### **AGENDA ITEM**

#### **Interoffice Memorandum**



November 8, 2021

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 14, 2021 — Consent Item

Environmental Protection Commission Recommendation for Request for After-the-Fact Variance for Haidar and Ziena Rahal

Dock Construction Permit BD-18-11-117-MOD

The applicants, Haidar and Ziena Rahal, are requesting a modification to a previously issued Dock Construction Permit (BD-18-11-117) with an after-the-fact variance to Orange County Code (Code), Chapter 15, Article IX, Section 15-342(d) (floor elevation). The project site is located at 9889 Lake Georgia Drive, Orlando, FL 32817. The Parcel ID Number is 06-22-31-4444-00-180. The subject property is on Lake Georgia in District 5.

On November 7, 2018, the Environmental Protection Division (EPD) received an Application to Construct a Dock to replace an existing, permitted dock at the subject property. The applicants proposed, at the time, to build a new dock with a larger terminal platform. Subsequently, Dock Construction Permit Number BD-18-11-117 was issued on March 11, 2019 with an administrative waiver to Section 15-343(b) to authorize a side setback distance of 17.4 feet from the northern projected property line in order to construct the replacement dock in the same general location as the old dock. A Letter of No Objection (LONO) was provided by the affected neighbor to the north (Lora Mason at 9887 Lake Georgia Drive).

On July 15, 2019, EPD received an as-built survey of the completed dock. Upon review of the as-built survey, staff identified several issues with the dock as constructed, including the side setback from the northern projected property line, which is 16.6 feet (not 17.4 feet as originally permitted), the floor elevation of the dock is 0.87 feet below the Normal High Water Elevation (NHWE) (1.87 feet below the minimum floor elevation), and a jet-ski lift installed on the dock that was neither included in the original permitted plans nor on the as-built survey. On August 4, 2021, EPD issued a formal letter to the applicants outlining the steps required to bring the dock into compliance.

In response to the non-compliance letter, on August 13, 2021, the applicants submitted an after-the-fact Application for Variance to 15-342(d) (along with the required variance fee) to attempt to gain authorization for the existing floor elevation and an after-the-fact waiver application for the northern side setback along with a new LONO from the current property owner of the adjacent property to the north (Perry Teague at 9887 Lake Georgia Drive).

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Environmental Protection Commission Recommendation for Request for After-the-Fact Variance for Haidar and Ziena Rahal Dock Construction Permit BD-18-11-117-MOD

Pursuant to Section 15-343(b), the side setback waiver can be approved by the Environmental Protection Officer (EPO) based on the LONO from the affected neighbor and no further action is required by the Environmental Protection Commission (EPC) or the Board on this item.

On August 30, 2021, EPD received confirmation that the terminal platform with the additional jet-ski lift is still within the allowable size per Section 15-342(b). On September 21, 2021, the applicants remitted an administrative penalty payment of \$639 for failure to adhere to the approved dock plans.

#### <u>After-the-Fact Variance Request – Floor Elevation</u>

Regarding the variance request, Section 15-350(a)(1) states that "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)(1), the applicants state, "Due to Covid we are literally in the red because of the increase in matrials [sic] and labor. We can not afford, and trying to finish house." [sic]

To address Section 15-350(a)(1)(2), the applicants state, "As far as my neighbours, [sic] we are blessed and I believe they have no issue and are okay with the elevation and set back."

Based on information provided by Orange County Public Works, lake elevations on Lake Georgia have not reached the NHWE since September of 1964. The highest recorded elevation of the lake was 60.34' NAVD88 (1.93' above the NHWE), recorded in October of 1959. The most recently recorded elevation of the lake was 52.36' NAVD88 (6.05' below the NHWE) on August 4, 2021.

#### **Public Noticing**

On September 15, 2021, a Notice of Application for After-the-Fact Variance was sent to all shoreline property owners within a 300-foot radius of the property. No objections were received.

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

Staff evaluated the after-the-fact variance request for compliance with the criteria for approval. The applicants have demonstrated that there will be no adverse effects from the proposed variance on abutting shoreline owners pursuant to Section 15-350(a)(1)(2), as no objections were received. However, the applicants have not demonstrated that the hardship is not self-imposed per Section 15-350(a)(1)(1), as a dock could be built that meets Code. Therefore, the recommendation of the EPO is to deny the request for the after-the-fact variance to Chapter 15, Section 15-342(d) (floor elevation).

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Environmental Protection Commission Recommendation for Request for After-the-Fact
Variance for Haidar and Ziena Rahal Dock Construction Permit BD-18-11-117-MOD

#### **Environmental Protection Commission Public Hearing**

EPD presented the after-the-fact variance request to the EPC at their October 27, 2021 public meeting. Commission Member Oscar Anderson asked if the height of the walkway had changed between the conditions in 2019 and the current configuration. Mr. Neal Thomas from EPD indicated that information on the elevation of the old dock was not available. Commission Member Peter Fleck stated that it appears the dock pilings were replaced and that the professional dock builder performing the work should have realized they were not meeting the minimum floor elevation. Chairman Mark Ausley stated that it appeared to be indicative of shoddy work. Commission Member Flormari Blackburn noted that the dock was not built in accordance with the plans submitted with the permit application, the applicant could have requested a variance prior to constructing the dock, and that the code requirement for floor elevation was a safety issue. Mr. Thomas confirmed that the plans submitted with the original permit application indicated that the dock would meet the minimum elevation requirement above the NHWE.

Commission Member Anderson suggested continuing the case to a later date when someone who was part of the construction could answer the question if they reconstructed the walkway, but the rest of the EPC did not take up the suggestion. The applicant did not attend the hearing; however, the applicant's agent who had submitted the application for the original dock permit, Ms. Sheila Cichra, stated that she had explained to the applicant that the dock would either need to be raised or they would need to apply for a variance, but they opted at that time not to apply for a variance.

Based upon evidence and testimony presented at the hearing, the EPC voted unanimously to accept the findings and recommendation of the EPO, and recommended denial of the request for after-the-fact variance to Section 15-342(d) (floor elevation).

#### **ACTION REQUESTED:**

Acceptance of the findings and recommendation of the Environmental Protection Commission, denial of the request for after-the-fact variance to Section 15-342(d), and require the dock to be reconstructed to meet the minimum floor height elevation requirement of one foot above the Normal High Water Elevation within 60 days of the decision of the Board of County Commissioners for the Haidar and Ziena Rahal Dock Construction Permit BD-18-11-117-MOD. District 5

JVW/DDJ: jk Attachments Dock Construction Application for After-the-Fact Variance



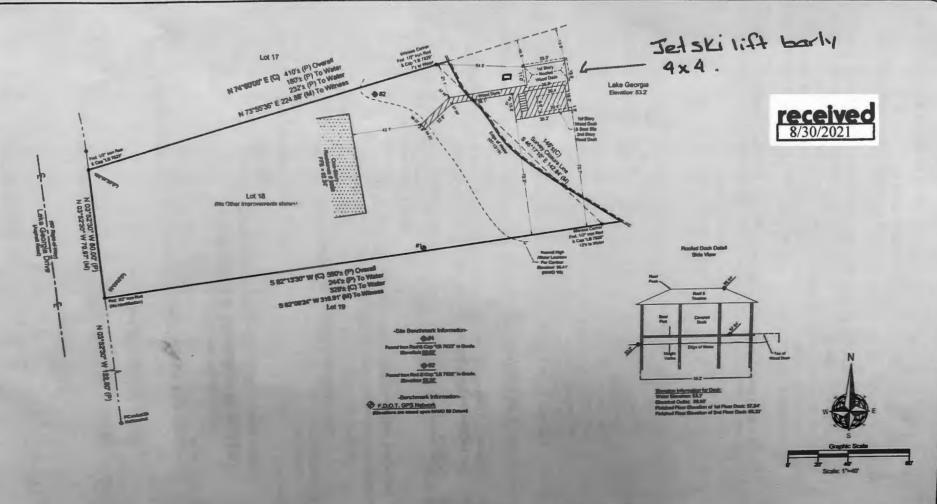
Dock Construction Application for After-the-Fact Variance BD-18-11-117-MOD District 5

Applicant: Haidar and Ziena Rahal

Address: 9889 Lake Georgia Drive Parcel ID: 06-22-31-4444-00-180

Project Site Property Location





#### AS-BUILT SURVEY

Legal Description:

LOT 18, LAKE GEORGIA SHORES, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK S, PAGE 45, OF THE PUBLIC RECORDS OF DRANGE COUNTY, FLORIDA.

CERTIFIED TO: ORLANDO DECK AND DOCK



9889 LAKE GEORGIA DRIVE, ORLANDO, FLORIDA 32817

en By: B.J	Date Completed: 07/12/19 File Number: IS-9007 AS-BUILT	>Servey is Board upon the Legal Description Supplied by Clerk. skituting Properties Deeds have NOT been Researched for Capi. Civeries.
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Office-407.678.3366 Fax-407,320.8165



#### **Environmental Protection Division**

## DOCK CONSTRUCTION PERMIT

Permit No.: BD-18-11-117

Date Issued: March 11, 2019

Date Expires: March 11, 2020

#### A Permit Authorizing:

The construction of a dock not to exceed the measurements identified on the Environmental Protection Division (EPD) stamp on the plans dated as received by EPD on February 25, 2019 and March 8, 2019.

This permit includes an approved administrative waiver to Section 15-343(b) to allow a side setback of 17.4 feet from the northern projected property line. A letter of no objection was received from the affected property owner.

This permit is issued pursuant to Orange County Code, Chapter 15, Article IX, Construction of Dock Ordinance of Orange County and is subject to the permit conditions provided on the following pages:

### **Activity Location:**

9889 Lake Georgia Drive, Orlando, FL 32817

Parcel ID No.: 06-22-31-4444-00-180

Lake Name: Georgia

Orange County Commission District: 5

#### Permittee / Authorized Entity:

Haidar & Ziena Rahal c/o Sheila Cichra Streamline Permitting, Inc. E-mail: sheilacichra@gmail.com As the permit holder, you are responsible to ensure that all the conditions are met. If you are using a contractor to perform the activities authorized within the permit you are both responsible for meeting the conditions of your permit. If you fail to meet any of the conditions, you and/or your contractor may be subject to formal enforcement which may include administrative penalties.

Approval of this permit is subject to the following conditions:

#### **Specific Conditions:**

- 1. This permit shall become final and effective upon expiration of the 15 calendar day appeal period following the date of issuance, unless an appeal has been filed within this timeframe. Any appeal shall stay the effective date of this permit until any and all appeals are resolved.
- 2. The operational phase of this permit is effective upon the completion of construction and continues in perpetuity.
- 3. Construction activities shall be completed in accordance with the 'Rahal Residence Dock' plan submitted by Streamline Permitting, Inc., received by EPD on February 25, 2019 and March 8, 2019. Construction shall not exceed the measurements identified on the stamp on the plans. The permitted work must be completed within one year from the date of issuance of the permit. Requests for permit extension must be submitted to the EPD prior to the expiration date.
- 4. Minimum height of the deck must be one foot above the Normal High Water Elevation (NHWE) of 58.41 feet above mean sea level (NAVD 1988) for Lake Georgia. Maximum height of the roof shall be no higher than 12 feet above the floor elevation
- 5. The access walkway shall be elevated a minimum of three feet above ground over any wetland. Please be advised that the Florida Department of Environmental Protection (FDEP) may have additional height requirements. Please contact FDEP for information regarding additional walkway height requirements.
- 6. The dock must be constructed within the access corridor according to Chapter 15, Article VII. No access corridor is allowed through any conservation area and/or easement.
- 7. The structure and its use shall not significantly impede navigability in the waterbody.
- 8. There shall be no dredging or filling associated with construction of the structure(s) authorized herein, other than that required for installation of structural pilings.
- 9. The dock must be constructed to meander around native trees to minimize the impact. If any trees are removed (dead or alive), EPD must be notified immediately and a restoration plan must be submitted to EPD for approval. At a minimum, the plan must consist of native wetland plants on 2-foot centers and native wetland trees on 10-foot centers. The ratio will be at least 4:1 ratio for any trees that are removed.
- 10. If any fallen trees are located within the proposed dock location they may be cut in place and left within the wetland/conservation area. If it must be removed only hand removal is

- permitted; no heavy equipment or machinery is permitted. Debris must be removed without displacing soils.
- 11. Unless expressly authorized by this permit and approved site plans, no floating platform structure (including, but not limited to, jetski platforms) has been approved with the issuance of this permit. If, at any time, any addition to the terminal platform (including, but not limited to, a floating platform) is proposed, the permittee or future owners of the property may be required to apply for, and obtain, a new Dock Construction Permit.
- 12. All excess lumber, scrap wood, trash, garbage, and similar materials shall be removed from the project area immediately.
- 13. The permit holder and/or designated agent must submit a notice of completion to EPD within 30 days of completion of the construction or repair of the permitted structure so that a compliance check may be performed by EPD staff. The permit holder and/or designated agent must provide as-built drawings on a final survey, signed and sealed by an appropriate professional licensed by the State of Florida, with the notice of completion. The signed and sealed as-built survey shall consist of an aerial view and a side view of dock structure as well as any other information required to demonstrate compliance with the permitted structure. The following items must be included on the survey:
  - a. North arrow;
  - b. Name of water body;
  - c. Reference point;
  - d. Setback distance from all portions of the boat dock;
  - e. NHWE:
  - f. Floor elevation (measured from the NHWE);
  - g. Roof elevation (measured from the top of the floor to the top of the roof);
  - h. Length of dock below the NHWE;
  - i. Access walkway width;
  - i. Conservation easements, wetlands, buffers, berm and swale/drainage easements;
  - k. Floor elevation of the dock through easements, wetlands or buffers:
  - 1. Complete dimensions of the terminal platform.
- 14. A copy of this permit, along with EPD stamped and approved drawings should be taken to the Orange County Zoning Division (OCZD) at 201 South Rosalind Avenue for approval. For further information, please contact the OCZD at (407) 836-5525
- 15. After approval by OCZD, the certified site plans will need to be reviewed by the Orange County Building Safety Division (OCBSD) in order to obtain a building permit. For further information, please contact the OCBSD at (407) 836-5550.
- 16. At least 48-hours prior to commencement of activity authorized by this permit, the permittee shall submit to EPD, a Construction Notice indicating the actual start date and expected completion date.
- 17. The permittee shall notify EPD, in writing, within 30 days of any sale, conveyance, or other transfer of ownership or control of the real property subject to this permit. The permittee shall remain liable for all permit conditions and corrective actions that may be required as a result of any permit violations which occur prior to the transfer of the permit by Orange County to a subsequent owner. If applicable, no permit shall be transferred unless and until adequate financial assurance has been provided and approved by Orange County.

#### General Conditions:

- 18. Subject to the terms and conditions herein, the permittee is hereby authorized to perform or cause to be performed, the impacts shown on the application and approved drawings, plans, and other documents attached hereto or on file with EPD. The permittee binds itself and its successors to comply with the provisions and conditions of this permit. If EPD determines at any time that activities are not in accordance with the conditions of the permit, work shall cease and the permit may be revoked immediately by the Environmental Protection Officer. Notice of the revocation shall be provided to the permit holder promptly thereafter.
- 19. Prior to construction, the permittee shall clearly designate the limits of construction on-site. The permittee shall advise the contractor that any work outside the limits of construction, including clearing, may be a violation of this permit.
- 20. The projected property lines, as identified on the stamped permit drawings, should be field staked by a professional land surveyor prior to the start of construction in order to be sure that the dock is constructed in the permitted location. Utilizing an adjacent boat dock or fence line is not sufficient for accurate placement of the dock, and may result in the placement of the dock in the wrong location. It is extremely important to build the dock in the approved location. Upon completion of construction, if an unauthorized encroachment into the required minimum setback occurs, you may be required to relocate the dock.
- 21. The permittee shall require the contractor to maintain a copy of this permit, complete with all approved drawings, plans, conditions, attachments, exhibits, and modifications in good condition at the construction site. The permittee shall require the contractor to review the permit prior to commencement of the activity authorized by this permit. The complete permit shall be available upon request by Orange County staff.
- 22. Issuance of this permit does not warrant in any way that the permittee has riparian or property rights to construct any structure permitted herein and any such construction is done at the sole risk of the permittee. In the event that any part of the structure(s) permitted herein is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent property owner's riparian or other property rights, permittee agrees to either obtain written consent or to remove the offending structure or encroachment within 60 days from the date of the adjudication. Failure to comply shall constitute a material breach of this permit and shall be grounds for its immediate revocation.
- 23. This permit does not release the permittee from complying with all other federal, state, and local laws, ordinances, rules and regulations. Specifically, this permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities upon property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 15, Article IX of the Orange County Code. If these permit conditions conflict with those of any other regulatory agency the permittee shall comply

- with the most stringent conditions. The permittee shall immediately notify EPD of any conflict between the conditions of this permit and any other permit or approval.
- 24. The permittee is hereby advised that Section 253.77, Florida Statutes (FS), states that a person may not commence any excavation, construction, or other activity involving the use of sovereignty or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.
- 25. Should any other regulatory agency require changes to the permitted activities, the permittee shall provide written notification to EPD of the change prior to implementation so that a determination can be made whether a permit modification is required.
- 26. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
- 27. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
- 28. EPD staff, with proper identification, shall have permission to enter the site at any reasonable time ensure conformity with the plans and specifications approved by the permit.
- 29. The permittee shall hold and save the County harmless from any and all damages, claims or liabilities, which may arise by reason of the activities authorized by the permit.
- 30. All costs, including attorney's fees, incurred by the County in enforcing the terms and conditions of this permit shall be required to be paid by the permittee.
- 31. The permittee agrees that any dispute arising from matters relating to this permit shall be governed by the laws of Florida, and initiated only in Orange County.
- 32. Turbidity and sediments shall be controlled to prevent violations of water quality pursuant to Rule 62-302.500, 62-302.530(70) and 62-4.242 Florida Administrative Code. Best Management Practices, as specified in the Florida Stormwater, Erosion, and Sedimentation Control Inspector's Manual, shall be installed and maintained at all locations where the possibility of transferring suspended solids into wetlands and/or surface waters may occur due to the permitted activity. If site-specific conditions require additional measures, then the permittee shall implement them as necessary to prevent adverse impacts to wetlands and/or surface waters.
- 33. Pursuant to Section 125.022, FS, issuance of this permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.

34. Pursuant to Section 125.022, FS, the applicant shall obtain all other applicable state or federal permits before commencement of the activity authorized herein.

If you should have any questions concerning this review, please contact Taina Torres at 407-836-1438 or <a href="mailto:Taina.Torres@ocfl.net">Taina.Torres@ocfl.net</a>.

Project Manager:

Taina Torres, Environmental Specialist II

Authorized for the Orange County Environmental Protection Division by:

David D. Jones, P.E., CEP, Environmental Protection Officer

7.III./IV/TMH/ERJ/DJ/gfdjr:

Enclosure(s): Construction Notice Approved Plans

c: Haidar & Ziena Rahal – <u>Family.Rahal@gmail.com</u>
David Rooney – Orlando Deck and Dock – <u>David@orlandodeckanddock.com</u>
Florida Department of Environmental Protection - <u>DEP\_CD@dep.state.fl.us</u>



By Fax:

By Mail:

# **Construction Notice**

Approximate Starting Date:
Approximate Completion Date:
Permit Number/Name <u>: BD-18-11-117, Rahal - 9889 Lake Georgia Drive</u>
Remarks:
Agent/Consultant/Permittee:
Date:
Complete and Return to:
By Email: Taina Torres@ocfl.net

Orange County Environmental Protection Division

407-836-1499, Attn: Taina

Orlando, FL 32803

3165 McCrory Place, Suite 200

## Rahal Residence Dock

APPROVED BY **ORANGE COUNTY ENVIRONMENTAL PROTECTION DIV.** 

- 13,80 UT A

INITIAL:

Specifications and Notations



Minimum Side Setbacks - (1) 17.4 (R) 71.2 Maximum Terminal Platform size -Maximum Water Depth -

Maximum Roof Height above floor - 12 feet Minimum Dock Height above the NHWE - 1 foot Minimum Deck Height above Consv. Area-min.3 feet Maximum width of walkway - 5 feet



#### **Schedule of Drawings**

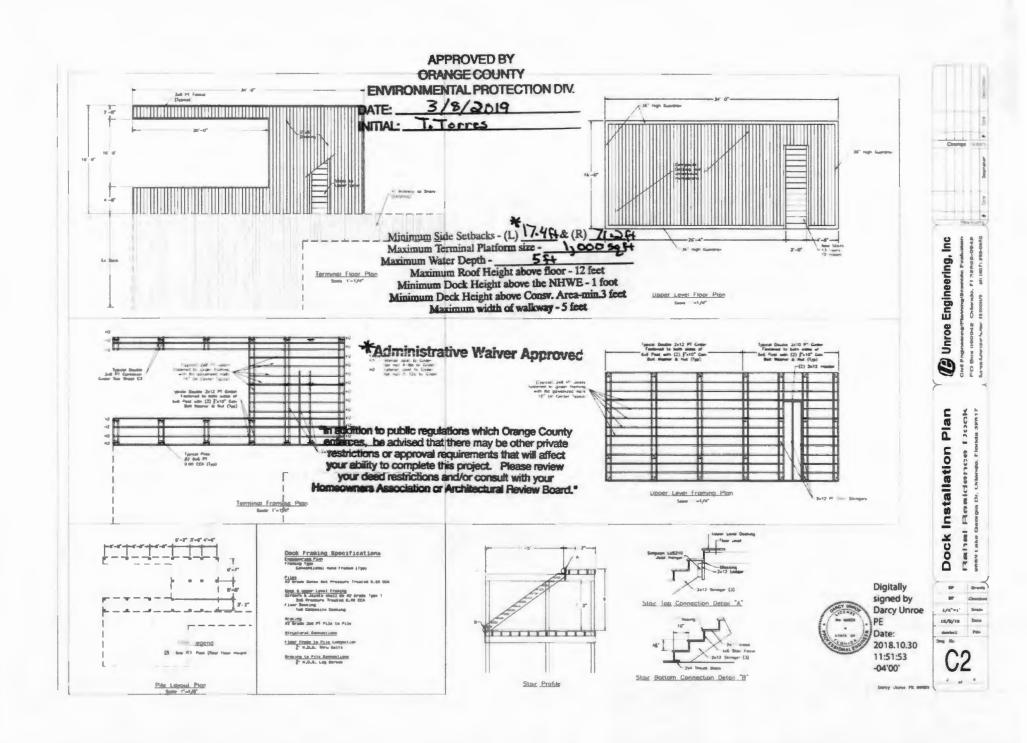
#### Project Data

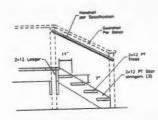
Assistante Com-

"In addition to public regulations which Orange County enforces, be advised that there may be other private restrictions or approval requirements that will affect your ability to complete this project. Please review your deed restrictions and/or consult with your Homeowners Association or Architectural Review Board. Deck Area Calculations New Down Addy tion Late: Terminal Platform Area

\* Administrative Waiver Approved

Engineering, Inc Unroe

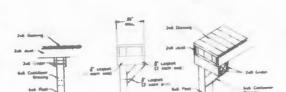




Stor Detail

- Connections
  Tempera structure to League W.
  Samesan LESZ16
- Minimum Side Setbacks (L) 17.4fte (R) 71.2ft Maximum Terminal Platform size -

Maximum Water Depth -Maximum Roof Height above floor - 12 feet Minimum Dock Height above the NHWE - 1 foot Minimum Deck Height above Consv. Area-min.3 feet Maximum width of walkway - 5 feet



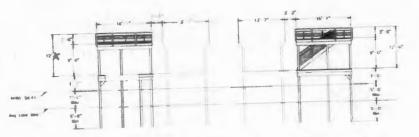
Dock Studient Coming Section

"In addition to public regulations which Orange County enforces, be advised that there may be other private restrictions or approval requirements that will affect your ability to complete this project. Please review your deed restrictions and/or consult with your Homeowners Association or Architectural Review Board."

APPROVED BY **ORANGE COUNTY** ENVIRONMENTAL PROTECTION DIV.

3/8/2019 DATE: T. Torres INITIAL:

\*Administrative Waiver Approved Side Litrofton West View



Hear Elevation - South View cont tout he North Vise

Guardrad Assembly

(B) Unroe Engineering, Inc

Sections Dook ø Elevations





### ENVIRONMENTAL PROTECTION DIVISION David D. Jones, P.E., CEP, Manager

ENVIRONMENTAL PROTECTION COMMISSION

Mark Ausley

Oscar Anderson
Vice Chairman

Horman Blackburn

Billy Butterfield

Mark Corbett

Peter Fleck

Elaine Imbrugha

### ORANGE COUNTY ENVIRONMENTAL PROTECTION COMMISSION October 27, 2021

Applicants: Haidar and Ziena Rahal

Permit Application Number: BD-18-11-117-MOD

Location/Address: 9889 Lake Georgia Drive, Orlando

RECOMMENDATION:

Accept the findings and recommendations of the Environmental Protection Officer, and make a finding that the request for after-the-fact variance is inconsistent with Section 15-350(a)(1) and recommend denial of the request for after-the-fact variance to 15-342(d) and require the dock to be reconstructed to meet the minimum floor height elevation requirement of one foot above the NHWE within 60 days of the decision of the Board of County Commissioners for the Haidar and Ziena Rahal Dock Construction Permit BD-18-11-117-MOD. District 5

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 recommendations of the Environmental Protection Officer, and make a finding that the request for after-the-fact variance is consistent with Section 15-350(a)(1) and recommend approval of the request for after-the-fact variance to 15-342(d) to reduce the required floor elevation from one foot above to 0.87-foot below the Normal High Water Elevation with the condition that the applicants enter into a Hold Harmless and Indemnification Agreement with Orange County for the Haidar and Ziena Rahal Dock Construction Permit BD-18-11-117-MOD. District 5

Signature of EPC Chairman:	Mark	Clusley	
DATE EPC RECOMMENDAT	ION RENDERE	D: 10-27-21	

Serving our community by conserving, protecting, and enhancing the environment for current and future generations.