

NOTE: A three-minute maximum time limit will be imposed on all comments from the public, regardless of the subject matter. A request form is available from the Deputy Town Clerk; fill it in and return it to her prior to the start of the meeting. When you speak, you must come to the podium in the front and clearly state your name and address for the record. Please turn off or mute your cell phone or pager

TOWN OF BAY HARBOR ISLANDS
QUASI-JUDICIAL PUBLIC HEARING
AGENDA
September 17, 2018

AGENDA

CALL TO ORDER: 6:30 p.m.

PLEDGE OF ALLEGIANCE:

ROLL CALL

1. **Discussion** for the purpose of hearing any public comment with respect to an application for variance from Section 23-12(6)(a)(v) and 23-12 (6)(a)(x) of the Town Code to construct a new dock / viewing platform that would extend 12 feet seaward and 25 feet wide parallel to the seawall for property located at 9414 West Broadview Drive, half of lot 85 and all of lot 86, in block 23, Bay Harbor Islands, Florida. The application for a variance is being requested by Broadhouse Holdings, Ltd. Enclosed is a copy of the letter of hardship, the application, plans, and a memorandum from the Town Planner.
2. **Approval or Denial** of the a variance request for residence located at 9414 W. Broadview Drive. As required by Section 2-22 of the Town Code, the Town Council shall determine whether to grant or deny the application for variance. An affirmative vote of five Council Members is necessary in order to grant the request. The decision of the Town Council is final. If the request is granted, the decision of the Town Council shall be recorded in a resolution to be prepared by the Town Attorney. It should be noted that any approval of the Town Council is subject to other requirements of the Town Code, County Code, Florida Building Code, FEMA, etc.

STAFF RECOMMENDATION: Deny the requested variance as submitted.

CONCLUSION OF PUBLIC HEARING - Approximately 7:00 p.m.

Pursuant to Florida Statutes 286.0105, the Town hereby advises the public that should any person decide to appeal any decision of the Town Council with respect to any matter to be considered at this meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

AGENDA ITEM REPORT

September 17, 2018

ITEM NUMBER: 1.

ITEM: Discussion for the purpose of hearing any public comment with respect to an application for variance from Section 23-12(6)(a)(v) and 23-12 (6)(a)(x) of the Town Code to construct a new dock / viewing platform that would extend 12 feet seaward and 25 feet wide parallel to the seawall for property located at 9414 West Broadview Drive, half of lot 85 and all of lot 86, in block 23, Bay Harbor Islands, Florida. The application for a variance is being requested by Broadhouse Holdings, Ltd. Enclosed is a copy of the letter of hardship, the application, plans, and a memorandum from the Town Planner.

DESCRIPTION:

On June 26, 2018, the Town Clerk's Office received a variance application for the residence located at 9414 West Broadview Drive. The applicant Broahouse Holdings, LTD is seeking a variance from Sections 23-12(6)(a)(v) and 23-12(6)(a)(x) of the Town Code in order to construct a new dock / viewing platform that would extend 12 feet seaward and 25 feet wide parallel to the seawall.

Enclosed is a copy of the application, hardship letter, survey and staff report. The staff's recommendation is to deny the variance request.

RECOMMENDED ACTION:

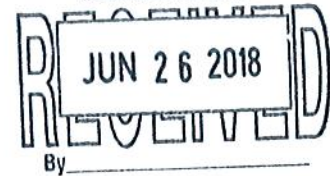
FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1. 9414 W. Broadview Drive - Variance Application
2. Staff Report - MM 9414 W. Broadview Drive

TOWN OF BAY HARBOR ISLANDS
MIAMI-DADE COUNTY, FL**APPLICATION FOR VARIANCE AND PUBLIC HEARING**

DATE: May 9, 2018	PROPERTY ADDRESS: 9414 West Broadview Drive
LEGAL DESCRIPTION	LOT: 86 E 1/2 M/L Lot 85 BLOCK: 23
SUBDIVISION:	TOWN OF BAY HARBOR ISLANDS

APPLICANT'S NAME:	Broadhouse Holdings LTD.	
ADDRESS:	Road Town Tortola, British Virgin Isl.	
BUSINESS PHONE:	RESIDENCE PHONE:	CELL PHONE: 305-496-4476

PROPERTY OWNER'S NAME: (If different from applicant)	Same	
ADDRESS:	Same	
BUSINESS PHONE:	RESIDENCE PHONE:	CELL PHONE:

NAME OF CONTRACTOR and/or ARCHITECT:	Robert Rossi	
COMPANY NAME:	Southern Marine Construction, Inc.	
ADDRESS:	P.O. Box 414194 Miami Beach, FL	
BUSINESS PHONE: 305-861-2764	RESIDENCE PHONE:	CELL PHONE: 305-613-6377

PRESENT ZONING CLASSIFICATION:

- | | |
|--|---|
| ☐ BAA - Business District | ☐ CA - Causeway |
| ☐ RBA - Tract | ☐ RE - Multiple Family |
| ☒ RD - Single Family | ☐ PUD - Planned Unit Development |
| ☐ PRD - Planned Residential Development | |

- IF APPLICANT IS THE PROPERTY OWNER, INDICATE DATE ACQUIRED: Dec 17, 2012IF APPLICANT IS THE LESSEE, INDICATE LEASE DATE: / /

INDICATE TERMS OF LEASE:	

LEGAL DESCRIPTION OF ANY CONTIGUOUS PROPERTY OWNED BY THE APPLICANT:

LOT: ^{46 E 1/2} M/L Lots	BLOCK: 23	SUBDIVISION: Bay Harbor Islands
--------------------------------------	-----------	---------------------------------

IS THERE AN OPTION TO PURCHASE OR LEASE THE SUBJECT PROPERTY? ☐ Yes ☒ No

IS IT PREDICATED ON APPROVAL OF APPLICATION? ☐ Yes ☒ No

IS HEARING BEING REQUESTED AS A RESULT OF A VIOLATION NOTICE? ☐ Yes ☒ No

HAS A PUBLIC HEARING PREVIOUSLY BEEN HELD REGARDING THIS PROPERTY? ☐ Yes ☒ No
IF YES DATE: _____ DECISION: _____

ARE THERE ANY EXISTING STRUCTURES ON THE PROPERTY TO BE DEMOLISHED? ☐ Yes ☒ No
DESCRIBE: _____

BRIEFLY STATE REQUEST:	Installation of a 25' x 12' wood dock, 12' projection into waterway to comply with DEKM's 4' of water Depth requirement.
------------------------	--

THE FOLLOWING ARE TO BE NOTIFIED OF HEARING DATE, AS MY REPRESENTATIVE(S):
(Please provide this information, or they will NOT be notified)

NAME	ADDRESS	PHONE
Robert Rossi	P.O. BOX 414194 Miami Beach, FL 33141-0194	305-861-2744 305-613-6317

Applicant Signature(s)

[Signature]
Auth. Representative

Date 5/11/18

Date / /

Date / /

ALL INFORMATION SUBMITTED IN CONNECTION WITH THIS APPLICATION BECOMES A PERMANENT PART OF THE PUBLIC RECORDS OF THE TOWN OF BAY HARBOR ISLANDS.

(FOR OFFICE USE ONLY)
APPROVED: ☐ YES ☐ NO
DATE APPROVED: / /
CODE SECTION: _____

c:\all\gn\forms\variance.app

**REQUEST FOR VARIANCE
CORPORATION AFFIDAVIT**

DATE: 5/9/18

The subject property is legally described as:

LOT: <u>86E 112</u> <u>N/L Lot 85</u>	BLOCK: <u>23</u>	SUBDIVISION: <u>BAY HARBOR ISLANDS</u>
ADDRESS:	<u>9414 West Broadview Drive</u>	
CORPORATION NAME:	<u>Broadhouse Holdings Ltd.</u>	

I, BRUCE LAZAR and Asst. Rep. Secretary being first duly sworn, depose and say that we are the President/Vice President, and Secretary/Asst. Secretary of the aforesaid corporation, and as such, have been authorized by the corporation to file this application for public hearing; that all answers to the questions in said application and all supplemental data attached to and made a part of this application are honest and true to the best of our knowledge and belief; that said corporation is the owner/tenant of the property described herein and which is the subject matter of the proposed hearing.

We hereby authorize the Town of Bay Harbor Islands to enter the subject property for the sole purpose of posting a NOTICE OF PUBLIC HEARING on the property as required by the Town Council and we take the responsibility of removing this notice after the date of the hearing.

[Signature]
Signature of President/Vice President

Signature of Secretary/Assistant Secretary

Before me this day personally appeared

BRUCE E LAZAR
known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that HE executed this document for the purposes therein expressed.

Sworn to and subscribed to before me this day of May 11, 2018.

[Signature]
Notary Public

My commission expires: Nov. 25, 2018 Personally known ☒ Produced I.D. _____
Type/number of I.D. _____

☒ DID TAKE an oath, or
☐ DID NOT take an oath

Before me this day personally appeared

known to me to be the person described in and who executed the foregoing instrument, and acknowledged to and before me that _____ executed this document for the purposes therein expressed.

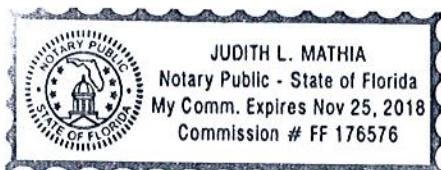
Sworn to and subscribed to before me this day of _____, 20____.

Notary Public

My commission expires: _____ Personally known _____ Produced I.D. _____
Type/number of I.D. _____

☐ DID TAKE an oath, or
☐ DID NOT take an oath

c:\l\gn\forms\variance.tif



Broadhouse Holding Ltd.
9414 West Broadview Drive
Bay Harbor Islands, Florida 33154

June 25, 2018

Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

Re: Lowenstein Residence
9414 West Broadview Drive
Bay Harbor Islands, Florida 33154

HARDSHIP LETTER

I am requesting a variance to exceed the 8' dock width as per the Town of Bay Harbor Islands building code. My request is based on having to comply with Miami Dade County DERM's water depth requirement (4' MLW). I do not obtain the required depth until 12' water-ward, this is the minimum that DERM will approve, see attached letter.

If you have any questions please contact my agent, Robert Rossi with Southern Marine Construction, Inc at 305-861-2764, or email rossi2@bellsouth.net.

Regards,



Alfredo Lowenstein

Subject: R/V CLI-2017-0269 - Broadhouse Holdings, LTD
From: Gray, Catherine (RER) (Catherine.Gray@miamidade.gov)
To: ross12@bellsouth.net;
Date: Wednesday, August 9, 2017 1:45 PM

Hi Jacki,

Please be advised that the 4' contour is not obtained until approximately 11-12' waterward of the seawall and therefore, DERM is not willing to authorize an 8' wide marginal dock. DERM could authorize the installation of a 12' wide by 25' long marginal dock that utilizes the footprint of the previous dock (between 14 and 39 linear feet from the west property line).

In reference to the previous information provided to the property owner, the Completeness Summary for the seawall work (CLI-2015-0306) is available online with DERM's recommendation.

Please let me know how the property owner would like to proceed.

Regards,

McKee Gray, MPS

Biologist II

Coastal Resources Section

Miami-Dade County

Department of Regulatory and Economic Resources

Environmental Resources Management

Overtown Transit Village

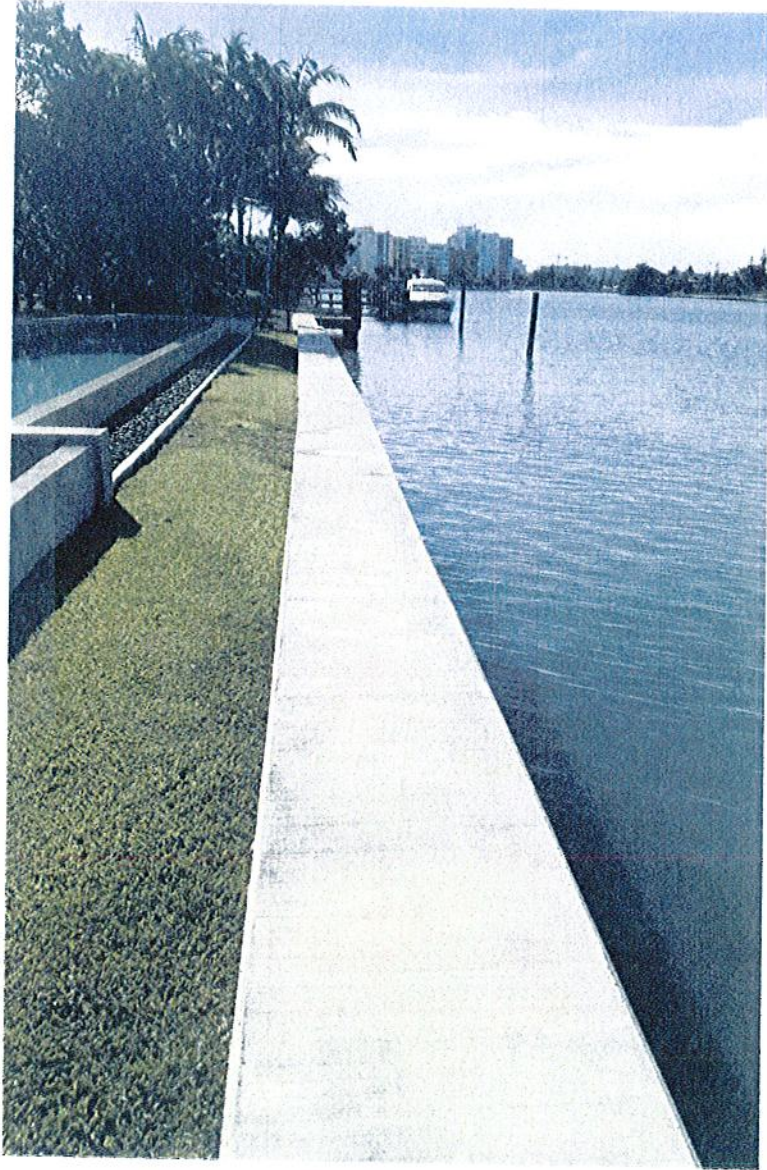
701 NW 1st Court, Suite 600, Miami, Florida 33136

(305)372-6733

<http://www.miamidade.gov/economy/>

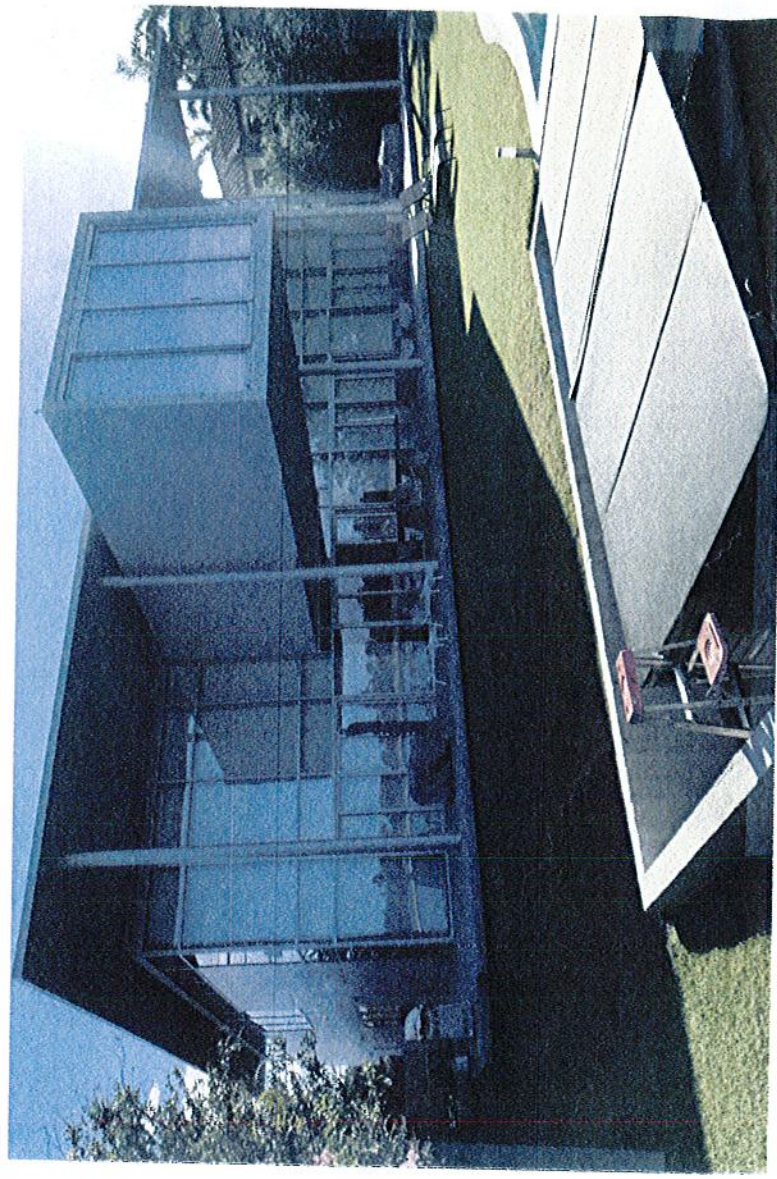
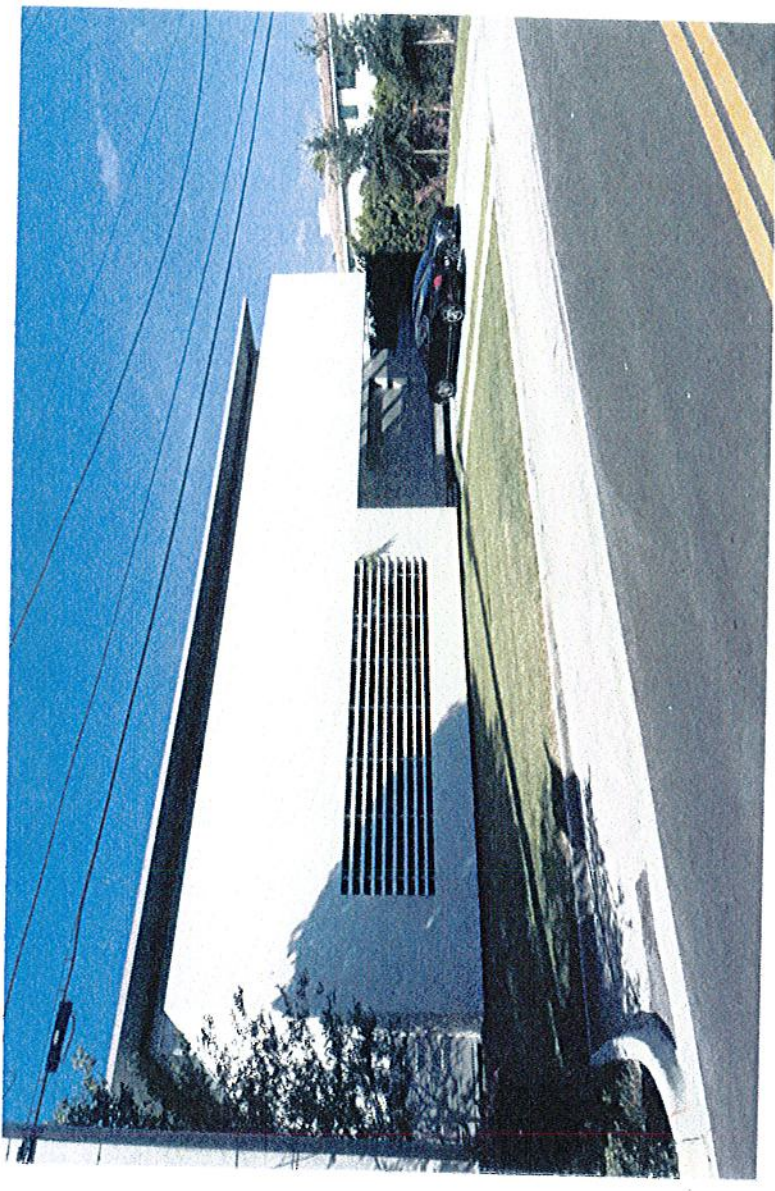
"Delivering Excellence Every Day"

REAR



BROADHOUSE Holdings LTI
9414 West Broadview TR
Bay Harbor Islands FL.

FRONT



REAR



Carlos A. Gimenez, Mayor

Department of Regulatory and Economic Resources
Environmental Resources Management
701 NW 1st Court, 6th Floor
Miami, Florida 33136-3912
T 305-372-6567 F 305-372-6407

miamidade.gov

July 6, 2017

Broadhouse Holdings, LTD
c/o Bruce E. Lazar, Authorized Representative
P.O. Box 4519 Road Town
Tortola, British Virgin Islands

Re: Class I Permit Application CLI-2017-0269: Broadhouse Holdings, LTD - Dock located at 9414 West Broadview Drive, Bay Harbor Islands, Miami-Dade County, Florida. (Folio No. 13-2227-001-4640)

Dear Mr. Lazar:

Please accept this letter in response to your submittal of a Class I permit application for the above referenced property. DERM staff has conducted a biological assessment and has the following recommendations to continue processing your permit application.

DERM has no objection to the installation of a dock at the property; however, the proposed marginal dock does not avoid and minimize impacts to benthic resources and the minimum Code-required water depth of 4 feet N.O.A.A. Mean Low Water is not obtained throughout the slip area. Please submit a complete set of revised sketches that depict an L- or T-shaped dock consisting of a 4 foot access walkway located in the area between 40 and 50 linear feet from the west property line and an 8 foot wide by 20 foot long terminal platform with the landward side located a minimum of 15 feet waterward of the seawall and a minimum of 25 feet east of the west property line. Please note, DERM recommends that corrections to sketches be provided for review and approval before signed and sealed plans are submitted.

A Class I permit application shall be verified by the upland property owner who possesses riparian rights to the area of the proposed work. The Class I permit application must be signed by an officer of Broadhouse Holdings, LTD. Please submit a new complete revised Class I permit application completed and executed by an officer of Broadhouse Holdings, LTD.

For any structures located outside of the boundaries described in Section D-5(03)(2)(a) of the Miami-Dade County Public Works Manual letters of consent that reference DERM preliminary approved plans may be requested prior to permit issuance. Please note that the Class I permit will not be drafted unless and until the requested letter has been submitted to DERM for review and approval. If the letter cannot be obtained, a modification to the proposed scope of work and a new review by DERM will be required. Any new proposal that results in a significant modification to the scope of work may result in additional process time.

Attached please find a Completeness Summary detailing items required in order to complete your Class I Permit Application Package, and a State and Federal Delegated Review Checklist containing additional information and indicating additional items to be submitted prior to Class I permit issuance. If you have any questions concerning the above referenced application, please contact me at (305) 372-6733 or grayca@miamidade.gov.

Sincerely,

McKee Gray, Biologist II
Coastal and Wetlands Resources Section
Division of Environmental Resources Management (DERM)

Delivering Excellence Every Day

cc: Robert Rossi - Southern Marine Construction, Inc. (rrossi2@bellsouth.net)
Robert Kirby - U.S. Army Corps of Engineers (Robert.J.Kirby@usace.army.mil)

Print
Subject: RM CLI-2017-0289 - Broadhouse Holdings, LTD
From: Gray, Catherine (RER) (Catherine.Gray@miamidade.gov)
To: mrossi2@bellsouth.net;
Date: Wednesday, August 9, 2017 1:45 PM

Hi Jacki,

Please be advised that the 4' contour is not obtained until approximately 11-12' waterward of the seawall and therefore, DERM is not willing to authorize an 8' wide marginal dock. DERM could authorize the installation of a 12' wide by 25' long marginal dock that utilizes the footprint of the previous dock (between 14 and 39 linear feet from the west property line).

In reference to the previous information provided to the property owner, the Completeness Summary for the seawall work (CLI-2015-0306) is available online with DERM's recommendation.

Please let me know how the property owner would like to proceed.

Regards,

McKee Gray, MPS

Biologist II

Coastal Resources Section

Miami-Dade County

Department of Regulatory and Economic Resources

Environmental Resources Management

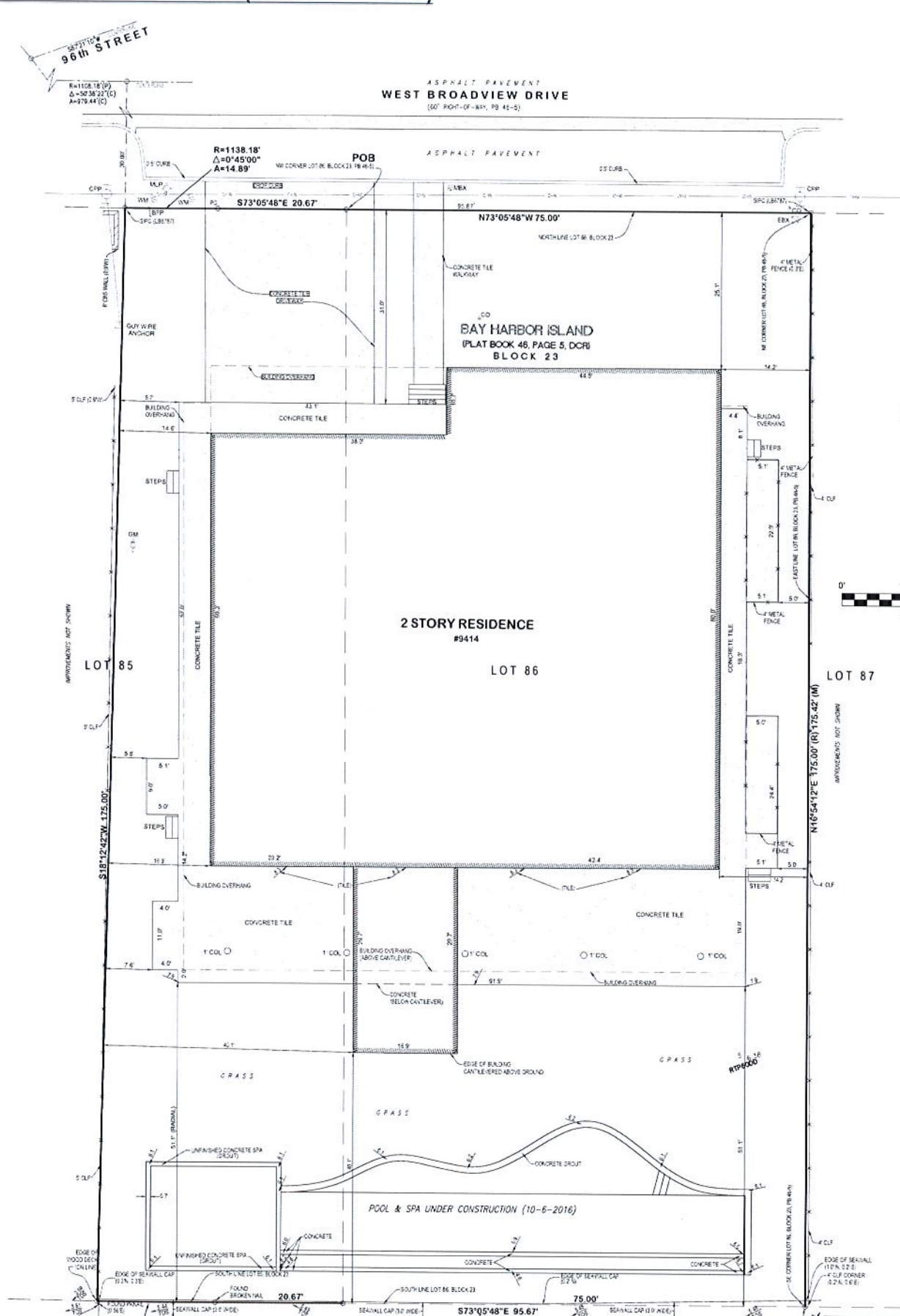
Overtown Transit Village

701 NW 1st Court, Suite 600, Miami, Florida 33136

(305)372-6733

<http://www.miamidade.gov/economy/>

"Delivering Excellence Every Day"



R=1313.18'
Δ=0°49'28"(C) 0°49'08"(R) 0°47'57"(M)
A=18.89(C) 18.77(R)

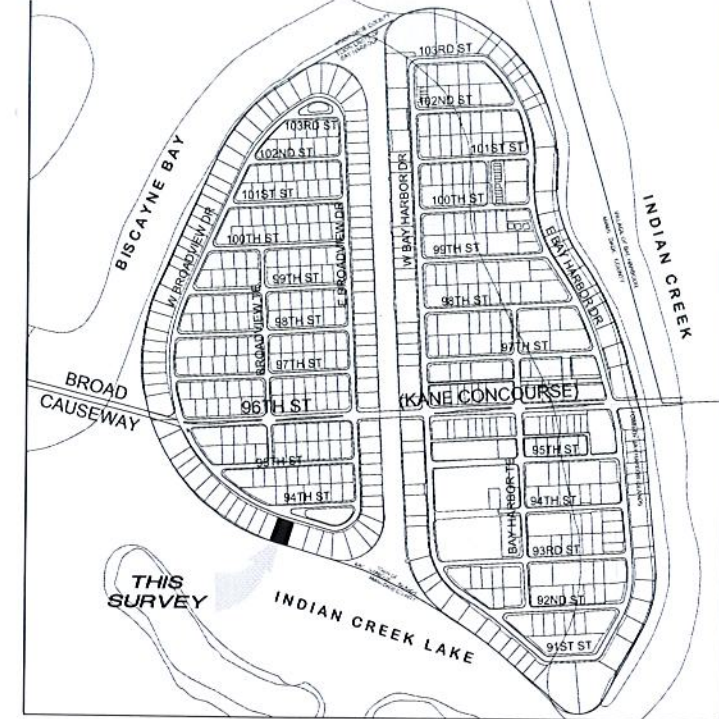
INDIAN CREEK LAKE

LEGEND:

- Δ - CENTRAL ANGLE EQUALS
- A= - ARC LENGTH EQUALS
- BFP - BACK FLOW PREVENTER
- ID - IDENTIFICATION
- (C) - CALCULATED
- CBS - CONCRETE BLOCK AND STUCCO
- CLF - CHAIN LINK FENCE
- CO - SEWER CLEANOUT
- COL - COLUMN
- CPP - CONCRETE POWER POLE
- DCR - MIAMI-DADE COUNTY PUBLIC RECORDS
- EBX - ELECTRIC BOX
- GM - GAS METER
- ICV - IRRIGATION CONTROL VALVE
- LB - LICENSED BUSINESS
- MBX - MAILBOX
- MLP - METAL LIGHT POLE
- NGVD29 - NATIONAL GEODETIC VERTICAL DATUM, 1929
- OHV - OVERHEAD WIRE
- ORB - OFFICIAL RECORDS BOOK
- PB - PLAT BOOK
- PG - PAGE
- PC - POINT OF CURVATURE
- PT - POINT OF TANGENCY
- POB - POINT OF BEGINNING
- POC - POINT OF COMMENCEMENT
- (P) - PLAT
- (R) - LEGAL DESCRIPTION DISTANCE
- (M) - MEASURED
- R= - RADIUS EQUALS
- SIPC - SET 5/8" IRON PIPE & CAP
- TOS - TOP OF SEAWALL CAP
- WM - WATER METER
- - CONCRETE

SURVEY NOTES:

1. PROPERTY FOLIO NO. 13-2227-001-4640.
2. CONSTRUCTION PERMIT NO. BP-2013-66.
3. BUILDING DIMENSIONS WERE MEASURED ALONG THE EXTERIOR EDGE OF THE SLAB AND MAY NOT REPRESENT THE DESIGN "BUILDING LINE".
4. OWNERSHIP OF FENCES AND WALLS (IF SHOWN) WAS NOT DETERMINED.
5. THIS FIRM HAS MADE NO ATTEMPT TO LOCATE FOOTINGS AND/OR FOUNDATIONS (UNLESS OTHERWISE NOTED).
6. PROPERTY ADDRESS: 9414 WEST BROADVIEW DRIVE, BAY HARBOR ISLANDS, FL 33154.
7. PROPERTY LEGAL PROVIDED BY CLIENT AND SHOWN HEREON.
8. SURVEY ACCURACY: THE ACCURACY OBTAINED BY MEASUREMENT AND CALCULATIONS ON THIS SURVEY MEETS OR EXCEEDS THE MINIMUM TECHNICAL STANDARDS REQUIREMENTS FOR A SUBURBAN AREA (1 FOOT IN 7,500 FEET) AS SPECIFIED IN CHAPTER 5A-17 OF THE FLORIDA ADMINISTRATIVE CODE. ALL DISTANCES SHOWN HEREON ARE MEASURED IN FEET AND DECIMAL FEET THEREOF.
9. BEARINGS: BEARINGS SHOWN HEREON ARE BASED ON AN ASSUMED MERIDIAN AND ARE BASED UPON THE CENTERLINE OF WEST BROADVIEW DRIVE, BEARING S73°05'48"E.
10. BENCHMARK: MIAMI-DADE COUNTY BENCHMARK NO. N-3106; DESCRIPTION: ELEVATION = +4.81' NGVD29.
11. ELEVATIONS: ELEVATIONS SHOWN HEREON (IF ANY) ARE REFERENCED TO THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD29), UNLESS OTHERWISE STATED.
12. BOUNDARY DISTANCES ARE RECORDED AND MEASURED UNLESS OTHERWISE NOTED.
13. VISIBLE INDICATORS OF SURFACE UTILITIES ARE NOT SHOWN HEREON, NO ATTEMPT HAS BEEN MADE TO LOCATE UNDERGROUND UTILITIES. AT LEAST 48 HOURS BEFORE DIGGING CALL SUNSHINE AT 1-800-432-4770.
14. ZONING: SURVEYOR HAS NOT SHOWN ANY OFFICIAL ZONING CLASSIFICATION, VARIANCES, USES PERMITTED THEREUNDER, SETBACK, HEIGHT, BULK, DENSITY AND/OR PARKING REQUIREMENTS. REFERENCE TO MIAMI-DADE COUNTY BUILDING CODES, OR ZONING CODES, AS SAME MAY VARY DEPENDING ON CONSTRUCTION. ALL TO BE DETERMINED BY OTHERS. CLIENT SHOULD CONTACT THE APPROPRIATE CITY AND COUNTY DEPARTMENTS TO OBTAIN A ZONING VERIFICATION LETTER PRIOR TO ANY DESIGN WORK.
15. THE LANDS SHOWN HEREON HAVE NOT BEEN ABSTRACTED BY THIS FIRM REGARDING MATTERS OF INTEREST BY OTHER PARTIES, SUCH AS EASEMENTS, RIGHTS-OF-WAYS, RESERVATIONS, ETC.
16. ALL OF THE RECORDING INFORMATION CONTAINED HEREIN REFERS TO THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, UNLESS OTHERWISE INDICATED.
17. FEMA FLOOD ZONE INFORMATION: THIS SITE IS SITUATED WITHIN A SPECIAL FLOOD HAZARD ZONE INUNDATED BY THE 100-YEAR FLOOD, AS ESTABLISHED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) AND SHOWN ON THE FLOOD INSURANCE RATE MAP (FIRM) MAP NUMBER 12086C0144L, COMMUNITY NO. 120637, ON PANEL 0144, SUFFIX L. MAP DATE OF FIRM 9-11-2009. MAP INDEX DATE 9-11-2009. THE FIRM ZONE THAT APPLIES FOR ALL BUILDINGS SHOWN ON THIS SURVEY IS "AE". BASE FLOOD ELEVATION 8.0 NGVD29.
18. HIGHEST CROWN OF ROAD +5.2' NGVD29.
19. LOWEST ADJACENT GRADE +6.2' NGVD29 (9-22-2016).
20. ADDITIONS OR DELETIONS TO THIS SURVEY BY OTHER THAN THE SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES.
21. MEASURED POOL AND SPA ELEVATIONS ON 7-26-2016. POOL AND SPA IMPROVEMENTS SHOWN ARE APPROXIMATE AND BASED ON ARCHITECTURAL PDF FILE PROVIDED BY CLIENT.
22. COMPLETED SEAWALL TOP OF CAP ELEVATIONS MEASURED ON 6-14-2017.



LOCATION MAP

1"=600'
IN SECTION 34, TOWNSHIP 52S., RANGE 42E.
TOWN OF BAY HARBOR ISLANDS, MIAMI-DADE COUNTY, FLORIDA

LEGAL DESCRIPTION:

THE EAST ONE HALF (E1/2) OF LOT 85 AND ALL OF LOT 86 BLOCK 23 BAY HARBOR ISLANDS AND ACCORDING TO PLAT THEREOF RECORDED IN PLAT BOOK 48 AT PAGE 5 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA, SAID PROPERTY BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE N.W. CORNER OF LOT 86 BLOCK 23 BAY HARBOR ISLANDS ACCORDING TO PLAT THEREOF RECORDED IN PLAT BOOK 48 AT PAGE 5 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; THENCE NORTH 73 DEGREES 05 MINUTES 48 SECONDS WEST ALONG THE NORTHERLY BOUNDARY OF SAID LOT 85 FOR A DISTANCE OF 20.67 FEET TO THE BEGINNING OF A TANGENTIAL CIRCULAR CURVE; THENCE CONTINUE IN A NORTH-WESTERLY DIRECTION ALONG THE NORTHERLY BOUNDARY OF SAID LOT 85 AND ALONG A CIRCULAR CURVE HAVING A RADIUS OF 1,138.18 FEET THROUGH A CENTRAL ANGLE OF 0 DEGREES 45 MINUTES 00 SECONDS FOR AN ARC DISTANCE OF 14.89 FEET TO A POINT; THENCE SOUTH 18 DEGREES 12 MINUTES 42 SECONDS WEST FOR A DISTANCE OF 175 FEET TO A POINT ON AN EXISTING SEA WALL AND A POINT ON THE SOUTHERLY BOUNDARY OF SAID LOT 85; THENCE IN A SOUTHEASTERLY DIRECTION ALONG THE SOUTHERLY BOUNDARY LINE OF SAID LOT 85 AND ALONG A CIRCULAR CURVE HAVING A RADIUS OF 1,313.18 FEET THROUGH A CENTRAL ANGLE OF 0 DEGREES 49 MINUTES 08 SECONDS FOR AN ARC DISTANCE OF 18.77 FEET TO THE END OF SAID CURVE; THENCE SOUTH 73 DEGREES 05 MINUTES 48 SECONDS EAST ALONG THE SOUTHERLY BOUNDARY OF SAID LOTS 85 AND 86 AND ALONG AN EXISTING SEA WALL FOR A DISTANCE OF 95.67 FEET TO THE SOUTHEASTLY CORNER OF SAID LOT 86; THENCE NORTH 18 DEGREES 54 MINUTES 12 SECONDS EAST ALONG THE EASTERLY BOUNDARY OF SAID LOT 86 FOR A DISTANCE OF 175 FEET TO THE N.E. CORNER OF SAID LOT 86; THENCE NORTH 73 DEGREES 05 MINUTES 48 SECONDS WEST ALONG THE NORTHERLY BOUNDARY OF SAID LOT 86 FOR A DISTANCE OF 75 FEET TO THE N.W. CORNER THEREOF AND THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED.

CERTIFIED TO:
Broadhouse Holdings Ltd
Stonegate Bank
First American Title Insurance Company



SURVEYOR'S CERTIFICATE:
I HEREBY CERTIFY THAT THIS SURVEY IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF AS REPRESENTED BY THE SIGNATURE AND SEAL OF THE SURVEYOR AND MAPPER. I HAVE NOT BEEN RECALLED BY THE BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN ORDER TO OBTAIN A FURTHER ADVISORY OPINION. I HAVE NOT BEEN RECALLED BY THE BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN ORDER TO OBTAIN A FURTHER ADVISORY OPINION. I HAVE NOT BEEN RECALLED BY THE BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN ORDER TO OBTAIN A FURTHER ADVISORY OPINION.

NOT VALID WITHOUT THE SIGNATURE AND SEAL OF THE SURVEYOR AND MAPPER.
SHEET 1 OF 1



LEITER PEREZ & ASSOCIATES, INC.
LAND DEVELOPMENT CONSULTANTS
CIVIL ENGINEERS - LAND SURVEYORS
520 N.W. 18TH STREET, SUITE 200, MIAMI, FL 33139
PHONE: (305) 452-1133 FAX: (305) 452-1131
WEBSITE: www.leiterperez.com LICENSED B. ENGINEER NO. 5787

TYPE OF SURVEY		REVISIONS:	
BOUNDARY SURVEY		DATE	DESCRIPTION
PREPARED FOR: BROADHOUSE HOLDINGS LTD		DATE	DESCRIPTION
SURVEY DATE: 7-10-2015		DATE	DESCRIPTION
JOB ORDER: 18-209		DATE	DESCRIPTION
FILE NO. B-2356A		DATE	DESCRIPTION
FILE NAME: 18-209APR		DATE	DESCRIPTION
FB 313		DATE	DESCRIPTION
PG		DATE	DESCRIPTION

NOTES:
1. ELEVATIONS SHOWN HEREON REFER TO THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD29).
2. THIS FIRM HAS MADE NO ATTEMPT TO LOCATE FOOTINGS AND/OR FOUNDATIONS (UNLESS OTHERWISE NOTED).
3. THE LANDS SHOWN HEREON HAVE NOT BEEN ABSTRACTED BY THIS FIRM REGARDING MATTERS OF INTEREST BY OTHER PARTIES, SUCH AS EASEMENTS, RIGHTS-OF-WAYS, RESERVATIONS, ETC.
4. THIS SURVEY WAS PREPARED FOR AND CERTIFIED TO THE TRANSPARENT OR ASSOCIATE.
5. ALL IRON PIPES AND CAPS AND TOPS OF SEAWALL SET WITH CAP OR SET WITH KEY.

RECEIVED

JAN 25 2018

DERM Coastal Resources Section
Natural Resources Regulation & Restoration
Division (NRRRD)

76'-0"

25'-0"

14'-0"

(6) NEW 12"x12" CONCRETE
DOCK PILES AS PER
GEO-TECH REPORT, TYP.

NEW 3"x12" BEAM W/ 2 $\frac{7}{8}$ " SS
THRU-BOLTS AT EACH PILE
CONNECTION, TYP.

NEW 3"x8" JOISTS @ 15" O.C. W/
1"x12" LTS12 SIMPSON SS STRAPS
(FL10456.29) W/ 7 SS 10d T&B, TYP.

INSTALL THIS ROW OF
PILES BELOW DECK

12'-0"

12'-0"

NEW 1"x5 $\frac{1}{2}$ " AZEK
COMPOSITE DECKING
WITH (2) #10 SS
SCREWS AT EACH
CONNECTION

12'-0"

2'-0"
2'-0"

EXISTING SEAWALL, SEAWALL CAP
AND BATTER PILES TO REMAIN

LINE OF EXISTING
SEAWALL PANEL BELOW



PROPOSED DOCK PLAN

3/16" = 1'-0"



Southern Marine
Construction, Inc.

Custom Docks
Seawalls
Pier Drilling
Environmental Planning & Permits
www.southernmarineconstruction.net
305-861-305-865

PROPOSED DOCK
CONSTRUCTION

OWNER:
BROADHOUSE HOLDINGS, LTD.
9414 West Broadview Drive
Bay Harbor Islands, Florida

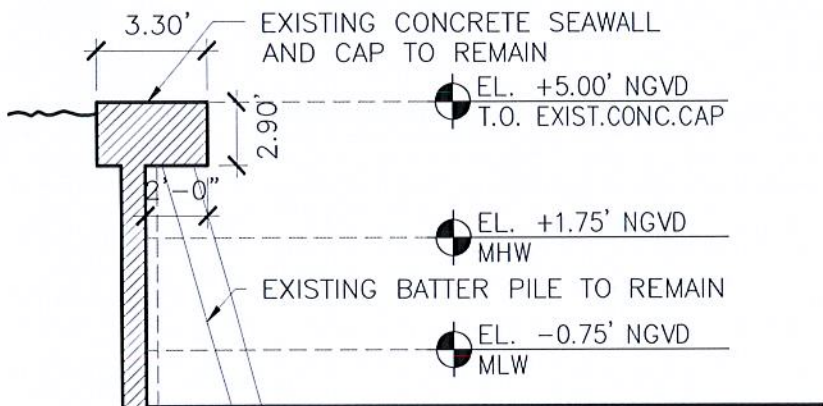
CONSULTING ENGINEERS

J.N. SHEINGOLD P.E. (O) 305 986 7002
12420 SW 75 AVENUE (F) 305 253 4455
MIAMI, FLORIDA 33156
PE #21181

A-2

DESIGN: IN ACCORDANCE WITH FBC 2014, 5th EDITION & ASCE 7-10
PILE NOTES: ALL WOOD PILES TO BE SOUTHERN PINE AND COMPLY WITH A.S.T.M. d25-79 AND BE PRESSURE TREATED W/ C.C.A.
FEDERAL SPECIFICATIONS TT-W-550D(1) OR TT-W-00550E(1) AND AWFA-MP-4. PILES TO HAVE A MIN. DIA. OF 12"
PRESTRESSED CONCRETE: RECOGNIZED TESTING LABORATORY TO VERIFY CONCRETE ATTAINING A STRENGTH OF 6000 psi IN 28 DAYS.
CONCRETE SHALL ATTAIN A STRENGTH OF 3500 psi BEFORE STRANDS ARE RELEASED. REINFORCING SHALL BE PER ASTM A416-6820K
STRANDS WITH #5 GAUGE WIRE SPIRALS AT AN 8 INCH PITCH EXCEPT AT ENDS WITH 6 TURNS AT A 3 INCH PITCH.
MINIMUM PENETRATION OF ALL PILES TO BE AS FOLLOWS:
INTO BEDROCK- 6 FEET MIN.
MINIMUM SAFE BEARING: 10 TONS WOOD PILE & 25 TONS CONCRETE PILE
CONCRETE: CONCRETE FOR THE CAP SHALL ATTAIN A MINIMUM COMPRESSIVE STRENGTH OF 5000 psi AT THE END OF 28 DAYS.
REINFORCING STEEL: ALL REINFORCEMENT SHALL BE 60K psi MINIMUM YIELD NEW BILLET STEEL IN ACCORDANCE WITH ASTM A615
GRADE 60. ALL BAR LAPS SHALL BE A MINIMUM OF 48 BAR DIAMETERS. PLACING OF REINFORCEMENT SHALL CONFORM TO THE LATEST
ACI AND MANUAL OF STANDARD PRACTICE CODES.
*** PROVIDE A MINIMUM OF 3" CONCRETE COVERAGE FOR ALL CONCRETE STEEL REINFORCEMENT. ***
STRUCTURAL LUMBER: ALL DIMENSIONAL LUMBER TO BE PRESSURE TREATED, #1 GRADE S.P. OR BETTER (BEAMS TO BE NON-DENSE
SELECT STRUCTURAL) AND COMPLY WITH NSD 2005 SPECIFICATIONS.
HARDWARE: ALL HARDWARE TO BE HOT DIPPED GALVANIZED ACCORDING TO ASTM A-153-80 OR AS SPECIFIED.
BOLTS: ALL MACHINE BOLTS TO BE HOT DIPPED GALVANIZED ACCORDING TO ASTM A307-83A.
DESIGN LOADS: 40lbs/FT² OF LIVE LOADS
175 mph WIND VELOCITY, EXPOSURE "D"

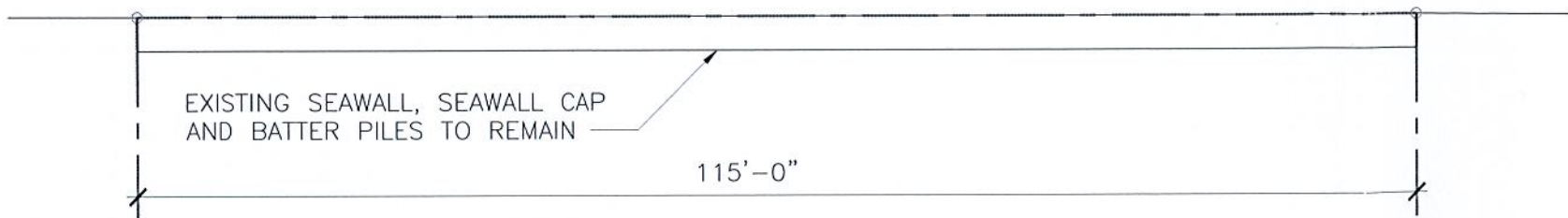
- ALL EXISTING STRUCTURES TO REMAIN UNLESS OTHERWISE NOTED TO BE REMOVED.
- THIS DRAWING IS THE PROPERTY OF SOUTHERN MARINE CONSTRUCTION, INC. AND IS AN INSTRUMENT OF SERVICE NOT TO BE REPRODUCED IN WHOLE OR PART WITHOUT THE EXPRESSED WRITTEN PERMISSION OF SOUTHERN MARINE CONSTRUCTION, INC.
- ALL DIMENSIONS AND ELEVATIONS MUST BE FIELD VERIFIED.



EXISTING SEAWALL SECTION

1/4" = 1'-0"

INDIAN CREEK



EXISTING CONDITIONS PLAN

1/16" = 1'-0"

RECEIVED

JAN 25 2018

DERM Coastal Resources Section
Natural Resources Regulation & Restoration
Division (NRRRD)

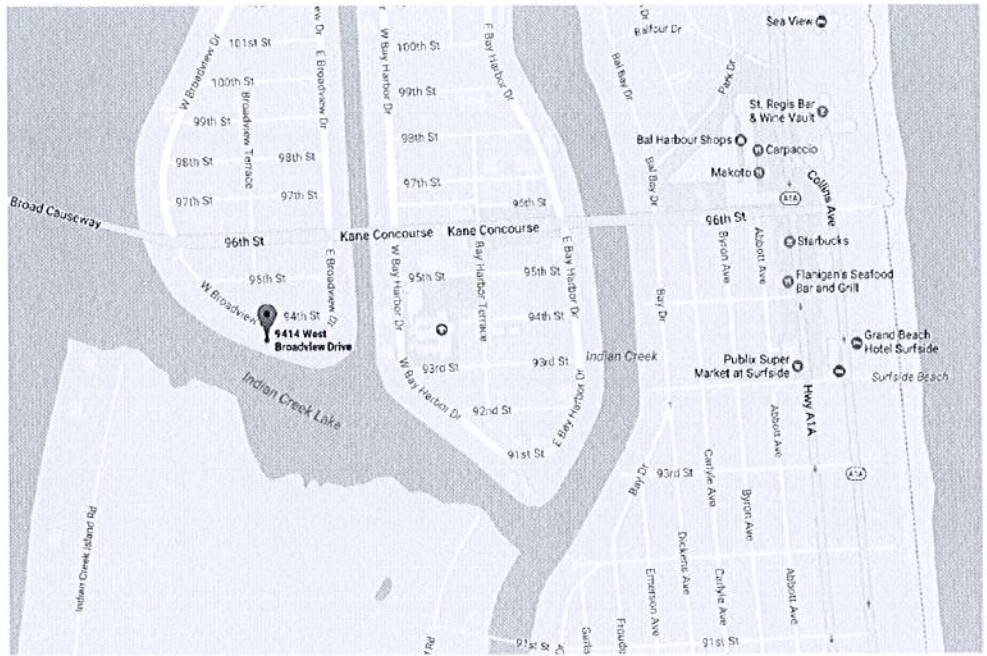


BROADHOUSE HOLDINGS, LTD.
9414 WEST BROADVIEW DRIVE
BAY HARBOR ISLANDS, FLORIDA

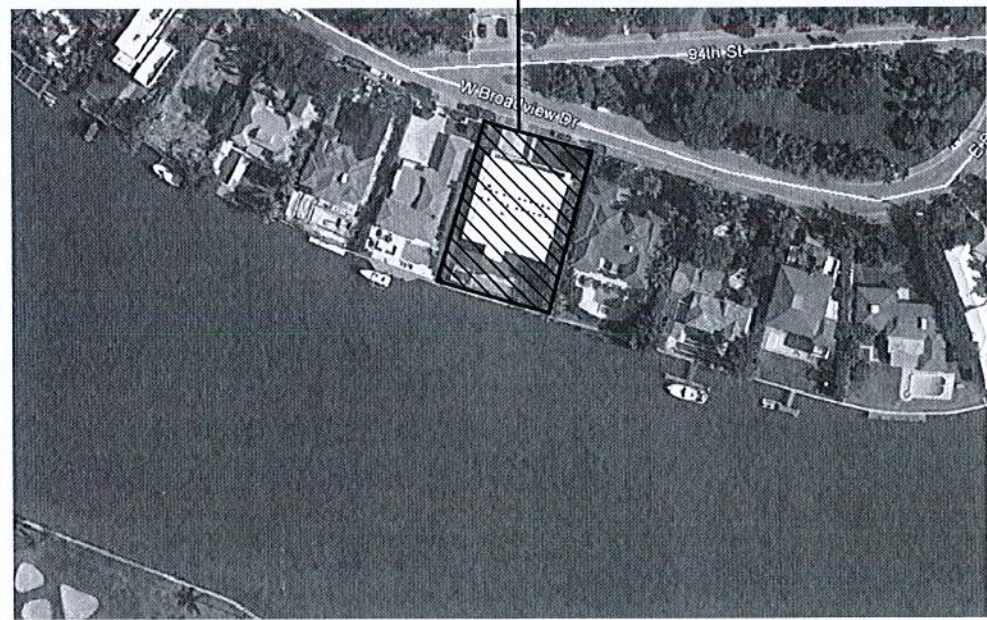
CONSULTING ENGINEER:

J.N. SHEINGOLD P.E.
PE #21181
12420 SW 75 AVENUE
MIAMI, FLORIDA 33156

OFFICE: 305 986 7002
FAX: 305 253 4455



LOCATION MAP
N.T.S.



VICINITY MAP
N.T.S.

Southern Marine
Construction, Inc.

Custom Docks
Seawalls
Boatlifts
Pile Driving
Environmental Planning & Permits
www.southernmarineconstruction.net

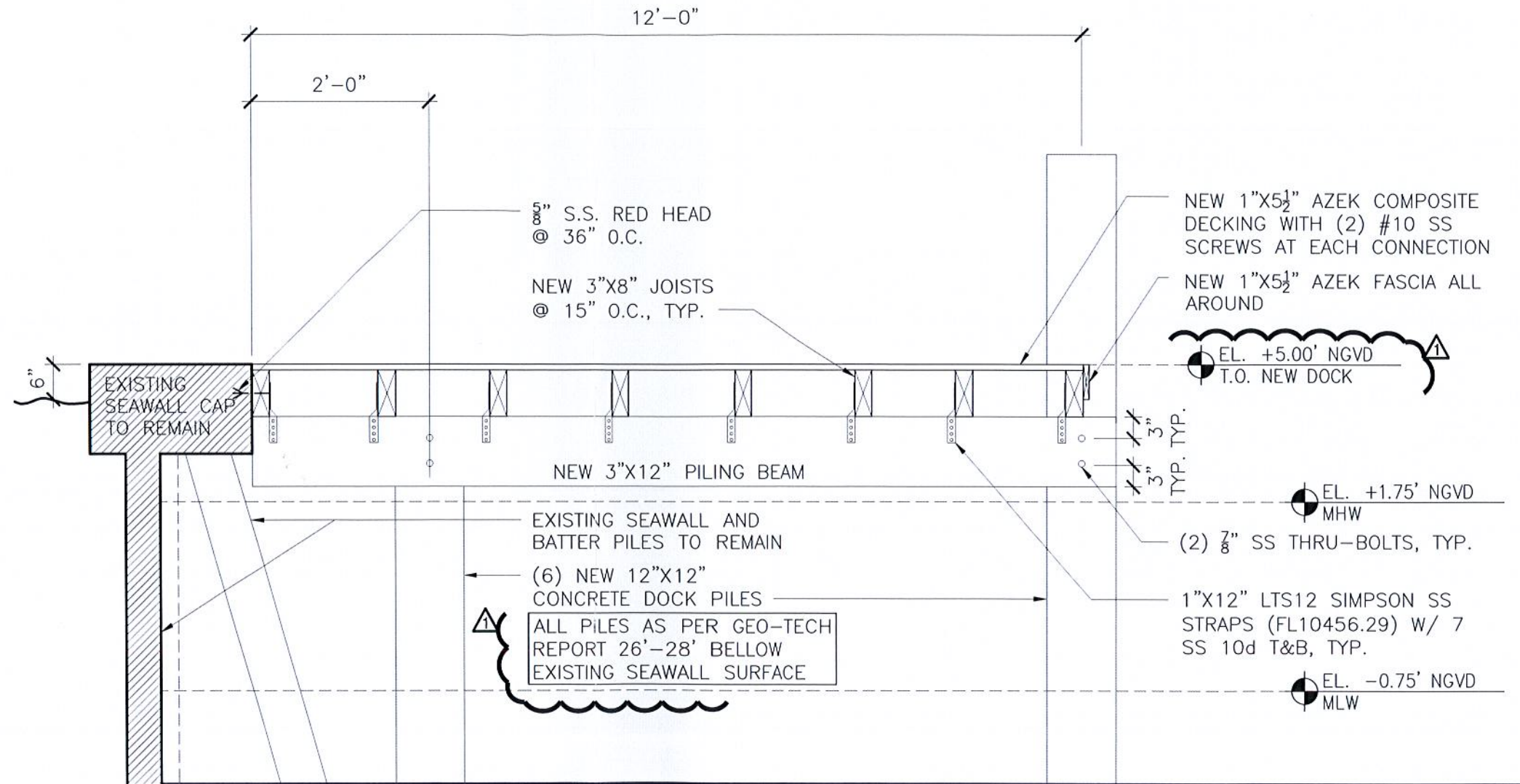
PROPOSED DOCK
CONSTRUCTION

OWNER:
BROADHOUSE HOLDINGS, LTD.
9414 West Broadview Drive
Bay Harbor Islands, Florida

CONSULTING ENGINEERS

J.N. SHEINGOLD P.E. (O) 305 986 7002
12420 SW 75 AVENUE (F) 305 253 4455
MIAMI, FLORIDA 33156
PE #21181

A-1



SECTION AA
1/2" = 1'-0"

[Handwritten Signature]
3/20/18

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Mayor and Town Councilmembers
Town of Bay Harbor Islands

CC: Ron Wasson, Town Manager
Marlene Siegel, Town Clerk

From: Michael J. Miller, AICP *MJM*
Consultant Town Planner

Date: July 23rd, 2018

Subject: Zoning Variance Application – Dock
Applicant - Broadhouse Holdings, Ltd. (Lowenstein)
9414 W. Broadview Drive
Legal Description: Lot 86 & E ½ of Lot 85 / Block 23
MMPA Project No.: 01-0702-1072

ISSUE

The Town has received a variance application from Broadhouse Holdings, Ltd. (M/M Lowenstein) to construct a new dock / viewing platform into the Town-owned Indian Creek Lake separating the communities of Bay Harbor Islands and Indian Creek Village. Southern Marine Construction, Inc. (Robert Rossi) will be the contractor of record. The applicant is requesting a variance from the Town's Zoning and Planning Code in order to construct a rectangular dock / viewing platform that extends 12 feet seaward into the Indian Creek Lake and is 25 feet wide parallel to the seawall. The Code allows docks to extend up to 25 feet into this waterway; however, the Code limits docks to 4 feet in width for any portion extending more than 8 feet beyond the outside face of the seawall cap. The applicant states that this request is due to Miami-Dade County Department of Environmental Resource Management (DERM) requirements related to water depth for docking boats (min 4 feet deep) and due to existing seagrasses. Section 23-12(6)(a)(x) of the Code allows for variances to be requested based on DERM's environmental review. There is currently no dock at the site (demolished in 2016). It is claimed a former dock extended 10 feet into the Indian Creek Lake and was 24 feet / 3 inches long (survey). The Town's permit records note a 8' x 16' dock.

SPECIFIC VARIANCE REQUEST

DERM initially denied the applicant's request to construct an 8-foot-wide dock in compliance with the requirements of the Town's Code citing water depth / seagrass issues. A minimum of 4 feet of water depth is needed, and that depth is not reached until 11-12 feet waterward of the seawall.

The applicant is seeking permission to construct a rectangular dock that extends 12 feet into the Indian Creek Lake and is 25 feet long. The applicant claims the new dock will essentially replace the dock that existed previously (prior to 2016), although slightly larger. Town building permit records reveal this is not true – unless an illegal dock existed without the Town's knowledge.

Below are the applicable Code provisions:

- §23-12(6)(a)(v) No dock which extends more than eight feet beyond the outside face of the seawall cap shall have a width of more than four feet, and shall have no obstructions to such width such as storage bins, benches, etc.;
- §23-12(6)(a)(x) Notwithstanding the above provisions as related to the allowable projection of docks from the outside face of a seawall, because of shifting underwater land elevations and/or environmental characteristics in Biscayne Bay and the Bay Harbor Waterway, the Miami-Dade Department of Environmental Resource Management (DERM) may require alterations to the above stated criteria. Any variation from the above criteria shall require an owner to request and receive a variance from the town council prior to any construction commencing on a dock structure. Such variances shall be on a case-by-case basis, the application shall be accompanied by an environmental assessment from DERM of the waterway adjacent to the subject property, and any town approval shall be limited to the minimal variation of the criteria necessary to meet the unique environmental characteristics of the site;

BACKGROUND

The Town has had land development regulations governing seawalls, docks, mooring piles and related structures for many years. A major Code analysis / rewrite was performed in late 2007. Former Mayor Peter Lynch, a professional boat captain, led efforts to update the Code provisions to include modern standards. Another study effort / Code update was undertaken in 2009-10 due primarily to address seawall heights but was never adopted. However, in November 2013 the Town Council amended this section of the Code to address the heights of future seawalls and again revised some of the regulations for docks, particularly to address the Miami-Dade County restrictions caused by shallow water / environmental issues. Currently the Town is again studying its dock requirements for potential amendments for floating docks.

The subject single-family home was approved by the PZB in 2013 and construction was completed in 2016. This house is one of the noted recent modern homes viewed as "overbuilt / too plain" that has caused the Town to study / adopt new regulations governing single-family home designs.

Again, the applicant is seeking permission to construct a rectangular dock that extends 12 feet into the Indian Creek Lake and is 25 feet long. The applicant claims the new dock will essentially replace the dock that existed previously (prior to 2016), although slightly larger. Town building permit records reveal this is not true – unless an illegal dock existed without the Town's knowledge. The only building permit record on file for a dock at this site was for a typical rectangular dock extending 8 feet into the waterway and 16 feet in length parallel to the seawall – which would have complied with the Town Code.

Also, the former dock was the subject of a Town Code violation case in 1997-98 due to the height of the dock (higher than seawall as limited at that time). A Town Building Inspector at that time noticed the previous dock exceeded the height of the seawall – that was prohibited at that time. There is no mention as to the size of the dock in 1997-98 in the Town's documents - so it is presumed it was sized correctly – as Town staff inspected the site and inventoried all docks in the Town at that time. This led to a courtesy notice to cure and eventually a formal Code citation. The owner filed a variance request for the dock. The matter was discussed by the Town Council at that time. The records note that at the October 1998 Town Council meeting they considered the dock variance and/or amending the Code on the dock height / seawall issue but decided not to grant the variance or amend the Code. The Town Council voted to “grandfather” all existing non-conforming docks that exceeded to height limit. A condition was included that if any replacement / repairs occurred, the older docks had to be modified to comply with the latest Code requirements. Former Town Manager Linda Karlsson sent a letter to the Lowenstein's and other non-conforming dock owners. MMPA notes that years later (2007 / 2010 / 2013) the Town Council at those times studied / updated its Codes related to seawalls and docking facilities. Seawalls can now be much higher, as well as docks, and DERM environmental issues can be addressed via variances. Also, docks may now cross over seawalls as well. So, the issue before the Town now is the shape and size of the proposed dock. MMPA contacted DERM staff directly and was informed while they agreed in concept with the applicant's submittal, their only focus was on the water depth / seagrass issue – at least 4 feet deep for boat motors. Other dock designs that extend waterward 11'-12' to reach 4 feet of water depth would also be acceptable.

A review of nearby docks on this section of the West Island reveals the following (aerial attached):

- 9406 W. Broadview Drive (3 properties away) has a “T” shaped dock, with the decking 4 feet width, that extends approximately 18 feet from the seawall that complies with the Code.
- 9408 W. Broadview Drive (2 properties away) has a “T” shaped dock, with the decking 4 feet width, that extends approximately 20 feet from the seawall that complies with the Code;
- 9418 W. Broadview Drive (adjoining site) has a rectangular shaped dock over both the water and crossing seamlessly over the seawall into the rear yard (making it look larger); however, the decking extends approximately 8 feet from the seawall and is about 25 feet in length, that complies with the Code. Last noted Town permit activity prior to 2005.
- 9420 W. Broadview Drive (2 properties away) has a rectangular shaped dock over the water, with the decking extending approximately 5'-7" from the seawall and is 42'-2" in length, that complies with the Code.
- 9424 W. Broadview Drive (3 properties away) has a rectangular shaped dock over both the water and crossing seamlessly over the seawall into the rear yard (making it look larger); however, the decking extends approximately 8 feet from the seawall and is 25 feet in length, that complies with the Code.

The application package submitted included a Town variance application form, a property survey and a site design plan / dock plan showing the location of the proposed dock designed by project engineer (J.N. Sheingold P.E). The applicant also included correspondence from DERM.

Town staff (Clerk / Bldg. Dept.) was able to research the Town's archived records and provide an abundance of historical records (correspondence / letter / staff notes / TC minutes / etc.) to assist MMPA in our analysis of this application.

ANALYSIS

As per the Town's request, MMPA has completed our review of the variance application and provide the following analysis and comments.

The subject property is located on the south side of the West Island facing Indian Creek Lake. Pursuant to the Town's Zoning and Planning Code, docks may extend up to 25 feet into this waterway; however, the Code limits docks to 4 feet in width for any portion extending more than 8 feet beyond the outside face of the seawall cap. Due to the silting-in of underwater lands near the seawalls creating shallow depths, the growth of seagrasses on those underwater lands, and sea life, the Code includes provisions for variances to be filed related to the allowable projection of docks when they are limited to the "minimal variation of the stated criteria necessary to meet the unique environmental characteristics of the site".

In 2012 when the redevelopment house plans were submitted to the Town a survey was submitted showing an existing 10-foot by 24'-3" long dock. The Town has no record of approving a large dock – it could not have received Town permits as it violates numerous Code provisions and would have need variances. The only public record the Town has related to a variance at this site is from 1997-98 for the height of the dock (exceeding the seawall height). The approved 2012 PZB plans show only a proposed new 4-foot wide dock extending 21'-3' into the Indian Creek Lake – which would be allowed.

The applicant originally went to DERM with a proposal for an 8-foot-wide rectangular marginal dock (allowed by Town Code) and received a response from DERM on August 9, 2017 denying the request, stating that the 4-foot underwater land contour is not obtained until approximately 11-12 feet waterward from the face of the seawall. A water depth of 4 feet is needed for a boat slip / mooring area. DERM stated that they could authorize a 12-foot-wide by 25-foot-long dock utilizing the footprint of the previous dock – which has been demolished – and the Town has no record of approving. When the building permit for the new 12-foot x 25-foot dock was originally reviewed (not per PZB plans / rectangular dock), MMPA's zoning comment was to revise the plans to comply with the Town Code requirements or seek a variance to address the DERM issues.

Upon receipt of the variance application MMPA contacted DERM staff directly. DERM issued a corrective email dated July 23, 2018 providing a correction to their initial Completeness Summary dated July 6, 2017 where they state a dock that is a minimum of 15 feet waterward of the seawall is needed, reducing the required projection of the dock into the waterway by 3-4 feet. The July 6, 2017 DERM Completeness Summary states that a set of revised plans showing a design of an "L" or "T" shaped dock with a 4-foot accessway and up to 8-foot-wide by 20-foot-long terminal platform should be submitted for their review. We have confirmed with DERM that a "L" or "T" dock in compliance with the Town Code could be approved.

With there being docks on numerous neighboring properties that are “T” or “L” shaped designs which comply with the Town Code and DERM stating that they can approve a similar dock, this variance request (a large rectangular 12' x 25' dock) is not a “minimal variation” as required by the Town Code and should be **DENIED** in our opinion. The previous larger dock was most likely illegal and nonconforming, was removed, was shown as a minimal lineal dock (4' x 21') on the 2012 redevelopment plans and does not provide the applicant any entitlement to replace it. As proposed, the dock will be larger in width than any other “legal dock” found on either island.

CONCLUSION AND RECOMMENDATION

Based on historical research of docks at this site, Town Manager instructions to the same owner in 1998 that stated while the former 8' x 16' dock was grandfathered as to height, any new dock would need to comply with current Code requirements, and the above analysis, MMPA recommends that the Town Council **DENY** the requested variance as submitted. The dock design is too massive and plain – a complaint made against the house / site design itself. MMPA recommends the dock be re-designed to comply with the 2012 PZB plans or modified to match most others in the area (“T” / “L”). It is believed the existing parallel docks at nearby homesites are older and predate the current DERM environmental regulations.

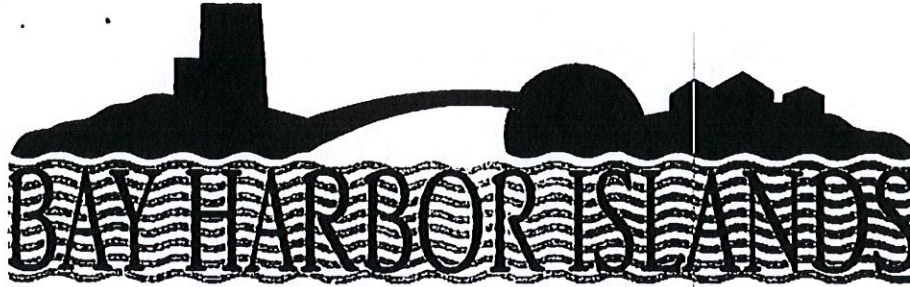
Town Officials
Linda Karlsson
Town Manager

Ken Cassel
Asst. Manager

Sara M. Casal
Town Clerk

Craig Sherman
Town Attorney

Alan K. Short
Finance Officer



Town Council
Thomas E. Gillick
Mayor

Robert H. Yaffe
Vice Mayor

Council Members
Steven M. Brown
Joseph J. Gardner
Jay Meiselman
Edward M. Tavlin
Linda Zilber

**TOWN OF BAY HARBOR ISLANDS
NOTICE OF PUBLIC HEARING**

Please take notice that on Monday, November 9, 1998, at 7:00 p.m. or as soon thereafter as may be reached on the agenda, in the Council Chambers of the Bay Harbor Islands Town Hall, located at 9665 Bay Harbor Terrace, Bay Harbor Islands, Florida, a public hearing will be held before the Town Council with regard to the following matter:

A REQUEST FROM THE OWNERS OF THE RESIDENCE
LOCATED AT 9414 WEST BROADVIEW DRIVE, HALF OF
LOT 85 AND ALL OF LOT 86, IN BLOCK 23 FOR A
VARIANCE FROM SECTION 23-12(6)(a) OF THE TOWN
CODE RELATED TO A DOCK ABOVE THE EXISTING
HEIGHT OF THE SEAWALL.

Interested parties are invited to attend and be heard with regard to this matter.

SARA M. CASAL, TOWN CLERK

MEMORANDUM

DATE: November 4, 1998

TO: MAYOR AND TOWN COUNCIL

FROM: LINDA KARLSSON, TOWN MANAGER 

Subject: **Update** - Request for Variance at 9414 West Broadview Drive, half of Lot 85 and all of Lot 86 in block 23, Alfredo and Diana Lowenstein

This memo is to provide additional information to the Town Council members in connection with the subject variance request.

In my memo dated October 23rd, I indicated the Lowenstein dock is "approximately 8 to 12 inches above the seawall." However, an actual measurement taken this week shows that the dock is 15 inches above the seawall.

Of the 10 West Island docks observed to also have docks higher than the seawall, one was authorized by variance in 1991 to allow a dock 5 inches higher than the seawall. On a second property, a permit was issued in 1979 for a dock, and the plan drawing does show the dock at 6 inches above the seawall. On that same property, another permit was issued for replacement in 1985, but the plans for the replacement are not on file and we were unable to determine whether the violation was noted at that time and was supposed to be corrected. On the other 8 docks, they were either constructed without permit or the plans on file for the permits show the dock as being level with the seawall which indicates the construction was done incorrectly. Based on the photographs taken, most do not appear to be more than 6 or 8 inches above the seawall and some are only a few inches above.

With regard to the East Island, better information received indicates only 4 properties with docks above the seawall. One of those properties recently obtained a permit to demolish the dock; another had only one permit issued in 1957 with a permit to replace boards in 1977; the third had two permits to repair dock but no sketches on file and the fourth had no permit or sketches for any dock.

None of the docks appear to be as high as the Lowenstein dock.

LK:me

MEMORANDUM

DATE: October 23, 1998

TO: MAYOR AND TOWN COUNCIL

FROM: LINDA KARLSSON, TOWN MANAGER *LK*

Subject: Request for Variance at 9414 West Broadview Drive, half of Lot 85 and all of Lot 86 in block 23, Alfredo and Diana Lowenstein

The original residential structure at this property was built in 1951. In 1952, the original owner added a small dock (7.5 feet measured out from the seawall by 14 feet measured side to side). The plan drawing on file for that dock indicates the deck was level with the seawall. The last reference to that dock in the file was on drawings for installation of a fence in 1961 and again in 1966 for a fence replacement.

Mr. Lowenstein is apparently the second owner of the property, which he purchased in approximately 1977. A search of the building file and plans indicates a number of improvements have been made by Mr. Lowenstein over the years, including an addition to the structure and extensive renovation, a new swimming pool, new central a/c, etc. In addition, a permit was issued on August 8, 1988 for the installation of batter piles and a new seawall cap. The plans submitted for that work mention and depict an "existing dock" but since no work on the dock was a part of the plans, they do not indicate any details.

In 1997, the Town's building inspector was sent to make an inspection on a nearby property. Mr. Reed saw the Lowensteins' dock and, being aware of the Town's restriction on dock heights, immediately noticed that it was higher than the seawall. (He also noted that the dock was not far from needing replacement.) Upon verifying in our records that no permit had been issued for this dock, a notice of violation was issued and on June 17, 1998, Mr. Lazar appeared before the Special Master. A copy of the Special Master's findings is attached to this memorandum.

Upon Mr. Lazar's assertion before the Special Master that other properties had similar violations, we surveyed the East and West Islands. On the West Island, there are 86 homes on the water and there are approximately 69 or 70 docks (the count was made from aerial photographs and in several cases a dock may be hidden by the canopies of large trees). On the East Island, there are 79 waterfront buildings and 73 docks. A survey by boat found ten West Island properties (other than the Lowensteins) with docks higher than the seawall and seven East Island properties. In some cases, the violation consists of no more than the flat thickness of a board. The Lowenstein dock is approximately 8 to 12 inches above the seawall. We are researching the files for these properties to verify whether the violating docks were constructed with a permit. However, the existence of a similar violation on other properties is not grounds for dismissal of a violation notice.

Memorandum
Mayor and Town Council
October 23, 1998

With respect to the opinion of the special master:

1. It is, of course, up to the Town Council whether it wishes to consider amending the Town Code. Should the Town Council determine that it wishes to amend the code regulations on the height of docks, the administration will refrain from issuing violation notices to the other properties with such docks. If the code is to be changed, please note you will need to determine what height above a seawall cap is acceptable.
2. I do not believe a "city-initiated variance" is appropriate in view of the substantial number of other property owners who have docks that do comply with the code.
3. Grandfathering is not applicable in this case inasmuch as the issue of dock height has been the same since 1952 and the dock in question was clearly constructed since that time.

With respect to the request for variance on the basis of hardship, the administration notes that the only dock at the subject property that was built to code was the original dock constructed in 1952. When that dock was replaced, we cannot say, but there are no plans or permit on file for the current dock. Furthermore, when the batter piles and new seawall cap were installed in 1988 the work was inspected by Mr. Reed who would have noticed if there were a new dock at that time.

Enclosed is a copy of Sec. 2-22 of our Town Code outlining the facts and circumstances under which the Town Council may grant a variance.

**IN THE MATTER OF A HEARING ON THE NOTICE
OF VIOLATION SERVED ON**

OWNER/VIOLATOR: Alfredo & Diana Lowenstein
MAILING ADDRESS: 9414 W. Broadview Dr.
Bay Harbor Islands, FL 33154

LOCATION OF VIOLATION: 9414 W. Bay Harbor Dr.

Lot 85 & 86, Block 23

Citation No. 821

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Findings of Fact

This matter is before the Special Master this 17th day of June, 1998, as a follow-up to a previous hearing on April 17, 1998 on a Citation alleging violation of Section 23-12 (6) (a) relating to the maintaining of a dock which has been determined above the existing height of the seawall, in violation of this Code provision.

The Findings of Fact, Conclusions of Law, and Order of April 17, 1998 are adopted as a part of the Order resulting from this hearing.

Bruce E. Lazar, Esq., who testified on special knowledge as well as attorney for Mr. and Mrs. Lowenstein previously, appeared today and was duly sworn. He indicated his clients were considering filing a variance petition with the Council on grounds of "hardship" and petitioned the Special Master for additional time to undertake this procedure, which was suggested by the Special Master in his previous Order. Mr. Lazar indicated he had discussed the matter with the Assistant Town Manager and a contractor.

It appears that on the basis of recommendation by the Special Master, a water inspection of other properties which maintain docks has resulted in a report of at least ten (10) other properties on the West island which are technically in violation of the provisions of the above Code section. There may be more on the East island.

It is the opinion of the Special Master that this is a violation that, (a) could necessitate an amendment of exemption to existing docks; (2) be the subject of a city-initiated variance in the cases which fall within the parameters of variance laws; (3) be the subject of a "grand fathering" decision, or, (4) be determinable by previously published law on which the provisions of the Code, respecting the height of the dock, would be controlling.

Wherefore the premises Considered:

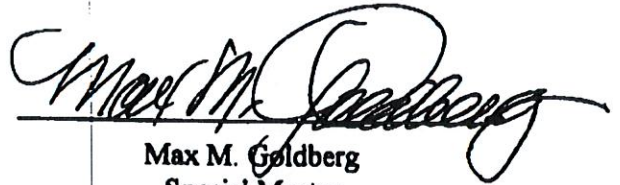
It is Ordered that this matter be reset for a hearing on the 6th of October, 1998.

It is further recommended that the issues in this case be fully explored by the office of the Building Department, with consultation with the Town Manager, Town Council and Town Attorney, to determine whether there is any other way of meeting the legal mandate of the Township and the equities which the Township is required to provide its residents.

Page Two Findings of Fact

If this matter cannot be resolved through other means, the Special Master is prepared to act on this case in accordance with the facts and the Code provisions prevailing.

Ordered this 17th day of June, 1998.



Max M. Goldberg
Special Master

To: All parties.
Town Manager
Town Counsel
Code Compliance Officer

least ten (10) days prior to the date of such hearing. The publication shall indicate the nature and type of variance sought and the specific property involved. In addition to the foregoing, the town clerk shall cause to be delivered individual notices of such application for variance and hearing, in person, or by mail, to the owners of record of all property within three hundred seventy-five (375) feet of the property under consideration; provided, however, that in case of notice by mail, such notice shall be mailed not less than seven (7) days before the date of the hearing. (Ord. No. 434, § 6, 1-13-86)

Sec. 2-22. Public hearing.

(a) At the public hearing, the town council shall consider the application for variance.

(b) At the public hearing, property owners of record of all property within three hundred seventy-five (375) feet of the property under consideration, and any other interested persons shall be permitted to testify and express their opinions before the town council. At the public hearing, the town council shall determine whether to grant or deny the application for variance. Any variance shall be granted only after a public hearing has been held and at which persons interested and/or affected shall be afforded an opportunity to be heard. An affirmative vote of five (5) of the seven (7) members of the town council is necessary in order to grant an application for a variance. The decision of the town council shall be final and there shall be no further review except by resort to a court of competent jurisdiction. All decisions of the town council to grant an application for variance shall be by written resolution. In order to authorize any variance from the provisions of the Code of the Town of Bay Harbor Islands the town council must and shall find:

- (1) That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.
- (2) That the special conditions and circumstances do not result from the actions of the applicant.

- (3) That granting the variance requested will not confer on the applicant any special privilege that is denied by this article to other lands, buildings or structures in the same zoning district.
 - (4) That literal interpretation of the provisions of the Code would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district and would work unnecessary and undue hardship on the applicant.
 - (5) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.
 - (6) That granting the variance will not change the use to one that is different from other land in the same district.
 - (7) That the grant of the variance will be in harmony with the general intent and purpose of the Code, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.
- No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted use of land, structures or buildings in other districts, shall be considered grounds for the issuance of a variance.

(c) In granting any variance, the town council may prescribe appropriate conditions and safeguards in conformity with the Code of the Town of Bay Harbor Islands. Violations of such conditions and safeguards, which are made a part of the terms under which the variance is granted, shall be deemed a violation of the Code of the Town of Bay Harbor Islands and punishable under Sections 1-8, 23-17, 23-37 and any other applicable penalty section(s) of the Code.

(d) Under no circumstances will the town council grant a variance to permit a use not permitted in the district involved, or any use expressly or by implication prohibited by the Code. (Ord. No. 434, § 7, 1-13-86)

BRUCE E. LAZAR
ATTORNEY AT LAW
2901 COLLINS AVENUE
SUITE M
MIAMI BEACH, FLORIDA 33140

TELEPHONE (305) 535-8118
FAX (305) 673-8865

October 9, 1998

Town Council
Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

Re: Alfredo and Diana Lowenstein
9414 W. Broadview Dr.
Request for Variance from Section 23-12(6)(a) BHI Code

To Whom It May Concern:

This letter is submitted in conjunction with Mr. & Mrs. Lowenstein's request for a variance from the above referenced section of the Bay Harbor Islands code which requires that decks of docks be no higher than the sea wall.

The Lowenstein's have resided at their current address in Bay Harbor Islands since approximately 1977. In approximately 1988, the Lowenstein's were required to restore their sea wall. When the sea wall repairs were completed, the deck was restored in its original location and has remained so since that time. In February, 1998, some ten (10) years after the dock was restored, the Lowenstein's received a Notice of Violation to the effect that the deck of their dock was higher than the sea wall in violation of the above referenced code section. The Lowenstein's were advised that they may comply with the violation by removing the structure, obtaining a variance, or reconstructing the structure according to the town code.

The undersigned has appeared before the Special Master on several occasions regarding this matter. There was evidence presented of wide spread violations of this ordinance. On the recommendation of the Special Master, a water inspection of other properties was made by the Town and resulted in a report of at least ten (10) other properties on the west island in violation of the code section. The report noted that there may be more on the East Island. It was the opinion of the Special Master that the violation (a) could necessitate an amendment of exemption to existing docks; (b) be the subject of a city initiated variance in the cases which fall within the parameters of variance laws; (c) be the subject of a grandfathering decision, or; (d) be determinable by previously published law on which the provisions of the code, respecting the height of the

dock would be controlling. (See Special Masters Report dated June 17, 1998.) The Special Master recommended that the case be fully explored by the office of the Building Department, with consultation with the Town Manager, Town Council and Town Attorney to determine whether there is any other way of meeting the legal mandate of the Township and the equities which the Township is required to provide its residents. The city apparently decided to take no action generally with respect to this matter and the Special Master afforded the Lowenstein's the opportunity to file a request for Variance.

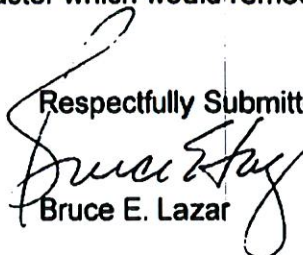
Accordingly, the Lowenstein's respectfully request the Town Council to grant them a variance from the above referenced code section because of hardship. The specific hardship is that if the dock is placed even or below the sea wall, during times of high tide and/or rough seas the water level will be at the level of the supporting structure which will ultimately cause the dock to be damaged or destroyed. A secondary hardship is that the Lowenstein's are visited from time to time by friends who have large vessels. If the dock is too low, then it is difficult or impossible for those larger vessels to properly tie up and disembark passengers.

Other factors which the Town Council should consider are as follows:

- a) the deck has been in place since 1988 without complaint.
- b) the dock was apparently originally built according to the code then in force. When it was restored in 1988, it was put back in its original condition and location.
- c) there are apparently numerous violations of this code section throughout the Town as confirmed in the various Special Master reports relative to this matter. Although it is impossible to know what prompted these numerous violations, it could be presumed that these other residents have the same problem as the Lowenstein's if their docks are to be lowered in accordance with code.

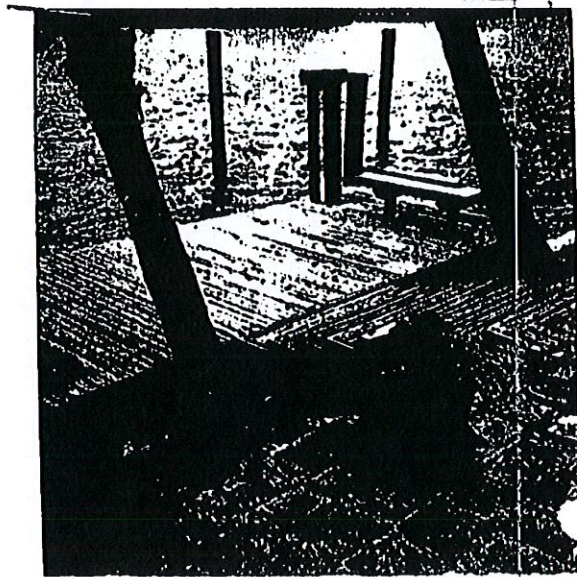
Based upon the forgoing, the Lowenstein's respectfully request a variance from the code section or, in the alternative, request that the Town Council take action as suggested by the Special Master which would remedy this situation town wide.

Respectfully Submitted,



Bruce E. Lazar

BEL/sd



TOWN OF BAY HARBOR ISLANDS, FLORIDA
APPLICATION FOR VARIANCE AND PUBLIC HEARING

DATE: October 7, 1998

1. PROPERTY ADDRESS: 9414 W. Broadview Drive

LEGAL DESCRIPTION: LOT: E $\frac{1}{2}$ 85 & 86 BLOCK: 23

SUBDIVISION: Bay Harbor Island

2. APPLICANT'S NAME: Alfredo & Diana Lowenstein

ADDRESS: 9414 W. Broadview Drive

051.7200 10/22/98 140000

BUSINESS PHONE: 305-532-2511 RESIDENCE PHONE: 305-864-5139

3. PROPERTY OWNER'S NAME: Alfredo & Diana Lowenstein
(If different from applicant)

ADDRESS: Same as above

BUSINESS PHONE: Same RESIDENCE PHONE: Same

4. NAME OF CONTRACTOR and/or ARCHITECT: N/A

TELEPHONE: _____

5. PRESENT ZONING CLASSIFICATION: Residential

6. IF APPLICANT IS THE PROPERTY OWNER, INDICATE DATE ACQUIRED: 1977

7. IF APPLICANT IS THE LESSEE, INDICATE LEASE DATE: N/A

INDICATE TERMS OF LEASE: _____

8. LEGAL DESCRIPTION OF ANY CONTIGUOUS PROPERTY OWNED BY THE APPLICANT:

LOT: N/A BLOCK: SUBDIVISION:

9. IS THERE AN OPTION TO PURCHASE OR LEASE THE SUBJECT PROPERTY? YES / NO
(Circle one)

IS IT PREDICATED ON APPROVAL OF APPLICATION? YES / NO
(Circle one)

10. IS HEARING BEING REQUESTED AS A RESULT OF A VIOLATION NOTICE? YES / NO
(Circle one)

11. HAS A PUBLIC HEARING PREVIOUSLY BEEN HELD REGARDING THIS PROPERTY?

NO
YES

DATE: _____ DECISION: _____

12. ARE THERE ANY EXISTING STRUCTURES ON THE PROPERTY TO BE DEMOLISHED?

NO
YES

DESCRIBE: _____

13. BRIEFLY STATE REQUEST: Variance from Section 23-12 which prohibits
docks higher than sea wall.

14. THE FOLLOWING ARE TO BE NOTIFIED OF HEARING DATE, AS MY REPRESENTATIVE(S):
(Please provide this information, or they will NOT be notified)

<u>NAME</u>	<u>ADDRESS</u>	<u>PHONE</u>
<u>Bruce Lazar</u>	<u>2901 Collins Avenue</u>	<u>(305) 535-8118</u>
_____	<u>Miami Beach, FL 33140</u>	_____
_____	_____	_____

Applicant Signature(s)

Bruce Lazar
Anthony Lopez

10/9/98
Date

_____ Date

_____ Date

**REQUEST FOR VARIANCE
OWNER/POWER OF ATTORNEY AFFIDAVIT**

DATE: OCT 5, 1998

The subject property is legally described as:

LOT: E 1/2 Lot 85 + Lot 86 BLOCK: 23
ADDRESS: 9414 W. Broadview Dr.

SUBDIVISION: BAY HARBOR ISLANDS

I (we), Alfredo Lowenstein + Diana Lowenstein being
duly sworn, depose and say that I am (we are) the owner(s) of the described real property and that I am (we
are) aware of the nature and effect of the request for variance(s) on the above subject property, which request
is hereby made by me (us) OR I am (we are) hereby authorizing BRUCE E. LAZAR
to be my (our) legal representative before the Town Council with respect to said request.

I (we) hereby authorize the Town of Bay Harbor Islands to enter the subject property for the sole purpose of
posting a NOTICE OF PUBLIC HEARING on the property as required by the Town Council, and do take the
responsibility of removing this notice after the date of the hearing.

[Signature]
Signature of Owner

[Signature]
Signature of Co-owner

Before me this day personally appeared _____

Before me this day personally appeared _____

known to me to be the person described in and who
executed the foregoing instrument, and
acknowledged to and before me that _____
executed this document for the purposes therein
expressed.

known to me to be the person described in and who
executed the foregoing instrument, and
acknowledged to and before me that _____
executed this document for the purposes therein
expressed.

Sworn to and subscribed to before me this _____
day of 7 of October, 1998.

Sworn to and subscribed to before me this _____
day of 7 of October, 1998.

[Signature]
Notary Public

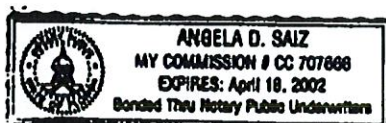
[Signature]
Notary Public

My commission expires: _____
Personally known ☒ Produced I.D. _____
Type/number of I.D. _____

My commission expires: _____
Personally known ☒ Produced I.D. _____
Type/number of I.D. _____

_____ DID TAKE an oath, or
☒ DID NOT take an oath

_____ DID TAKE an oath, or
☒ DID NOT take an oath



AGENDA ITEM REPORT

September 17, 2018

ITEM NUMBER: 2.

ITEM: Approval or Denial of the a variance request for residence located at 9414 W. Broadview Drive. As required by Section 2-22 of the Town Code, the Town Council shall determine whether to grant or deny the application for variance. An affirmative vote of five Council Members is necessary in order to grant the request. The decision of the Town Council is final. If the request is granted, the decision of the Town Council shall be recorded in a resolution to be prepared by the Town Attorney. It should be noted that any approval of the Town Council is subject to other requirements of the Town Code, County Code, Florida Building Code, FEMA, etc.

DESCRIPTION:

RECOMMENDED ACTION:

Deny the requested variance as submitted.

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

None