accurate. I understand this is an application and not a permit, and that work conducted prior to approval is a violation. I understand that this application and any permit issued pursuant thereto, does not relieve me of any obligation for obtaining any other required federal, state, or local permits prior to commencement of construction. I understand that knowingly making any false statements or representation in this application is a violation of Sections 15-341 & 15-342, Orange County Code.

Name of Applicant: Sheila Cichra
Signature of Applicant/Agent [Signature] Date: 07/14/2019
Corporate Title (if applicable): President, Streamline Permitting, Inc.

SZUKALSKI SITE PLAN DETAIL
219 W 2ND AVENUE
WINDERMERE, FL 34786

12' X 12'
 FIXED SWIM
 PLATFORM
 TO REMAIN



2' SETBACK

LAKE
 BUTLER

40'

22'

9' SETBACK

EXISTING DOCK TO
 BE DEMOLISHED PRIOR
 TO CONSTRUCTION OF
 THE NEW DOCK

9' SETBACK

20'

28'

NOR
 OF S
 (SOL
 OF L

72°18'06"W.
 39.90'(M)

TURBIDITY
 BARRIER

28'

12'

NHWE

FIR 1/2"
 P.O.L.

FIR 5/8"
 P.O.L.

1' BLOCK
 5.4' OFF

AVENUE

5.7' OFF

EOP

15' DIRT DRIVE

EOP

N. 72°26'E. 40.00'(D)

FIP 1"

SOUTHER

FIR 1/2"
 P.O.L.

SURVEY TIE
 5.68°11'00"
 40.11'(M)

VACATED R/W

58' TO
 FENCE

86°(M)

58' TO
 FENCE

REMAINDER

(D)
 10°W.
 (M)

17°E.
 1.8' ON

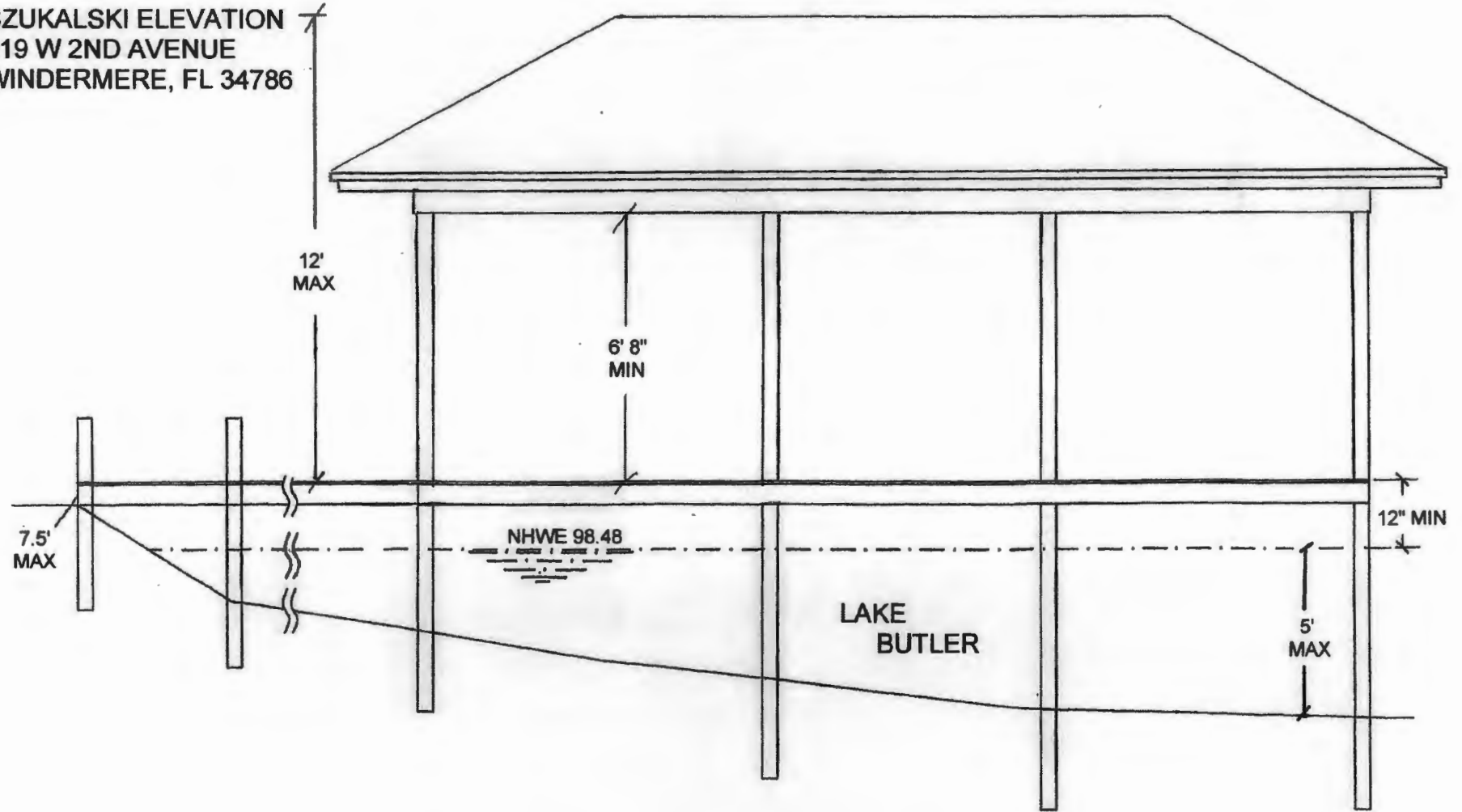
ONLINE

00°W.
 3'(M)

00°W.
 (D)

B.R.

SZUKALSKI ELEVATION
219 W 2ND AVENUE
WINDERMERE, FL 34786



12'
MAX

6' 8"
MIN

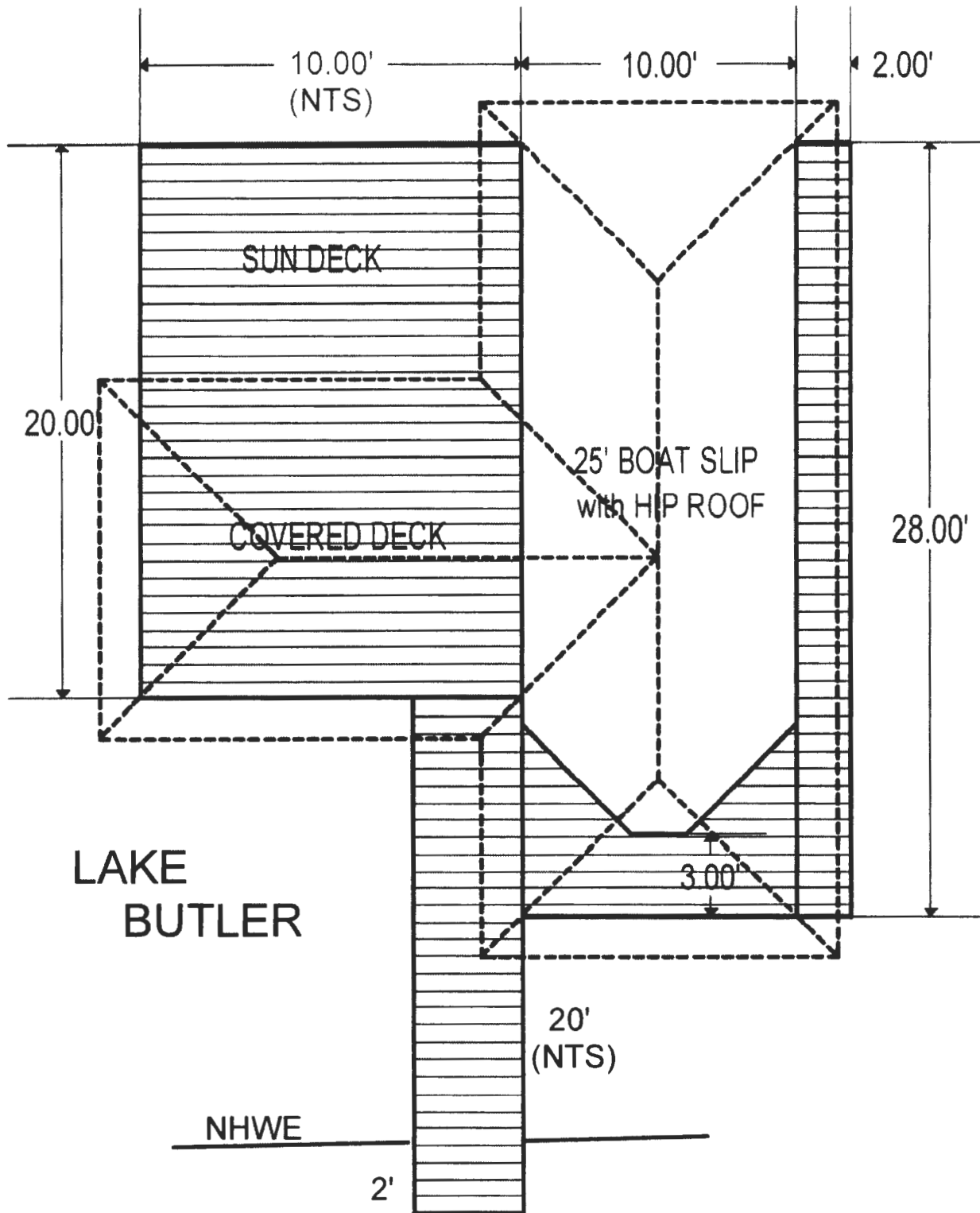
7.5'
MAX

NHWE 98.48

LAKE
BUTLER

12" MIN

5'
MAX



SZUKALSKI PLAN VIEW
 219 W 2ND AVENUE
 WINDERMERE, FL 34786

4' X 28' DOCK
 10' X 20' DECK
 12' X 28' BOATHOUSE
 568 SQ. FT. TERM. PLATFORM
 648 TOTAL SQ. FT.