



Interoffice Memorandum

AGENDA ITEM

November 3, 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 and Variance for Justin Wetherill for Dock
Construction Permit BD-22-06-124

The applicant, Justin Wetherill, is requesting a dock construction permit with approval of a waiver to Orange County Code (Code), Chapter 15, Article IX, Section 15-342(b) (terminal platform size) and a variance to Chapter 15, Article IX, Section 15-342(e) (roof height). The project site is located at 5835 Emerington Crescent, Orlando, FL 32819 (Parcel ID number 21-23-28-0000-00-006) on Lake Chase in District 1.

On June 22, 2022, the Environmental Protection Division (EPD) received an Application to Construct a Dock at the subject property. On August 7, 2022, in response to a Request for Additional Information, an Application for a Waiver to Section 15-342(b) to increase the allowed terminal platform size from 1,000 to 1,944 square feet and an Application for Variance to Section 15-342(e) to increase the roof height from 12 feet to 16.5 feet were received.

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 1,000 square feet." The applicant has a shoreline that measures approximately 761 linear feet at the Normal High Water Elevation (NHWE), allowing for a maximum terminal platform size of 1,000 square feet. The applicant is requesting a terminal platform of 1,944 square feet (944 square feet larger than allowed).

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)(2)(1), the applicant's agent (Mr. Michael Carpenter) states, "*The terminal platform will be constructed over open water, so there will not be any impact to aquatic vegetation [sic]. The proposed terminal platform is 944 square feet over the limit but the shoreline is 761'.*"

To address Section 15-350(a)(2)(2), Mr. Carpenter states, "*The proposed structure will not adversely affect the adjacent property owners [sic] view or navigability [sic].*"

The shading impacts were evaluated by EPD staff using the Uniform Mitigation Assessment Method. The applicant has agreed to provide mitigation for the additional shading from the oversized terminal platform with a payment of \$1,300 to the Conservation Trust Fund (CTF), if the waiver is approved.

### **Roof Height Variance**

Chapter 15, Article IX, Section 15-342(e) of the Code states, "The maximum roof height shall be no higher than twelve (12) feet above the floor elevation." The applicant is requesting a roof height of 16.5 feet.

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."

### **Variance Criteria**

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)(1), the applicant's agent (Mr. Michael Carpenter) states, "*This property is much larger than the average building lot in the area. (Estate) The shoreline for example is 671'. The size of the lot and proximity to adjacent [sic] properties allows [sic] for a variance to be considered.*"

To address Section 15-350(a)(1)(2), the applicant's agent states, "*None due to the distance allowed by the large building lot and shoreline length.*"

### **Public Notification**

On August 12, 2022, a Notice of Applications for Waiver and Variance were sent to all shoreline property owners within a 300-foot radius of the property. Due to United States Postal Service certified mail delivery issues, EPD was unable to confirm whether 11 of the notices were received. Accordingly, those notices for which delivery were unconfirmed were also posted onsite at each neighbor's residence by Mr. Carpenter. Documentation that the noticing was completed was provided to EPD on September 16, 2022. No objections to the waiver and variance requests from neighboring property owners have been received.

On September 29, 2022, the applicant and their agent were sent notices to inform them of the Environmental Protection Commission meeting on October 26, 2022.

### **Butler Chain of Lakes Advisory Board**

Pursuant to Section 15-347(b), EPD sent notice of the waiver and variance requests to the Windermere Water and Navigation Control District Advisory Board, which is also known as the Butler Chain of Lakes Advisory Board (BCLAB), on June 22, 2022.

In accordance with 15-347(e), “The Windermere 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.”

On August 16, 2022, after the July 27, 2022 deadline to submit comments, EPD received a signed letter from the BCLAB stating “The Butler Chain of Lakes Advisory Board at their August 15, 2022 meeting approved a recommendation to oppose this dock application. The basis for this decision is described below. 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.””

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 no current enforcement action for this property.

### **EPD Staff Evaluation/Recommendation**

Staff evaluated the waiver request for compliance with the criteria for approval. The recommendation of the Environmental Protection Officer (EPO) is to approve the request for waiver to Section 15-342(b) (terminal platform size) based on a finding that the applicant has demonstrated there will be no negative effects on the abutting shoreline owners pursuant to Section 15-350(a)(2)(2), as no objections were received from abutting shoreline owners. In addition, Section 15-350(a)(2)(1) is addressed by the applicant’s willingness to make a mitigation payment to the CTF to address impacts to the environment due to additional shading from the larger terminal platform size.

Staff also evaluated the variance request for compliance with the criteria for approval. The recommendation of the EPO is to deny the request for variance to Section 15-342(e) (roof height) based on a finding that the applicant failed to demonstrate that the hardship was not self-imposed pursuant to Section 15-350(a)(1)(1) and a finding that a dock without a roof or with a lesser height could be constructed and still meet the Code.

### **Environmental Protection Commission (EPC) Public Hearing**

EPD presented the applicant's waiver and variance requests to the EPC at their October 26, 2022 public meeting. Mr. Min Cho, attorney for the applicant, spoke in favor of the requests. Mr. Cho stated that the roof height request was reasonable considering upcoming code changes. He noted that the code states an exception for a variance may be granted if the variance allows greater protection to the shoreline, which would be the case as boats would be lifted out of the water which is better for the environment. Mr. Cho also stated that having an uncovered dock would be a hardship, as boats would be unprotected from the elements. Mr. Chuck Whittall, a neighbor of the applicant, spoke in favor of the roof height request. Mr. Whittall stated that he has no issue with the visuals of the roof and that the applicant's roof style is gable, to match the house, and that is why the additional height is needed. Member Blackburn stated that the Board thought 15 feet for roof height for the new code was a reasonable number, but now there is already a request for higher than the new code will allow. Vice Chairman Horn noted that the roof height request is self-imposed because the applicant chose the gable roof style. Chairman Mark Ausley said he has no issue with the roof height environmentally, and that usually it is a potential impact to neighbors. Member Blackburn said she has no issue with the height. Member Fleck agreed roof height does not have much of an environmental impact.

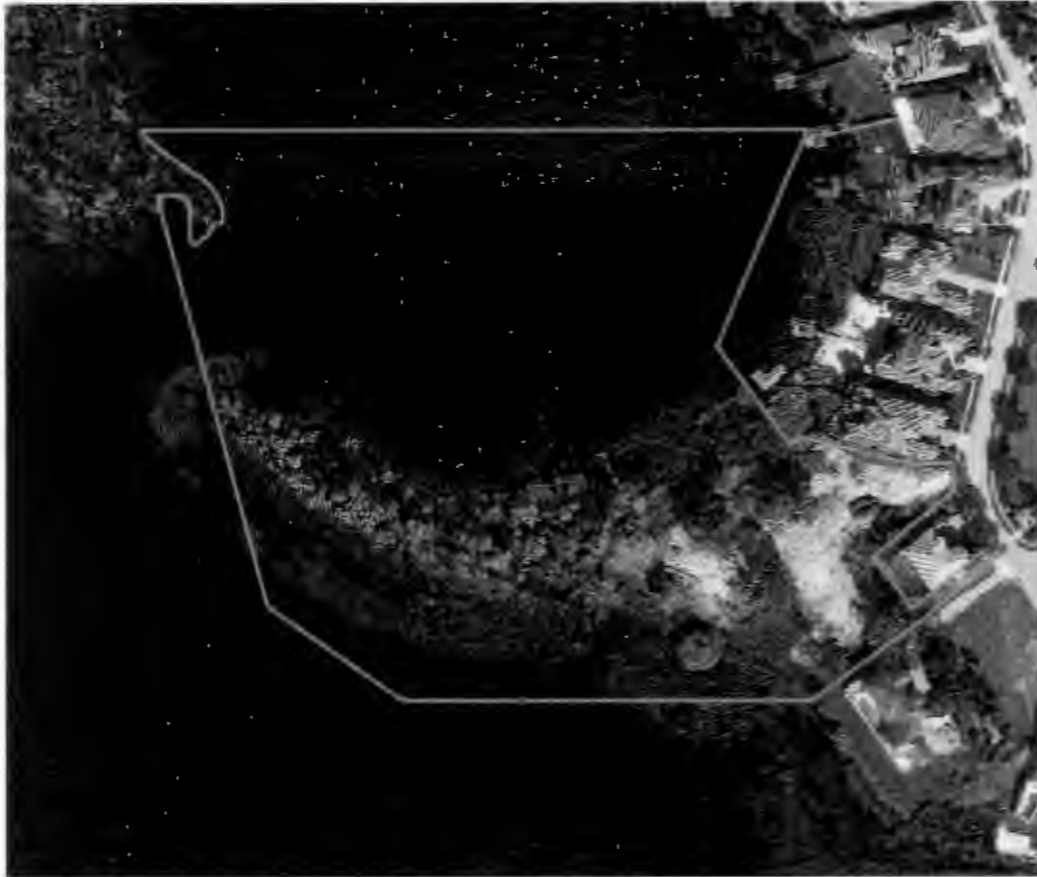
Based upon evidence and testimony presented at the hearing, the EPC voted 6-1 to approve the findings and recommendations of the EPO, and recommended approval of the waiver to Section 15-342(b) (terminal platform size) with the condition that the applicant remit a payment in the amount of \$1,300 to the CTF as mitigation for the additional shading impacts, and to reject the findings and recommendations of the EPO, and recommended approval of the variance to Section 15-342(e) (roof height) to increase the roof height from 12 feet to 16.5 feet.

**ACTION REQUESTED:**      **Acceptance of the findings and recommendation of the Environmental Protection Commission and approval of the request for waiver to Orange County Code, Chapter 15, Article IX, Section 15-342(b) to increase the maximum allowable terminal platform size from 1,000 to 1,944 square feet with a mitigation payment of \$1,300 to the Conservation Trust Fund within 60 days of the decision of the Board of County Commissioners, and approval of the request for variance to Section 15-342(e) to increase the roof height from 12 feet to 16.5 feet for the Justin Wetherill Dock Construction Permit BD-22-06-124. District 1**

JVW/DDJ: jk

Attachments

# Dock Construction Application for Variance and Waiver



## Dock Construction Application for Variance and Waiver

**BD-22-06-124**

**District #1**

**Applicant:** Justin Wetherill

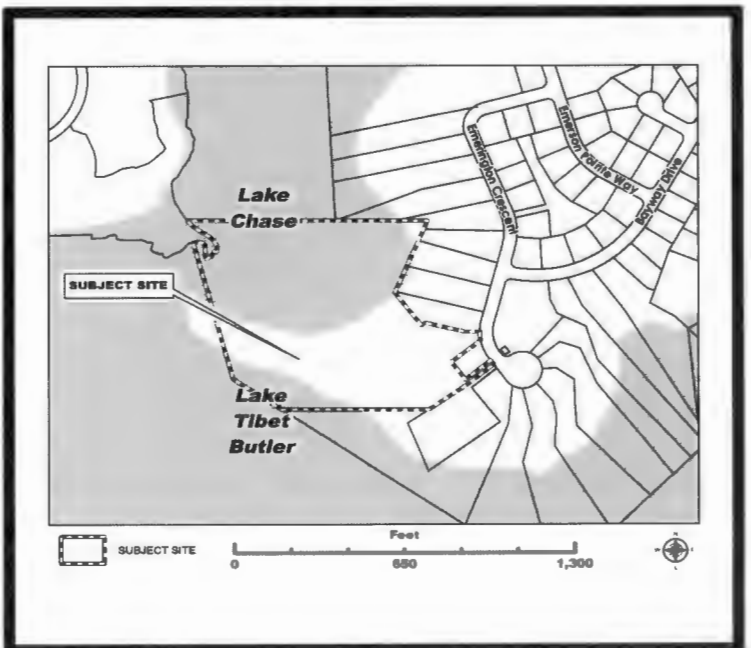
**Address:** 5835 Emerington  
Crescent

**Parcel ID:** 21-23-28-0000-00-006

**Project Site**



**Property Location**





LAKE CHASE

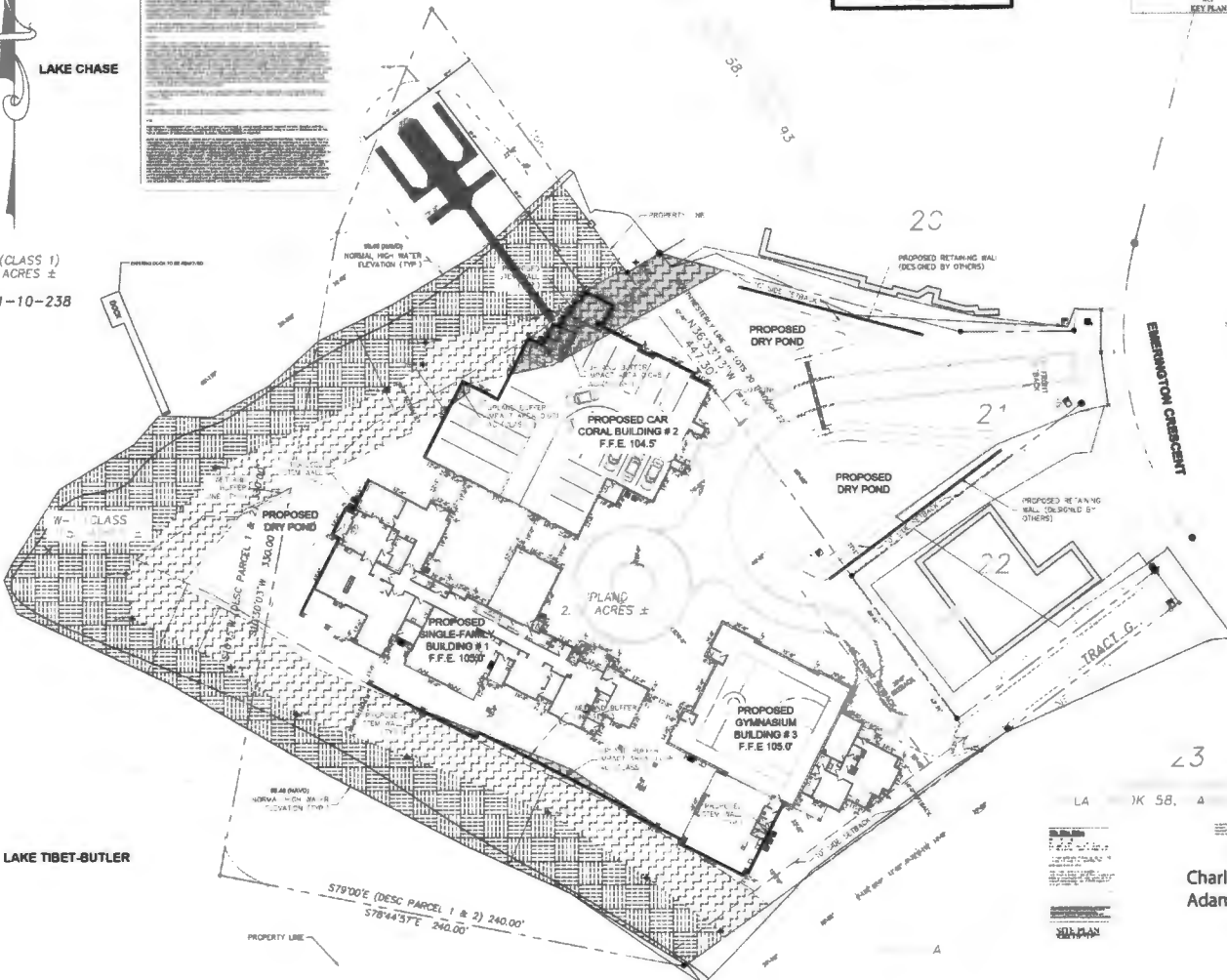
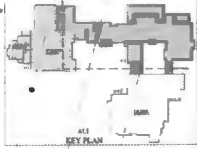
SW 1 (CLASS 1)  
10.64 ACRES ±

CAD-21-10-238

**LEGAL DESCRIPTION**  
SW 1 (CLASS 1)  
10.64 ACRES ±

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE. DATE 08/20/2022 BY 60325/UC/STP

**received**  
8/7/2022



LAKE TIBET-BUTLER

**CRONIN ARCHITECTURAL DESIGN**  
3000 W. PALM AVENUE  
SUITE 200  
FORT LAUDERDALE, FL 33309  
Tel: 954.775.1155

**EMERGENCY CONCOURSE**

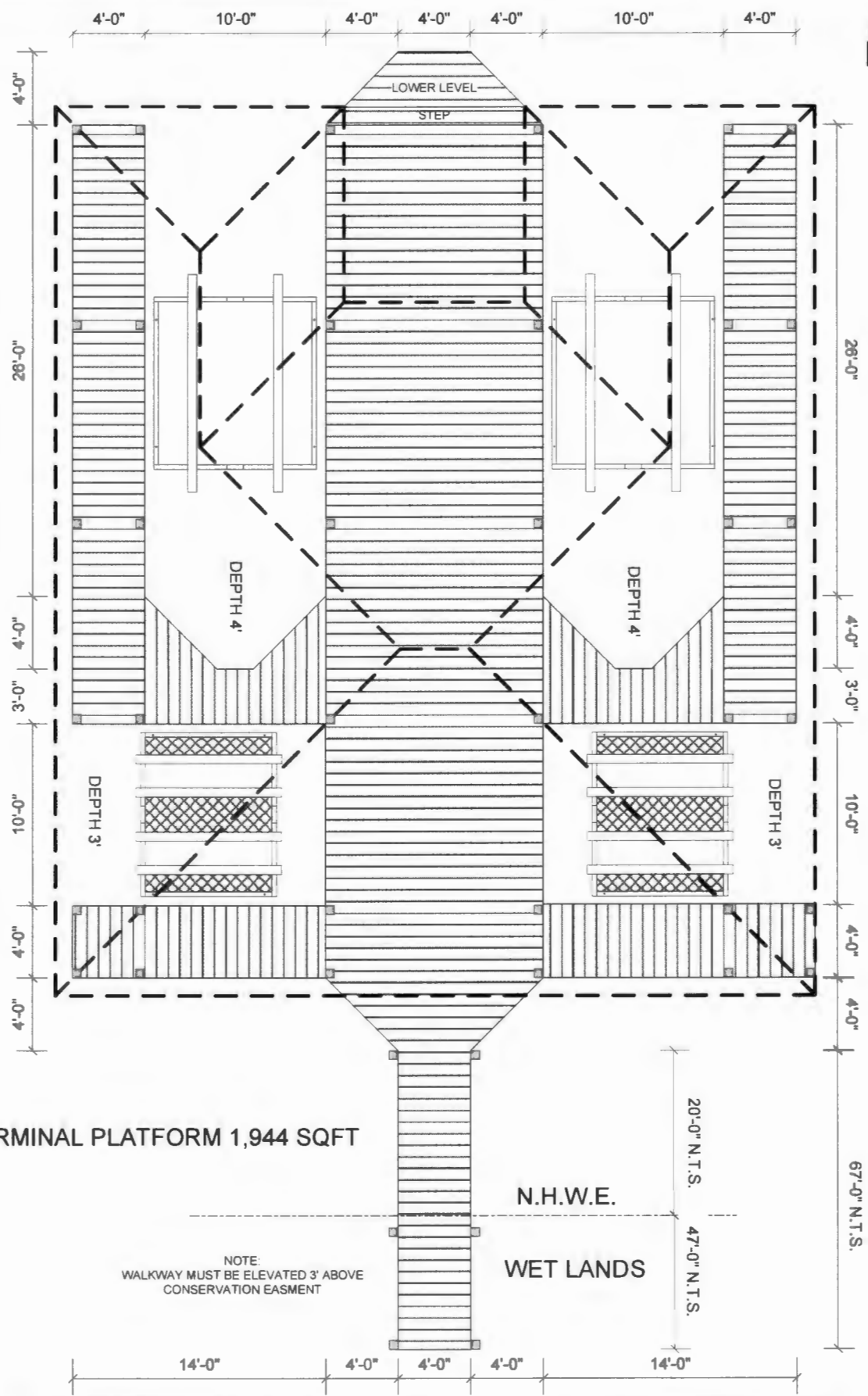
**Campbell Custom Homes**  
8823 Grey Hawk Point  
Wahpeton, FL 34786  
Tel: 888.878.1215

**The Wetherill Residence**  
585 W. Wetherill Street  
Lakeland, FL 33819  
Orange County, Florida

**Charles Adams**  
Digitally signed by Charles Adams  
Date: 2022.08.21 17:48:29 -0400

**SP**

received  
8/7/2022



TERMINAL PLATFORM 1,944 SQFT

NOTE:  
WALKWAY MUST BE ELEVATED 3' ABOVE  
CONSERVATION EASMENT

N.H.W.E.  
WET LANDS

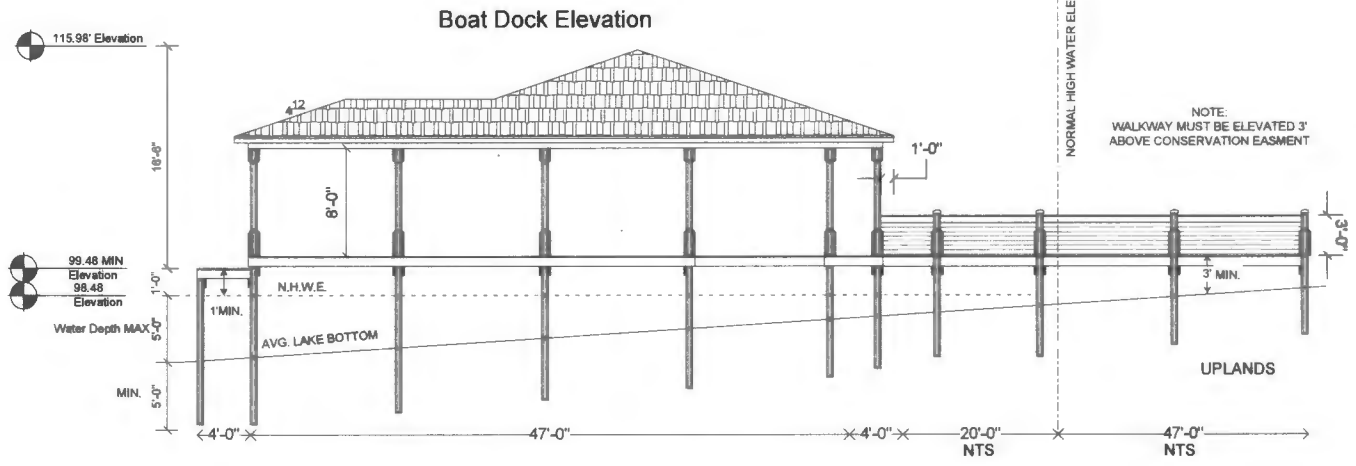
**C&M Carpenter  
Construction Co., Inc.**  
1513 Royal Circle, Apopka, FL 32703  
321-229-6554

**5835 Emerington Cres  
Orlando 32819**

**Copyright**  
United States Copyright Office  
NO. 051020.001 MRC  
SCALE: 1/8" = 1' 0"



**received**  
8/7/2022







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

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

I Michael R Carpenter on behalf of Justin M Wetherill (if applicable) pursuant to Orange County Code Chapter 15, Article IX, Section 15-350(a)(1) am requesting a variance to section 15-342(e) 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):

This property is much larger than the average building lot in the area. (Estate) The shoreline for example is 671' , The size of the lot and proximity to adjacent properties allows for a variance to be considered.

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

None due to the distance allowed by the large building lot and shoreline length.

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: Justin M Wetherill Signature of Applicant/Agent [Signature] Date: 08/07/2022 Corporate Title (if applicable):



**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** Orange County Environmental Protection Division  
**Deliver To:** 3165 McCrory Place, Suite 200  
Orlando, Florida 32803  
(407) 836-1400, Fax (407) 836-1499

I Michael R Carpenter on behalf of Justin M Wetherill (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 aquatic vegetation  
The proposed terminal platform is 944 square feet over the limit but the shoreline is 761'

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

The proposed structure will not adversely affect the adjacent property owners view or navigability.

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: Justin M Wetherill

Signature of Applicant/Agent Michael R Carpenter Date: 08/07/2022

Corporate Title (if applicable): \_\_\_\_\_

Butler Chain of Lakes Advisory Board Response to Dock Permit Application

Address: 5835 Emerington Crescent, Orlando, FL 32819

Application No: BD-22-06-124

Recommendation: Deny

The Butler Chain of Lakes Advisory Board at their August 15, 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 almost double 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."

Respectfully,



Ijaz Ahmed, Chairman Butler Chain of Lakes Advisory Board

8/16/2022

Date







**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

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

ENVIRONMENTAL  
 PROTECTION  
 COMMISSION

Mark Ausley  
 Chairman

R. Alan Horn  
 Vice Chairman

Florian Blackburn

Billy Butterfield

Peter Fleck

Elaine Imbruglia

Oscar Anderson

Applicant: Justin Wetherill

Permit Application Number: BD-22-06-124

Location/Address: 5835 Emerington Crescent, Orlando, FL 32819

**RECOMMENDATION:**

Accept 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 15-342(b) to increase the maximum allowable terminal platform size from 1,000 to 1,944 square feet with a mitigation payment of \$1,300 to the Conservation Trust Fund within 60 days of the decision of the Board of County Commissioners; and,

Accept the findings and recommendation of the Environmental Protection Officer, and make a finding that the request for variance is inconsistent with Section 15-350(a)(1) and recommend denial of the request for variance to Section 15-342(e) to increase the roof height from 12 feet to 16.5 feet for the Justin Wetherill Dock Construction Permit BD-22-06-124. District 1

EPC AGREES WITH THE ACTION REQUESTED, AS PRESENTED

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

Accept 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 15-342(b) to increase the maximum allowable terminal platform size from 1,000 to 1,944 square feet with a mitigation payment of \$1,300 to the Conservation Trust Fund within 60 days of the decision of the Board of County Commissioners; and,

Reject the findings and recommendation of the Environmental Protection Officer, and make a finding that the request for variance is consistent with Section 15-350(a)(1) and recommend approval of the request for variance to Section 15-342(e) to increase the roof height from 12 feet to 16.5 feet for the Justin Wetherill Dock Construction Permit BD-22-06-124. District 1

Signature of EPC Chairman: \_\_\_\_\_

*Mark Ausley*

DATE EPC RECOMMENDATION RENDERED: 10-26-22