

**STAFF REPORT**  
**Community Development Department**  
**Petition Number: VAR-12-003**

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**To:** The Charlotte County Board of Zoning Appeals

**From:** Shaun Cullinan, Zoning Official

**Prepared By:** Ken Quillen, AICP, Planner III

**Report Date:** June 5, 2012

**BZA meeting date:** June 13, 2012

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**Requested Action/General Information:**

Thomas Shaw, agent for Froelich Trust Life Estate, is requesting two variances; one to reduce the required 7.5' side yard setback by 7.5' to allow a zero-foot side yard setback for a shared boat dock; and a second to reduce the required 7.5' side yard setback by 7.0' to allow a 0.5' side yard setback for a new covered boat lift. This property is located at 1912 Mississippi Avenue, in Grove City (see **Location Map**). The attached **Zoning Map** shows the zoning of this property, which is *Residential Single-family-3.5* (RSF-3.5). This property has a *Low Density Residential*, Future Land Use Map designation.

This lot is part of the Grove City Shores Subdivision, which was platted in 1954. County records indicate that the existing single-family residence was constructed in 1969. The applicant has submitted the attached **Special Purpose Survey** (Exhibit A), which shows the existing eight-foot wide boat dock located on the lot line within a shared boat basin, as well as the existing covered boat lift. It is believed that the existing seawall and boat basin were constructed circa 1968. This boat dock is shared by both property owners for access to their boats slips in this shared boat basin.

The applicant, Mr. Jay Froelich, and his neighbor, Mr. James Keys, would like to be able to reconstruct this shared boat dock to make it narrower and to make room for a new covered boat lift on Mr. Froelich's property (Lot 29). The applicant has submitted the attached **Site Plan** (Exhibit B-1), **Lift Plan** (Exhibit B-2) and **Section Plan** (Exhibit B-3) showing the dimensions and location of the proposed new dock and covered boat lift. A building permit cannot be issued for these structures because they do not meet the 7.5' side yard setback requirement of the Zoning Code. As such, the owner is requesting a variance to allow a building permit to be issued for this shared boat dock and new covered boat lift.

The applicant has also submitted the attached **Photographs** (Exhibit C) showing the existing dock and covered boat lift located in the existing shared boat basin. The proposed new dock will be centered on the property line and reduced in width to allow room for 10" diameter wood pilings to support the new covered boat lift.

The applicant has submitted the attached **Narrative** (Exhibit D) explaining why the applicant believes this request for a variance should be granted. An Environmental Specialist has performed a cursory environmental review and their comments are in the attached **Memorandum** (Exhibit E) dated May 25, 2012.

**Findings: The seven standards for approval of a Variance according to Section 3-9-6.1(d) of the Charlotte County Zoning Code are as follows:**

1. Unique or peculiar conditions or circumstances exist which relate to the location, size and characteristics of the land or structure involved and are not generally applicable to other lands or structures.

Finding: There are unique or peculiar conditions related to the location size and characteristic of the land and existing boat basin, which was constructed circa 1968. Also the existing eight-foot wide dock spans across the property line and is shared by the adjacent property owners. Staff believes there are hundreds of properties having boat basins; however, there are very few boat basins which span the property line and are shared by adjacent property owners. These conditions are not generally applicable to other lots having boat basins.

2. The strict and literal enforcement of the Zoning Regulations would create an undue hardship as distinguished from a mere inconvenience on the property owners. Physical handicaps or disability of the applicant may be considered where relevant to the request.

Finding: The strict and literal enforcement of the Zoning Code would create an undue hardship because; enforcement of the 7.5' setback would prohibit the use of 50% of this boat basin for a dock or boat lifts.

3. The variance requested does not involve any use, which is prohibited in the district where the property is located.

Finding: The variance request is to allow a dock and covered boat lift, which are permitted accessory structures in the RSF-3.5 zoning district.

4. The granting of a variance would not be injurious to or incompatible with contiguous uses, the surrounding neighborhood or otherwise detrimental to the public welfare.

Finding: The granting of the requested variance would not be considered injurious or incompatible with the adjacent residential uses because the adjacent property owner has also filed a request for a variance for their portion of the dock. Also the proposed dock and covered boat lift is compatible with other similar structures for adjacent properties and does not project into the navigable channel.

5. The condition giving rise to the requested variance has not been created by any person presently having an interest in the property and the conditions cannot reasonably be corrected or avoided by the applicant.

Finding: The conditions given rise to the requested variance have not been created by the current property owners who purchased this property in 1992. The existing conditions were created over 40 years ago and before the current Zoning Code was adopted. Also, the conditions cannot reasonably be corrected or avoided by the applicant.

6. The requested variance is the minimum modification of the regulation at issue that will afford relief.

Finding: The requested variance to allow a zero-foot setback for a boat dock and 0.5' setback for the boat lift roof is the minimum modification that will afford relief.

7. The requested variance is consistent with the **Smart Charlotte 2050 Plan** (Charlotte County Comprehensive Plan).

Finding: **Objective 1.4** of the **Future Land Use Element**, which is titled "**Protection of Private Property Rights**" proposes to: "recognize and respect existing private property rights, ... and to consider such rights and the impact upon them when preparing recommendations for land use decisions." Staff believes that the variance request may be considered consistent with this objective in the **Smart Charlotte 2050 Plan**.

## **ANALYSIS AND CONCLUSIONS:**

After review of the site and the application requesting two variances to reduce the required side yard setback, to allow a shared boat dock and covered boat lift, staff believes that the requested variance does meet all seven criteria for granting a variance.

If the Board of Zoning Appeals decides to approve the requested variances staff recommends the following conditions be adopted, as conditions of approval, to ensure that this development is in compliance with the purpose and intent of the Zoning Code. The recommended condition(s) are as follows:

1. The first variance, as approved by the Board of Zoning Appeals, is to reduce the required 7.5' side yard setback by 7.5' to allow a zero-foot side yard setback, for a shared boat dock in a shared boat basin located between 1912 and 1918 Mississippi Avenue.
2. The second variance, as approved by the Board of Zoning Appeals, is to reduce the required 7.5' side yard setback by 7.0' to allow a 0.5' side yard setback, for a covered boat lift in a shared boat basin located at 1912 Mississippi Avenue.
3. The pilings supporting the covered boat lift shall have a minimum setback from the side lot line of 1.5' from the centerline of the pilings to the property line.
4. All future development must be constructed according to all applicable codes in existence at that time, unless a variance is granted specific to the development proposed at that time.

**Please be advised that the final decision regarding the petition rests with the Board of Zoning Appeals, and will be decided upon consideration of all the evidence introduced at the hearing.**

Attachments: Staff Report (3), Location Map, Zoning Map, Aerial Photo, Special Purpose Survey, Site Plan, Lift Plan, Section Plan, Site Photographs, Narrative (6) and Environmental Specialist Memorandum (2)



Open for Business

# VAR-12-003 Location Map

Map Prepared By  
Charlotte County  
Community Development  
Department



## 17/41/20 West County

This map is a representation of compiled public information. It is believed to be an accurate and true depiction for the stated purpose, but Charlotte County and its employees make no guaranties, implied or otherwise, to the accuracy, or completeness. We therefore do not accept any responsibilities as to its use. This is not a survey or is it to be used for design. Reflected Dimensions are for Informational purposes only and may have been rounded to the nearest tenth. For precise dimensions, please refer to recorded plats and related documents Created 04-20-2012

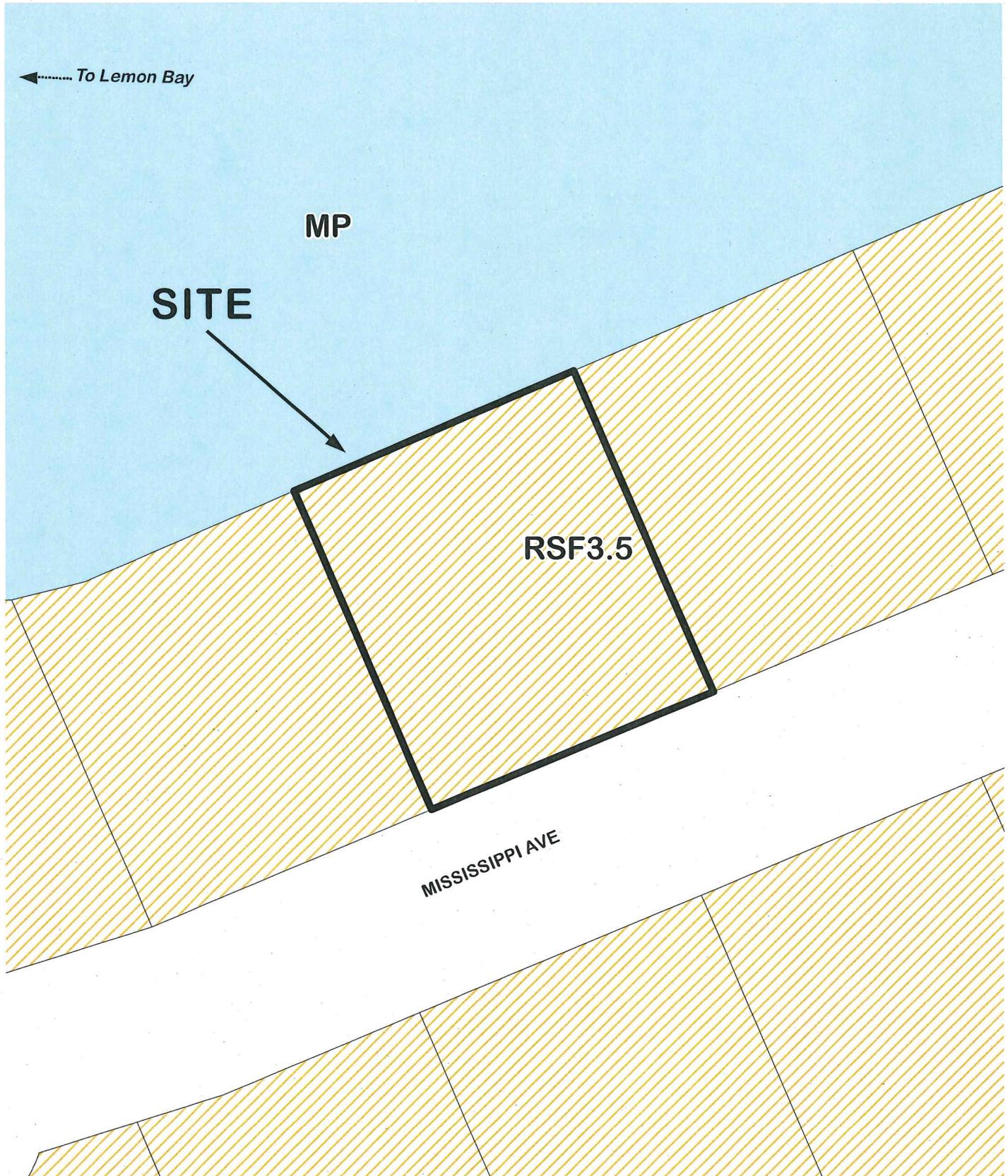




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# VAR-12-003 Zoning Map

Map Prepared By  
Charlotte County  
Community Development  
Department



17/41/20 West County

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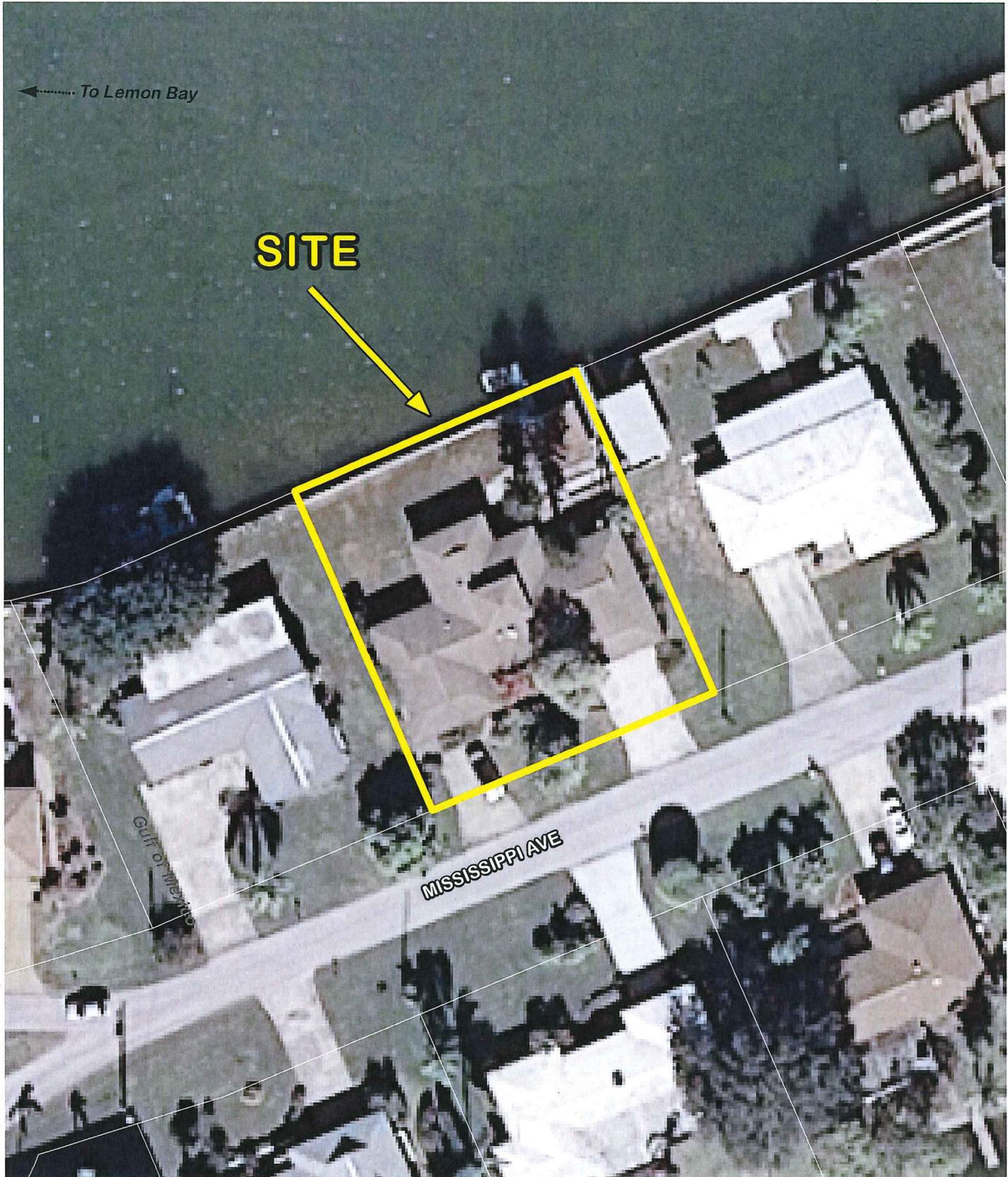
NOT TO SCALE



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# VAR-12-003 Aerial Photo

Map Prepared By  
Charlotte County  
Community Development  
Department

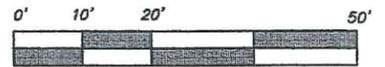
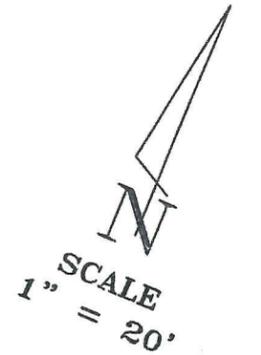


17/41/20 West County

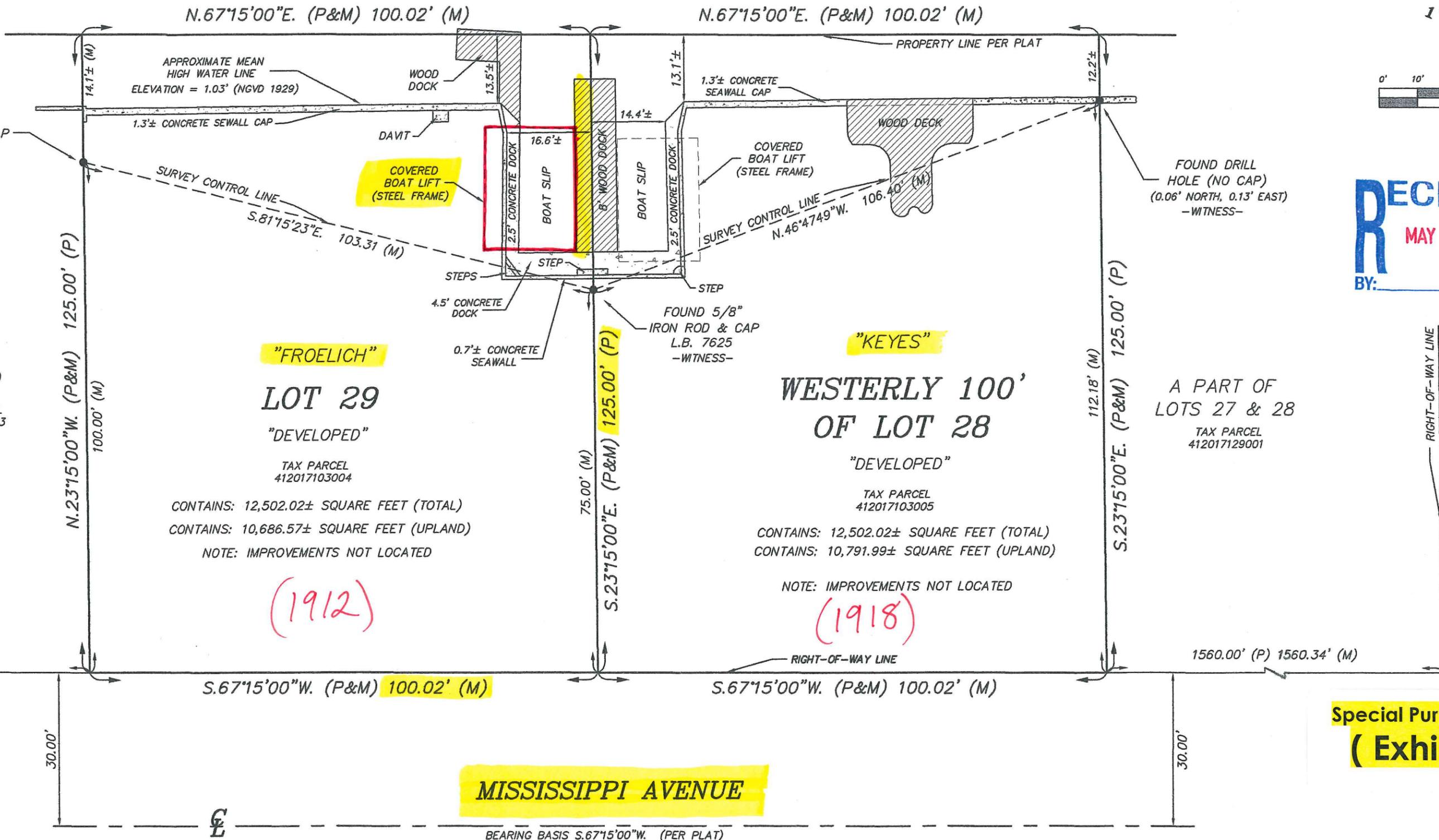
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LEMON BAY  
(TIDAL)



RECEIVED  
MAY 17 2012  
BY:



"FROELICH"

LOT 29

"DEVELOPED"

TAX PARCEL  
412017103004

CONTAINS: 12,502.02± SQUARE FEET (TOTAL)  
CONTAINS: 10,686.57± SQUARE FEET (UPLAND)  
NOTE: IMPROVEMENTS NOT LOCATED

(1912)

"KEYES"

WESTERLY 100'  
OF LOT 28

"DEVELOPED"

TAX PARCEL  
412017103005

CONTAINS: 12,502.02± SQUARE FEET (TOTAL)  
CONTAINS: 10,791.99± SQUARE FEET (UPLAND)  
NOTE: IMPROVEMENTS NOT LOCATED

(1918)

MISSISSIPPI AVENUE

Special Purpose Survey  
(Exhibit A)

BEARING BASIS S.67°15'00"W. (PER PLAT)

(60' PUBLIC RIGHT-OF-WAY)

SIXTH STREET  
(50' PUBLIC RIGHT-OF-WAY)

A PART OF  
LOTS 27 & 28  
TAX PARCEL  
412017129001

APPROXIMATE MEAN  
HIGH WATER LINE  
ELEVATION = 1.03' (NGVD 1929)

1.3'± CONCRETE SEAWALL CAP

WOOD DOCK

DAVIT

COVERED  
BOAT LIFT  
(STEEL FRAME)

2.5' CONCRETE DOCK

BOAT SLIP

WOOD DOCK

BOAT SLIP

2.5' CONCRETE DOCK

COVERED  
BOAT LIFT  
(STEEL FRAME)

WOOD DECK

SURVEY CONTROL LINE  
N.46°47'49"W.

FOUND DRILL  
HOLE (NO CAP)  
(0.06' NORTH, 0.13' EAST)  
-WITNESS-

FOUND 5/8"  
IRON ROD & CAP  
L.B. 7625  
-WITNESS-

N.67°15'00"E. (P&M) 100.02' (M)

N.67°15'00"E. (P&M) 100.02' (M)

PROPERTY LINE PER PLAT

14.1'± (M)

13.5'±

13.1'±

12.2'±

1.3'± CONCRETE SEAWALL CAP

1.3'± CONCRETE SEAWALL CAP

4.5' CONCRETE DOCK

0.7'± CONCRETE SEAWALL

75.00' (M)

S.23°15'00"E. (P&M) 125.00' (P)

112.18' (M)

S.23°15'00"E. (P&M) 125.00' (P)

S.67°15'00"W. (P&M) 100.02' (M)

S.67°15'00"W. (P&M) 100.02' (M)

1560.00' (P) 1560.34' (M)

30.00'

30.00'



VD 5/8"  
ROD & CAP  
L.B. 7625  
-WITNESS-

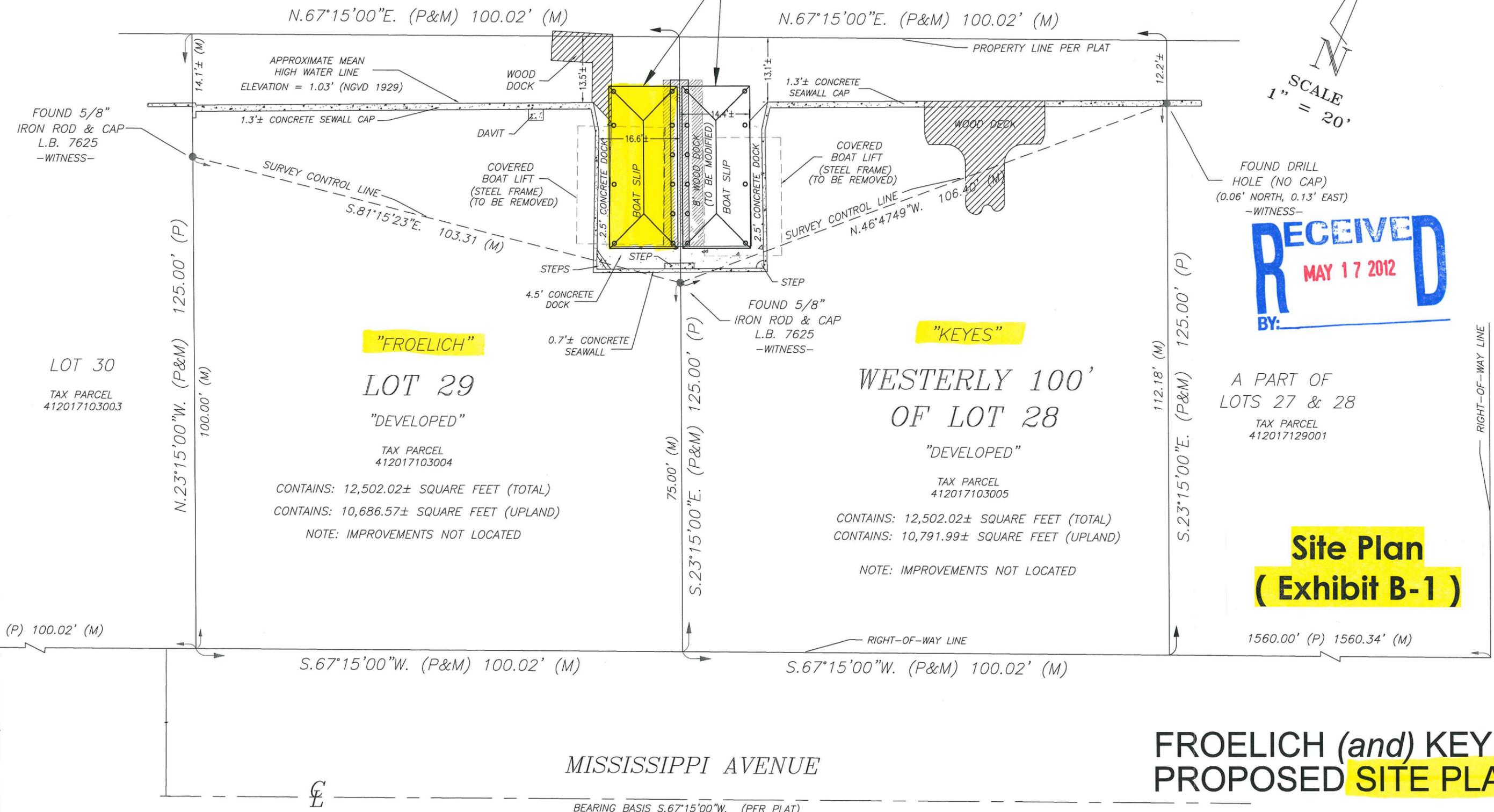
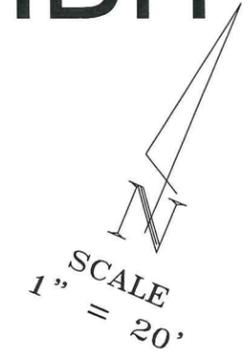
LOT 30  
TAX PARCEL  
2017103003

02' (M)

# EXHIBIT 3

LEMON BAY  
(TIDAL)

PROPOSED ROOFED BOATLIFTS  
& SHARED ACCESS DOCK



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"FROELICH"

"KEYES"

**Site Plan**  
**(Exhibit B-1)**

**FROELICH (and) KEYES**  
**PROPOSED SITE PLAN**

S:\PROJECTS\6001\6008 Froelich Marine\REVISED VARIANCE\Roofed Boat Lift - Cadwag\_5/16/2012 10:30:15 AM

DATE	REVISION	BY	DATE	REVISION	BY

**GWE** GIFFELS-WEBSTER  
ENGINEERS, INC.  
Certificate of Authorization No. 3607

900 Pine Street, Suite 225  
Englewood, Florida 34223  
Phone (941)475-7981  
Fax (941)474-4285

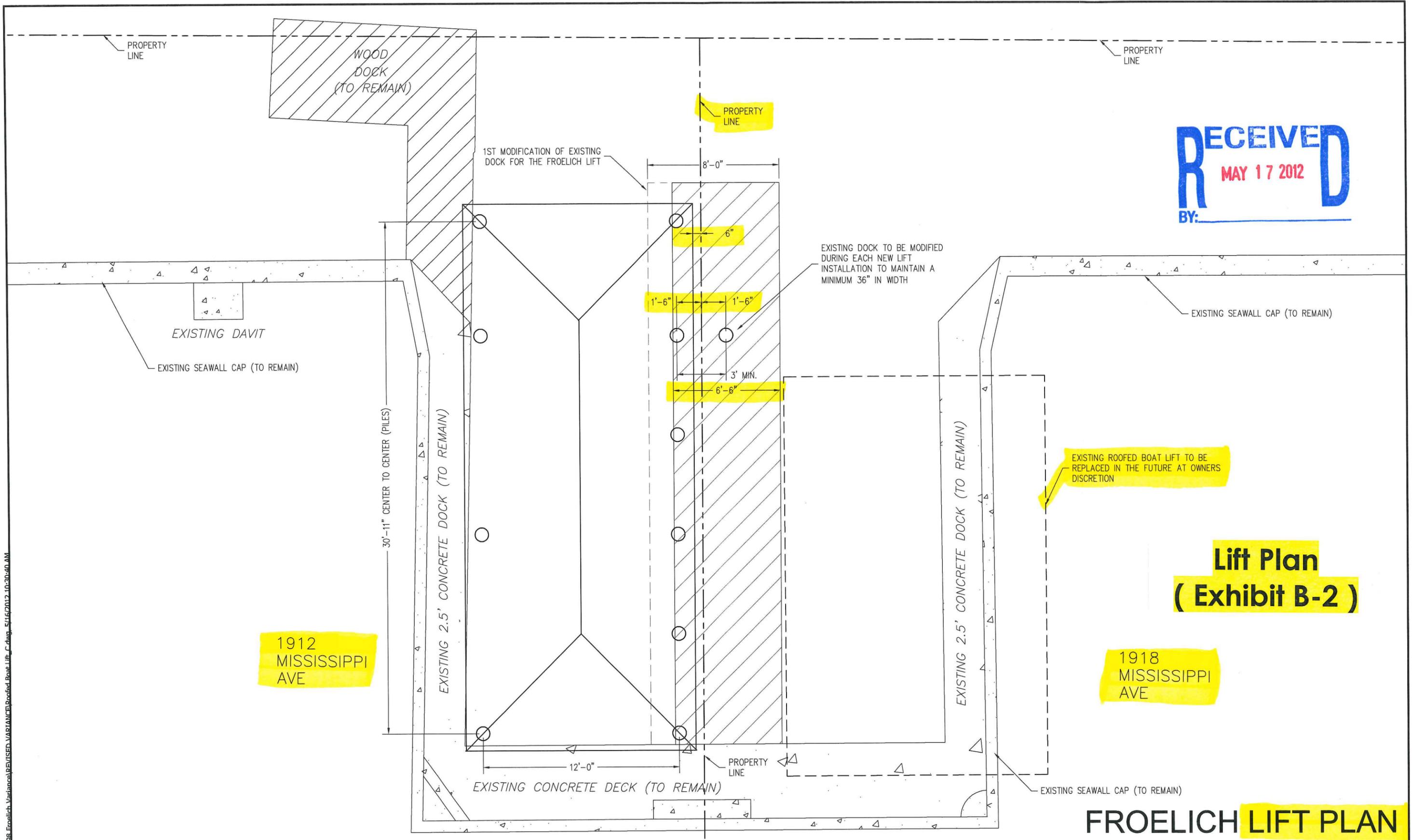
DATE: 5/15/12  
DRAWN: TS  
CHK'D BY: JHC

**Bennett Marine - Roofed Boat Lift**  
For Joseph Froelich, 1912 Mississippi Ave, Englewood, FL

NOTE: ALTHOUGH EVERY EFFORT HAS BEEN MADE TO ASSURE THE ACCURACY OF THESE DRAWINGS, IT IS RESPONSIBILITY OF THE OWNER AND/OR BUILDER TO VERIFY ALL CONDITIONS, SPECIFICATIONS, AND DIMENSIONS.

VARIANCE EXHIBIT  
SHEET: 1 OF 4  
GWE NO. 6001.00

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BY: \_\_\_\_\_



**Lift Plan  
(Exhibit B-2)**

**FROELICH LIFT PLAN**

S:\PROJECTS\6001\6008.Froelich.Variance\REVISED.VARIANCE\Roofed Boat Lift\_C.dwg, 5/16/2012 10:30:40 AM

DATE	REVISION	BY	DATE	REVISION	BY

**GWE** GIFFELS-WEBSTER  
ENGINEERS, INC.  
Certificate of Authorization No. 3607

900 Pine Street, Suite 225  
Englewood, Florida 34223  
Phone (941)475-7981  
Fax (941)474-4285

DATE: 5/15/12  
DRAWN: TS  
CHK'D BY: JHC

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For Joseph Froelich, 1912 Mississippi Ave, Englewood, FL

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VARIANCE EXHIBIT  
SHEET: 2 OF 4  
GWE NO. 6001.00

REFER TO MANUFACTURER'S TRUSS ENGINEERING FOR ALL REQUIRED BRACING AND INSTALLATION DETAILS; TYP.

ENGINEERED WOOD TRUSSES @ 24" o.c. DESIGNED BY OTHERS

5V CRIMP METAL ROOFING (FL# 11101.3) OVER 30# FELT OVER 1 5/32" CDX PLYWOOD W/ 8d RINGSHANKS @ 4" o.c. AT PANEL EDGES, 6" o.c. INTERMEDIATE

2x6 PT-FASCIA W/ GALV. DRIP EDGE

DBL. PT 2x12 BEAM NOTCHED INTO PILING W/ (2) 5/8" S.S. BOLTS; TYP. (PROVIDE 2 1/2" EDGE DIST. FROM CENTER OF BOLTS TO EDGE OF BEAM)

10" DIA. x 30' PT WOOD PILINGS

BOAT LIFT TO BE INSTALLED PER MANUFACTURER'S SPECIFICATIONS (BY OTHERS)

EXISTING SEAWALL AND CAP TO REMAIN

APPROXIMATE BASIN BOTTOM

FUTURE CONSTRUCTION

APPROXIMATELY 40% EMBEDMENT (12' MIN. REQUIRED)

Property Line

**GENERAL:**

- All construction shall meet requirements of all Local and State Building Codes.
- Engineer of Record shall be notified of any deviation to this plan in a timely manner prior to construction. All structural changes shall be signed & sealed by the Engineer of Record & re-submitted to the Building Department prior to installation.
- Due to the nature of this construction the Engineer of Record shall be given the opportunity to re-evaluate these plans and specifications as additional information becomes available or unforeseen circumstances arise.
- Contractor shall verify all dimensions and conditions in the field as work progresses. All discrepancies and deviations from the plans shall be reported to the Engineer of Record in a timely manner prior to construction.
- This structure has been designed to be self supporting and stable after the building is complete. It is the responsibility of the contractor to determine suitable sequencing, means and methods of construction, including, but not limited to the addition of necessary shoring, tie downs, temporary bracing, etc.

**DESIGN CRITERIA:**

Florida Building Code, 2007 Edition/ ASCE 7-05

- Wind Velocity = 130 M.P.H., Exposure C  
Internal Pressure Coefficient = ±0.00; Open Structure  
Wind Importance Factor (I) = 0.77
- Live Loads  
Roofs: 20 psf

**MATERIALS:**

**WOOD:**

- Unless noted otherwise, all wood construction shall meet or exceed requirements of Chapter 23, FBC 2007. Table 2304.9.1 shall be used as a minimum for all nailing schedules.
- Dimensional lumber shall be rated in accordance with the standards of the current edition of the American Wood Council's National Design Specifications.
- All wood joists, beams, rafters, and ledgers shall be No. 2 Southern Yellow Pine (SYP) unless noted otherwise.
- All wood exposed to weather or in direct contact with concrete shall be either Pressure Treated or a naturally durable species.

**METAL:**

- All steel plates, bolts, washers, nuts, fasteners, hangers, straps and clips shall be "Z-MAX" (Salt air exposure) galvanized or stainless steel - (Simpson Products or equal). Fasteners and connectors in contact with CCA, ACQ, or CA treated lumber shall be G185 galvanized conforming with ASTM A153 and ASTM A653, or stainless steel.
- Aluminum, coated or otherwise, shall not be in contact with CCA, ACQ, or CA treated wood.
- Lag bolts, nails, screws, hangers, straps, and clips shall be fabricated from appropriate materials and H.D.G. (Hot-dipped Galvanized) or stainless steel to meet conditions shown.
- Pre-manufactured straps, hangers, and clips shall be installed according to manufacturer's recommendations as required to supply desired performance.

**GLUE:**

Glue used in the field for assembling wood products shall be waterproof exterior grade equal to or better than Liquid Nails.

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MAY 17 2012  
BY: \_\_\_\_\_

**Section Plan  
( Exhibit B-3 )**

**SECTION PLAN**

DATE	REVISION	BY	DATE	REVISION	BY

**GWE** GIFFELS-WEBSTER ENGINEERS, INC.  
Certificate of Authorization No. 3607

900 Pine Street, Suite 225  
Englewood, Florida 34223  
Phone (941)475-7981  
Fax (941)474-4285

DATE: 5/15/12  
DRAWN: TS  
CHK'D BY: JHC

**Bennett Marine - Roofed Boat Lift**  
For Joseph Froelich, 1912 Mississippi Ave, Englewood, FL

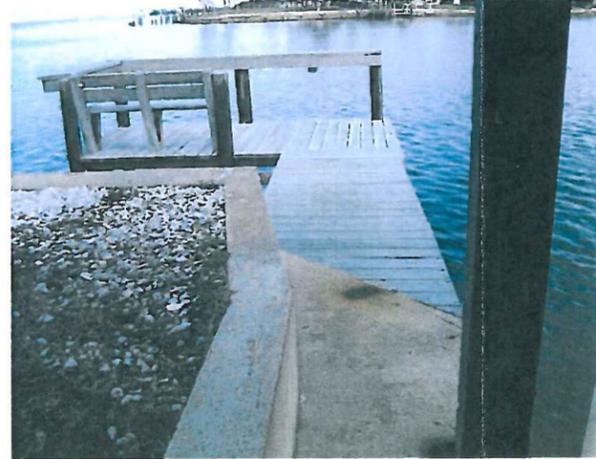
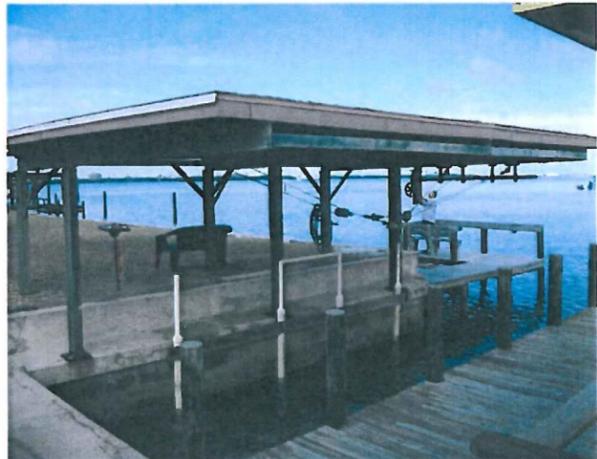
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VARIANCE EXHIBIT  
SHEET: 4 OF 4  
GWE NO. 6001.00

# EXHIBIT 1B



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**Photographs  
( Exhibit C )**

May 16, 2012

Charlotte County Growth Management Department  
Planning & Zoning Division  
18500 Murdock Circle, Bldg B  
Port Charlotte, FL 33948-1094

**VIA: Hand Delivery**

**RE: JOINT VARIANCE APPLICATION REQUEST ITEM #12 NARRATIVE  
JOSEPH J. AND JANET E. FROELICH TRUST LIFE ESTATE  
1912 MISSISSIPPI AVENUE, ENGLEWOOD, FLORIDA AND  
JAMES KEYES 1918 MISSISSIPPI AVENUE, ENGLEWOOD, FLORIDA**

To Whom It May Concern:

**Requested Action/General Information**

Mr. Joseph Froelich and Mr. James Keyes are requesting a variance to the common side yard setback requirement on their property at 1912 and 1918 Mississippi Avenue limited to the shared boat basin. The purpose for the variance is to replace cantilevered iron I-Beam roofed boat lift structures, which are beyond repair, with marine wood pile supported roofed boat lifts and a shared access dock.

This proposed design continues individual ownership and responsibility for maintenance (see attached exhibit 3) and has taken into account the unique characteristics of the 1956 development of a shared sea walled boat basin. Presently, an 8' wide by 34' long dock is centered in the basin. This access dock is to be renovated as needed to accommodate pile supported roofed boat lifts. The centerline of all pilings used for either property owner's roofed boat lift structure shall be no closer to the common property line than 1-1/2', which permits a 3' wide center of pile to center of pile shared access dock.

Each property owner can choose the timing for their replacement pile supported roofed boat lift structure to be constructed on their property. Any future modifications or replacement structure proposed shall provide all necessary modifications to the entire access dock, as required, maintaining a minimum 3' wide center shared dock. The access dock width is restricted to a minimum width of 3' wide; however, each owner may elect by design to have the shared access dock wider to accommodate for the skewed angles of the original sea walled basin. This design advantage permits both neighbors the same convenience they have now and the opportunity to choose the timing for any future plans.

This is the second attempt by the property owner to establish the same side yard setback. In 2010, Bennett Marine Construction filed and established VAR10-14. However, at the hearing, only four out of the five board members were present and heard the case. The

**Narrative  
( Exhibit D-1 )**

end result was split equally--two for and two against in granting approval. Since staff did not recommend approval of the variance (VAR10-14), the spilt board went with staff's recommendation to deny the variance. I believe, if all of the facts were brought to the Board's attention during this first hearing, the outcome would have been for approval of the variance.

**Condition #1 of a Variance:** *Unique or peculiar conditions or circumstances exist which relate to the location, size and characteristics of the land or structure involved and are not generally applicable to other lands or structures.*

I took exception to staff comments in the property owner's previous attempt to reduce the side yard setback from 7.5 feet to zero; VAR10-14. Staff's report in this previous attempt states for condition #1, "...that there are no unique or peculiar conditions or circumstances related to the location, size or characteristics of the land, which is not generally applicable to other lands."

Presently, staff concurs with our research which established that these properties are very unique and are the prefect example to be considered when qualifying for this condition. There are thousands of waterfront sea walled lots that have direct access to the Gulf of Mexico in Charlotte County. We established through the Charlotte County GIS offices that there are 190 miles of saltwater tidal canals in Charlotte County. Our staff invested hours scanning the aerials of Charlotte County, lot-by-lot, canal-by-canal to determine how many of those parcels shared a protected sea walled boat basin matching the properties noted above. The basin must be let back into the property, centered on the property line and shared equally. Our efforts established only 19 protected boat basins which matched this condition. Each protected boat basin was located in the Englewood area on Lemon Bay Aquatic Preserve or canals leading out to the Preserve. Since only 38 known single-family parcels exist with shared protected sea walled boat basins, some with roofed boat lifts, to moor their personal property within the 190 miles of saltwater tidal canals, it was our opinion this property should be considered unique.

**Condition #2 of a Variance:** *The strict and literal enforcement of the Zoning Regulation would create an undue hardship as distinguished from a mere inconvenience on the property owners.*

After a careful inspection of the existing roofed boat lifts at 1912 and 1918 Mississippi Avenue, we can certify that the safe service life of these structures have, or are soon to, expire; and continued use would be dangerous as defined in the 2007 Florida Building Code, Existing Buildings.

The cantilevered iron I-Beam roofed boat lift design was site constructed in the 1960's, and many still exist in the Lemon Bay area. I have been called out to inspect many of them for repair in the past twelve plus years as Senior Designer for Giffels-Webster Engineers; most of them I found in the same condition as these structures--dangerous and

**Narrative  
( Exhibit D-2 )**

not being used since the capacity of these old iron structures are questionable. The most common negative comment shared from most property owners is the rust stains on their vessels from the old iron structure. Replacement of the structure as built is not possible, as present building and design codes prohibit front column loading on the seawall cap and seawall planks.

In the previous attempt to reduce the side yard setback from 7.5 feet to zero, VAR10-14, staff commented, "...enforcement of the 7.5' setback would not create an undue hardship on the property owners. The proposed covered boat lift could be located at many locations that would comply with all setback requirements of the code."

The subject properties are located in the Lemon Bay Aquatic Preserve. The environmental rules and regulations for roofed boat lift structures proposed over the Outstanding Florida Waters, sovereign submerged lands within a nationally recognized aquatic preserve, would require manatee, sea grass, oyster studies, and shading of the seafloor considerations. The existing roofed boat lift structures have existed within a protected boat basin, originally designed for that purpose for nearly one-half century. There would be no negative environmental impacts to the ecologically sensitive aquatic preserve or costly environment studies to replace the structures at the present location.

The following is a copy/pasted e-mailed letter I received from Heather S. Stafford, Manager of the Charlotte Harbor Aquatic Preserve with regard to the subject properties:

Mr. Shaw,

Although providing submerged resource information for a County variance request is unusual for us, Charlotte Harbor Aquatic Preserve staff were happy to assist with a cursory inspection of the submerged resources at 1912 Mississippi Ave while conducting site inspections for DEP permit applications in the same area on 4/30/12. Upon inspection via snorkeling, staff found that there were no seagrasses within the boat basin adjacent to the 1912 Mississippi Ave location. The submerged bottom consisted of muddy sand. Unlike in the basin, there were seagrasses found waterward of the seawall. Both turtle grass (*Thalassia testudinum*) and manatee grass (*Syringodium filiforme*) were found. The coverage of the seagrass ranged from 5% to 25% in the area between the seawall and the 4' mean low water (MLW) contour located at approximately 21.5' waterward of the seawall. Seagrass also extended waterward of the 4' MLW contour.

I have not heard back from the Division of State Lands about the Lemon Bay Aquatic Preserve (LBAP) boundary at this location yet, but will contact you as soon as I do. If the submerged lands waterward of the seawall are found to be within the LBAP, and there were to be a subsequent DEP application to construct a dock/boatlift here, a site inspection would be conducted by DEP's Environmental Resource Permitting staff, possibly with CHAP assistance upon receipt.

**Narrative**  
**( Exhibit D-3 )**

I hope you and Charlotte County find this information helpful in your further review and consideration of the variance request.

Heather S. Stafford

Heather S. Stafford, Manager  
Charlotte Harbor Aquatic Preserves  
12301 Burnt Store Road  
Punta Gorda, FL 33955  
Phone: 941-575-5861 ext. 106  
Fax: 941-575-5863

Estero Bay Aquatic Preserve  
700-1 Fisherman's Wharf  
Fort Myers Beach, FL 33931  
Phone: 239-463-3240  
Fax: 239-463-3634

The simple solution is to use the available tools of the government and seek a Zoning side yard setback variance to permit the continuation of an existing use as originally developed, only changing the design to adequately support the loads of the structure in the most commonly preferred safe manner versus a design that was predicated by regulation for regulation sake. It is a unique, existing condition--a shared boat basin by design which should have taken precedence then and now in the review process with consideration for stewardship of our aquatic preserve.

**Condition #3 of a Variance:** *The variance does not involve any use which is prohibited in the district where the property is located.*

This variance request is to allow a covered boat lift, which is a permitted accessory structure in the RSF-3.5 zoning district.

**Condition #4 of a Variance:** *The granting of a variance would not be injurious to or incompatible with contiguous uses, the surrounding neighborhood or otherwise detrimental to the public welfare.*

We request granting of this variance in perpetuity within the boat basin to allow:

1. Zero side yard setback limited to the access dock
2. 1-1/2' side yard setback to the centerline of all piling necessary to construct roof optional boat lifts
3. Roof overhang within 6" of the property line

This action would not be injurious to or incompatible with contiguous uses, the surrounding neighborhood or otherwise detrimental to the public welfare. The owners' benefit as well as future property owners since a variance is recorded to the property, resolving future reconstruction needs without revisiting this issue. The test of time has

illustrated the property owners' willingness to respect each other's property rights and continued obligation of shared maintenance of the center access dock, without liability to the others. The granting of this variance is an opportunity to legitimize the centered access dock by utilizing a reconstruction design mandate that permits future reconstruction of boat lifts without loss of use of the access dock to the adjacent owner. The granting of this variance affords a replacement of the roof boat lift structures without using an unconventional, unsafe design that has a potential of great risk, including loss of life and property as is with these original cantilevered boat lifts.

The aesthetic enhancements to the community by ridding the shoreline of old, antiquated rusted out boat lifts to a conventional pitched roof, old Florida look, pile supported boat lift is an obvious benefit to the surrounding neighborhood.

***Condition #5 of a Variance: The condition giving rise to the requested variance has not been created by any person presently having an interest in the property and the conditions cannot reasonably be corrected or avoided by the applicant.***

The conditions giving rise to the requested variance were created by persons other than the property owners, who were sold a flawed design concept forty some years ago, not compatible to stand the harsh environmental conditions of living near the saltwater coast. A design flawed by the exclusive use of a material that would create constant maintenance and limited life span, which cannot be reasonably corrected or made compatible to conventional design standards without great expense. An attempt to design a cantilevered structure with two-thirds of an overhanging load subject to the forces generated by a swaying object from wind forces would require in-depth structural engineering analysis at exorbitant costs under present building codes. Notwithstanding what it would cost to construct, it's just not done. The circumstances of how the original design manifested may never be known; however, every opportunity should be made available to any homeowner who wishes to replace these structures with a more conventional design.

***Condition #6 of a Variance: The requested variance is the minimum modification of the regulation at issue that will afford relief.***

The requested variance is the minimum modification of the regulation at issue that will afford relief because of the limitation of space within the existing protected boat basin shared by both neighbors. To design a roofed boat lift structure that incorporates the setback regulation, limits a vessel's width that is not compatible for use in near coastal waters of the Gulf of Mexico or barrier island inland waterways most commonly used by water recreation enthusiasts.

Present side yard setback regulations are incompatible with the intent of the original 1956 development design of a shared protected boat basin. This requested variance is the minimum modification of the regulation at issue that will afford relief of this unique and

peculiar circumstance which has been in use for nearly one-half century. This variance negates the need to relocate the covered boat lift in the environmentally sensitive aquatic preserve.

**Condition #7 of a Variance: *The requested variance is consistent with the Charlotte County Comprehensive Plan.***

The objective of the laws and regulations as stated in the Charlotte County Comprehensive Plan requires private property owners to give consideration and respect to the rights of their neighbors and develop land in a manner which is respectful of the rights of others.

Unique circumstances exist in this request that these property owners own and share a valuable asset not available to a vast majority of our community--their own private and protected boat basin. The rights of these neighbors for their continued use of this asset should not be dismissed or put in jeopardy by limiting them only to a design with overly burdensome costs or loss of designed use of their asset, the protected boat basin. Both parties have illustrated their desire to continue this use of the shared and protective boat basin with a design that benefits each party collectively.

The Charlotte County Comprehensive Plan, Chapter 3, Natural Resources and Coastal Planning Element and Policy 1.3.4 has language that seeks to establish goals and objectives for the natural resources and coastal planning element--that is to proactively, in direct cooperation with landowners, develop use activities away from sensitive areas in marine resource environment, including manatees and sea grass beds to protect the County's natural resources and safeguard the health, safety, and welfare of the general public. This variance request proactively pursues to maintain the goals and objectives for the natural resources of Charlotte County and the Comprehensive Plan, as did the first variance attempt, "*VAR10-14 Narrative Mr. Froelich would prefer to upgrade the basin rather than disturb the open waters of Lemon Bay,*" by electing to keep the redevelopment within the existing boat basin and not the environmentally sensitive marine resource environment.

Sincerely,  
GIFFELS-WEBSTER ENGINEERS

Thomas Shaw, Senior Designer

ts  
Attachment

**Narrative**  
**( Exhibit D-6 )**



## MEMORANDUM

**Date:** May 25, 2012  
**To:** Ken Quillen, Planner III  
**From:** Jamie Scudera, Environmental Specialist  
**Subject:** VAR-12-003  
Froelich Boat Basin Variance  
1912 Mississippi Avenue

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The Zoning Environmental Review Section has conducted a cursory review (additional wildlife or environmental reviews may be required by state and/or federal agencies) of the above referenced petition for compliance with Environmental, Tree and Landscaping codes and offers the following comments:

- ❖ A GIS aerial and preliminary environmental review was conducted by staff. The property consists of a developed single family waterfront residence in a basin off of Lemon Bay. The boat basin being reviewed through this petition is a sea walled man-made basin with existing docks and two roofed boat lifts located between two single family lots in Grove City.
- ❖ Environmental staff agrees that the placement of the proposed structures would be best located within the existing basin versus the open bay side of the site. Minimization/avoidance of environmentally sensitive resources is highly encouraged when reviewing proposed development activities. The applicant's narrative provided e-mail correspondence from Heather Stafford with Charlotte Harbor Aquatic Preserves stating that no sea grass was identified in the basin but was identified water ward of the seawall in the open bay area. It was also stated in the narrative that "the subject property is located beyond the line of demarcation of a man-made canal located in the Lemon Bay Aquatic Preserve." Please provide verification that the Florida Department of Environmental Protection has made the determination that this property is located within the aquatic preserve.

**( Exhibit E-1 )**

If this petition is approved, the following conditions will be reviewed for compliance upon Site Plan Review (if required) and the issuance of any county permit or land improvement activities:

- ❖ All applicable county, state and federal authorization/permits, and mitigation (if necessary) will be required.
- ❖ If this proposal moves forward, it will be reviewed for compliance with:

Chapter 3-5:

Article XV. SURFACE WATER AND WETLAND PROTECTION

- ❖ The project must comply with the Charlotte County Smart Charlotte 2050 Comprehensive Plan with particular attention paid to:
  - ENV Goal, Objectives and Policies 2 & 3
  - CST Goal, Objectives and Policies 1 & 2.

If there are any questions pertaining to this review please feel free contact me at (941) 743-1290.

JS

**( Exhibit E-2 )**