

BMA, INC.



Memo To: Daniel J. Comerford, III
Mayor, Jupiter Inlet Colony

From: Mark Bolchoz, P.E.
M-K Bolchoz

Date: July 6, 2020

CC: Bill Whiteford

RE: 78 Lighthouse Drive – Dock Variance Request

We have reviewed the supporting documents for a dock variance at 78 Lighthouse Drive. The specific variance request (to encroach on the required 25-foot riparian line setback to dock structures) appears to be valid. Maintaining the current dock location (15' from the riparian line) in the proposed dock reconstruction makes good sense for the town and the residents, for all the reasons provided in the variance request summary.

However, there are other items surrounding the proposed dock and boatlift that do not meet the town code, as well as other conflicts between the variance request and the property owner's DEP permit:

- 1- The DEP drawings do not match the variance drawings. The variance drawings show a finger dock and terminal platform, whereas the DEP permit drawings only have the terminal platform.
- 2- The proposed boatlift is shown in different locations in the DEP permit drawings and variance request drawings. The variance drawing shows the lift further to the west.
- 3- JIC code states that the dock can extend waterward up to a maximum 10% of the waterway width; from the subject property seawall to the opposite edge of the channel is approximately 600'. So, technically, the dock should only be allowed to extend 60' into the inlet.

(It should be noted that this dock, nor many other docks in JIC, meet the third length criteria in Sec. 21-18(a)(3), as it is a fairly impractical restriction).

- 4- The variance drawings show a finger and the terminal platform, both at 16' long, for 32' total of perpendicular docking. JIC code allows a maximum of 25' (per Exhibit "E" in the ordinances).
- 5- The proposed dock is under 500 square foot on the variance drawings. However, the DEP permit is counting the one large boatlift as a platform lift, and hence they are calculating the proposed square footage as being close to 725 square feet. The town code limits docks to a maximum 500 square feet.

In summary, while the specific variance that is being requested appears to be a valid variance, these other factors mentioned above should be resolved as well, prior to the town's approval of the new dock configuration. We are available to discuss the subject further at your convenience.

Chapter 21 - WATERWAYS^[1]

ARTICLE I. - IN GENERAL

Sec. 21-1. - Vessel exclusion zone.

It shall be unlawful for any persons to operate a vessel within an area that has been designated and marked as a swim area or vessel exclusion zone. (Ord. No. 224-135-90, § 1, 3-27-06)

Secs. 21-2—21-15. - Reserved.

ARTICLE II. - DOCK AND PIER CONTROL

Sec. 21-16. - Definitions.

The following words and phrases, when used in this article, shall have the meanings respectively ascribed to them:

Commercial dock means a dock or pier which is used to produce income and shall include any dock or pier not defined herein as a private dock.

Dock means a fixed or floating structure, including moorings, used for the purpose of berthing buoyant vessels either temporarily or indefinitely, or for a finite period.

Mean high water means the average height of the high waters over a nineteen-year period, or for shorter periods of observation, the average height of the high waters after corrections are applied to eliminate known variations and to produce the result of the equivalent of a mean nineteen-year value. Alternatively, mean high water may mean the average height of the high waters as established and accepted by the United States Army Corps of Engineers.

Mean high water line means the intersection of the tidal plane of mean high water with shore.

Mean low water means the average height of the low waters over a nineteen-year period, or for shorter periods of observation, the average height of the low waters after corrections are applied to eliminate known variations and to produce the result of the equivalent of a mean nineteen-year value. Alternatively, mean low water may mean the average height of the low waters as established and accepted by the United States Army Corps of Engineers.

Mean low water line means the intersection of the tidal plane of mean low water with the shore.

Moorings piling means a post, pillar, piling or stake used for the purpose of berthing buoyant vessels either temporarily or indefinitely, or for a finite period, whether or not used in conjunction with a dock.

Pier means a fixed or floating structure, on or over submerged lands which is used primarily for fishing, swimming or viewing the waterway. A pier shall not include a dock.

Private dock means a dock or pier which is used for the private leisure purposes of a resident of a single- or multi-family dwelling unit located on a contiguous riparian parcel, and which does not produce income.

Submerged lands means lands lying in or below the public waters of the state waterward of the mean high water line.

Three-foot mean low water line means the line formed by the intersection of a plane three (3) feet below the tidal plane of mean low water with the shore.

Waterway width means, with respect to any dock or pier to which the measure applies, the straight line distance from the point at which the center line of the dock or pier intersects the mean high water line, measured to the nearest point on the mean low water line of the opposite shore of the waterway.

A representative illustrative sketch depicting the manner of determining "waterway width" is on file in the clerk's office, and designated as exhibit "A." (Ord. No. 99-81-2, § 1, 7-6-81)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 21-17. - Scope.

This article shall apply within the public waters of the state comprising the Loxahatchee River and all creeks, canals or waterways or tributaries connected therewith, located within the geographical boundaries of the municipality lying eastward or downstream of the Florida East Coast Railway bridge over the Loxahatchee River at or near the Atlantic Intracoastal Waterway including Jupiter Inlet in Palm Beach County, Florida. (Ord. No. 99-81-2, § 2, 7-6-81)

Sec. 21-18. - Length, width and configuration.

- (a) No dock or pier shall be constructed which extends waterward from the mean high water line in excess of the lesser of the following distances:
 - (1) Seventy-five (75) feet; or
 - (2) Ten (10) percent of the waterway width; or
 - (3) The distance from the point at which the dock or pier intersects the mean high water line measured in a straight line to the nearest point on the three-foot mean low water line; provided, however, the foregoing limitations shall not prohibit a dock which does not extend waterward from the mean high water line in excess of six (6) feet.
- (b) No dock or pier shall be constructed with a maximum width in excess of ten (10) feet.
- (c) No dock or pier shall be located less than twenty-five (25) feet from the waterward extension of the property line of any adjoining riparian property owner. For purposes of illustration of this subsection only, an illustrative sketch is on file in the clerk's office, and designated as exhibit "B." Any dock or pier shall be deemed to comply with this subsection if the waterward end of the center line of the dock or pier is equidistant from the nearest points at which the property lines of adjoining property owners intersect the mean high water line. For purposes of illustration only of this subsection, an illustrative sketch is on file in the clerk's office, and designated as exhibit "C."
- (d) Mooring pilings may not be located within ten (10) feet of the waterward extension of the property line of any adjoining riparian property owner, nor more than fifteen (15) feet waterward of a line of any dock used with the same riparian property. If more than one dock is used with the same property, the endpoint of the dock extending further from the mean high water line shall be used. For the purpose of illustrating the provisions of this subsection, an illustrative sketch is on file in the clerk's office, and designated as exhibit "D."
- (e) All sections or areas of any dock or pier which intersect at any angle with the main portion of a dock or pier extending from the shoreline may not exceed a total combined length of twenty-five (25) feet. For the purpose of illustrating this subsection, an illustrative sketch is on file in the clerk's office, and is designated as exhibit "E."
- (f) The total area of all docks and piers located on any riparian parcel shall not exceed five hundred (500) square feet.

- (g) No building or structure other than an approved dock or pier shall be permitted to be located waterward of the mean high water line. (Ord. No. 99-81-2, § 3, 7-6-81; Ord. No. 112-84-5, § 1, 1-7-85; Ord. No. 118-85-5, § 1, 8-5-85)

EXHIBIT "A"

EXHIBIT "A"

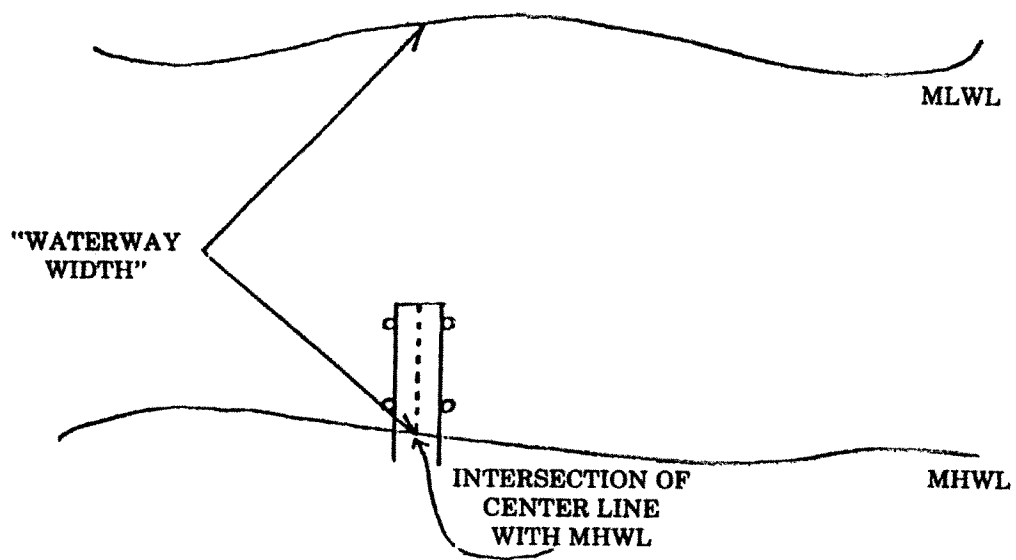


EXHIBIT "A" illustration

EXHIBIT "B"

EXHIBIT "B"

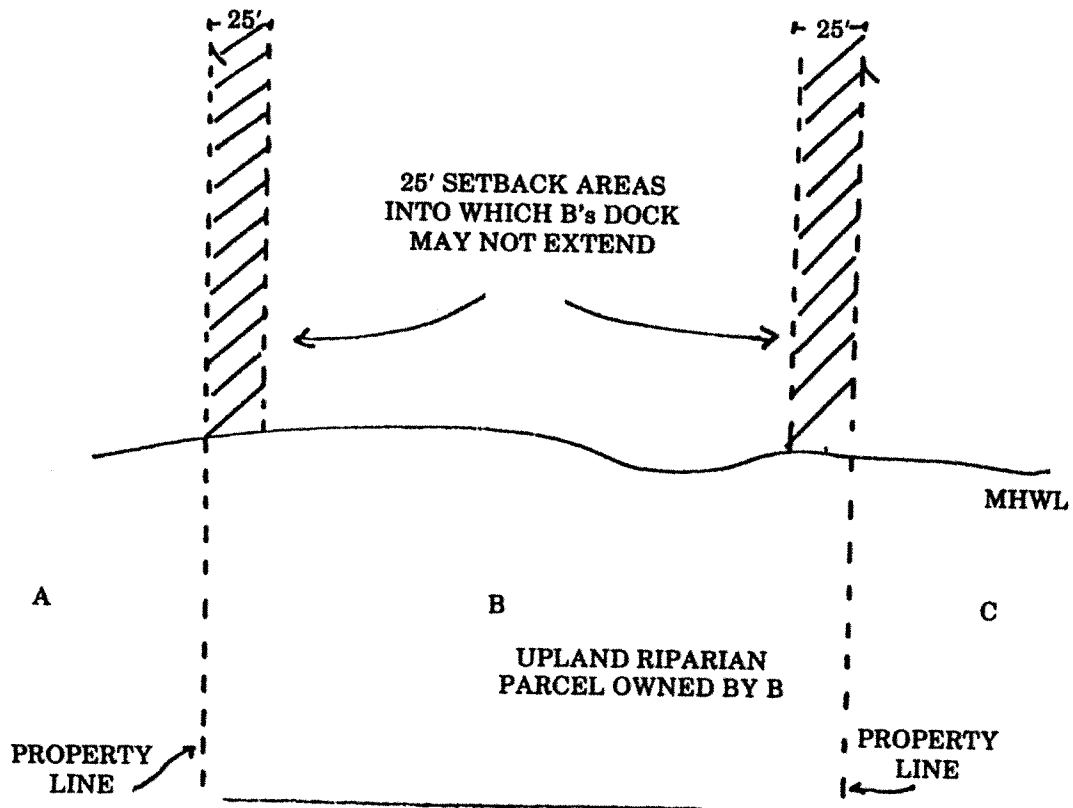


EXHIBIT "B" illustration

EXHIBIT "C"
3(c)ii ILLUSTRATIVE SKETCH
SHOWING CASE OF DEEMED COMPLIANCE
WATERWAYS

EXHIBIT "C"
3(c)ii ILLUSTRATIVE SKETCH
SHOWING CASE OF DEEMED COMPLIANCE

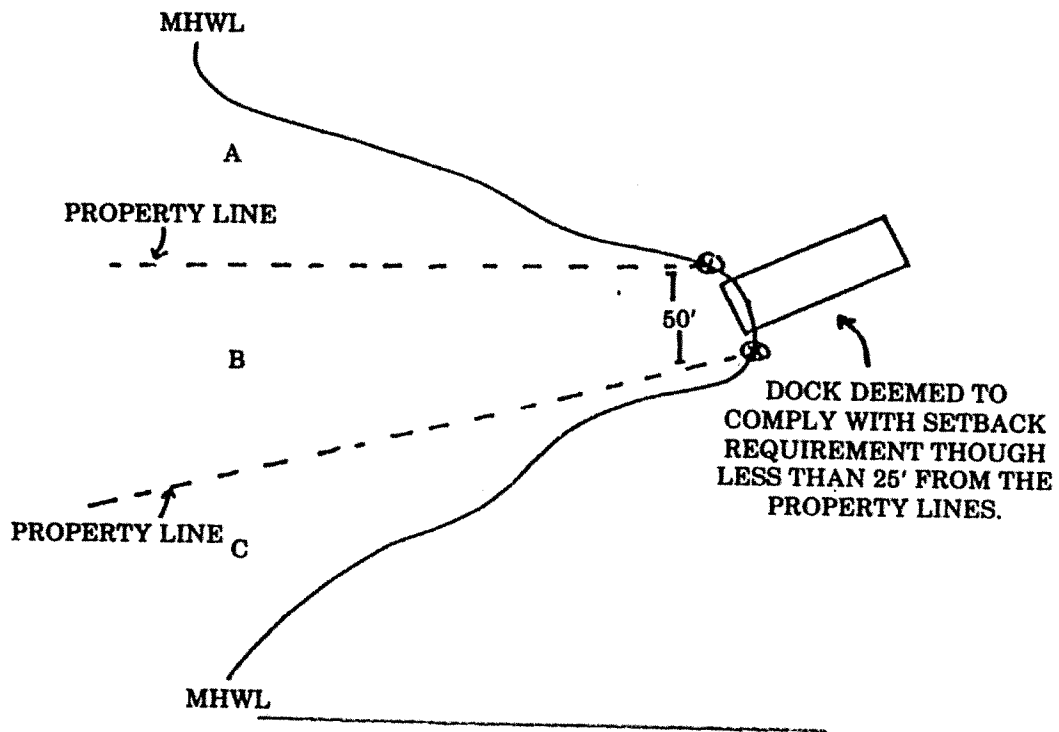


EXHIBIT "C" illustration

EXHIBIT "D"
3(d) ILLUSTRATIVE SKETCH
JUPITER INLET COLONY CODE

EXHIBIT "D"
3(d) ILLUSTRATIVE SKETCH

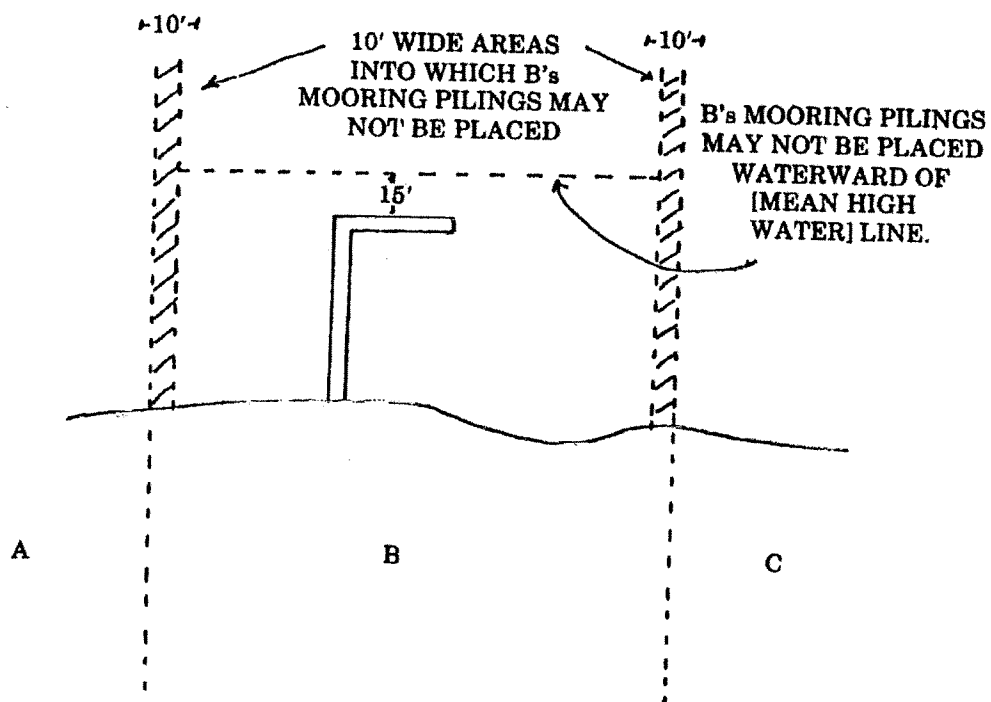


EXHIBIT "D"

EXHIBIT "E"
3(e) ILLUSTRATIVE SKETCH

WATERWAYS

EXHIBIT "E"
3(e) ILLUSTRATIVE SKETCH

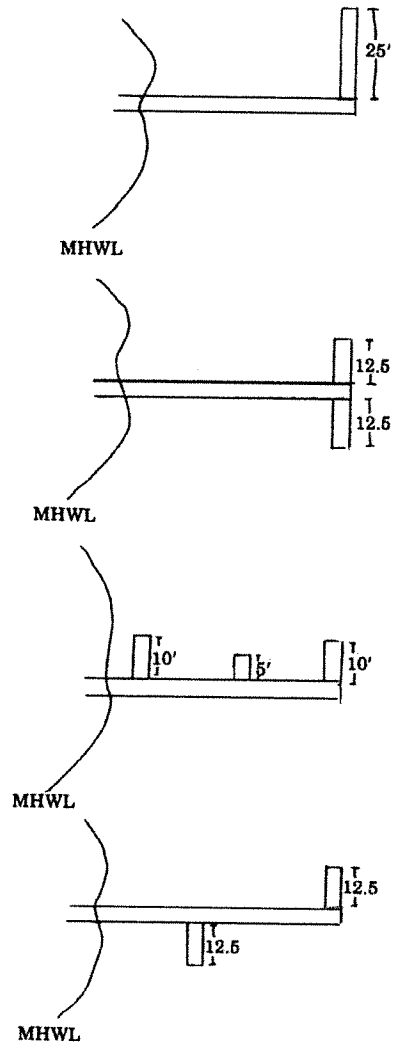


EXHIBIT "E"

Sec. 21-19. - Commercial docks prohibited.

No commercial docks shall be permitted within the area to which this article applies. (Ord. No. 99-81-2, § 4, 7-6-81)

Sec. 21-20. - Boathouses and boat shelters restricted.

No boathouse or boat shelter shall be permitted to be located waterward of the mean high water line. (Ord. No. 99-81-2, § 5, 7-6-81)

Sec. 21-21. - Parking of watercraft.

No person shall anchor, moor or park in a stationary position or cause or permit or allow any other person under his control or command, to anchor, moor or park in a stationary position any vessel or watercraft of any description used or capable of being used as a means of transportation on water, within the area to which this article applies for a period of time in excess of seventy-two (72) continuous hours during any consecutive thirty-day period, unless such vessel is located at a dock with the consent of the owner of such dock. (Ord. No. 99-81-2, § 6, 7-6-81)

Sec. 21-22. - Discharges from vessels.

No person shall discharge or permit, or allow any other person on a vessel under his control or command, to discharge any human or animal excreta from any head, toilet or similar facility on any vessel, or throw, discharge, deposit or leave, or cause or permit to be thrown, discharged, deposited, or left from any vessel any refuse matter of any description into the waters located within the area to which this article applies. (Ord. No. 99-81-2, § 7, 7-6-81)

Sec. 21-23. - Variances.

Application for variances and variance hearings shall be in accordance with the procedure established by article II of chapter 22. However, no variance shall be granted unless such variance will not be contrary to the public interest, unless owing to special conditions, a literal enforcement of the provisions of this article would result in unnecessary and undue hardship. In order to authorize any variance from the terms of this article, the commission must find with respect to the proposed project as follows:

- (1) No hazardous condition would be created;
- (2) The flow of water would not be impeded or interfered with;
- (3) No obstruction to navigation would occur;
- (4) It would not interfere with traditional public uses of the waterway, including but not limited to swimming, fishing or boating;
- (5) It would not create an appreciable obstruction of waterway views or would otherwise detract from aesthetic values;
- (6) It would not appreciably disrupt, interfere with, or disturb marine or benthic life;
- (7) It would not contribute to the pollution of the waterway or the degradation of its condition;
- (8) It would not interfere with the lawful rights of riparian owners;
- (9) It would be consistent with any other applicable laws, rules or plans. (Ord. No. 99-81-2, § 8, 17-6-81)

Sec. 21-24. - Nonconforming uses.

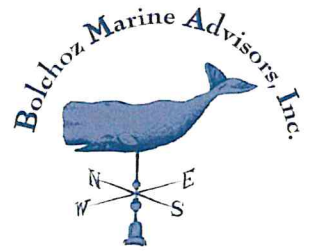
- (a) The use of any structure, land, dock or pier that does not conform to the requirements of this article, to the extent it can be said to have existed prior to July 6, 1981, shall be termed a nonconforming use. Such nonconforming use shall be allowed to continue subject to the requirements that any alteration, remodeling or additions thereto shall be such as to conform with this article in all respects. Upon the destruction or removal of any nonconforming use or structure under this article shall thereafter require that all subsequent structures or uses including docks and piers shall be in accordance with this article. All docks, piers, mooring pilings, commercial docks and private docks constructed after July 6, 1981, shall be constructed in accordance herewith. Such docks, piers, mooring pilings, commercial docks, or private docks constructed after July 6, 1981, other than in the manner described herein shall be deemed to be nonconforming to this article. The commission shall be empowered to require the immediate ceasing and removal of such nonconforming construction upon notice in writing to the constructing party and adjacent landowner and, in the event of noncompliance with such notice, the commission shall be herewith empowered to make immediate application to the county circuit court for a temporary restraining order, temporary and permanent injunction and mandatory injunction to stop such nonconforming construction and to require the removal of such nonconforming structures already constructed in contravention to this article.
- (b) Attorneys' fees, costs and damages occasioned by construction or by action of the landowner at whose direction such construction was undertaken or continued shall be recoverable by the municipality in such litigation in such sums as are awarded by the county circuit court or by any other court having jurisdiction thereof, shall become a lien upon the land of the landowner causing such nonconforming use to be constructed, maintained or not removed after timely notice. (Ord. No. 99-81-2, § 9, 7-6-81)

Footnotes:

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Cross reference— Flood damage prevention, Ch. 7; planning, Ch. 12; streets, sidewalks and other public places, Ch. 16; vehicles and watercraft, Ch. 20.

State Law reference— Beach And Shore Preservation Act, F.S. Ch. 161.011 et seq.; tidal lands and bulkheads, F.S. § 253.12 et seq.; deposit of material in tidewater regulated, F.S. § 309.01; Florida Vessel Safety Law, F.S. Ch. 327; local regulations, limitations, F.S. § 327.60; natural resources, conservation, reclamation and use, F.S. Ch. 369 et seq.



CONTRACT AGREEMENT FOR PROFESSIONAL SERVICES

between
Bolchoz Marine Advisors, Inc.
and
Jupiter Inlet Colony
for
Waterfront Development Consulting Services
July 6, 2020

SCOPE OF SERVICES:

Bolchoz Marine Advisors, Inc. (BMA) shall provide professional consulting services to the town of Jupiter Inlet Colony (Client) on an as-needed basis for specific residential waterfront property tasks. The scope of work is based on recent communications with Mr. Bill Whiteford, as detailed below:

1. Opinion on 78 Lighthouse Drive Dock:

For this task, BMA will review the proposed dock reconfiguration at 78 Lighthouse Drive and provide an opinion, per the following:

- a. Review owner's variance request and town's initial report of findings
- b. Review requested dock reconfiguration in light of FDEP permit and town dock ordinances
- c. Provide preliminary opinion to Mr. Whiteford as to the suitability of proposed dock reconfiguration and variance; meet to review preliminary findings as necessary
- d. Finalize findings and opinion in letter report to town

2. Review of Code of Ordinances, Chapter 21:

For this task, BMA will work with Mr. Bill Whiteford on a potential revision to the town's code of ordinances related to docks and piers:

- a. Review current code (Chapter 21, Waterways); develop list of conflicting, confusing, and/or missing language and exhibits; review deficiencies with Mr. Whiteford (*projected fee - \$700*)
- b. Attend two town meetings (P&Z, Commission); present potential code revisions to town officials and staff (*projected fee - \$900*)
- c. Based on meetings with town officials and staff, town staff will develop revisions into ordinance format; BMA will develop updated exhibits to match revised code language (*projected fee - \$700*)
- d. Review and finalize revisions and exhibits prior to formal submittal to town commission (*projected fee - \$700*)

TERMS AND FEE ARRANGEMENT:

Bolchoz Marine Advisors, Inc., shall provide the aforementioned services on a time and material basis, per the fee schedule on Page 4 of 4. Anticipated fees for the above tasks are shown below. Fee amounts


will not be exceeded without prior written approval from the Client:

<u>Task</u>	<u>Estimated Fee</u>
1- Opinion on 78 Lighthouse Drive Dock	\$ 900 (previously approved June 15, 2020)
2- Review of Code of Ordinances	\$3,000

Any modification to the scope of services and/or fees shall be in writing, approved by both parties. Any work performed at the request of the Client, but not specifically addressed above, will be billed at the hourly rates below.

Work will begin immediately upon Notice to Proceed.

Proposed:

 7-6-20

Mark Bolchoz, President Date
Bolchoz Marine Advisors, Inc.

Accepted:

Daniel J. Comerford, III, Mayor Date
Jupiter Inlet Colony

TERMS AND CONDITIONS, continued

Bolchoz Marine Advisors, Inc. (Consultant) shall perform the services outlined in this agreement for the stated fee arrangement. This proposal is valid only if accepted within 30 days of the proposal date.

FEE: a) *Lump sum* – amount stated is total fee, amount may be adjusted proportionally if project not completed within 18 months of proposal date. Additional Services beyond the “*Scope of Services*” indicated shall be charged based on actual accrued time in accordance with our standard hourly rate schedule. b) *Hourly* - project shall be charged based on time devoted to the project, such as but not limited to, analysis, design, drafting, meetings, travel, and project setup and administration, in accordance with our standard hourly rate schedule. The rates shall be those that prevail at the time the services are rendered. On projects with Hourly based fees, any additional services shall also be charged in accordance with our standard hourly rate schedule. The **Consultant’s** current standard hourly rates are outlined in the attached Fee Schedule.

Reimbursable expenses incurred in the interest of the project are as outlined in the Scope of Services.

BILLING/PAYMENTS: Invoices for the **Consultant’s** services shall be submitted on a monthly basis. Invoices are due upon receipt. If the invoice is not paid within 30 days, the **Consultant** may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of the services. Any retainer shall be credited on the final invoice. Payment of fees is expressly not conditioned upon Client receiving any payment from third parties who are not a party to this agreement.

LATE PAYMENTS: Accounts unpaid 30 days after the invoice date may be subject to a monthly service charge of 1.5% on the then unpaid balance (18% true annual rate), at the sole election of the **Consultant**. In the event any portion or all of an account remains unpaid 60 days after billing, the Client shall pay all costs of collection, including reasonable attorney’s fees.

INDEMNIFICATION: In addition, and notwithstanding any other provisions of this Agreement, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the **Consultant**, its officers, directors, employees, agents, consultants, and subconsultants from and against all damages, liability or costs, including reasonable attorney’s fees and defense costs, arising out of or in any way connected with this project or the performance, by any parties above named, of the services under this Agreement, excepting only those damages, liabilities, or costs attributable to the sole negligence or willful misconduct of the **Consultant**.

RISK ALLOCATION: In recognition of the relative risks and benefits of the project to both the Client and the **Consultant**, the risks have been allocated such that the Client agrees to the fullest extent permitted by law, to limit the liability of the **Consultant**, its officers, directors, employees, agents, consultants, and subconsultants for the Client’s damages to the sum of total fees paid. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

HAZARDOUS MATERIALS: The **Consultant** shall have no responsibility for the discovery, handling, removal, or disposal of hazardous materials, including but not limited to, asbestos, lead paint, mold, or contaminated soil.

OWNERSHIP OF INSTRUMENTS OF SERVICES: All reports, plans, specifications, field data and notes, and other documents, including all documents on electronic media produced by the **Consultant** under this agreement, shall become the property of the Client, but may not be used by the Client for any other project or endeavor without written consent of the **Consultant**.

ALTERNATE DISPUTE RESOLUTION: In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Client and **Consultant** agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise.

TERMINATION OF SERVICES: With 60 days written notice, this agreement may be terminated by the Client or the **Consultant** should the other fail to perform its obligation hereunder. In the event of termination, the Client shall pay the **Consultant** for all services rendered to the date of termination and all reimbursable termination expenses.

APPLICABLE LAW: Unless otherwise specified, this agreement shall be governed by the laws of the **State of Florida**.

FEE SCHEDULE FOR PROFESSIONAL SERVICES

effective January 1, 2020

<u>Classification</u>	<u>Rate</u>
Principal-in-Charge	\$225
Senior Engineer	\$195
Project Manager/Engineer	\$150
Planner	\$125
Permitting Specialist	\$125
Engineer-in-Training	\$125
Field Engineer/Inspector	\$115
Engineering Technician	\$ 85

<u>Expert Testimony</u>	<u>Rate</u>
Depositions, court appearances	\$275
Pre-trial research, consulting	\$225
Travel time (beyond Palm Beach County)	\$100

Reimbursable Expenses

Auto mileage (beyond Palm Beach County) to be charged at current IRS-published rates, at the date of contract execution. Other travel expenses (airfare, rentals, hotels, etc.) to be reimbursed at cost plus 15%.

Non-travel expenses (reproductions, boat usage, permit fees, etc.) to be reimbursed at cost plus 15%.

Outside consultant fees (e.g., surveying, geotechnical, seagrass specialists, etc.) to be reimbursed at cost plus 15%.

LETTER OF CONCURRENCE FOR SETBACK WAIVER

TO: Hillary Shane (owner/applicant)
78 Lighthouse (address of project)
Jupiter Inlet Colony, FL

File No.: _____

FROM: Tracy Rickers Siani (adjacent property owner)

78 Lighthouse Dr.
Jupiter Inlet Colony, FL 33469

Section 18-21.004(3)(d), Florida Administrative Code, provides:

Except as provided herein, all structures, including mooring pilings, breakwaters, jetties and groins, and activities must be set back a minimum of 25 feet inside the applicant's riparian rights lines. Marginal docks, however, must be set back a minimum of 10 feet. Exceptions to the setbacks are: private residential single-family docks or piers associated with a parcel that has a shoreline frontage of less than 65 feet, where portions of such structures are located between riparian lines less than 65 feet apart, or where such structure is shared by two adjacent single-family parcels; utility lines; bulkheads, seawalls, riprap or similar shoreline protection structures located along the shoreline; structures and activities previously authorized by the Board; structures and activities built or occurring prior to any requirement for Board authorization; **when a letter of concurrence is obtained from the affected adjacent upland riparian owner**; or when the Board determines that locating any portion of the structure or activity within the setback area is necessary to avoid or minimize adverse impacts to natural resources.

I hereby state that I am the owner of the adjacent upland riparian property located to the north of the facility or activity proposed to be constructed or conducted by Hillary Shane (the applicant), as shown in the above referenced file (and on the attached drawing). **I understand that the subject project will be located entirely within the applicant's riparian rights area, and I do not object to the proposed structure or activity being located within the area required as a setback distance from the common riparian rights line, as required by Chapter 18-21.004(3)(d), F.A.C.** This file shows the structure will be located entirely within the applicant's riparian rights area and within 15 feet of the common riparian rights line between our parcels.

Tracy Rickers Siani
(Original signature of adjacent owner)

TRACY RICKERS SIANI
(Printed name of adjacent owner)

6-1-2020
(Date signed)

This form is not adopted by rule; therefore, any letter of concurrence of similar content may be accepted.

LETTER OF CONCURRENCE FOR SETBACK WAIVER

PAGE 2 – DRAWING, SKETCH, OR SURVEY OF PROPOSED DOCK LOCATION

INSERT DRAWING HERE

Drawing should show the distance of the structure or activities
from the riparian rights lines.

**SEE ATTACHED LAYOUTS ON AERIAL AND ON
PROPERTY SURVEY AND INITIAL THEM AS
ATTACHMENTS**

SKG

(Initials of adjacent owner)

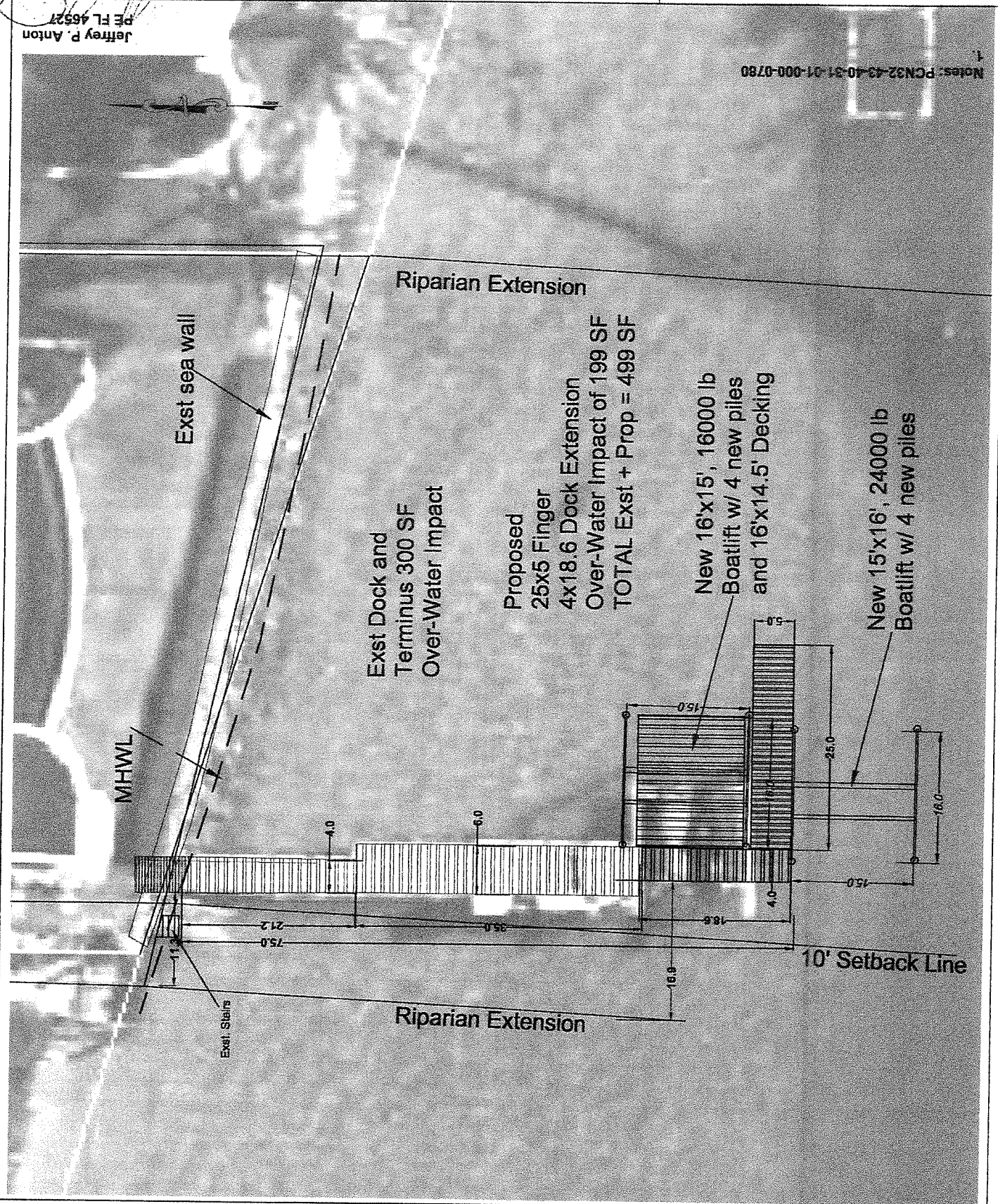
6-1-2000

(Date)

James Jackson Brown

Hilary Shane Residence
78 Lighthouse Dr
Jupiter Inlet Colony, FL 334

Jeffrey P. Anton
PE FL 46527



Handwritten signature: *Robert J. [illegible]*

Hilary Shane Residence
78 Lighthouse Dr

Jupiter Inlet Colony, FL 33469

Date	
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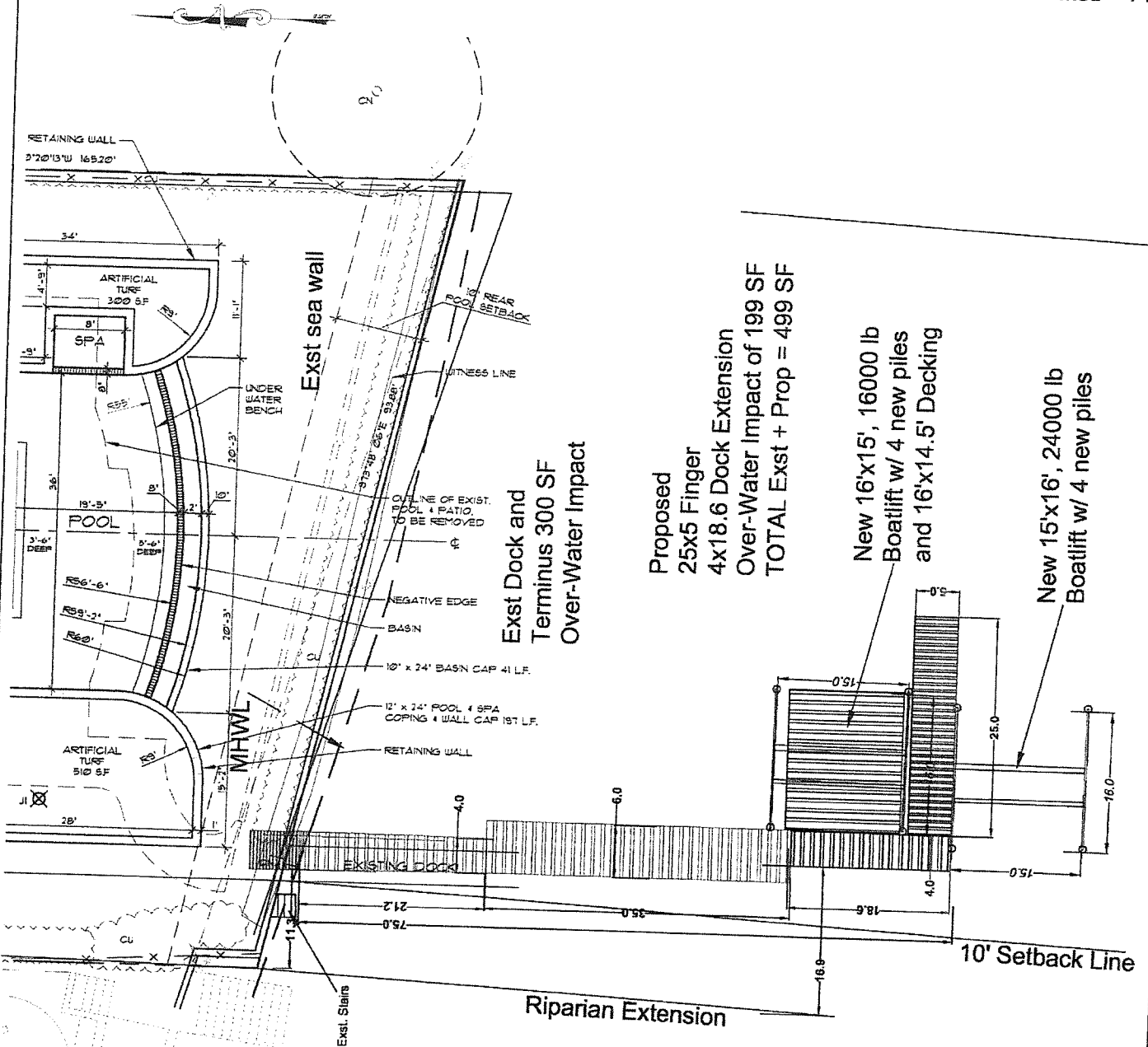
ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

✓
✓

1-20

PE FL 46327

1.

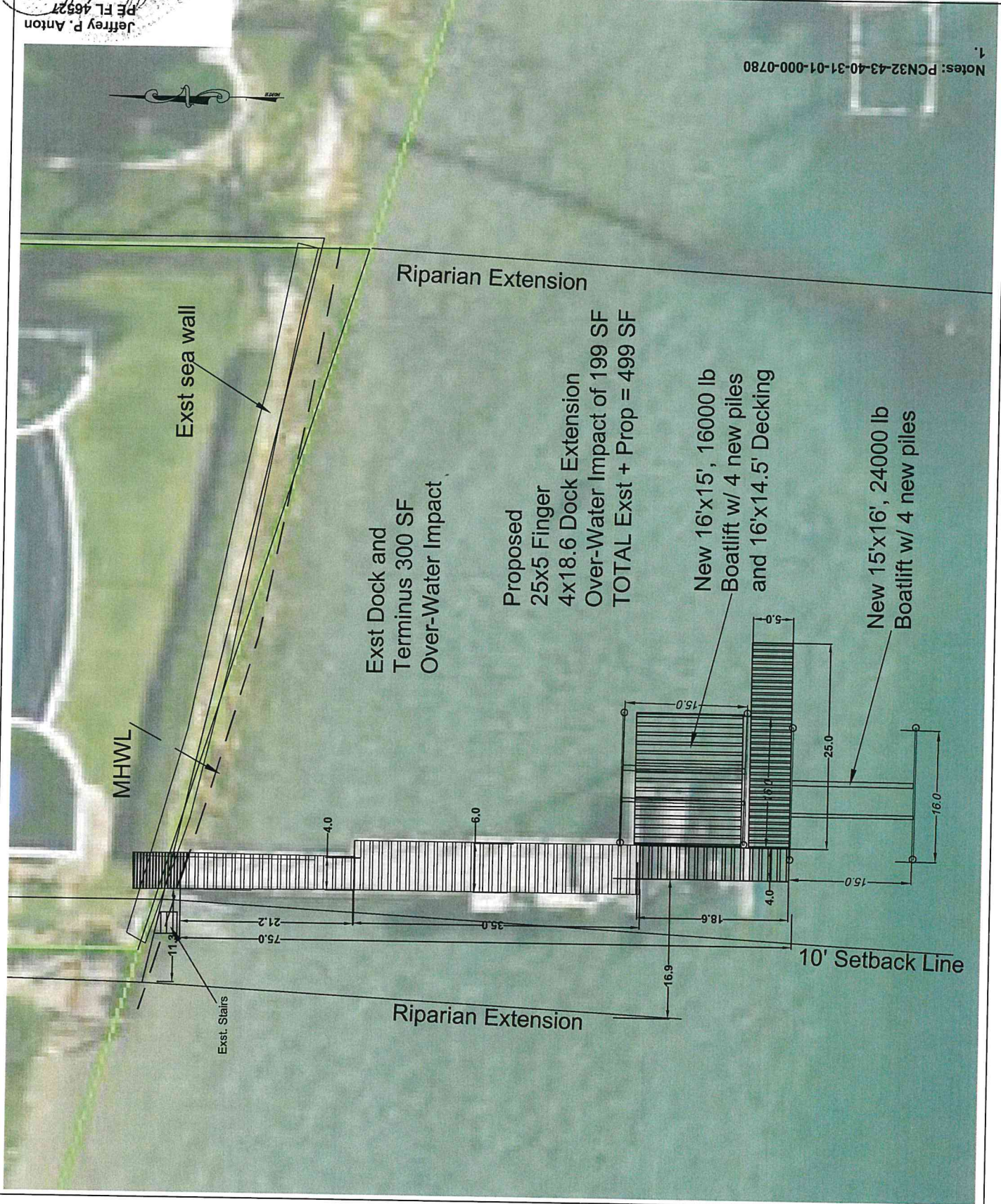


Terragone Engineering, LLC
 361 NW Dewbury Terrace, Jensen Beach, Florida 34957
 Phone: (772) 291-8177
 E-mail: antonpe@comcast.net
 License Registry: 34035

Layout on Aerial
Hilary Shane Residence
78 Lighthouse Dr
Jupiter Inlet Colony, FL 33469

Jeffrey P. Anton
 PE FL 46527
 Scale 1"=20'
 Designed By JPA
 Drawn By JPA
 Date April 10, 2020

Notes: PCN32-43-40-31-01-000-0780



Terragone Engineering, LLC
361 NW Dewbury Terrace, Jensen Beach, Florida 34957
Phone: (772)291-8177
E-mail: antonpe@comcast.net
License Registry: 34035

Layout on Survey

Hilary Shane Residence

Jupiter Inlet Colony, FL 33469

Date _____

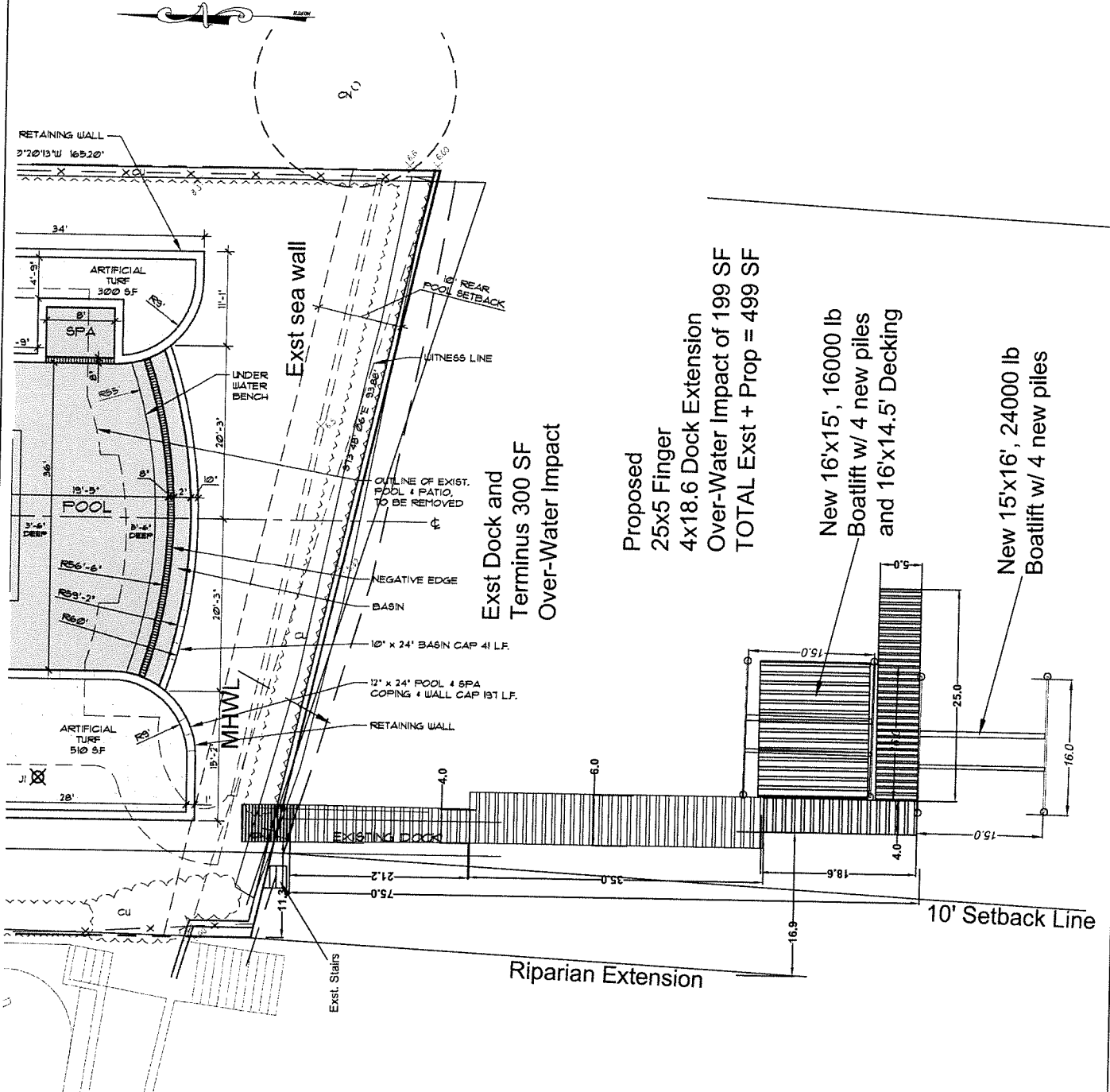
Drawn By

DESIGNED BY JPA

Scale

Jeffrey P. An
PE FL 46527

Notes: PCN32-43-40-31-01-000-0780



Kevin Lucas

From: the shane shack <hilary@shane.com>
Sent: Friday, June 26, 2020 1:23 PM
To: Bill Whiteford; Dan Comerford; Brian Weisman

Dear Bill,
please update your records that I am no longer putting a platform decking on the lifts. please inform Buck. I would like this permitted asap with the outstanding requirement being the variance. Please email me and my contractor if there is anything you need from me.
best
hilary shane