

STAFF REPORT
Community Development Department
Petition Number: VAR-15-001

To: The Charlotte County Board of Zoning Appeals
From: Shaun Cullinan, Planning and Zoning Official
Prepared By: Ken Quillen, AICP, Planner III
Report Date: February 4, 2015 **BZA meeting date: February 11, 2015**

Requested Action/General Information:

Perry Lawrence, agent for Paul and Deborah Vanderberg, is requesting a variance of 24-feet, to increase the distance a dock may project into a canal from 12-feet to 36-feet. This property is located at 2779 North Beach Road in Englewood (see **Location Map**). The attached **Zoning Map** shows the zoning of this property, which is Manasota Single-family-3.5 (MSF-3.5). This property has a Low Density Residential, Future Land Use Map (FLUM) designation.

Section **3-9-70(b)** (Exhibit A) of the Zoning Code regulates the location of boat docks, boat houses and boat lifts in waterways, and requires that: "... On man-made bodies of water, such structures shall not extend further seaward than the lesser of ten (10) percent of the open water span or twelve (12) feet from the mean high waterline or seawall." The applicant has stated in their Narrative that this canal is 111-feet wide; however, this measurement is apparently taken from the top of bank and not the Mean High Waterline. The documents submitted by the applicant clearly show that the existing width of this canal varies from less than 90-feet to approximately 103-feet. However, the applicant is proposing to install a seawall at the property line, which will create a 102-foot wide canal, seawall to seawall. This would allow a dock to extend no more than 10.2-feet into the canal according to the existing code. Sections **3-9-70(d) and (e)** (Exhibit A) of the Zoning Code allows pilings and boat lifts to extend 25-feet into this canal. The applicant has received a **Permit** (Exhibit B), from the Army Corps of Engineers, to remove mangroves, dredge material, install a seawall, construct docks and install two boat lifts, which extend 36-feet into the canal. As such the applicant has submitted this application.

The applicant has submitted a **Survey** (Exhibit C-1), which shows the location of the existing mangroves, dock, mooring piles and Mean High Waterline (red line), all in relation to the property line and existing residence. The applicant has also submitted an **Existing Conditions Plan** (Exhibit C-2), which shows water depths and dimensions to the seawall on the opposite side of the canal. On this plan staff has shown the width of the canal as measured at the Mean High Waterline (red line and dimensions), as well as the width of the canal as measured to the proposed seawall (blue line and dimensions). The attached **Marine Improvements Plan** (Exhibit C-3) shows the size and locations of the proposed seawall, docks and boat lifts, which extend 36' into the canal.

The applicant has submitted the attached **Narrative** (Exhibit D) explaining why the applicant believes this request for a variance should be granted.

The Manasota and Sandpiper Key Advisory Committee met on January 21, 2015, and recommended that the requested variance be denied (see attached Exhibit E). The Community Development Department's Environmental Specialist has performed a cursory environmental review and their comments are in the attached **Memorandum** (Exhibit F) dated January 29, 2015.

Findings: The five standards for approval of a Variance according to Section 3-9-6.3 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: This lot, which was platted in 1952, is larger than the standard County lot with 12,970 square feet in area. This lot also has 97-feet of water frontage, which allows for much greater access to the water than a typical 80-foot wide lot. The canal will be 102-feet wide once the proposed seawall is constructed. The applicant has not submitted any evidence indicating that there are any unique or peculiar conditions that prevent the construction of a dock that is in compliance with Code.

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

Finding: Strict and literal enforcement of the Zoning Code would not create an undue hardship on the applicant because a dock with boat lifts could be constructed according to code. There is an existing dock, which has been constructed and utilized for mooring boats parallel to the shoreline. This was done according to code proving that it is possible.

3. 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 proposed 36-foot dock (finger pier) will obstruct more than one-third of this canal width. This is contrary to the purpose and intent of the code, which is to limit obstructions to no more than 25 percent of the width of a canal. Also, this may be injurious or detrimental to the public welfare because, it will have an impact on other boaters' access and maneuverability in this waterway. This canal has no outlet to the north and boats will have to perform U-turns in this canal.

4. 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 been created by the applicants, who are the property owners. The conditions can reasonably be corrected or avoided by the applicant by constructing a dock which, both, meets their needs and complies with the Zoning Code. The applicant merely wished to dock his boats perpendicular to, rather than parallel with, the shoreline for convenience.

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

Finding: The requested variance is not the minimum modification that will afford relief because there are other designs for a dock which could be constructed that meets all the dimensional requirements of Code. As an alternative the boats and boat lifts could be oriented parallel to the shore line. Also, since mooring piers and boat lifts are permitted to extend 25-feet into this canal staff believes that 25-feet could be the minimum variance that would afford relief.

ANALYSIS AND CONCLUSIONS:

After review of the site and the application requesting a variance, to allow a dock to extend 36-feet into a canal, staff believes that the requested variance does not meet all five criteria for granting a variance. Specifically standards numbered 1, 2, 3, 4 and 5 have not been met.

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

1. The variance, as approved by the Board of Zoning Appeals, is to allow a single finger pier which extends no more than 25-feet from the Mean High Waterline or future seawall.
2. All other docks shall not extend more than 10.2-feet from the Mean High Waterline or future seawall.
3. All other mooring piles, boat lifts, or sun shade awnings shall not extend more than 25-feet from the Mean High Waterline or future seawall.

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, Section 3-9-70, Boundary Survey, Existing Conditions Plan, Marine Improvements Plan, Narrative (2), Manasota Key Advisory Committee Recommendation, Environmental Specialist



Community Development

CHARLOTTE COUNTY

Location Map for VAR-15-001



01/41/19 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 By: Land Information-S. Yancey 6487 Date Saved: 1/27/2015 10:49:50 AM

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NOT TO SCALE



Community Development

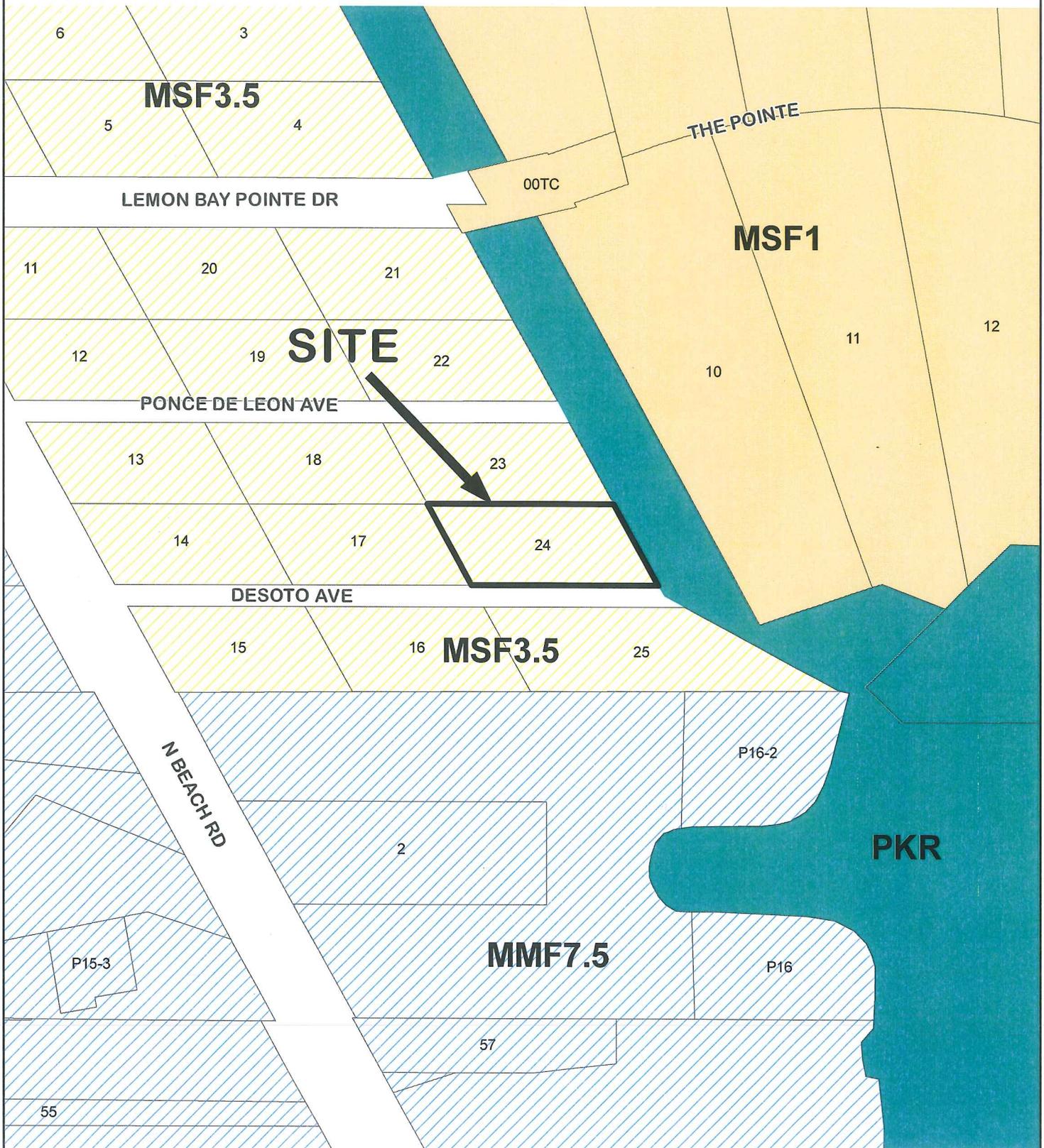
CHARLOTTE COUNTY

Zoning Map for VAR-15-001

Charlotte County Government

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Community Development

CHARLOTTE COUNTY

2014 Aerial View for VAR-15-001

Charlotte County Government

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PONCE DE LEON AVE

SITE

DESOTO AVE

01/41/19 West County

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Sec. 3-9-70. - Boat docks; boat houses; boat lifts.

- (a) No boat docks, boat houses or boat lifts, covered or uncovered, shall be constructed without the issuance of a building permit.
- (b) In natural bodies of water, such structures shall not be erected or watercraft moored nearer to the centerline of an open water span than fifteen (15) feet, nor shall structures extend from the mean high waterline more than ten (10) percent of the open water span at the point of installation, or fifteen (15) feet from the centerline of the open water span, whichever is less. The open water span shall be measured from seawall to seawall or mean high waterline to mean high waterline at point of installation. On man-made bodies of water, such structures shall not extend further seaward than the lesser of ten (10) percent of the open water span or twelve (12) feet from the mean high waterline or seawall. Unwalled roofed areas or boat shelters are permitted on conforming piers, docks or wharves, provided that no part of such structures shall extend further seaward than a permitted dock or wharf.
- (c) No such structure shall be permitted in the waters of the Gulf of Mexico.
- (d) No pilings or other mooring devices shall extend further seaward in a man-made canal than the lesser of twenty-five (25) percent of the width of the canal or twenty-five (25) feet. All pilings and other mooring devices located in a canal more than fifteen (15) feet seaward of the seawall or mean high waterline shall be marked with red or yellow reflectors or other acceptable reflectorized markings and the top three (3) feet thereof shall be painted white.
- (e) No marine elevator and/or submergible boat lift shall extend farther seaward in a man-made canal than the lesser of twenty-five (25) percent of the width of the canal or twenty-five (25) feet. Cradle ends shall be marked so that when submerged, passing boat traffic will be able to identify their location in the water. These markings shall be white and reflectorized so as to be easily seen by boat traffic approaching from any direction.
- (f) This section, except that portion requiring a building permit, shall not apply to structures within a three-sided marina basin, provided, however, that all three (3) sides of the marina basin and the underlying marina basin bottom land are under unitary ownership and control.
- (g) Structures enumerated in this section are exempt from setback requirements from the mean high waterline.

(Minutes of 12-8-81, § 8; Res. No. 84-180, § 1, 9-18-84; Res. No. 86-86, § 1, 4-22-86)

Cross reference— Boats, docks and waterways, Ch. 3-1.

Note— See § 3-5-348(c)(2).

Section 3-9-70(b)
(Exhibit A)



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
1520 ROYAL PALM SQUARE BLVD., SUITE 310
FORT MYERS, FLORIDA 33919

August 27, 2014

REPLY TO
ATTENTION OF

Fort Myers Section
SAJ-2011-03319 (LP-GRN)

Paul Vanderberg
35 McKenzie Lake Landing SE
Calgary, AB Canada

Dear Mr. Vanderberg:

This is in reference to your request for a Department of the Army (DA) permit to perform work in or affecting waters of the United States. If you determine the permit provided is acceptable in its entirety and you have chosen to proceed with the authorized activity, then upon recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), you are authorized under a Letter of Permission to dredge approximately 250 cubic yards of material to remove 1,143 square feet (0.026 acres) of mangroves and riprap to a depth of -5.0' MLW. Place 95' of concrete vertical seawall (with 8' returns) above the MHWL and backfill behind the newly constructed sea wall. Construct a new 17 X 6' main dock with a 30' X 4' finger pier, and 10 X 11' deck adjacent to the seawall and north of the main dock. Place a 30' x 13' boat lift on the south side of the finger pier. Place 25' x 10' boat lift and a 996 square foot sun shade over the boat lift on the north side of the finger pier. The material dredged will be trucked to an approved landfill for disposal. The project site is located at 2779 N. Beach Road, Englewood in Section 01, Township 41 South, Range 19 East, Charlotte County, Florida in unnamed residential canal of Lemon Bay.

Geographic Position: Latitude: 26.934646°
Longitude: -82.364710°

The project must be completed in accordance with the enclosed construction drawings, and the general and special conditions which are incorporated in, and made a part of, the permit.

Special Conditions:

1. **Reporting Address:** All reports, documentation and correspondence required by the conditions of this permit shall be submitted to the following address: U.S. Army Corps of Engineers, Regulatory Division, Enforcement Section, Cynthia Ovdenk, 1520 Royal Palm Square Blvd., Suite 310, Fort Myers, Florida 33919. The Permittee shall reference this permit number, SAJ-2011-03319 on all submittals.

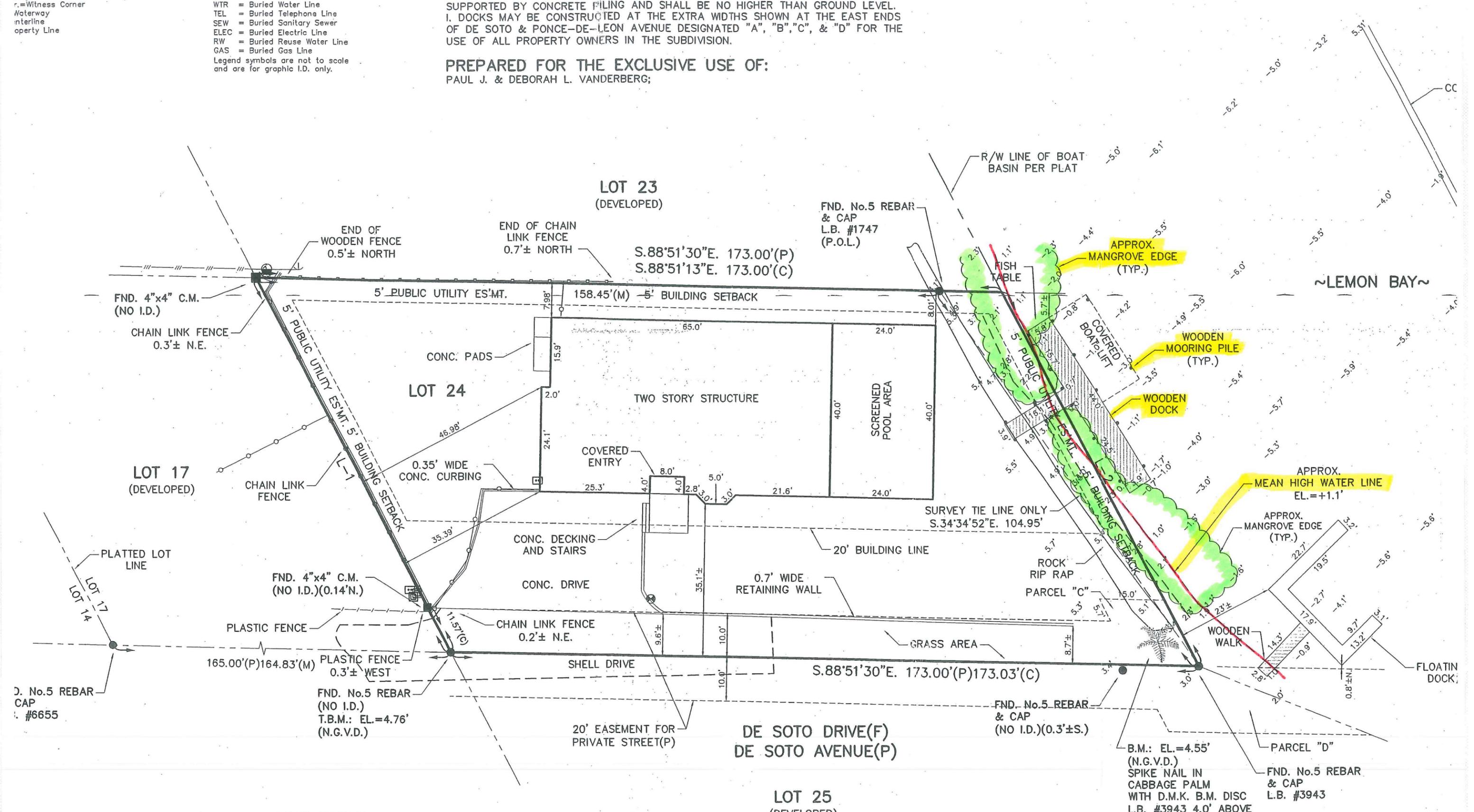
Permit
(Exhibit B)

r.=Witness Corner
Waterway
interline
Property Line

WTR = Buried Water Line
TEL = Buried Telephone Line
SEW = Buried Sanitary Sewer
ELEC = Buried Electric Line
RW = Buried Reuse Water Line
GAS = Buried Gas Line
Legend symbols are not to scale
and are for graphic I.D. only.

SUPPORTED BY CONCRETE PILING AND SHALL BE NO HIGHER THAN GROUND LEVEL.
I. DOCKS MAY BE CONSTRUCTED AT THE EXTRA WIDTHS SHOWN AT THE EAST ENDS
OF DE SOTO & PONCE-DE-LEON AVENUE DESIGNATED "A", "B", "C", & "D" FOR THE
USE OF ALL PROPERTY OWNERS IN THE SUBDIVISION.

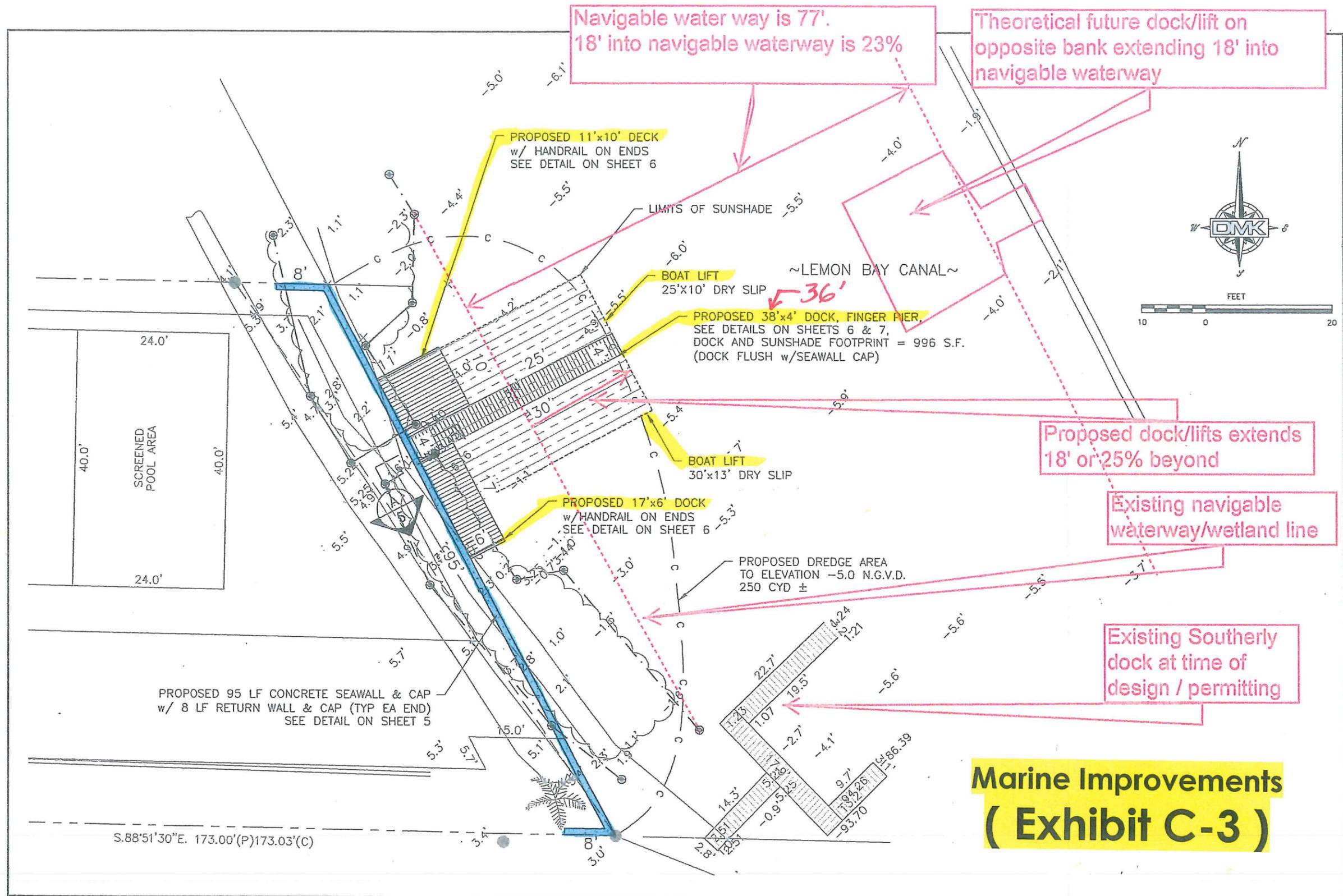
PREPARED FOR THE EXCLUSIVE USE OF:
PAUL J. & DEBORAH L. VANDERBERG;



LINE TABLE:

L-1	=	N.27°42'30"W.	97.0'(P)
		N.27°26'55"E.	97.17'(C)
L-2	=	S.27°42'30"E.	97.0'(P)
		S.27°37'56"E.	97.17'(C)

**Boundary Survey
(Exhibit C-1)**



Drawing name: F:\Projects\2013\13-0082 Vanderberg - 1779 N. Beach Rd\DWG\13-0082-SITE.dwg

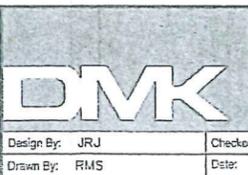
Jun 26, 2013 - 11:17am

4	FOR:	PAUL J. & DEBORAH L. VANDERBERG
	TITLE:	MARINE IMPROVEMENTS
	DESC:	MARINE IMPROVEMENTS PLAN

X
KREG E. MAHEU P.E.
FLA. LICENSE NO. 45766
C.A. NO. 3943
DATE:

IN ACCORDANCE WITH 61G15-30.003 (5) F.A.C., THESE PRELIMINARY ENGINEERING DOCUMENTS ARE NOT IN FINAL FORM, BUT ARE BEING TRANSMITTED TO THE PUBLIC AGENCY TO RECEIVE AGENCY REVIEWS, COMMENTS AND INTERPRETATIONS. THE DOCUMENTS MAY SUBSEQUENTLY BE REVISED BY THE ENGINEER TO REFLECT RESOLUTION OF ISSUES WITH PUBLIC AGENCY PRIOR TO FINAL ACTION BY THE AGENCY. CHANGES, REVISIONS AND MODIFICATIONS TO A PROJECT MAY PROMPT ADDITIONAL DOCUMENT SUBMITTAL FOR AGENCY APPROVAL ACTION ON THE SAME PROJECT.

NO.	REVISION	DATE	BY



DMK ASSOCIATES
ENGINEERS & SURVEYORS
435 Commercial Court, Suite 200
Venice, FL 34292
TEL: (941) 412-1293
FAX: (941) 412-1043
C.A. No. 3943

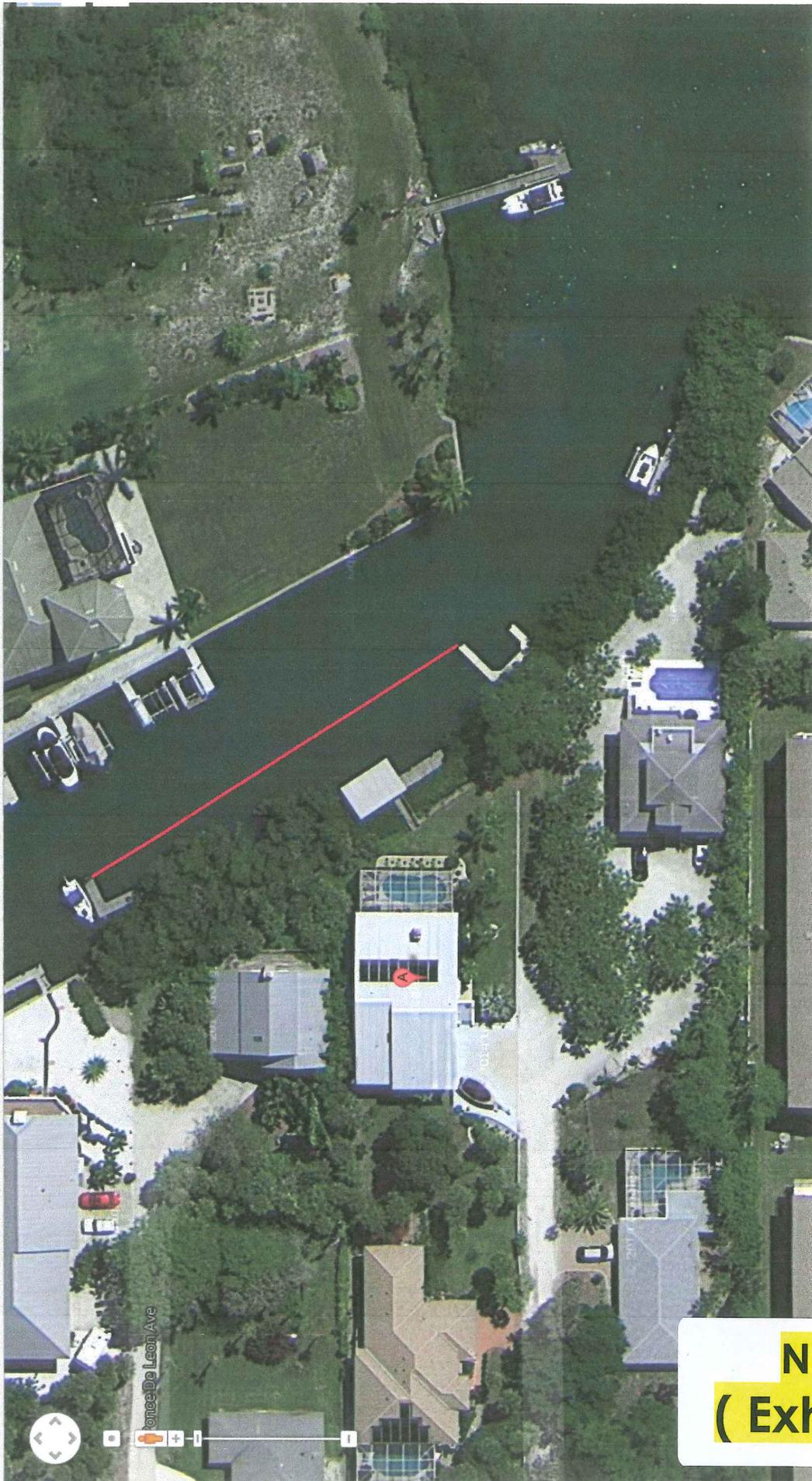
Design By: JRJ
Checked By: JRJ
Drawn By: RMS
Date: 06-28-13
Proj. No: 13-0082
SCALE: NOTED

To whom it may concern,

Applicant wishes to construct a new dock 36 feet out into water body, 18 feet into 77 feet of navigable waterway. The width of the water body is approximately 111 feet seawall to seawall. The structure, when completed, will not impede navigation in the area and will not be a safety hazard to other boats. The need for the variance is to accommodate the owners right to have two mooring areas and adequate access to them. Current zoning classification is a man made body of water. The uniqueness of this situation is that adjoining property owners have docks and lifts that exceed the applicants request by 3 (plus) feet. See attached drawings. The current zoning code of 25% of the width of the water body or 12 feet; the lesser thereof is not adequate to achieve proper access to mooring areas. The proposed dock and lift configuration is the only feasible solution given existing surrounding conditions. We have spent numerous hours attempting to redesign this dock system to conform to existing codes and regulations, but given the neighboring impediments into the navigable waterway, we feel this is the only suitable solution. An approval of variance would be greatly appreciated and we thank you for your time.

Sincerely,
Perry S. Lawrence
Innovative Marine Structures

Narrative
(Exhibit D-1)



**Narrative
(Exhibit D-2)**

To whom it may concern,

Applicant wishes to construct a new dock 36 feet out into water body, 18 feet into 77 feet of navigable waterway. The width of the water body is approximately 111 feet seawall to seawall. The structure, when completed, will not impede navigation in the area and will not be a safety hazard to other boats. The need for the variance is to accommodate the owners right to have two mooring areas and adequate access to them. Current zoning classification is a man made body of water. The uniqueness of this situation is that adjoining property owners have docks and lifts that exceed the applicants request by 3 (plus) feet. See attached drawings. The current zoning code of 25% of the width of the water body or 12 feet; the lesser thereof is not adequate to achieve proper access to mooring areas. The proposed dock and lift configuration is the only feasible solution given existing surrounding conditions. We have spent numerous hours attempting to redesign this dock system to conform to existing codes and regulations, but given the neighboring impediments into the navigable waterway, we feel this is the only suitable solution. An approval of variance would be greatly appreciated and we thank you for your time.

Sincerely,
Perry S. Lawrence
Innovative Marine Structures

Manasota/Sandpiper Key Architectural
Committee Submitted Plans
Recommendation to:
Approve Deny
Date: 1/21/2015
Signed: [Signature]
Comments:

Recommended To
Deny Approval

Manasota & Sandpiper
Key AC Recommendation
(Exhibit E)



MEMORANDUM

Date: January 29, 2015
To: Ken Quillen, Planner III
From: Jamie Scudera, Environmental Specialist
Subject: VAR-15-001, Vanderberg Dock and Lifts, 2779 North Beach Road

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

- ❖ The site consists of an existing single family residence in a residential neighborhood located adjacent to a man-made water body on a highly sensitive coastal island community.
- ❖ Upon review of the site plans submitted, environmental staff sees alternative dock designs available that would accommodate the lifts while still meeting Charlotte County code Section 3-9-70 (d). It is highly recommended that both the 6-foot and 11-foot docks be cut back to accommodate the bow of each boat so that each lift can be moved farther landward.

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 or permits, and mitigation (if necessary) will be required.
- ❖ The project must also comply with the Charlotte County Smart Charlotte 2050 Comprehensive Plan.

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

JS

(Exhibit F)

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COMMUNITY DEVELOPMENT DEPARTMENT - Zoning Division

18400 Murdock Circle | Port Charlotte, FL 33948

Phone: 941.743.1290 | Fax: 941.743.1598



Aerial Photograph (January 2011)

2779 North Beach Road (Lot 24)

(Exhibit G)