



## Interoffice Memorandum

APPROVED BY ORANGE  
COUNTY BOARD OF COUNTY  
COMMISSIONERS

BCC Mtg. Date: November 29, 2016

November 1, 2016

TO:

Mayor Teresa Jacobs  
-AND-  
Board of County Commissioners

AGENDA ITEM

FROM:

Jon V. Weiss, P.E., Director  
Community, Environmental and Development  
Services Department

CONTACT PERSON:

Lori Cunniff, CEP, CHMM, Deputy Director  
Community, Environmental and Development  
Services Department  
(407) 836-1405

SUBJECT:

November 29, 2016 – Consent Item  
Environmental Protection Commission (EPC) Recommendation  
for an After-the-Fact Variance Request for the Tovey Dock  
Construction Permit BD-16-05-049

On June 6, 2016, the Environmental Protection Division (EPD) issued Dock Construction Permit BD-16-05-049. Upon completion of a field survey during dock construction, the contractor realized that constructing the dock with a floor elevation of one foot above the Normal High Water Elevation (NHWE), as required by Code, would result in the dock being too high above the water; therefore, they submitted an After-the-Fact Application for Variance to Section 15-342(d)(floor height) on July 13, 2016.

Per the Orange County Lake Index, the NHWE of Lake Georgia is established at 59.50 NGVD (1929). Review of historical lake level data for this lake indicates that the NHWE has not been reached since April 1961; therefore, the applicant is requesting approval to allow his dock to remain constructed at an elevation of 58.0 feet NGVD (1929).

The contractor continued construction and finished the dock prior to obtaining approval of the variance, and on September 30, 2016, EPD issued a Notice of Violation (NOV) to Mr. Tovey for completing construction without the required variance to floor height. The NOV required an administrative penalty of \$200 to be paid to the Conservation Trust Fund (CTF). Approval of this variance and payment of the \$200 will resolve the enforcement case.

During the October 26, 2016 public hearing, the Environmental Protection Commission (EPC) voted to uphold the recommendation of the Environmental Protection Officer (EPO) to approve the request for the After-the-Fact Variance to Section 15-342(d) (floor height).

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November 29, 2016 – Consent Item

Environmental Protection Commission (EPC) Recommendation for an After-the-Fact Variance Request for the Tovey Dock Construction Permit BD-16-05-049.

**ACTION REQUESTED:**        **Acceptance of Recommendation of the Environmental Protection Commission to uphold the Environmental Protection Officer's Recommendation of the approval of the After-the-Fact Variance to Orange County Code, Chapter 15, Article IX, Section 15-342(d) for the Tovey Dock Construction Permit BD-16-05-049, with the condition that the applicant enter into a Hold Harmless and Indemnification Agreement with Orange County for the Dock being constructed below the Normal High Water Elevation, and payment of \$200 to the Conservation Trust Fund. District 5**

JVW/LC: mg

Attachments



ENVIRONMENTAL  
PROTECTION  
COMMISSION

David Ward  
Chairman

Jonathan Huels  
Vice Chairman

Sally Atwell

Alcx Preisser

Glenn Dunkelberger

Mark Corbett

Mark Ausley

ENVIRONMENTAL PROTECTION DIVISION  
Lori Cunniff, CEP, CHMM, Deputy Director  
Community, Environmental and Development Services Department  
3165 McCrory Place, Suite 200  
Orlando, FL 32803-3727  
407-836-1400 • Fax 407-836-1499  
www.ocfl.net

ORANGE COUNTY  
ENVIRONMENTAL PROTECTION COMMISSION

PROJECT NAME: Tovey

DOCK CONSTRUCTION PERMIT NUMBER: BD-16-05-049

LOCATION/ADDRESS: 5584 N. Dean Road, Lake Georgia

RECOMMENDATION:

PURSUANT TO ORANGE COUNTY CODE, CHAPTER 15, ARTICLE IX, SECTION 15-350(B), APPROVE THE REQUEST FOR AFTER-THE-FACT VARIANCE TO ORANGE COUNTY CODE, CHAPTER 15, ARTICLE IX, SECTION 15-342(D) FOR THE TOVEY DOCK CONSTRUCTION PERMIT BD-16-05-049 WITH THE CONDITION THAT THE APPLICANT ENTER INTO A HOLD HARMLESS AND INDEMNIFICATION AGREEMENT WITH ORANGE COUNTY FOR THE DOCK BEING CONSTRUCTED BELOW THE NHWE AND PAY \$200.00 TO THE CONSERVATION TRUST FUND.

☒ EPC AGREES WITH THE ACTION REQUESTED, AS PRESENTED

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

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

*David R. Ward*

Date EPC Recommendation Rendered: \_\_\_\_\_

10/26/16



**Interoffice Memorandum  
Community, Environmental and Development Services Department**

October 26, 2016

TO: Environmental Protection Commission

FROM: Lori Cunniff, CEP, CHMM, Deputy Director  
Community, Environmental and Development Services Department

*Elizabeth R. Kinsinger*

SUBJECT: Tovey After-The-Fact Variance Request

**Reason For Public Hearing**

The applicant, Austin Tovey, is requesting an after-the-fact variance from Orange County Code, Chapter 15, Article IX, Section 15-342(d)(floor elevation).

**Location of Property/Legal Description**

The project site is located at 5584 North Dean Road, on Lake Georgia. The Parcel ID for the site is 05-22-31-0000-00-030. The subject property is located in Orange County Commission District 5.

**Public Hearing Notifications**

The applicant, agent, and owners of the shoreline properties situated within 300 feet of the property on which the proposed dock is located were notified of the request for variance on September 8, 2016.

**Staff Findings**

On June 6, 2016, the Environmental Protection Division (EPD) issued Dock Construction Permit BD-16-05-049. Prior to construction of the dock, a surveyor was on-site to obtain elevations of the proposed dock. Upon completion of the field survey, the contractor then realized that constructing the dock with a floor elevation of one foot above the Normal High Water Elevation (NHWE), as required by Code, would result in the dock being too high above the water.

On July 13, 2016, an Application for Variance to Section 15-342(d)(floor height) was received by EPD.

Section 15-342(d) states the floor elevation shall be a minimum of one foot above the established control elevation or normal high water elevation. Per the Orange County Lake Index, the NHWE of Lake Georgia is 59.50 feet NGVD (1929)/58.41 NAVD (1988). Review of historical lake level data for this lake indicates that the NHWE has not been reached since April 1961.

Therefore, the applicant is requesting approval to allow his dock to remain as constructed at an elevation of 57.0 feet NAVD (1988).

Pursuant to Section 15-350(a)(1), Variance...the applicant shall 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; and (2) the effect of the proposed variance on abutting shoreline owners.

To address Section 15-350(a)(1)(1) the applicant has stated that, *"the NHWE of this lake is very inaccurate. If the deck level was built at the legal elevation, it would be so far above the water that it would be very difficult to get into a boat or out of the water, should someone fall in. It would also look strange."*

To address Section 15-350(a)(1)(2) the applicant shall describe the effect of the proposed variance on abutting shoreline owners and has stated that, *"the lower deck elevation will not negatively impact the view from the adjacent property. Quite the alternative. Should the water level ever rise above the deck level, the end of the dock will be clearly delineated by the boathouse roof, so navigation will not be negatively affected either – even in extremely high water."* EPD has not received any objections to the variance request.

#### **Enforcement Action**

On September 30, 2016, EPD issued a Notice of Violation (NOV) to Mr. Tovey for completing construction of the dock without the required variance to floor height. The NOV required an administrative penalty of \$200.00 to be paid to the Conservation Trust Fund (CTF). Approval of this variance and payment of the \$200.00 will resolve the enforcement case.

#### **Staff Recommendation**

Although the Applicant has not clearly demonstrated that the hardship is not self-imposed, he believes there is a unique hardship to accommodate the floor height requirement in the Code. It was determined that this will not negatively impact the environment and there have been no objections to the variance request. Therefore, the recommendation of the Environmental Protection Officer is to approve the request for variance to Section 15-342(d) floor elevation, with the condition that the Applicant enter into a Hold Harmless and Indemnification Agreement with Orange County for building a structure below the NHWE.

#### **ACTION REQUESTED**

**PURSUANT TO ORANGE COUNTY CODE, CHAPTER 15, ARTICLE IX, SECTION 15-350(B), APPROVE THE REQUEST FOR AFTER-THE-FACT VARIANCE TO ORANGE COUNTY CODE, CHAPTER 15, ARTICLE IX, SECTION 15-342(D) FOR THE TOVEY DOCK CONSTRUCTION PERMIT BD-16-05-049 WITH THE CONDITION THAT THE APPLICANT ENTER INTO A HOLD HARMLESS AND INDEMNIFICATION AGREEMENT WITH ORANGE COUNTY FOR THE DOCK BEING CONSTRUCTED BELOW THE NHWE AND PAY \$200.00 TO THE CONSERVATION TRUST FUND.**

  
AK/NT/ERJ/LC: mg

Attachments

# Application to Construct a Dock with a Variance



**Variance Request**  
**15-342(d) floor elevation**

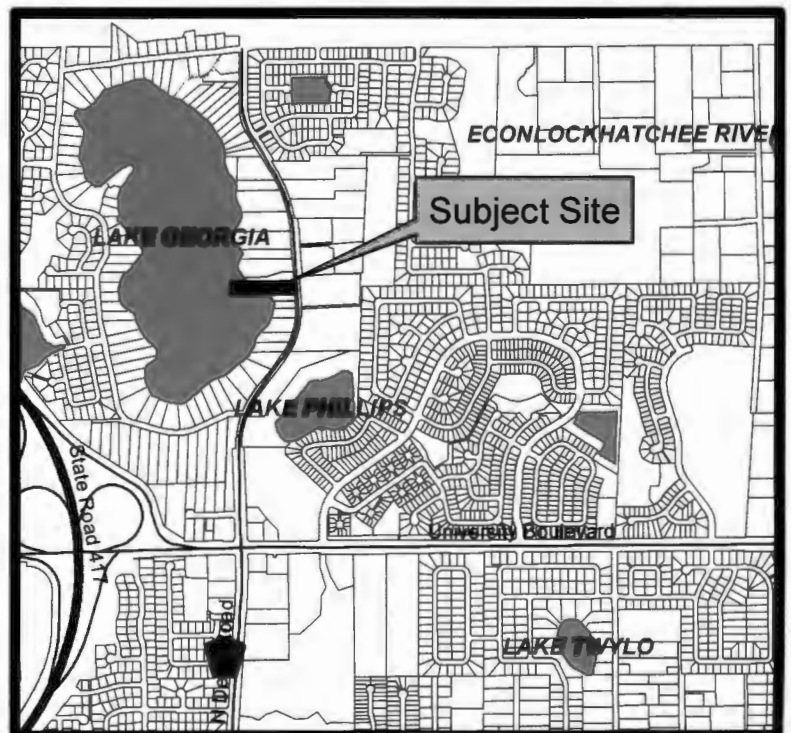
**District # 5**

**Applicant:** Austin Tovey

**Parcel ID:** 05-22-31-0000-00-030

**Project Site** 

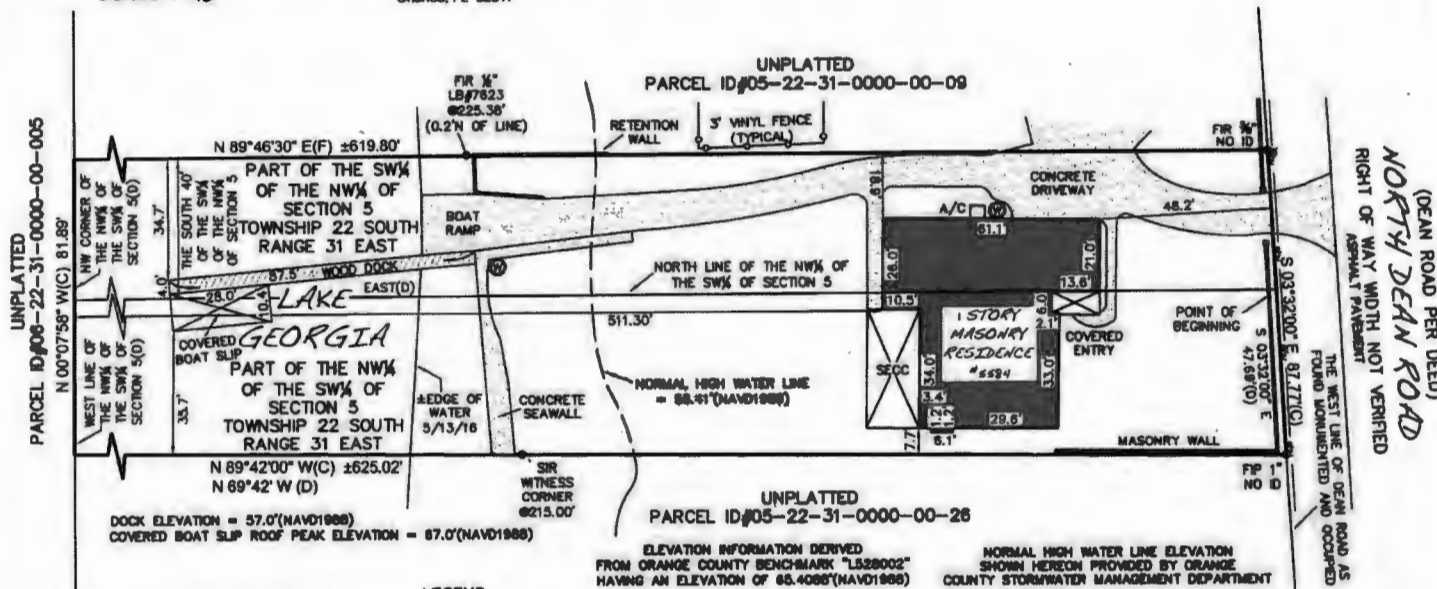
**Property Location** 





ADDRESS  
5584 North Dean Road  
Orlando, FL 32817

# Boundary Survey



## Legal Description (as furnished)

THE SOUTH 40 FEET OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 22 SOUTH, RANGE 31 EAST, ORANGE COUNTY, FLORIDA, LYING WEST OF DEAN ROAD, AND BEGIN AT A POINT ON THE NORTH LINE OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 5 AND THE WEST LINE OF DEAN ROAD, RUN THENCE SOUTH 2 DEGREES 22 MINUTES EAST ALONG SAID WEST LINE OF DEAN ROAD 47.61 FEET, THENCE NORTH 64 DEGREES 42 MINUTES WEST TO THE WEST LINE OF SAID NORTHWEST 1/4 OF THE SOUTHWEST 1/4 THENCE NORTH TO THE NORTHWEST CORNER OF SAID NORTHWEST 1/4 OF SOUTHWEST 1/4, THENCE EAST TO POINT OF BEGINNING, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

CERTIFIED TO: (AS FURNISHED)  
Austin Blake Tovey  
Bank of America, NA  
Gray/Robinson, PA  
Fidelity National Title Insurance Company

**FLOOD ZONE**  
SUBJECT PROPERTY SHOWN HEREON APPEARS TO BE LOCATED IN FLOOD ZONE "AE & X", AREAS DETERMINED TO BE INSIDE & OUTSIDE THE 100-YEAR FLOODPLAIN, PER F.I.R.M. PANEL NUMBER 12095C0280F. LAST REVISION DATE 8/25/09. (PER MAPWISE WEBSITE). THIS SURVEYOR MAKES NO GUARANTEES AS TO THE ACCURACY OF THE ABOVE INFORMATION. THE LOCAL F.E.M.A. AGENT SHOULD BE CONTACTED FOR VERIFICATION.

**LIST OF POSSIBLE ENCROACHMENTS:**  
CONCRETE AND WALLS CROSS PROPERTY LINE.  
OWNERSHIP OF CONCRETE AND WALLS HAS NOT BEEN DETERMINED.

**BASIS OF BEARING**  
BEARINGS ARE BASED ON THE WEST RIGHT-OF-WAY OF NORTH DEAN ROAD WHICH HAS AN ASSUMED BEARING OF S 03°32'00" E PER DEED.

**NOTES**  
1. Underground utility installations, underground improvements, foundations and/or other underground structures were not located by this survey.  
2. The purpose of this survey is for use in obtaining title insurance and financing and should not be used for construction purposes.  
3. Additions or deletions to this survey by anyone other than the signing party or parties is prohibited without the written consent of the signing party or parties.  
4. The property shown hereon is subject to all easements, restrictions and reservations which may be shown or noted on the record plat and within the public records of the county the subject property is located. This survey only depicts survey related information such as easements and setbacks that are shown on a record plat or have been furnished to the Surveyor.  
5. Building lines and dimensions for improvements should not be used to reconstruct boundary lines.

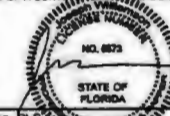
THIS SURVEY IS PREPARED FOR THE EXCLUSIVE USE AND BENEFIT OF THE PARTIES LISTED HEREON. LIABILITY TO THIRD PARTIES MAY NOT BE TRANSFERRED OR ASSIGNED.

LB 7788



941 S Pennsylvania Ave, Winter Park, FL 32789 | (888) 399-8474

**SURVEYOR'S CERTIFICATE**  
I HEREBY CERTIFY THAT THIS SURVEY IS A TRUE AND ACCURATE REPRESENTATION OF A SURVEY PREPARED UNDER MY DIRECTION.



Joseph E. Williamson, FLS DATED: 5/19/16

PROFESSIONAL LAND SURVEYOR  
FLORIDA REGISTRATION #6573  
NOT VALID WITHOUT THE ELECTRONIC SIGNATURE AND/OR ORIGINAL RAISED SEAL OF THE LISTED FLORIDA LICENSED SURVEYOR AND MAPPER

DATE	REVISION	DATE	REVISION
9/30/16	Add Normal High Water Line	9/9/16	Add Dock w/Elevation

COPYRIGHT 2011

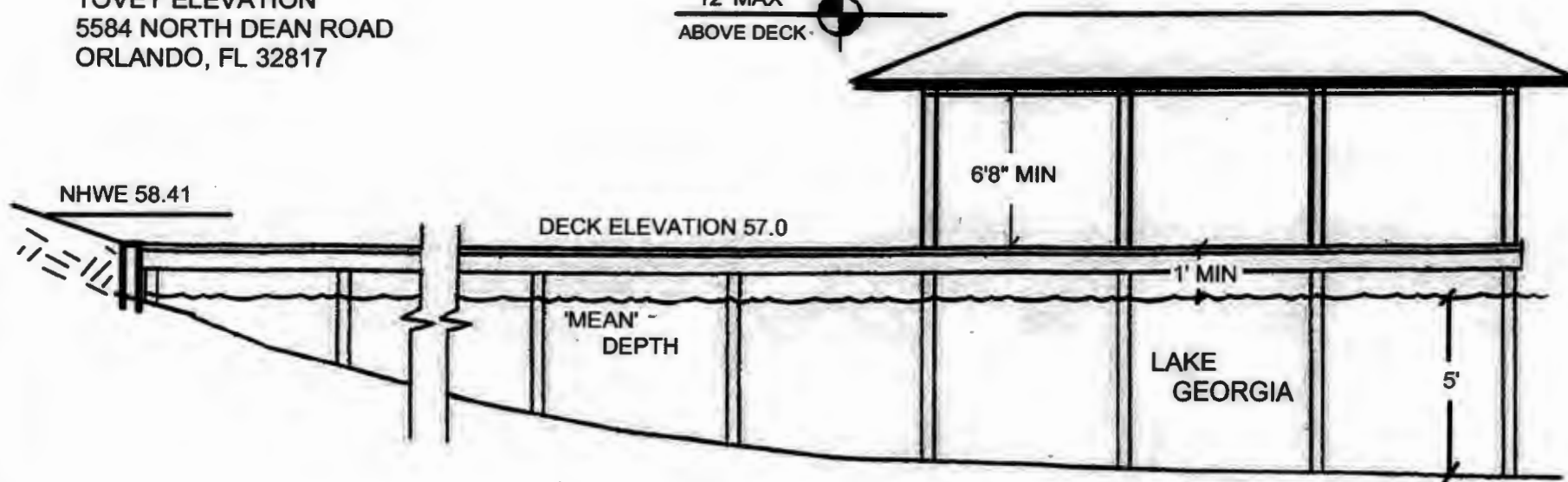
☒ Borrower's Acknowledgment and Acceptance  
☒ Borrower's Acknowledgment and Acceptance

GRAY ROBINSON  
ATTORNEYS AT LAW



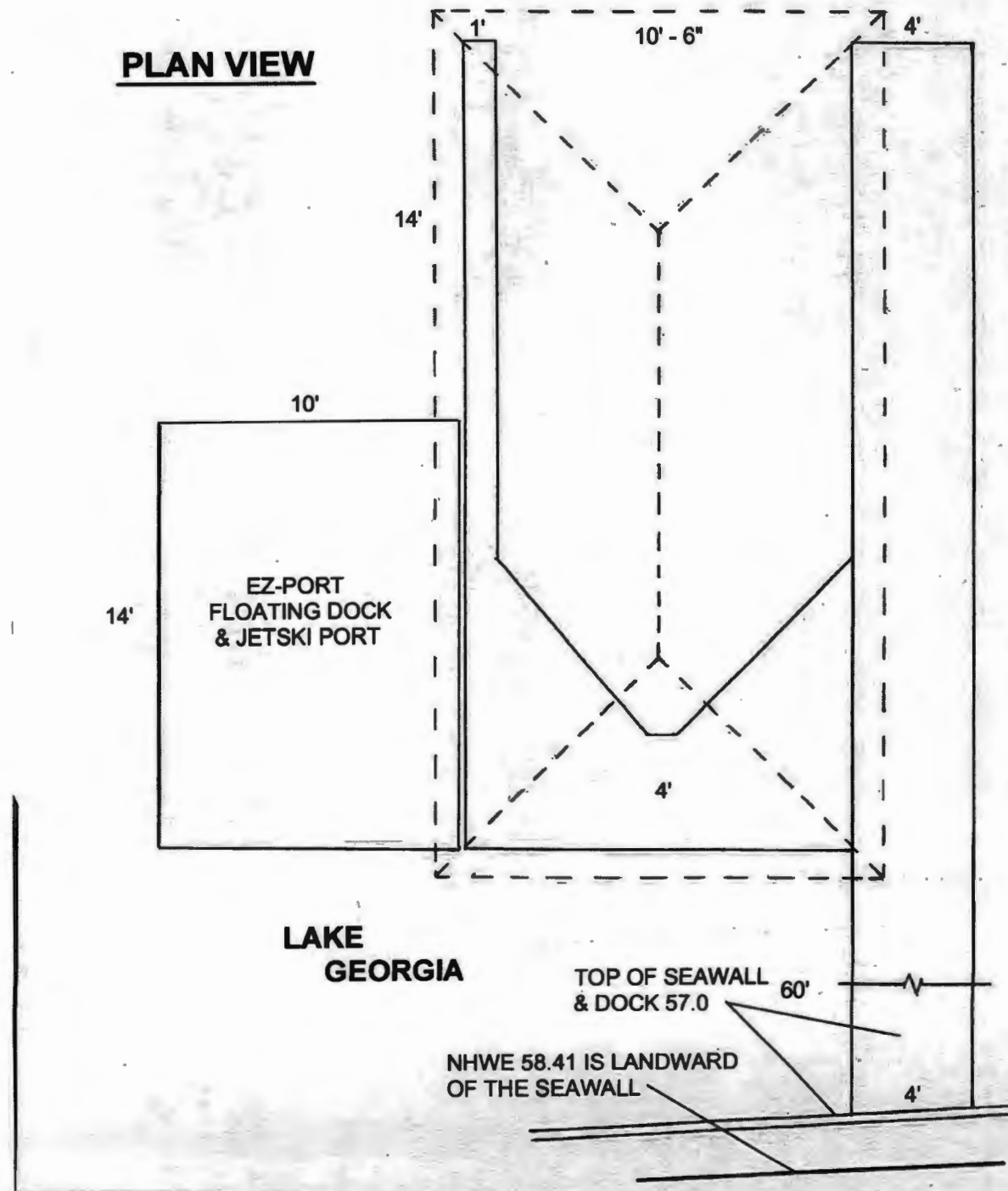
TOVEY ELEVATION  
5584 NORTH DEAN ROAD  
ORLANDO, FL 32817

12' MAX  
ABOVE DECK





**PLAN VIEW**



Tovey After-the-Fact Application to Construct a Dock BD-16-05-049

Location: 5584 N. Dean Road

Lake Georgia

Request for Variance to floor height, Section 15-342(d)

