



Interoffice Memorandum

AGENDA ITEM

November 11, 2022

TO: Mayor Jerry L. Demings
-AND-
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: December 13, 2022 — Consent Item
Environmental Protection Commission Recommendation for
Request for Waiver for Roger and Marianne MacClellan Dock
Construction Permit BD-22-03-051

The applicants, Roger and Marianne MacClellan, are requesting a Dock Construction Permit with a waiver to Orange County Code (Code), Chapter 15, Article IX, Section 15-343(b) (side setback) in order to construct a new boat dock. The project site is located at 1004 Main Street, Windermere, Florida 34786 (Parcel ID Number 17-23-28-9336-00-680) on Lake Butler in District 1.

There is an existing, unauthorized dock on the property which was built by previous owners and has been in place for over twenty years. This dock will be removed prior to the construction of a new dock. The existing dock does not meet the required minimum side setback of 25 feet from the southern projected property line.

On March 2, 2022, the Environmental Protection Division (EPD) received an Application to Construct a Dock at the subject property. Included with the dock application was an Application for Waiver to Section 15-343(b) to reduce the side setback from the required 25 feet to 16 feet from the southern projected property line. Also included with the dock application was an Application for Waiver to Section 15-342(b) to request authorization for a larger than allowed terminal platform of 1,429 square feet in size. The maximum allowable terminal platform size for this parcel is 1,000 square feet. On September 18, 2022, EPD staff received a revised site plan showing a reduction of the proposed terminal platform size from 1,429 to 949 square feet. Therefore, a waiver to terminal platform size is no longer required.

Side Setback Waiver

Chapter 15, Article IX, Section 15-343(b) of the Code 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 135 feet and therefore the dock is required to meet a setback of 25 feet. The applicants are proposing a side setback of 16 feet to the southern projected property line at 1012 Main Street, which is owned by Mr. Eric King.

Waiver Criteria

Pursuant to Section 15-350(a)(2), "the applicant shall 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)(1)(1), the applicants' agent, Mr. Peter Fleck, states, "*Due to the unique property boundaries, it makes it hard to meet the setback requirements.*"

To address Section 15-350(a)(1)(2), Mr. Fleck states, "*They have signed a letter of no objection.*"

Public Notifications

On September 1, 2022, a Notice of Application for Waiver was sent to all shoreline property owners within a 300-foot radius of the property. On September 28, 2022, the applicants, their agent (Peter Fleck), and the objectors were sent notices prior to this hearing to inform them of the Environmental Protection Commission meeting on October 26, 2022.

Objections

On September 13, 2022, EPD staff received a letter of objection from Mr. Robert Fleming and Ms. Molly Rose (928 Main Street; the adjacent property owner to the north). The letter states, "*We understand that the Applicants are requesting a permit to construct a boat dock with a waiver to Orange County Code, Chapter 15, Article IX, Section 15-342(b) (terminal platform size), in order to construct the dock with a terminal platform of 1,429 square feet. We also understand that the maximum allowed terminal platform size for this park [sic]; is 1,000 square feet. In addition, we understand that this is the second request for Variance/Waiver, the first being a request to reduce the allowed set back from 25 feet to 15 feet on the South property line. At the time, my wife and I were lead [sic] to believe that this was to be the only request for Variance/Waiver, and at the time I believe that we agreed to this request. HOWEVER, since we have now received this second request for Variance/Waiver, we are retracting our approval with regard to the set back request and believe that the set back should REMAIN at the 25 feet as set out in the By Laws. We feel that we were misled by the Owners of the property, by not making us aware of the entire request for Variance/Waiver at the beginning. With the request to increase the size of the Terminal Platform by almost 50% from what is allowed, reducing the set back by 10 feet would seriously impact the adjoining neighbors. Also, our dock (to the immediate north) and the King's dock (which is to the immediate south) of the subject property are significantly shorter than what the applicants are proposing to build. Why would they need a dock that juts out into Lake Butler well beyond the two adjacent docks? By laws have been put in place for a reason. Impact on neighbors [sic] views, environmental considerations, all play a part in establishing these by laws. The very real danger of setting precedent by approving these two requests just allows others to point at a situation like this (if approved) and say "why them and not me"? These two requests are NOT requests based on HARSHIP. They are requests based on what I would say are personal in nature and have no basis for approval. To be clear, my wife and I DO NOT APPROVE of these two requests and hope that you and your committee will agree and turn these requests down. I have also attached for reference a few photos, which may or may not help you and your committee with this process.*"

On September 13, 2022, EPD staff received a letter of objection from Mr. Eric King (1012 Main Street; the adjoining property owner to the south). The letter states, *"First I would like to state that I was badly misled when asked to sign the initial request for variance reducing the set back from 25 feet to 15 feet. It was represented in May / 2022 that a new law was going into effect in 2 months that would change the existing set back from 25 feet to 15 feet (that was patently false), and that objecting would be futile. I immediately reached out to a trusted neighbor and long time Windermere resident to share what was communicated to me (they can confirm our discussion if necessary). It was never disclosed that the new dock was going to extend so far into Lake Butler (significantly farther than the adjacent docks). It was also never disclosed that the new dock would be over 42% larger than the currently permitted amount. It was also never disclosed that there would be an additional second story. It was also never explained the negative impact visually and financially this would have on my home. So I am officially retracting my approval with regard to the set back request and believe that the set back should remain at the 25 feet as set out in the Bylaws. I am also objecting to the new request for variance expanding the size of the dock to 1,429 square feet because this will additionally negatively impact my view and therefore my property value. Importantly, it should also be noted that these requests for variance have nothing whatsoever to do with hardship. It should also be noted that the property where the variance is being requested to reduce the set back from 25 feet to 15 feet has a sizable 135 feet of lakefront, so why is it necessary to position the dock only 15 feet from my property instead of the 25 feet currently required in the Bylaw? Again, and of great concern to me is the fact that my view would be severely negatively impacted, which would also significantly damage my property value as well as my enjoyment of the property. I have always tried to be a good neighbor, so I reached out to my neighbor to see if he would be willing to compromise so that we could both be happy, but just not at the expense of my view, my property value and the enjoyment of my home. He did not appear to be amenable to compromise.*

Butler Chain of Lakes Advisory Board

In accordance with Section 15-347(e) of the Code, the Windermere Water and Navigation Control District Advisory Board and the Conway Water and Navigation Control District Advisory Board may submit to the environmental protection officer a recommendation to approve or deny applications for docks within their jurisdictions. Recommendations shall be approved by a majority of the advisory board at a public meeting, duly noticed and conducted in accordance with the Florida Sunshine Law, section 286.011, Florida Statutes, as may be transferred or amended from time to time. Advisory board recommendations shall be submitted to the environmental protection officer within thirty-five (35) calendar days of receipt of notice.

Pursuant to Section 15-347(b), EPD sent notice of the waivers to the Windermere Water and Navigation Control District's Butler Chain of Lakes Advisory Board (BCLAB) on March 11, 2022.

On September 21, 2022 EPD received a signed letter from the BCLAB stating *"The Butler Chain of Lakes Advisory Board at their September 19, 2022 meeting approved a recommendation to oppose this dock application. The basis for this decision is described below. 1. 'The Terminal Platform in this application is over the maximum size allowed. Zoning Code Article IX, Section 15-342(b) 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.' 2. Zoning Code Article IX, Sec. 15-342(a) 'The dock shall extend only to the point where reasonable water depth for vessel mooring is achieved. The maximum water depth allowed for mooring areas is five feet, as measured from the NHWE, unless the natural conditions of the water body necessitate a greater water depth to allow reasonable mooring conditions.'"

The BCLAB letter does not elaborate on how the request does not meet the waiver criteria in Section 15-350(a)(2).

Enforcement Action

There is currently an open incident for the subject property (Incident #22-613826) for sediment in Lake Butler due to improper Best Management Practices maintenance related to construction in the rear yard of the applicant's lot. As of October 4, 2022, EPD staff sent a Notice of Non-Compliance to the applicants and are coordinating with them to bring the property into compliance with sediment and erosion control regulations. The silt fence will be appropriately re-installed and all sediment that eroded into Lake Butler will be removed with hand equipment.

EPD Staff Evaluation/Recommendation

Staff has evaluated the waiver request for compliance with the criteria for approval. The recommendation of the Environmental Protection Officer (EPO) is to deny the waiver to Section 15-343(b) (side setback) based on a finding that the applicants have not demonstrated the request will not have a negative effect on the neighboring shoreline owners pursuant to Section 15-350(a)(2)(2), as objections have been received.

Environmental Protection Commission (EPC) Public Hearing

EPD presented the waiver request in a public hearing before the EPC at their October 26, 2022 meeting. EPC Member Peter Fleck declared a conflict, completed Form 8B, and was present to represent the applicant.

During the hearing, Mr. Fleck spoke for the applicants, in favor of the request. Mr. Kurt Ardaman, attorney for Mr. King, spoke against the request. Mr. Ardaman reiterated his client's concerns including, but not limited to, the proposed structure will be blocking nearly 50 percent of Mr. King's view, the proposed structure will be extending out into water that is over the allowed five-foot water depth, the proposed structure should be required to meet the 25-foot side setback that is currently in Code, and the previous owner of the subject property built most of the current dock illegally and therefore should not be considered when assessing the proposed structure. Mr. Fleck provided rebuttal comments and noted that the previous owner had a collection of many boats including several pontoon boats and that since the applicants' purchase of the property, all those boats were gone and the view of the lake was significantly improved. EPC Chairman Mark Ausley closed the public hearing and discussion ensued between EPC members. EPC Vice Chairman Horn noted that with the Code update scheduled to take effect in January 2023, the setback for this property would be 15 feet. Chairman Ausley, Member Oscar Anderson and Member Billy Butterfield also acknowledged that with the Code change [that will become effective on January 1, 2023], the dock could be built as designed.

Based upon evidence and testimony presented at the hearing, the remaining members of EPC voted in a motion, passed 6-to-1, to reject the findings and recommendation of the EPO, and made a finding that the request for waiver is consistent with Orange County Code, Chapter 15, Article IX, Section 15-350(a)(2) and recommended approval of the request for waiver to 15-343(b) to reduce the side setback from the southern projected property line from 25 feet to 16 feet for the Roger and Marianne MacClellan Dock Construction Permit BD-22-03-051.

ACTION REQUESTED: Acceptance of the findings and recommendation of the Environmental Protection Commission and approval of the request for waiver to Section 15-343(b) to reduce the side setback from the southern projected property line from 25 feet to 16 feet for the Roger and Marianne MacClellan Dock Construction Permit BD-22-03-051. District 1

JVW/DDJ: jk

Attachments

Request for Boat Dock Waiver for Side Setback



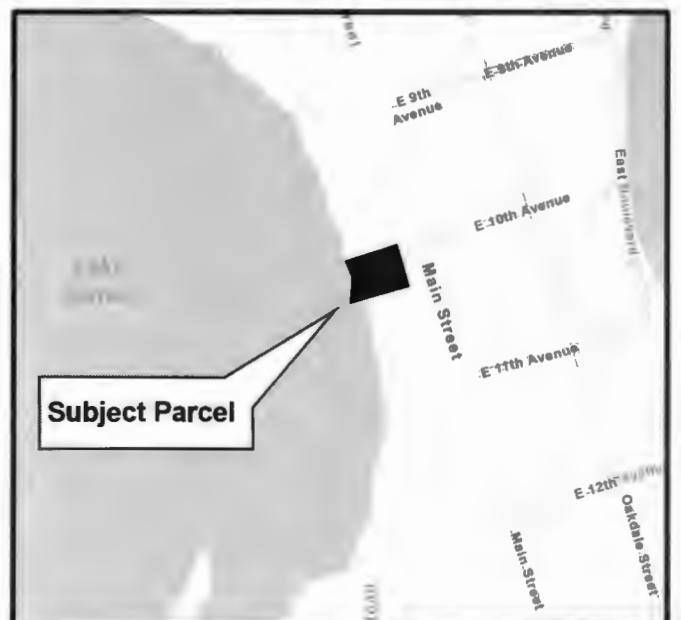
Request for Boat Dock Waiver for Terminal Platform Size for Side Setback

Permit No.: BD-22-03-051
District #1

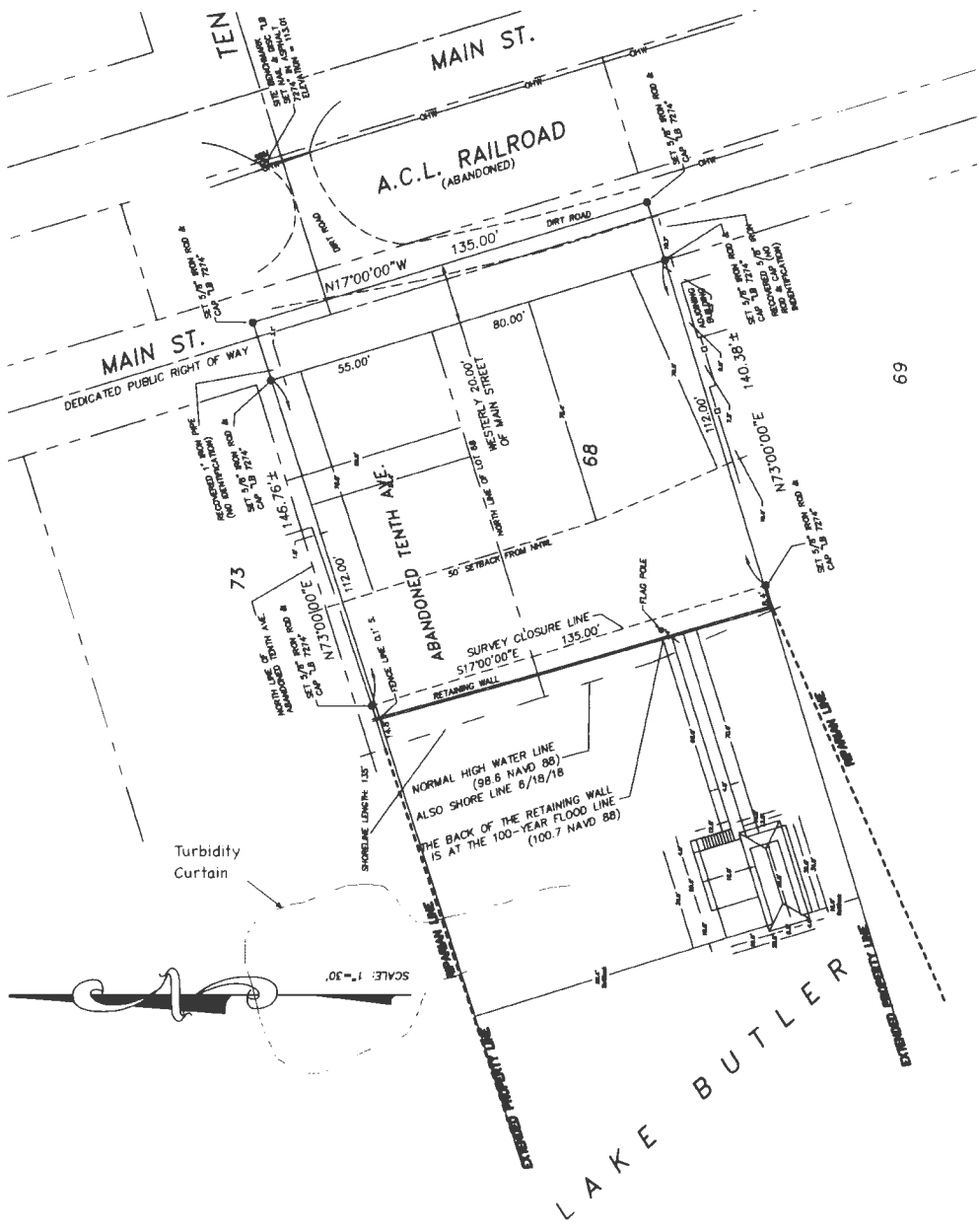
Applicants: Roger and Marianne MacClellan
Address: 1004 Main Street
Parcel ID No.: 17-23-28-9336-00-680

Project Site 

Property Location 

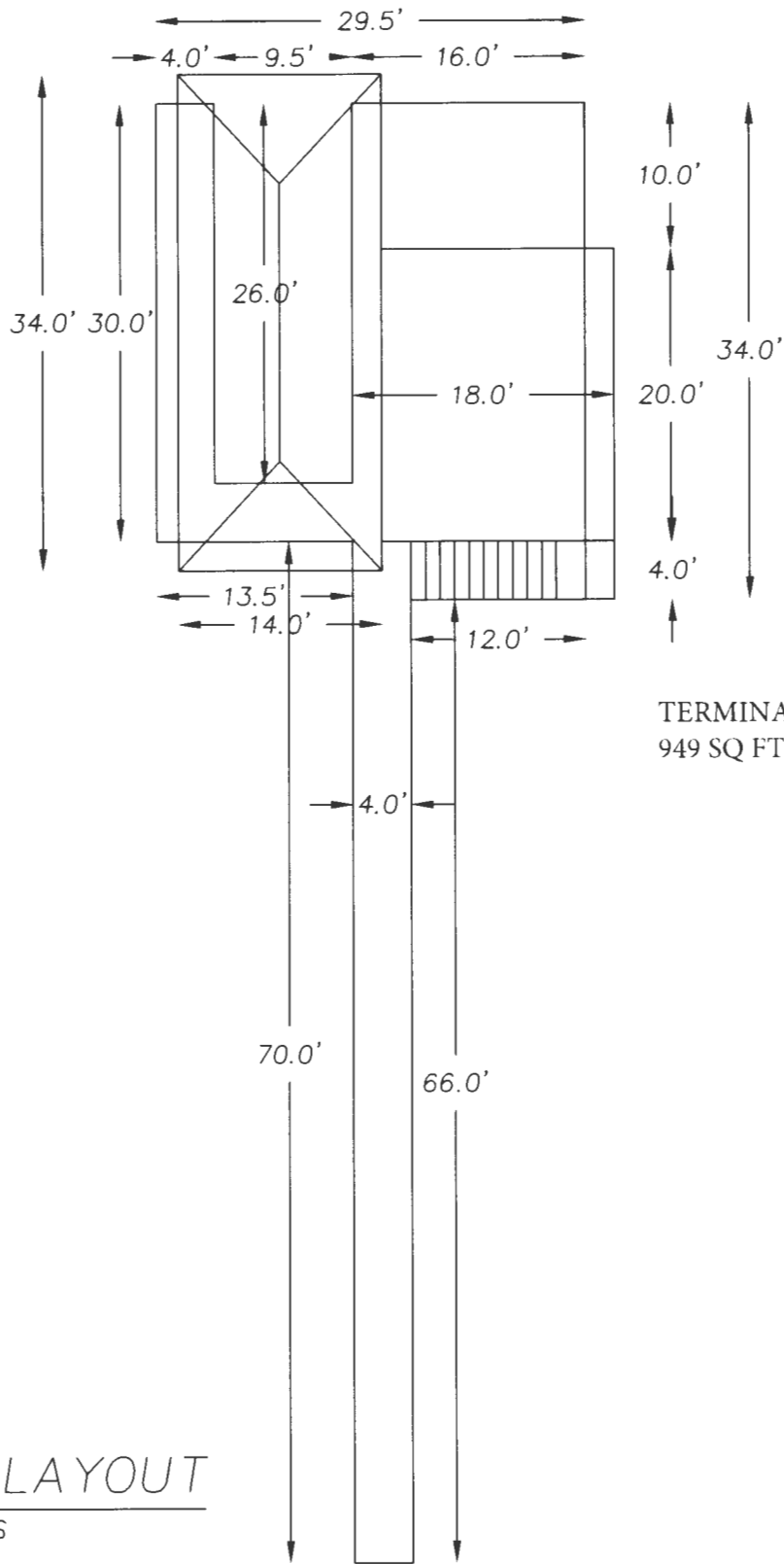


received
9/18/22



received

9/18/22

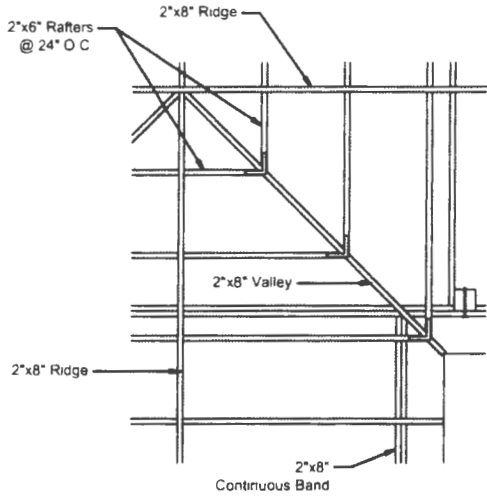


TERMINAL PLATFORM SIZE
949 SQ FT.

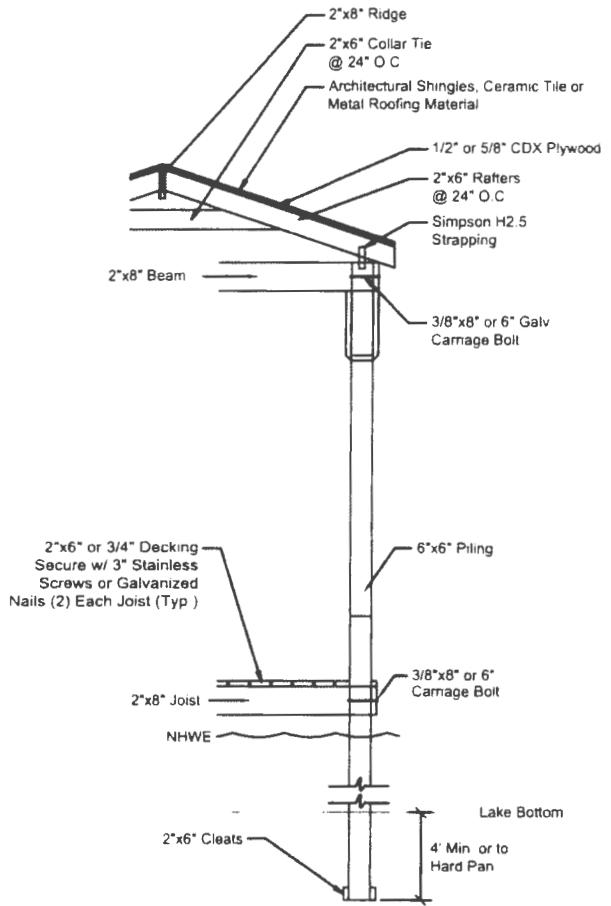
DOCK LAYOUT

SCALE: N.T.S

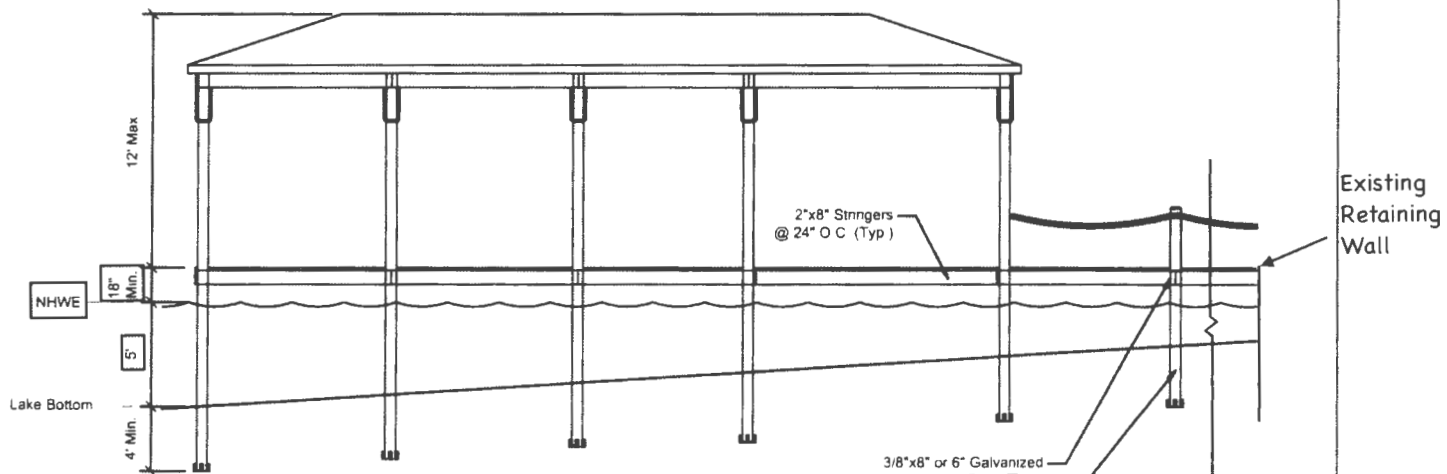
received
9/18/22



TYPICAL VALLEY FRAMING
SCALE: 1/4" = 1'-0"



TYPICAL SECTION
SCALE: 1/4" = 1'-0"

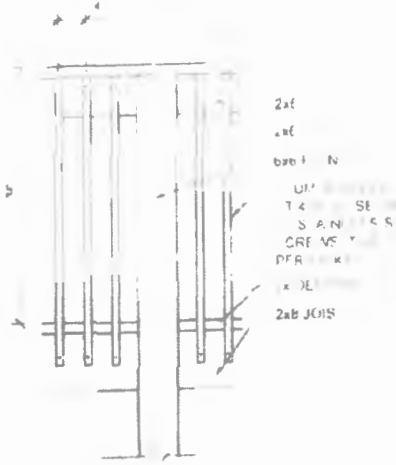


TYPICAL SIDE ELEVATION A
SCALE: 1/8" = 1'-0"

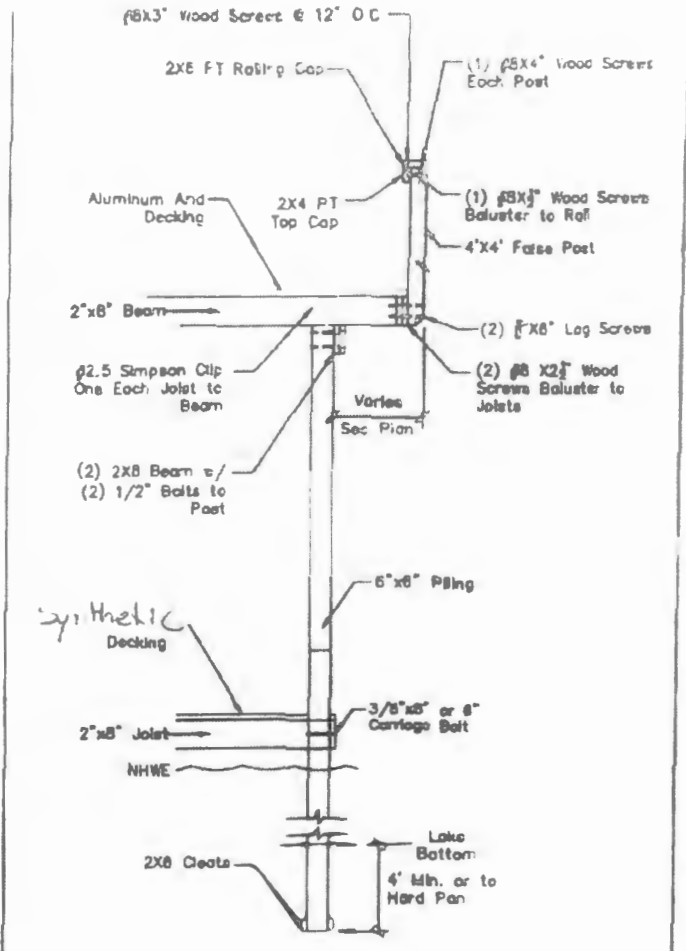
Water depth at all mooring locations: 5'
Body of water: Lake Butler
Floor Elevation: 12" min.

received

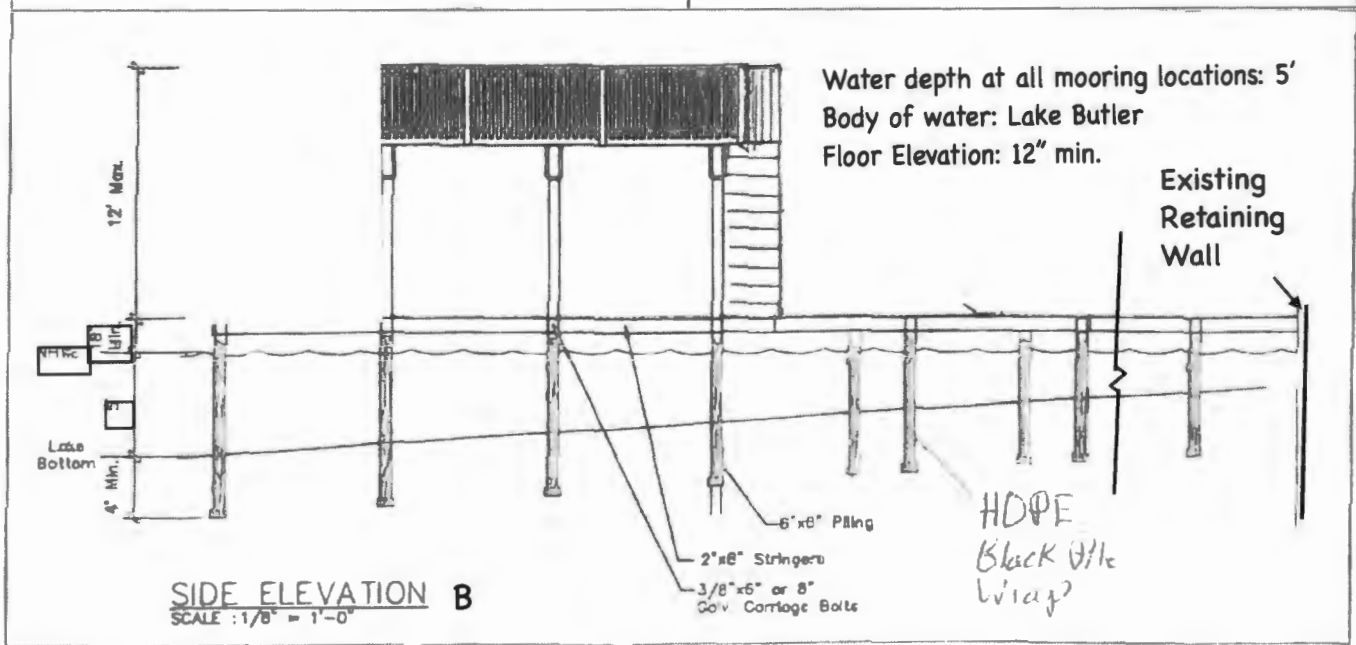
9/18/22



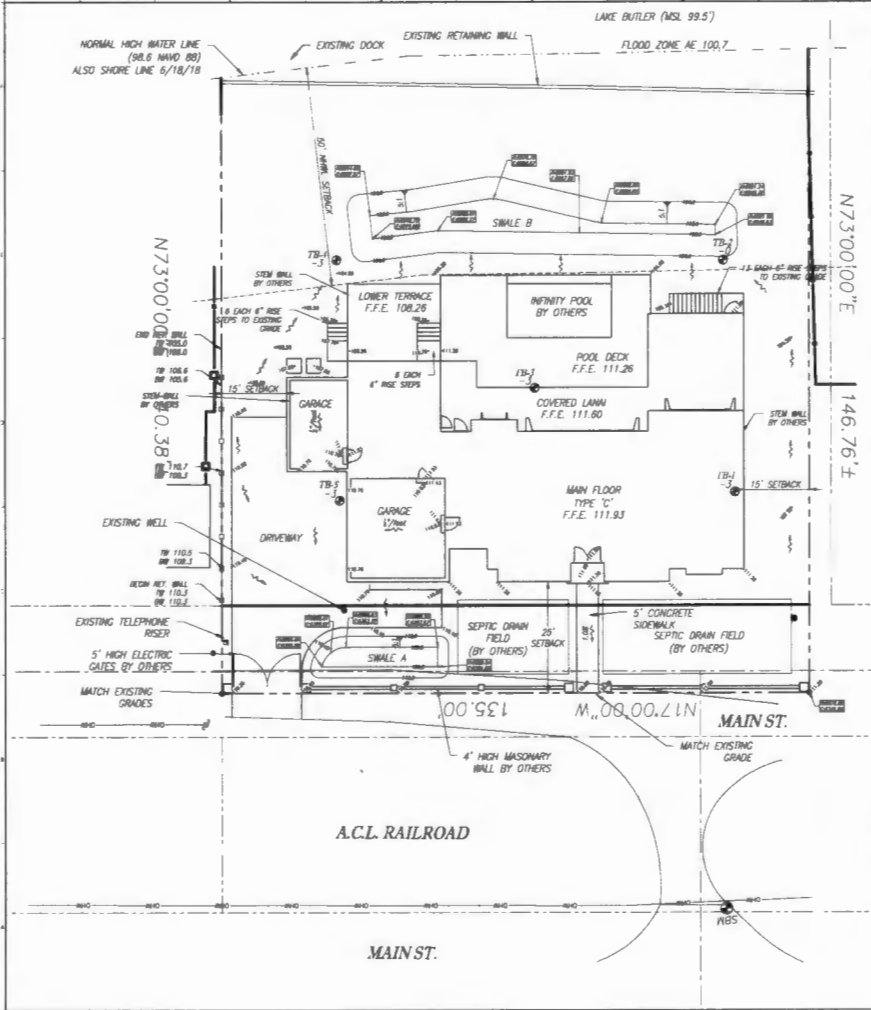
GUARDRAIL DETAIL
1/2" = 1'-0"



TYPICAL SECTION
SCALE: 1/4" = 1'-0"



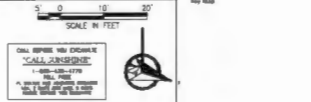
SIDE ELEVATION B
SCALE: 1/8" = 1'-0"



LEGAL DESCRIPTION:
 ALL OF LOT 88, PART OF SUBDIVISION, AS RECORDED IN PLAT BOOK C, PAGES 28-30, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, AND ALSO BEING BY THE NORTHEAST CORNER OF SAID LOT 88, AND MORE SPECIFICALLY, ALONG THE WEST LINE OF MAIN STREET A DISTANCE OF 100 FEET TO THE EXISTING CENTER LINE OF TRASH CANAL, AT THE TIME OF ASSIGNMENT OF TOWN AND SUBDIVISION OF THE FORM OF BOUNDARIES, THENCE S60°00'00"W 100.00 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 88, THENCE S60°00'00"W 100.00 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH:
 THE WESTERLY 25.00 FEET OF MAIN STREET, LYING ADJACENT TO THE EASTERLY LINE OF LOT 88 AND THE SOUTHERLY 25.00 FEET OF APPROXIMATE TOWN WIDE, ALL LIES IN THE PLAT OF BOUNDARIES, RECORDED IN PLAT BOOK C, PAGES 28-30, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

- NOTES:**
1. PROPOSED DRIVEWAY APPROX AND SIDEWALK ARE TO BE CONSTRUCTED PER FORM OF BOUNDARIES STANDARDS. THE CONTRACTOR SHALL RESTORE THE PUBLIC RIGHT-OF-WAY, INCLUDING ANY PAVED SURFACE, SIDEWALK, PARKS, CURBS, ETC., TO THEIR ORIGINAL CONDITION OR BETTER.
 2. ELEVATIONS ARE BASED ON ASSUMED DATUM PER SURVEY PROVIDED BY DESIGN SURVEYOR & SURVING, INC. DATED 04/18/2018, 181102.
 3. EXISTING TOWN SIGN ON THIS PLAN HAS BEEN FIELD VERIFIED. CONTRACTOR IS TO NOTIFY THE OWNER IN WRITING OF ANY DISCREPANCIES BEFORE COMMENCING WORK.
 4. FOOTPRINTS & LOCATION ON LOT IS FOR INFORMATIONAL PURPOSES ONLY AND SUBJECT TO CHANGE DURING PERMIT PROCESS.
 5. CONTRACTOR SHALL LOCATE AND PROTECT EXISTING UTILITY SERVICES DURING CONSTRUCTION. ALL SERVICES DAMAGED DURING CONSTRUCTION SHALL BE REPAIRED TO EQUAL OR BETTER CONDITION.
 6. ALL AREAS DESIGNATED BY PUBLIC RIGHT OF WAY SHALL BE RETURNED TO EQUAL OR BETTER CONDITION.
 7. LOCATION OF EXISTING UTILITIES IS BASED ON BEST AVAILABLE INFORMATION AND HAS NOT BEEN FIELD LOCATED. CONTRACTOR SHALL LOCATE ALL UTILITIES PRIOR TO CONSTRUCTION.
 8. LOT CORNER ELEVATIONS ARE BASED ON EXISTING CONDITIONS. CONTRACTOR SHALL VERIFY AND ADJUST CORNERS IF ELEVATIONS VARY SIGNIFICANTLY.
 9. SEE SHEET C OF ARCHITECTURAL PLANS FOR LOT ASSIGNMENTS, DIMENSIONS AND LOCATIONS.



LEGEND

- EXISTING ELEVATION
- PROPOSED ELEVATION
- PROPOSED SWALE C/A
- PROPOSED FLOW ARROWS
- SOIL BORING W/WATER TABLE DEPTH

SITE DATA:

APPROXIMATE: 5,188 SF
 BUILDING: 4,738 SF
 POOL: 2,412 SF
 DRIVEWAY: 10,438 SF
 TOTAL SITE: 22,876 SF
 (ALL AREAS REPRESENTED PROPOSED AND ALLOWED)

VEHICLE INCLUDED: SUV, COOL, PAVEL, POOL, PORCH, GRAY & EQUIP. PAVES.



received
 9/18/22

STORMWATER CALCULATIONS

Storage Volume Requirement	
Roof Area (Sq Ft)	40,000
Roof Runoff Coefficient	0.85
Roof Runoff Volume (Cu Ft)	34,000
Driveway Area (Sq Ft)	10,000
Driveway Runoff Coefficient	0.80
Driveway Runoff Volume (Cu Ft)	8,000
Site Area (Sq Ft)	22,876
Site Runoff Coefficient	0.30
Site Runoff Volume (Cu Ft)	6,863
Total Runoff Volume (Cu Ft)	48,863

Retention Volume Capacity	
Depth (ft)	2.0
Area (Sq Ft)	10,000
Volume (Cu Ft)	20,000
Depth (ft)	1.5
Area (Sq Ft)	10,000
Volume (Cu Ft)	15,000
Depth (ft)	1.0
Area (Sq Ft)	10,000
Volume (Cu Ft)	10,000
Total Retention Capacity (Cu Ft)	45,000

C1.00

CDS

THE MACCLELLAN RESIDENCE
 ELEMENT HOME BUILDERS

Whidbey, FL
 LOT GRADING PLAN
 1004 MAIN ST.

GEMINI DESIGN

Contractor/Consultant

NO DATE Calculations

DATE: 05.20.2022
 VERTICAL DATUM: BINGO BS
 AED NO: 24788
 DESIGNED BY: MCL
 CHECKED BY: MCL
 APPROVED BY: MCL
 PROJECT NAME: THE MACCLELLAN RESIDENCE
 PROJECT NO: 17-11-27

THE MACCLELLAN RESIDENCE
 ELEMENT HOME BUILDERS

Location: WHIDBEY, FL
 Sheet No: LOT GRADING PLAN 1004 MAIN ST.

Scale: C1.00

CDS

100% COMPLETE, 100% PERMITS
 100% PERMITS, 100% PERMITS
 100% PERMITS, 100% PERMITS
 100% PERMITS, 100% PERMITS



RECEIVED

By Rebecca Bowden at 4:15 pm, Aug 03, 2022



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
3165 McCrory Place, Suite 200
Orlando, Florida 32803
(407) 836-1400, Fax (407) 836-1499

I Peter Fleck on behalf of Roger MacCellan (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:

Mitigation will offset shading

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

None, Lono Letter Submitted

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: Peter Fleck for Roger MacCellan
Signature of Applicant/Agent: [Signature] Date: 8-1-22
Corporate Title (if applicable):



AFFECTED ADJACENT PROPERTY OWNER
NOTARIZED STATEMENT OF NO OBJECTION
TO BOAT DOCK SIDE-SETBACK WAIVER REQUEST

The following is to be completed by the affected adjacent property owner as required by Section 15-343, Orange County Code. Section 15-343(b) states: "On lots or parcels having a shoreline frontage of seventy-five (75) feet or greater, docks shall have a minimum side setback of twenty-five (25) feet from the projected property line, unless such requirement is reduced by an appropriate waiver which shall be reviewed by the environmental protection division. Waivers from side-setback requirements may be granted by the environmental protection officer if a notarized letter of no objection to the waiver is received from the shoreline property owner abutting the applicant's property line affected by the waiver."

I, Eric Brian King, a legal property owner of property located at 1012 Main St. Wintermere
(Adjacent Property Owner Name) (Address) FL 34786
have reviewed the dock construction plans dated 5/25/22, for the property located at
1012 Main St. Wintermere
FL 34786, and have no objections.

The dock construction plans include a side setback waiver request of 16 feet, in lieu of the minimum 25 feet required by Code.

Eric King
(Signature - Adjacent Affected Property Owner)
Eric Brian King
(Print Name - Adjacent Affected Property Owner)

MAY 25, 2022
(Date)

ACKNOWLEDGEMENT:
Puerto Rico
STATE OF ~~FLORIDA~~
COUNTY OF Puerto Rico

The foregoing instrument was acknowledged before me this 25th day of May, 2022, by Eric Brian King

(Notary seal)

[Signature]
(Signature of Notary Public - State of Florida)

Personally Known _____ OR Produced Identification drivers license
Type of Identification Produced Puerto Rico 7163351



From: [Fleming, Robert L.](#)
To: [Bowden, Rebecca L.](#)
Subject: Project Number BD-22-03-051
Date: Tuesday, September 13, 2022 2:16:10 PM

Dear M's Bowden,
Project Manager
Environmental Protection Division Orange County, Florida

I am officially writing to you regarding the Notice of Application for Variance/Waiver: (Project Number: BD-22-03-051, Project Name: 1004 Main Street, Applicants: Roger and Marianne Maccelellan, Parcel ID: 17-23-28-9336-00-680, Location: 1004 Main Street, Windermere, FL 34786 Lake: Butler, which my wife Molly Rose and I (Robert Fleming) received on September 1, 2022, via Certified Mail.

We understand that the Applicants are requesting a permit to construct a boat dock with a waiver to Orange County Code, Chapter 15, Article IX, Section 15-342(b) (terminal platform size), in order to construct the dock with a terminal platform of 1,429 square feet. WE also understand that the maximum allowed terminal platform size for this park: is 1,000 square feet.

In addition, we understand that this is the second request for Variance/Waiver, the first being a request to reduce the allowed set back from 25 feet to 15 feet on the South property line. At the time, my wife and I were lead to believe that this was to be the only request for Variance/Waiver, and at the time I believe that we agreed to this request. HOWEVER, since we have now received this second request for Variance/Waiver, we are retracting our approval with regard to the set back request and believe that the set back should REMAIN at the 25 feet as set out in the By Laws.

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Also, our dock (to the immediate north) and the King's dock (which is to the immediate south) of the subject property are significantly shorter than what the applicants are proposing to build. Why would they need a dock that juts out into Lake Butler well beyond the two adjacent docks?

By laws have been put in place for a reason. Impact on neighbors views, environmental considerations, all play a part in establishing these by laws. The very real danger of setting precedent by approving these two requests just allows others to point at a situation like this (if approved) and say "why them and not me"?

These two requests are NOT requests based on HARDSHIP. They are requests based on what I would say are personal in nature and have no basis for approval.

To be clear, my wife and I DO NOT APPROVE of these two requests and hope that you and your committee will agree and turn these requests down.

I have also attached for reference a few photos, which may or may not help you and your

committee with this process.

As requested by Mr. King, I have included a few photos from his dock as well as mine. Please contact me directly should you have any questions or require further information regarding this matter.

I also request that you send me a confirmation that you have received this official e-mail stating our OBJECTION to both of these requests for Variance/Waivers.

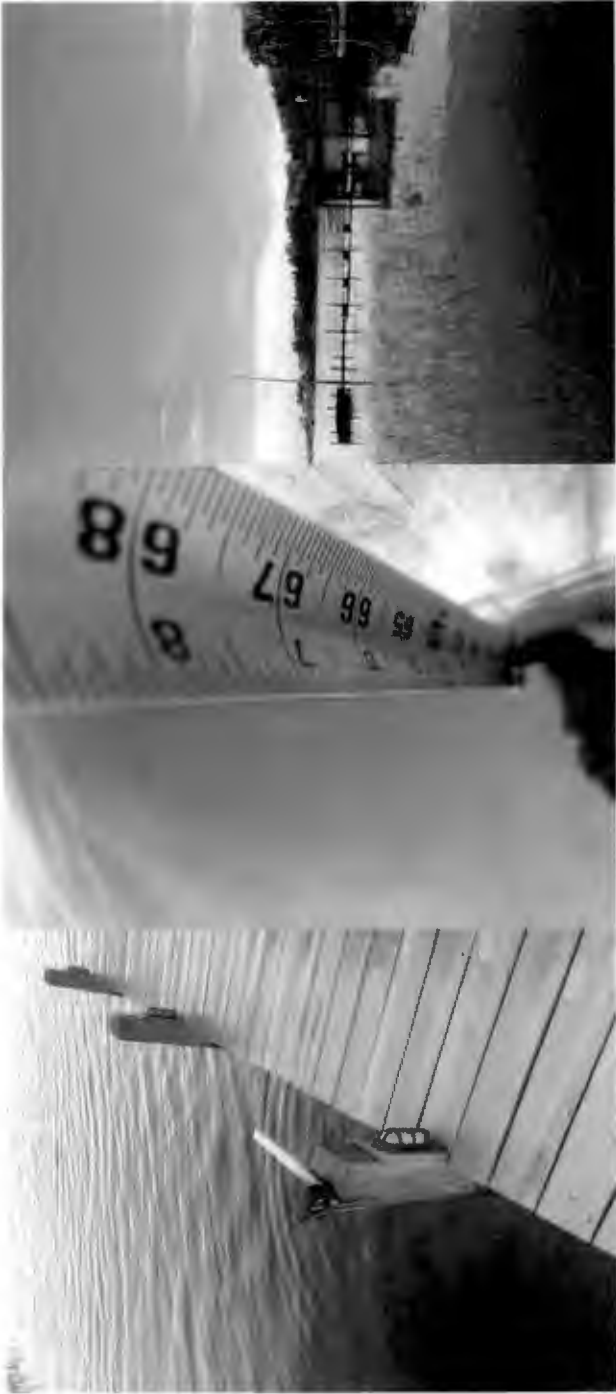
Thank you.

Regards,

Robert Fleming and Molly Rose









From: ERIC KING
To: Bowden, Rebecca L
Subject: Project Number: BD-22-03-051
Date: Tuesday, September 13, 2022 10:58:05 PM

Dear Rebecca Bowden,
Project Manager
Environmental Protection Division Orange County, Florida

I am officially writing to you regarding the Notice of Application for Variance/Waiver:
(Project Number: BD-22-03-051, Project Name: 1004 Main Street, Applicants: Roger and Marianne Macclellan, Parcel ID: 17-23-28-9336-00-680, Location: 1004 Main Street, Windermere, FL 34786 Lake: Butler

First I would like to state that I was badly misled when asked to sign the initial request for variance reducing the set back from 25 feet to 15 feet.

1. It was represented in May / 2022 that a new law was going into effect in 2 months that would change the existing set back from 25 feet to 15 feet (that was patently false), and that objecting would be futile. I immediately reached out to a trusted neighbor and long time Windermere resident to share what was communicated to me (they can confirm our discussion if necessary).
2. It was never disclosed that the new dock was going to extend so far in to Lake Butler (significantly farther than the adjacent docks).
3. It was also never disclosed that the new dock would be over 42% larger than the currently permitted amount.
4. It was also never disclosed that there would be an additional second story.
5. It was also never explained the negative impact visually and financially this would have on my home.

So I am officially retracting my approval with regard to the set back request and believe that the set back should remain at the 25 feet as set out in the Bylaws. I am also objecting to the new request for variance expanding the size of the dock to 1,429 square feet because this will additionally negatively impact my view and therefore my property value. Importantly, it should also be noted that these requests for variance have nothing whatsoever to do with hardship.

It should also be noted that the property where the variance is being requested to reduce the set back from 25 feet to 15 feet has a sizable 135 feet of lakefront, so why is it necessary to position the dock only 15 feet from my property instead of the 25 feet currently required in the Bylaw? Again, and of great concern to me is the fact that my view would be severely negatively impacted,

which would also significantly damage my property value as well as my enjoyment of the property.

I have always tried to be a good neighbor, so I reached out to my neighbor to see if he would be willing to compromise so that we could both be happy, but just not at the expense of my view, my property value and the enjoyment of my home. He did not appear to be amenable to compromise.

Thank you for your consideration.

Regards,
Eric King

received
10/25/22

Rebecca, please make sure the following is added to my (Eric King's portion) of the file for the Roger and Marianne Macclellan - BD-22-03-051 EPC hearing tomorrow:

My home has been located on the far right side of the property since 1944. The reason I paid a **SUBSTANTIAL PREMIUM** to purchase this property was for the beautiful views. The proposed Macclellan dock / boathouse threatens to eliminate half of my view because 50% of my view currently includes Bird Island and the sunsets over Bird Island.

The previous owner, (prior to Macclellan), Ken Ward, told me that he (Ken Ward) built most of the illegal dock and boat storage unit that extends so far out into Lake Butler in the middle of the night without any permits. So the existing illegal unpermitted Macclellan dock and boat storage unit should not be used or referenced as any acceptable benchmark to have the new dock jetting out into Lake Butler. This would have the effect of destroying my view, a significant portion of my property value, and most importantly the enjoyment for myself and my family of the property.

In summary:

- My home was built 78 years ago (1944) all the way to the right-side of the property, which is why my view is also from the far right hand side of the property.
- It is a small single story home where 95% of the property value is in the view and lakefront land.
- My home & view already exist.
- More than 50% of my view will be destroyed if the Macclellan dock / boathouse is allowed to be built so far to the left-side of the 135 feet of lakefront.
- The proposed Macclellan dock / boathouse also wharfs so far out into the lake beyond my dock.
- There is no hardship for the Macclellan's proposed dock / boathouse. And if the proposed Macclellan dock / boathouse is allowed to be built it will subsequently destroy a large portion of my view, significantly damage my property value, and most importantly the enjoyment of the property for myself and my family.
- There should be no reference to the existing illegal unpermitted Macclellan dock and boat storage unit because the new dock is not grandfathered.

#1 - Current views and sunsets over Bird Island. The existing illegal and unpermitted Macclellan dock & boat storage unit is an eyesore but not an impediment to my view.



#2 - The proposed Macclellan 104' dock with either a 44' or a 33.9' long boathouse & 12' high / two story platform (simulated) will destroy a massive portion of my view, it will also decrease my property value, and most importantly the enjoyment for myself and my family.



#3 - Before & after side by side.



#4 - Overhead of the proposed proposed Macclellan dock / boathouse (simulated) based on starting point dimensions that Pete Fleck sent me, **red line** marks end of my dock, **blue line** marks 5' depth measured on my dock by an engineer (pics below included), **green line** marks sea wall and **yellow lines** mark blocked views of Bird Island and sunsets.



#5 - The existing illegal unpermitted Macclellan dock is neither a grandfathered dock simply being repaired nor is there a hardship, but there is 135' of lakefront property so it does not need to be built this far on the left hand side of the Macclellan property. If proposed Macclellan dock / boathouse is built with the proposed dimensions in the proposed location it will block more than 50% of my view as well as most of Bird Island and the sunsets over Bird Island. This will negatively impact my property value, and most importantly enjoyment for myself and my family of the property. The only way not to destroy my current view is to move the proposed Macclellan

dock / boathouse much, much farther away from the left hand side of the massive 135 feet of lakefront property and also to reduce the length of the dock. This will leave my view intact as well as my property value.



#6 - Bellow I've used Peter Fleck's own pic sent to my lawyer as the base to prove my point. There is a cup shaped basin to the southeast of Bird Island and our two properties sit at the bottom, right before the basin begins to curve upwards on both sides. So since my dock and the Maccelellan dock are lined up, proposed Maccelellan dock / boathouse should not extend so far into the lake.

The proposed Maccelellan dock / boathouse is so close to the adjoining property line, unnecessarily all the way to the left of the 135' of lakefront. The curved green line follows the sea wall and curvature of the basin. The **red rectangles** are the exact same size and the proposed Maccelellan dock / boathouse should not extend any further than that to not impact the sightline. The Maccelellan dock / boathouse should also be moved over quite a bit so that the structure does not block the view. Again, with either a 44' or a 33.9' long boathouse & 12' high / two story platform it will destroy a massive portion of my view.



#7 - Bellow I've used Pete Fleck's own pic of the proposed Macclellan dock / boathouse sent to Rebecca as the base to highlight the staked markers that are physically inconsistent with the technical dimensions sent to us.



#8 - The two pics below show the 5' depth recently measured on my (Eric King) dock by an engineer roughly 10" away from my blue bench. This is way before the start of the Macclellan's existing, illegal dock & boat storage unit.



#9 - The photo below shows my single story 78 year old home bordering the Macclellan property. The wall of windows is on the far right hand side of home and property if you are facing the lake. Note the fence shows the home is located almost all the way to the property line. This is why the proposed Macclellan dock and boathouse would destroy so much of my view.



Regardless of whether the county changes the rule from 25 feet to 15 feet in the future, this proposed Macclellan dock / boathouse, if it is too close to my property line or too far out into the lake, will destroy a large part of my view, damage a significant portion of my property value, and most importantly the enjoyment for myself and my family of the property.

Windermere Water and Navigation Board Response to Dock Permit Application

Address: 1004 Main St, Windermere, FL 34786

Application No: BD-22-03-051

Recommendation: Deny

The Butler Chain of Lakes Advisory Board at their September 19, 2022 meeting approved a recommendation to oppose this dock application. The basis for this decision is described below.

1. The Terminal Platform in this application is over the maximum size allowed.
Zoning code Article IX, Sec. 15-342(b)
"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."
2. Zoning Code Article IX, Sec. 15-342(a)
The dock shall extend only to the point where reasonable water depth for vessel mooring is achieved. The maximum water depth allowed for mooring areas is five feet, as measured from the NHWE, unless the natural conditions of the water body necessitate a greater water depth to allow reasonable mooring conditions.

Respectfully,



Ijaz Ahmed, Chairman Butler Chain of Lakes Advisory Board

9/19/2022

Date



ENVIRONMENTAL PROTECTION DIVISION

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ENVIRONMENTAL
PROTECTION
COMMISSION

**ORANGE COUNTY
ENVIRONMENTAL PROTECTION COMMISSION
October 26, 2022**

Mark Ausley
Chairman

Applicants: Roger and Marianne MacClellan

R. Alan Horn
Vice Chairman

Permit Application Number: BD-22-03-051

Flormari Blackburn

Location/Address: 1004 Main Street, Windermere, FL 34786

Billy Butterfield

Peter Fleck

RECOMMENDATION: Accept the findings and recommendation of the Environmental Protection Officer, and make a finding that the request for waiver is not consistent with Orange County Code, Chapter 15, Article IX, Section 15-350(a)(2) and recommend denial of the request for waiver to 15-343(b) to reduce the side setback from the southern projected property line from 25 feet to 16 feet for the Roger and Marianne MacClellan Dock Construction Permit BD-22-03-051. District 1

Elaine Imbruglia

Oscar Anderson

EPC AGREES WITH THE ACTION REQUESTED, AS PRESENTED

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

Reject the findings and recommendation of the Environmental Protection Officer, and make a finding that the request for waiver is consistent with Orange County Code, Chapter 15, Article IX, Section 15-350(a)(2) and recommend approval of the request for waiver to 15-343(b) to reduce the side setback from the southern projected property line from 25 feet to 16 feet for the Roger and Marianne MacClellan Dock Construction Permit BD-22-03-051. District 1

Signature of EPC Chairman: _____

DATE EPC RECOMMENDATION RENDERED: 10-26-22