



Interoffice Memorandum

01-14-19A11:34 RCVD

cf

January 9, 2019

TO: Katie Smith, Manager
Comptroller Clerk's Office

THROUGH: Cheryl Gillespie, Agenda Development Supervisor
Agenda Development

FROM: David D. Jones, P.E., CEP, Manager
Environmental Protection Division
(407) 836-1405

cf

STAFF PERSON: Elizabeth R. Johnson, CEP, Assistant Manager
Environmental Protection Division

PHONE #: (407) 836-1511

26 cf

SUBJECT: Request for Public Hearing on February 12, 2019, at 2:00 p.m., for the Appeal of the Environmental Protection Commission recommendation of denial of an after-the-fact request for variance to side-setback for the Mathemeier dock permit application (#BD-18-05-056), for property located at 9184 Grand Island Way, on Lake Lartigue; Parcel ID No. 04-24-27-7555-05-100; District 1

Appellant: Scott Mathemeier

Type of Hearing: Appeal of the Environmental Protection Commission (EPC) recommendation of denial of an after-the-fact request for variance to side-setback for dock permit application #BD-18-05-056

Hearing required by
Florida Statute # or Code: Chapter 15, Article IX, Section 15-349(b)

Advertising requirements: None

Advertising timeframes: N/A

Notification Requirements: The applicant/appellant, authorized agent, and objector will be notified at least seven days prior to public hearing by the Environmental Protection Division (EPD).

Lake Advisory Board
to be notified: N/A

LEGISLATIVE FILE # 19-137

Feb. 26, 2019
@2pm

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January 9, 2019

Request for Public Hearing - Appeal of the Environmental Protection Commission
Recommendation for the Mathemeier Dock Permit Application (BD-18-05-056)

Municipality or other
Public Agency to be
notified:

South Florida Water Management District –
mady@sfwmd.gov

Estimated time required

For public hearing: 2 minutes

Hearing Controversial: No

District #: 1

Materials being submitted as backup for public hearing request:

1. Location Map
2. Appeal from Scott Mathemeier
3. EPC Staff Report
4. EPC Recommendation Letter
5. After-the-fact Boat Dock Variance Application
6. Site Plans
7. Letter of Objection from Timothy James
8. Site Photograph

Special Instructions to Clerk:

1. Once the Board of County Commissioners makes a decision on the Appeal, please submit the decision letter to Michelle Gonzalez of EPD. EPD will issue the decision to the appellant.

TT/NT/TMH/ERJ/DJ: mg

Attachments

Dock Construction Application Appeal

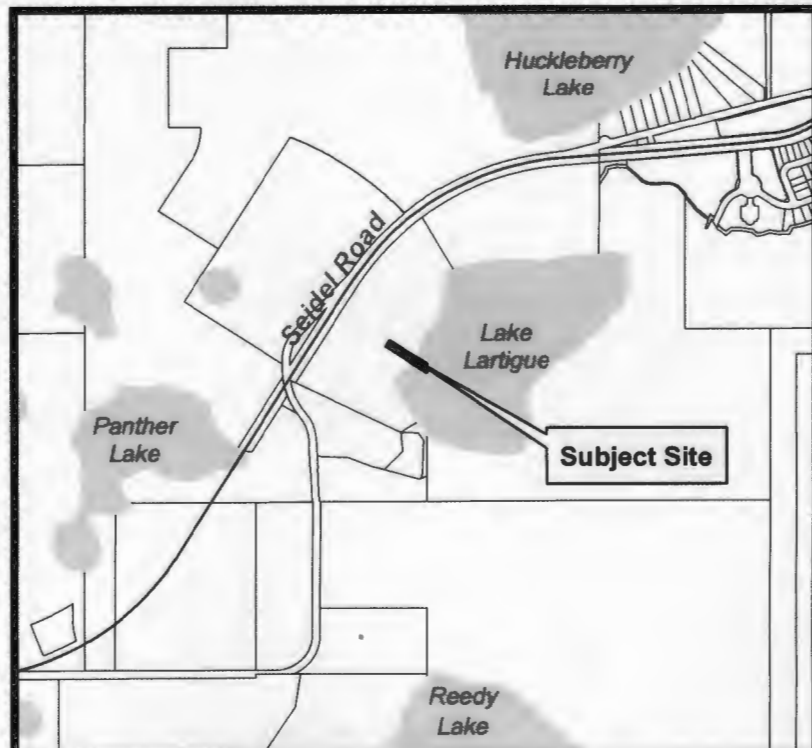


**Dock Construction Application
Appeal of Environmental Protection
Commission Recommendation
BD-18-05-056
District #1**

**Appellant: Scott Mathemeier
Address: 9184 Grand Island Way
Parcel ID: 04-24-27-7555-05-100**

Project Site

Property Location



Date: November 2, 2018
To: Taina Torres
From: Scott Mathemeier
9184 Grand Island Way, Winter Garden, FL 34787
(407) 921-6297
Re: BD-18-05-056

On October 31st, the EPC denied our variance to side setback.

Please allow this email to serve as our appeal of that decision.

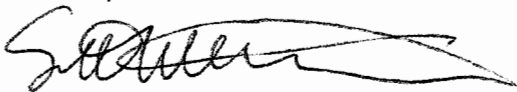
We believe that the EPC made that decision based solely on the opinion of the adjacent property owner that his property would be *negatively* impacted. That is very much a matter of opinion, but the way that the variance criteria is written, only the *opinion* matters to the EPC, not the validity of that opinion.

We also believe that tearing down a majority of the dock, only to move the terminal platform over 4.6' will cause unnecessary damage to the environment.

Therefore, we believe that pursuant to Article IX Section 15.350(a)(1), the effect of the proposed variance on the abutting shoreline owner is negligible and should not be grounds for denial of the variance.

We believe that the BCC will see that the adjacent property owner is not *actually* negatively impacted, reverse the EPC's decision and approve this variance.

Thank you.

A handwritten signature in black ink, appearing to read "Scott Mathemeier", with a long horizontal flourish extending to the right.



Interoffice Memorandum

October 22, 2018

To: Environmental Protection Commission

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

Subject: **Scott Mathemeier Request for an After-the-Fact Variance for Dock Construction Permit BD-18-05-056**

Reason for Public Hearing

Scott Mathemeier is requesting approval of an after-the-fact variance to Orange County Code, Chapter 15, Article IX, Section 15-343(a) (side setback).

Location of Property/Legal Description

The project site is located at 9184 Grand Island Way, Winter Garden, Florida 34787. The Parcel ID number is 04-24-27-7555-05-100. The subject property is located on Lake Lartigue in District 1.

Public Notifications

The applicant, agent, and objectors were notified of the October 31, 2018 meeting of the Environmental Protection Commission in accordance with the requirements of Orange County Code, Chapter 15, Article IX.

History

On May 7, 2018, the Environmental Protection Division (EPD) received an Application to Construct a Dock for the subject property, and on June 5, 2018, Dock Construction Permit #BD-18-05-056 was issued.

On July 16, 2018, EPD received an as-built survey of the constructed dock. During review of the as-built survey, staff noted that the side setback distance from the dock to the southwestern projected property line was only 5.4 feet, instead of ten feet as required by Orange County Code (Code). In order to keep the dock as constructed, an after-the-fact variance is required.

On July 23, 2018, EPD received an after-the-fact Application for Variance to attempt to permit the dock in the constructed location.

Side Setback Variance

Chapter 15, Article IX, Section 15-343(a) 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 shoreline of the subject property measures 63.3 feet; therefore, the side setback requirement is ten feet from the projected property lines.

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 agent for the applicant states, "*The location of the Bay trees made it impossible to construct the boat dock as permitted.*"

To address Section 15-350(a)(1)(2), the agent for the applicant states, "*The proposed boat dock does not negatively impact the view or navigation for either adjacent property owner. However, the affected adjacent property owner is concerned about possible deed restrictions and was unwilling to sign a Letter of No Objection.*"

During a site inspection on June 14, 2018, EPD staff observed that several sweetbay (*Magnolia virginiana*) trees were planned for removal in order to construct the dock. EPD staff informed both the contractor and the property owner that the dock needed to avoid as many sweetbay trees as practicable, and reiterated the 10-foot minimum side setback requirement. Staff observed that the dock could be constructed as authorized with removal of approximately two sweetbay trees.

Objection

A Notice of Application for variance was sent to the affected property owner, Timothy James of 9178 Grand Island Way, Winter Garden, Florida 34787, on August 17, 2018.

On September 17, 2018, EPD received a written objection from Mr. James. The letter states "*...this variance request is nonessential and strongly opposed. It is injurious to my property and property value, potentially poses a threat to the safety of my future structure, while the scale of the applicant's project restricts my Lake views. Aesthetically, the proportions of the structure are an unsightly encroachment....*"

Enforcement Action

A \$4,000 penalty has been assessed for the dock not being constructed according to the permit specifications and for debris in the conservation easement. Payment of the penalty and approval of the after-the-fact variance will bring the dock into compliance. If the after-the-fact variance is denied, the dock must be relocated to meet the minimum 10-foot side setback distance, as required by Code. The penalty must still be paid notwithstanding the outcome of the Environmental Protection Commission Hearing.

Staff Recommendation

The applicant has failed to meet 15-350(a)(1), therefore, the recommendation of the Environmental Protection Officer is to deny the after-the-fact request for variance to Section 15-343(a) (side setback).

October 31, 2018 Environmental Protection Commission

Scott Mathemeier Request for an After-the-Fact Variance for Dock Construction Permit BD-18-05-056

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ACTION REQUESTED: Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(a), deny the after-the-fact request for variance to Orange County Code, Chapter 15, Article IX, Section 15-343(a), for the Mathemeier Dock Construction Permit BD-18-05-056.

TT/NT/TMH/ERJ/DJ: gfdjr/mg

Attachments



ENVIRONMENTAL PROTECTION DIVISION

David D. Jones, P.E., CEP, Manager

3165 McCrory Place, Suite 200

Orlando, FL 32803

407-836-1400 • Fax 407-836-1499

www.ocfl.net

ENVIRONMENTAL
PROTECTION
COMMISSION

ORANGE COUNTY ENVIRONMENTAL PROTECTION COMMISSION October 31, 2018

Johnathan Huels
Chairman

Mark Ausley
Vice Chairman

Oscar Anderson

Perry Barnasi

Florian Blackburn

Mark Corbett

Theodore Geltz

PROJECT NAME:

Scott Mathemeier

PERMIT APPLICATION NUMBER:

BD-18-05-056

LOCATION/ADDRESS/LAKE:

9184 Grand Island Way, Lake Lartigue

RECOMMENDATION:

Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(a), deny the after-the-fact request for variance to Orange County Code, Chapter 15, Article IX, Section 15-343(a), for the Mathemeier Dock Construction Permit BD-18-05-056.

X

EPC AGREES WITH THE ACTION REQUESTED, AS PRESENTED

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

Signature of EPC Chairman:

EPC Recommendation Date:

10/31/18



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, Sheila Cichra on behalf of David Mathemeier (if applicable) pursuant to Orange County Code Chapter 15, Article IX, Section 15-350(a)(1) am requesting a variance to section 15-343 (a) 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):

The location of the Cypress trees made it impossible to construct the boat dock as permitted.

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

The proposed boat dock does not negatively impact the view or navigation for either adjacent property owner.

However, the affected adjacent property owner is concerned about possible deed restrictions and was unwilling to sign a Letter of No Objection.

Notice to the Applicant:

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

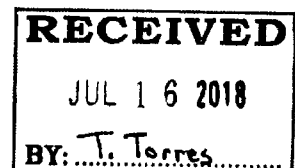
A variance application may receive an approval or approval with conditions when such variance: (1) would not be contrary to the public interest; (2) where, owing to special conditions, compliance with the provisions herein would impose an unnecessary hardship on the permit applicant; (3) that the hardship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

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

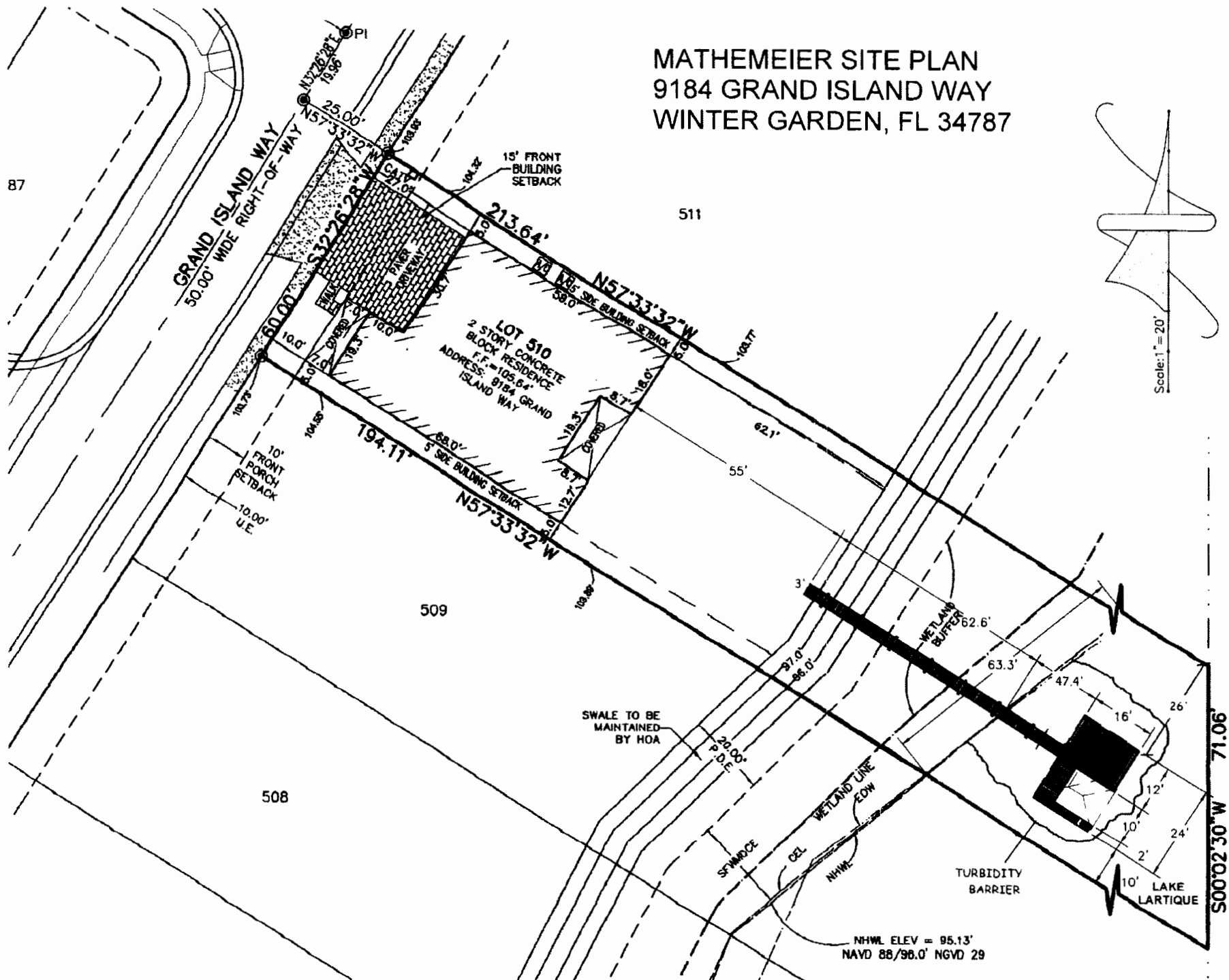
Name of Applicant: Sheila Cichra

Signature of Applicant/Agent [Signature] Date: 07/16/2018

Corporate Title (if applicable): _____



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RECEIVED
O.C. ENVIRONMENTAL
PROTECTION DIVISION

Mr. Timothy James
9178 Grand Island Way
Winter Garden, Florida 34787

2018 SEP 19 PM 12:47

September 17, 2018

Orange County Environmental Protection Division (EPD)
3165 McCrory Place, Suite 200
Orlando, Florida 32803

RE: Notice of Application for an After-the-Fact Variance - **OBJECTION**
Applicant: Mr. Scott Mathemeier
Subject Site Address: 9184 Grand Island Way
Application Number: BD-18-05-056
Lake Name: Lartigue, Orange County Commission District 1

To Whom It May Concern:

As the owner of the abutting property, I am objecting to the above-mentioned applicant's "after-the-fact" variance request with regards to the same set of principles and criteria driven by the EPD listed below when evaluating requests for such changes. Several of the conditions below are unmet which should result in an unambiguous rejection. Factually, the applicant is currently in violation of the setback provision as referenced in the Orange County Code Chapter 15, Article IX 15-343 (a) and, received a Notice of Violation for Non-Compliance with Dock Construction Permit BD-18-05-056 on August 17, 2018. In fairness to me, the applicant proposed remedy to defer his miscalculated risk onto the abutting property owner via a permit modification is ill-advised and just simply wrong; hence, compliance with the current ordinance of record should unequivocally prevail with formal enforcement. It protects the public, the preserve, abutting properties and all other properties around the lake.

Subsequent actions taken by the applicant should not ignore, impede or limit my dock design and construction options and potential safety to make the applicant whole, by accepting an unauthorized design structure contrary to the original approved permit. Nor should I bear the brunt of the changed conditions without careful consideration to accommodate my future options, effects on my home/lot value or the unnecessary stress visited upon me.

Should this process proceed in the affirmative, it would clearly represent a manifest abuse of the Orange County Code Chapter 15, Article IX 15-343 including the unmet variance criteria as illustrated below, while setting a bad precedent for the neighborhood if the structure is permitted to exist in its current location.

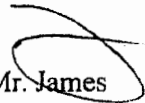
County Criteria	Status	Abutting homeowner response
(1) would not be contrary to the public interest;	Unmet	Sec. 15-602 "(b) It is the intent of this ordinance to apply these regulations in a manner sensitive to the property rights of the applicant, the property rights of lakefront property owners, and the rights of the citizens of Orange County to enjoy the benefits of their natural resources.
(2) where, owing to special conditions, compliance with the provisions herein would impose an unnecessary hardship on the permit applicant;	Unmet	Construction contrary to approved design does not constitute unnecessary hardship due to special conditions.
(3) that the hardship is not self-imposed;	Unmet	It is unfortunate, but clear this hardship falls under self-imposed. It is either an error by the contractor / applicant or a blatant disregard for the already in-place statutory regulations. The contractor and/or applicant should not attempt to right the wrong to make the applicant whole by trampling over the county's ordinance which keeps every lakefront property fairly accommodated in this space by adhering to the rules as outlined for the protection of all.
(4) the granting of the variance would not be contrary to the intent and purpose of this article.	Unmet	The Board of Commissioners found it necessary to develop this ordinance as the best effort to allow lakefront property owners, the public, and the lake's natural inhabitants to live together harmoniously. Granting this variance would trample over those amicable efforts by the governing body.
Source	http://www.orangecountyfl.net/portals/0/resource%20library/permits%20-%20licenses/Application%20for%20Boat%20Dock%20Variance.pdf	

To conclude, this variance request is nonessential and strongly opposed. It is injurious to my property and property value, potentially poses a threat to the safety of my future structure, while the scale of the applicant's project restricts my Lake views.

Aesthetically, the proportions of the structure are an unsightly encroachment. The lakefront lots allow for a beautiful and serene experience rarely found in the city today, giving views and sight lines of naturally preserved vistas of the lake, particularly at the water's edge. Allowing this variance for a post code and permit violation to proceed would obstruct and reduce this quality - which is the spirit of the ordinance in the first place.

I thank you for considering my objection in your ruling.

Sincerely,


Mr. James

P.S. please forward a copy of the Decision to the above address.

