



Interoffice Memorandum

**AGENDA ITEM**

May 13, 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: June 22, 2021 — Consent Item  
Environmental Protection Commission Recommendation for  
Request for After-the-Fact Variance for Anthony and Kathryn  
Kane Dock Construction Permit BD-19-07-066

The applicants, Anthony and Kathryn Kane, are requesting approval of an after-the-fact permit modification and variance to Orange County Code (Code), Chapter 15, Article IX, Section 15-342(c) (walkway height). The project site is located at 5436 Water Creek Drive, Windermere, FL 34786. The Parcel ID number is 13-23-27-4431-00-010. The subject property is located on Lake William Davis in District 1.

On August 13, 2019, the Environmental Protection Division (EPD) issued a permit (BD-19-07-066) to the applicants to construct a new boat dock on the subject property. Subsequent to completion of the dock, staff conducted a compliance inspection. During the compliance review, staff identified that the dock had not been constructed according to the approved plans and was in violation of Chapter 15, Article IX, Sections 15-342(c) (access walkway height) and 15-343(b) (side setback distance). The Code requires that a dock be elevated a minimum height of three feet over wetlands, pursuant to Section 15-342(c). There is a platted wetland conservation easement (CE) along the shoreline of the applicants' property. The dock walkway was built at an elevation over the CE ranging from 0.6-foot to two feet. Additionally, the dock was built 16.02 feet from the southern property line, which encroached on the required side setback of 25 feet, pursuant to Section 15-343(b). As such, on July 21, 2020, EPD issued a Notice of Violation (NOV) with corrective actions (Enforcement Case No. 20-573643), including that the property owners apply for an after-the-fact permit modification and pay an administrative penalty of \$2,198.90. The penalty was subsequently reduced (at the applicants' request) to \$300 to reflect the fact that the applicants' contractor built the dock out of compliance without their knowledge while they were out of the country. The applicants have paid the reduced penalty.

The applicants applied for a permit modification on October 5, 2020, which included an Application for Waiver to 15-343(b) to bring the location of the dock into compliance with Orange County Code. The permit modification, with the administratively approved waiver, was issued on October 27, 2020. The approved plans stated that the walkway

would be elevated to meet the minimum height of three feet over the CE, as required by Section 15-342(c).

On December 16, 2020, EPD received a second request to modify the permit, which included an after-the-fact Application for Variance to Section 15-342(c), to allow the existing height of the walkway over the CE to remain. In the variance application, the applicants' agent states the justification for the request is, "The property owner did not know that it was built incorrectly. The cost to correct it is substantial and it would disturb the conservation area more to rebuild it than to leave it as is."

In addition to the non-compliance issue for the boat dock construction, EPD also identified during the compliance review process that the CE has been cleared, sodded, and maintained as yard space for approximately 20 years (prior to the applicants' purchase of the property). Accordingly, on March 10, 2021, EPD issued a Notice of Non-Compliance to the applicants informing them of the existence of the CE and requested that they cease all mowing of the area and allow it to regrow. The applicants and the tenant of the property have acknowledged that they will cease mowing of the CE; therefore, EPD has not initiated formal enforcement for this issue.

Notification of the after-the-fact variance request was sent to all shoreline property owners within a 300-foot radius of the property. No objections were received.

Staff evaluated the after-the-fact variance request for compliance with the criteria for approval and made a finding that the dock could have been constructed according to the permitted walkway height requirements as stated in both the original permit issued on August 13, 2019 and the first permit modification issued on October 27, 2020. Therefore, the recommendation of the Environmental Protection Officer (EPO) was to deny the request for after-the-fact variance to Section 15-342(c) based on a finding that the applicant failed to demonstrate that the hardship is not self-imposed pursuant to Section 15-350(a)(1)(3).

Based upon evidence and testimony presented at the April 28, 2021 Environmental Protection Commission (EPC) public hearing, the EPC voted (3-2) to accept the findings and recommendation of the EPO and made a recommendation to deny the request for after-the-fact variance to Section 15-342(c) and require the permittee to reconstruct the access walkway as shown on the site plans previously approved in the October 27, 2020 permit modification.

**ACTION REQUESTED:**                    **Acceptance of the findings and recommendation of the Environmental Protection Commission and denial of the request for after-the-fact variance to Orange County Code, Chapter 15, Article IX, Section 15-342(c) and require the permittee to reconstruct the access walkway as shown on the site plans previously approved in the October 27, 2020 permit modification within 90 days of the decision of the Board for the Anthony and Kathryn Kane Dock Construction Permit BD-19-07-066. District 1**

JVW/DDJ: mg  
Attachments

# Dock Construction Application for After-the-Fact Variance



**Dock Construction  
Application for  
After-the-Fact Variance  
BD-19-07-066  
District #1**

**Applicant:** Anthony and Kathryn Kane  
**Address:** 5436 Water Creek Dr

**Parcel ID:** 13-23-27-4431-00-010

**Project Site** 

**Property Location** 





received  
12/16/2020

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  
800 Mercy Drive, Suite 4  
Orlando, Florida 32808  
(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 Mark Kane (if applicable) pursuant to Orange County Code Chapter 15, Article IX, Section 15-350(a)(1) am requesting a variance to section 15-342 (c) 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 variance application is being submitted in order to allow an existing non-compliant dock to remain at it's current elevation. The property owner did not know that it was built incorrectly. The cost to correct it is substantial and it would disturb the conservation area more to rebuild it than to leave it as is.

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

The proposed structure will not adversely affect the adjacent property owner's view or navigability. The affected adjacent property owner has already granted a setback waiver for the dock in it's current location and configuration.

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.

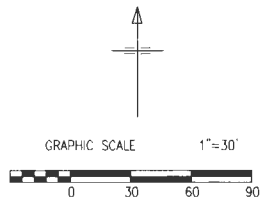
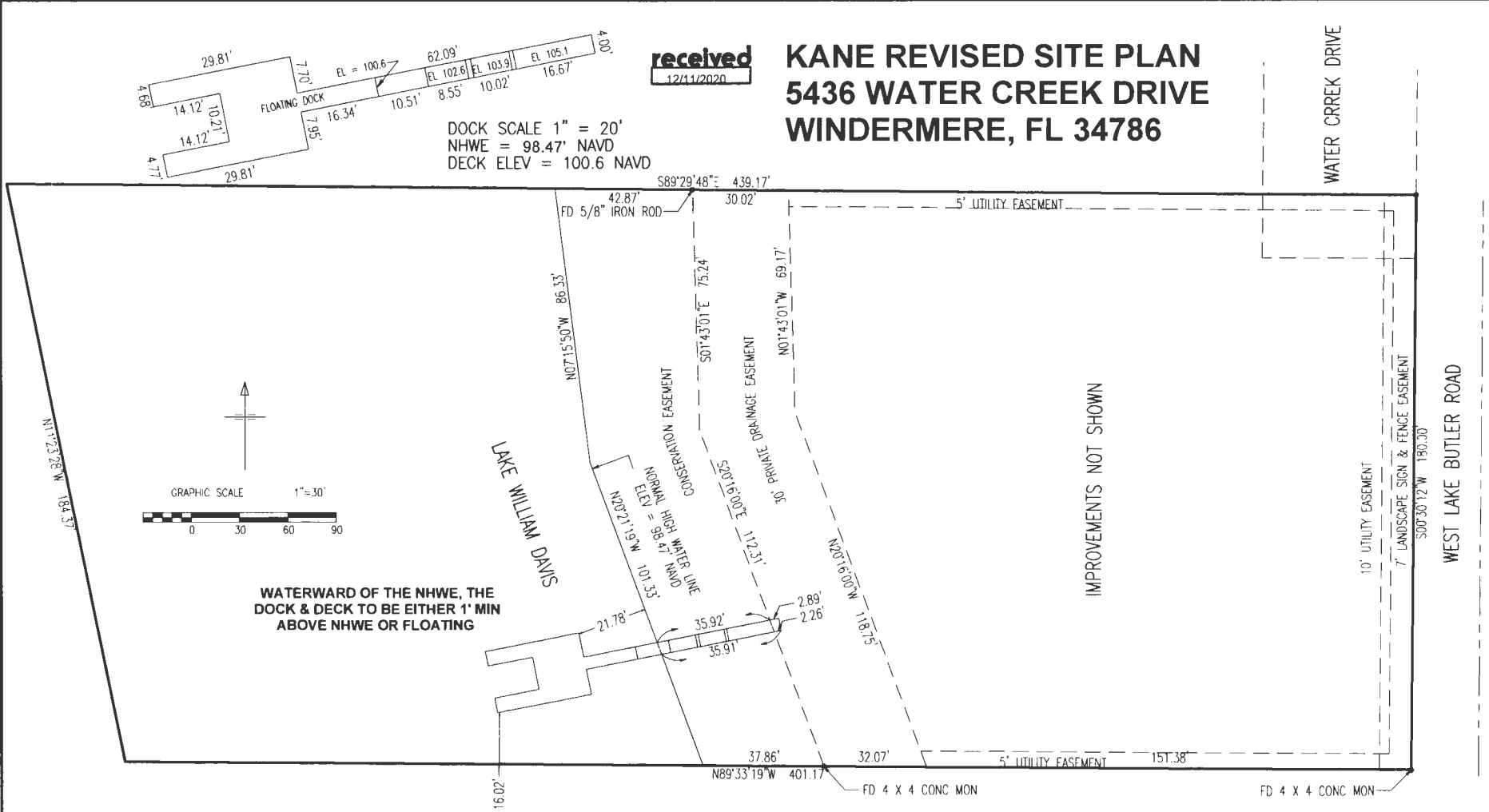
By signing and submitting this application form, I am applying for a variance to the Orange County Dock Construction Ordinance identified above, according to the supporting data and other incidental information filed with this application. I am familiar with the information contained in this application, 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: 12/16/2020  
Corporate Title (if applicable): President, Streamline Permitting, Inc.

**received**  
12/11/2020

# KANE REVISED SITE PLAN 5436 WATER CREEK DRIVE WINDERMERE, FL 34786

DOCK SCALE 1" = 20'  
NHWE = 98.47' NAVD  
DECK ELEV = 100.6 NAVD



**WATERWARD OF THE NHWE, THE DOCK & DECK TO BE EITHER 1' MIN ABOVE NHWE OR FLOATING**

IMPROVEMENTS NOT SHOWN

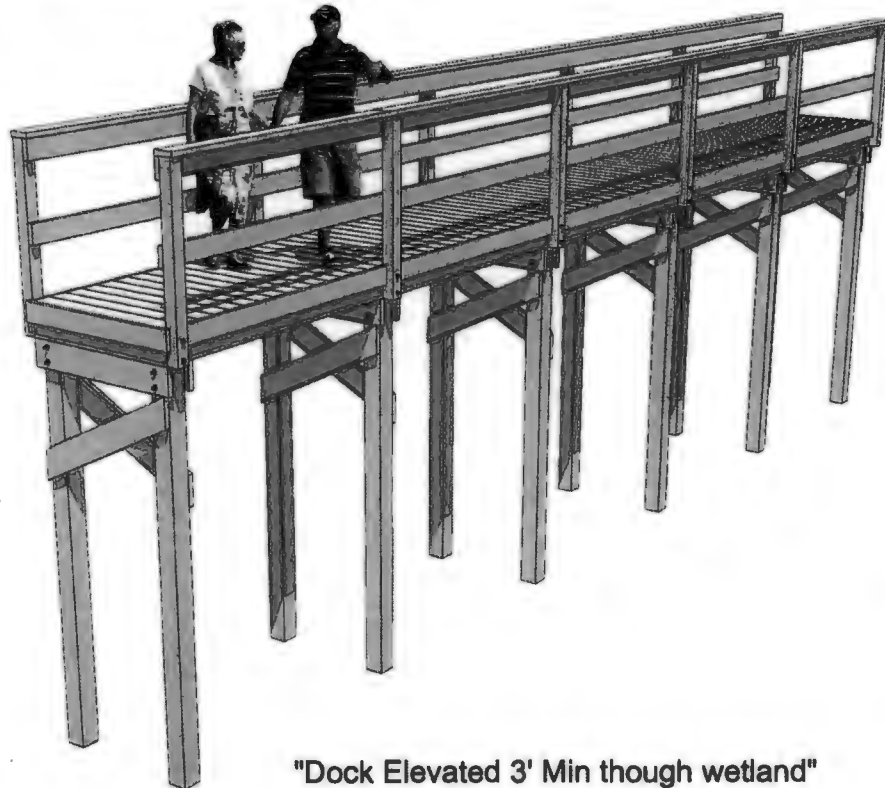
- SURVEYORS NOTES:
- 1 BEARINGS SHOWN HEREON ARE BASED ON THE PLAT OF RECORD
  - 2 ALL DISTANCES SHOWN ARE PLAT AND MEASURED UNLESS NOTED
  - 3 THE MEASUREMENTS SHOWN HEREON ARE IN U.S. SURVEY FEET. THE ACCURACY OF THIS SURVEY EXCEEDS THE REQUIREMENTS OF FLORIDA ADMINISTRATIVE CODE 5J 17.
  - 4 ELEVATIONS SHOWN HEREON ARE BASED AN NAVD 88 DATUM

I HEREBY CERTIFY THAT THIS SURVEY HAS BEEN PREPARED UNDER MY DIRECTION AND THAT THIS SURVEY HAS BEEN PREPARED IN ACCORDANCE WITH THE ADOPTED "MINIMUM TECHNICAL STANDARDS" AS REQUIRED BY CHAPTER 5J-17 FLORIDA ADMINISTRATIVE CODE PURSUANT TO SECTION 472.027, FLORIDA STATE STATUTES

EDWARD J MIZO  
PROFESSIONAL SURVEYOR AND MAPPER NO. 3376  
NOT VALID WITHOUT THE AUTHENTIC ELECTRONIC SIGNATURE AND SEAL OF A PROFESSIONAL SURVEYOR AND MAPPER.

EDWARD MIZO PROFESSIONAL LAND SURVEYOR 175 ANCONA AVE DEBARY, FL 32713 321-435-9391	SPECIAL PURPOSE SURVEY AS-BUILT DOCK 5436 WATER CREEK DRIVE WINDERMERE, FL 34786	FIELD SURVEY	AUGUST 26, 2020
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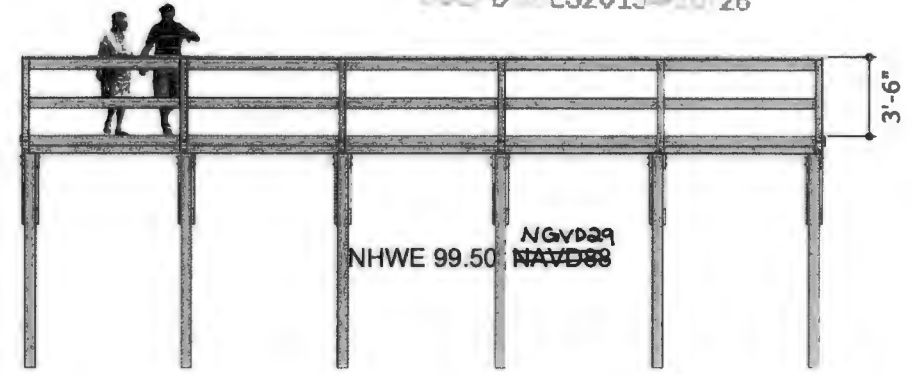
**Lake William Davis**  
 "In addition to public regulations which Orange County enforces, be advised that there may be other private restrictions or approval requirements that will affect your ability to erect this structure. Please review your deed restrictions and/or consult with your Homeowners Association or Architectural Review Board."



"Dock Elevated 3' Min though wetland"

"Dock Elevated 1' Min above NHME"  
 "Maximum Water mooring Deph 5' to Lake Bottom"

UCSD 11L32019-10:26

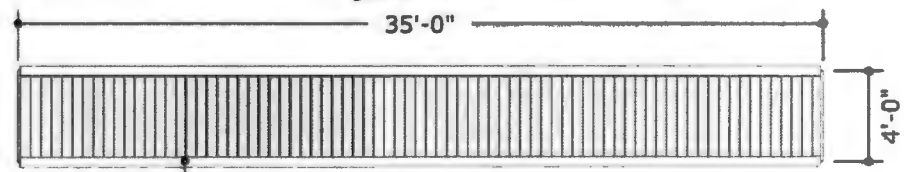


NHWE 99.50  
 NAVD88

APPROVED BY  
 ORANGE COUNTY  
 ENVIRONMENTAL PROTECTION DIV.  
 DATE: 8/13/19

**E1 SIDE VIEW** INITIAL: NS  
 SCALE: 1/8"=1'-0" BD-19-07-066

- Minimum Side Setbacks - (L) 25' & (R) 25'
- Maximum Terminal Platform size - 1000 sq ft
- Maximum Water Depth - 5'
- Maximum Roof Height above Floor - 12 feet
- Minimum Dock Height above the NHWE - 1 foot
- Minimum Deck Height above Cons. Area - min. 3 feet
- Maximum width of walkway - 5 feet



L-SHAPE HANDRAIL BOTH SIDES

**P1 TOP VIEW**  
 SCALE: 1/8"=1'-0"

DIMENSIONS LISTED FOR CONCEPT DESIGN PENDING  
 STRUCTURAL ENGINEER'S CONFIRMATION



230 Deer Island Rd  
 Winter Garden, FL 34787  
 (407) 909-0606  
 www.KonaDocks.com

MARK KANE  
 5436 WATER CREEK DR.  
 WINDERMERE, FL, 34786

FIXED DECK WALKWAY  
 CONCEPT PROPOSAL

MODEL PLAN & ELEVATION

Nov-13-2018  
 SHEET 01 OF 01



2'

1.2'

.6'

1.8'



**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

Mark Ausley  
*Chairman*

Oscar Anderson  
*Vice Chairman*

Flormari Blackburn

Billy Butterfield

Mark Corbett

Elaine Imbruglia

Vacancy - Regulated  
Business or  
Municipality

**ORANGE COUNTY  
ENVIRONMENTAL PROTECTION COMMISSION  
April 28, 2021**

Project Name: Anthony and Kathryn Kane

Permit Application Number: BD-19-07-066

Location/Address: 5436 Water Creek Drive, Windermere

**RECOMMENDATION:**

**Accept the findings and recommendations of the Environmental Protection Officer, and make a finding that the after-the-fact variance request is inconsistent with Orange County Code, Chapter 15, Article IX, Section 15-350(a)(1) and recommend denial of the request for after-the-fact variance to Section 15-342(c) and require the permittee to reconstruct the access walkway (as shown on the site plans previously approved by the October 27, 2020 permit modification) within 90 days of approval by the Board of County Commissioners for the Anthony and Kathryn Kane Dock Construction Permit Modification BD-19-07-066. District 1**

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: Mark Ausley

DATE EPC RECOMMENDATION RENDERED: 4-28-21