

RESOLUTION 19-13
CITY OF SANIBEL
PLANNING COMMISSION

IN THE MATTER OF: Consideration of an application filed pursuant to Land Development Code Section 82-138, Application and hearing, that includes a request for a Variance to Land Development Code Chapter 126, Article XIV, Division 2, Subdivision II – Accessory Marine Structures, Section 126-875 Waterward Extension, to allow for the construction of a new dock with a boat lift to extend waterward further than the maximum permitted waterward extension limit (i.e., more than 30’ or 20% of the width of the waterway) as measured from the approximate mean high water line of the abutting canal; and a request for a Variance to LDC Section 126-882 Deck planking, to vary from a deck planking spacing requirement for docks; all adjacent and accessory to a single-family residential lot located at 1203 Isabel Drive (tax parcel No. 18-46-23-T3-00300.0240). The application is submitted on behalf of property owners, Christopher W. and Lisa W. Heidrick by Steven C. Hartsell, Esquire. Application No. 19-11618V

APPLICANT: Christopher W. and Lisa W. Heidrick
APPLICATION NO: 19-11618V
DATES OF HEARINGS: September 10, 2019, October 8, 2019, and January 28, 2020
ADOPTION OF RESOLUTION: February 11, 2020

WHEREAS, the Planning Commission heard an application filed pursuant to Land Development Code Section 82-138, Application and hearing, for a **Variance** to Land Development Code Chapter 126, Article XIV, Division 2, Subdivision II – Accessory Marine Structures, Section 126-875 Waterward Extension, to allow for the construction of a new dock with a boat lift to extend waterward further than the maximum permitted waterward extension limit (i.e., more than 30’ or 20% of the width of the waterway) as measured from the approximate mean high water line of the abutting canal; and a request for a **Variance** to LDC Section 126-882 Deck planking, to vary from a deck planking spacing requirement for docks; all adjacent and accessory to a single-family residential lot located at 1203 Isabel Drive (tax parcel No. 18-46-23-T3-00300.0240); and

WHEREAS, it has been determined that the Applicant has complied with the requirements of Chapter 82, Article III, Division 3, Subdivision II of the Land Development Code; and

WHEREAS, a public hearing was legally and properly advertised and held on September 10, 2019, continued to October 8, 2019, and continued to January 28, 2020 before the Sanibel Planning Commission; and

WHEREAS, on January 28, 2020 the Sanibel Planning Commission considered the testimony, evidence and recommendations of the Planning Department Staff; the testimony and evidence of the Applicant and its representatives; public comments; and documents on file with the City; and

WHEREAS, Chair Chuck Ketteman, Vice Chair Roger Grogman and Commissioners Michael Hullivan, Matt Kirchner, Paul Nichols, Eric Pfeifer, and Karen Storjohann were present at the August 13, 2019 hearing; and

WHEREAS, Chair Chuck Ketteman, Vice Chair Roger Grogman and Commissioners Matt Kirchner, Paul Nichols, Eric Pfeifer, and Karen Storjohann were present at the September 10, 2019 hearing continuation, with Commissioner Michael Hullihan excused; and

WHEREAS, Chair Chuck Ketteman, Vice Chair Roger Grogman and Commissioners Michael Hullihan, Matt Kirchner, Paul Nichols, Eric Pfeifer, and Karen Storjohann were present at the January 28, 2020 hearing continuation; and

WHEREAS, the Sanibel Planning Commission finds that the application is complete, and the proposed development is consistent with the requirements of 1) The Sanibel Plan and 2) The Land Development Code; and

WHEREAS, the Sanibel Planning Commission, after full and complete consideration of the evidence presented during the hearings, at which written minutes were taken, makes the finding that the Record (without exhibits) is substantially as follows:

At the hearing of September 10, 2019 Director Williams read into record the case description for Application 19-11618V. The applicant has formally requested a continuance to October 8, 2019.

By motion and vote Commissioner Hullihan was excused from the hearing.

The Commissioners were polled for site visits, ex-parte Communications, and conflict:

- Chair Ketteman	No Site Visit	Ex-parte	No Conflict
- Vice Chair Grogman	No Site Visit	No Ex-parte	No Conflict
- Commissioner Kirchner	No Site Visit	Ex-parte	No Conflict
- Commissioner Nichols	No Site Visit	Ex-parte	No Conflict
- Commissioner Pfeifer	Site Visit	Ex-parte	No Conflict
- Commissioner Storjohann	Site Visit	Ex-parte	No Conflict

Commissioners Ketteman, Kirchner, Nichols, Pfeifer, and Storjohann noted their ex-parte communications were with Marty Harrity regarding the history of the property located at 1203 Isabel Drive and concerns expressed by neighbors requesting the application not be approved. Commissioner Pfeifer also had ex-parte communications with Planning Supervisor Roy Gibson regarding why the staff report that had not been provided to Commission which was due to the request by the applicant to continue the hearing.

Planning Supervisor Roy Gibson spoke to the request being for a continuance to the 9 am, October 8, 2019 Planning Commission meeting with a submission deadline of September 30, 2019.

MOTION: Vice Chair Grogman moved, seconded by Commissioner Storjohann to continue the hearing to 9:05 a.m. on October 8, 2019. The motion carried 6-0 with Commissioner Hullihan excused.

At the continued hearing of October 8, 2019 Director Williams read into record the description of Application 19-11618V.

The Commissioners were polled for site visits, ex-parte Communications, and conflict:

- Chair Ketteman	No Site Visit	No new ex-parte	No Conflict
- Vice Chair Grogman	Site Visit	No ex-parte	No Conflict
- Commissioner Hullihan	Site Visit	Ex-parte	No Conflict
- Commissioner Kirchner	Site Visit	No new ex-parte	No Conflict
- Commissioner Nichols	No Site Visit	No new ex-parte	No Conflict

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| - Commissioner Pfeifer | Site Visit | No new ex-parte | No Conflict |
| - Commissioner Storjohann | Site Visit | No new ex-parte | No Conflict |

Commissioner Hullihan read into record his notice of ex-parte communication. Commissioners Ketteman, Kirchner, Nichols, Pfeifer, and Storjohann all reiterated their ex-parte communications from the previous hearing. The ex-parte forms had been submitted to the recording secretary.

Chair Ketteman spoke to the purpose of the hearing being solely to approve or disapprove the request for continuation. He further noted the Commission to date still had not seen the application, plans or revisions of the request. He instructed that the hearing would proceed first with the applicant speaking to the request for another continuance, followed by staff and public before the commission deliberates.

Scotty Lynn Kelly, Support Services Supervisor, swore in the following:

- Chris Heidrick, Applicant
- Roy Gibson, City of Sanibel, Planning Supervisor
- Beverly Grady, Attorney representing certain property owners within the subdivision
- Holly Milbrandt, City of Sanibel, Deputy Director of Natural Resources
- Keith Williams, City of Sanibel, Director of Community Services

Applicant Chris Heidrick spoke to the application being in process for 14-15 months. He spoke to trying to understand staff requests and stated that last week they became aware of a need for a second variance due to the height of the dock. In an effort to provide proper legal notification for a second variance and allow adequate time for Commission to receive and review documentation, the applicants have requested a continuance to the November 12, 2019 meeting.

Commission inquired as to the length of the dock. Chair Ketteman spoke to the Commission regarding not asking questions relating to the actual application, only for the purpose of consideration of the continuance. Commission asked what the second variance would be requesting and if one of the boat lifts was removed. Mr. Heidrick confirmed one of the boat lifts would be removed and noted the second variance would be for the height of the dock. Late notification of the second variance was due to the possibility of Army Corps of Engineers' requirements relating to the seagrass.

Clarifying the intent of the hearing was to consider the request for continuance, Attorney Agnew noted it could be to a date certain as requested or to a date uncertain. Mr. Heidrick stated the overall intent was to improve the compatibility of the design to meet the needs and concerns of the community as well as the desires of the applicant. Commission asked what date had been requested for the continuance to which the applicant stated it was November 12, 2019.

Director Williams spoke to the standards for variances and noted to date that staff had not reviewed an application package that would be supported. He further spoke to the absence of the staff report and information not being provided to the Commission. Staff will begin the process over once new plans are provided by the applicants and the new plans would be reviewed in accordance with the standards. Staff confirmed support of the continuance without any commitment to support or not the application.

If the continuance was denied, the applicant could appeal or simply reapply. Attorney Agnew noted the hearing had been set for today and could be heard but would be lacking the proper information. Discussion ensued regarding the process, including the continuances, costing the applicant further fees. Commission inquired if the time frame of November 12, 2019 was adequate to discern the need for the second variance and receive the full application packet for review and consideration. Mr. Gibson noted the revisions were in effort to meet the requests of staff, eliminate the need for the second variance, and provide adequate materials in a timely manner. Deadline for application and backup materials would be

November 4 for a hearing on November 12, 2019. Mr. Heidrick spoke to having heard from the Army Corps of Engineers (ACOE) that the applicant would need to provide local jurisdiction approval before they would make a determination.

When asked why staff did not support the variance request, Mr. Gibson noted he was not at liberty to provide staff position without having seen the current revision. The item for consideration was the request for continuance and would allow time for staff to review revisions before making a position and providing materials to Commission.

Chair Kettelman requested that any public comment be related to the request for continuance, not for the requested dock variance.

Public Comment:

- Beverly Grady - attorney representing neighbors Marty and Brenda Harrity, Frank and Maureen Fernandez, and James Herrick - spoke to the variance affecting the 42 community properties. Ms. Grady requested the continuance be no earlier than the second Commission meeting in January 2020. She further requested the applicant have a deadline for submission by a December date. Additionally, she stated this is a very complicated application and finds it inappropriate for staff to provide the staff report and information on Friday before a Tuesday meeting. Ms. Grady reiterated the request for setting the third hearing at a time when most residents would be available to attend.

Commission noted the suggested date by Ms. Grady was primarily so neighbors were able to participate, Ms. Grady agreed that was accurate but that it would also allow for submission in a timely manner. Commission noted that residents and neighbors did not have to be in attendance to be heard on the matter and could provide comment via phone, in person, email, or mail prior to the hearing.

Ms. Grady had the residents in attendance state their names and agreement with her statements. Residents in attendance and agreement were Todd Smith, Lindsay Cantor, Marty Harrity, Erika Steiner, Linda Essig, David Essig, Jim Herrick, Christine Herrick, Jim Conlon, Ann Denise Conlon, Lindsay Meisner-Jensen, Mark Ebenhoh, and Sandy Stilwell.

Mr. Heidrick spoke to many in attendance being here full time and to not being interested in waiting until January, stating his preference to the meeting in November. Attorney Agnew spoke to the appropriateness of a continuance date being based upon the applicant's request or staff's need for additional time, but not neighborhood resident attendance. Mr. Gibson spoke to the fact that the option to continue to a date uncertain would require additional legal advertising, if set to a date certain then no legal ads were needed.

Discussion continued regarding timing of the continuance, with Mr. Heidrick stating they were confident they would be ready for November 12, and staff suggesting continuing to November 26. Additional concerns were raised regarding previous public comment being included with new comments at time of new hearing. Mr. Agnew noted public comment was allowed up until and through the public hearing and all public comment would be considered through the process. Commission stated caution should be used to ensure the applicants have sufficient time to submit and present their case, staff has time to review and prepare the staff report, and the Commission has adequate time to review before the hearing.

Chair Kettelman requested to continue to a date certain, with a 15-day prior deadline for staff to provide the staff report to Commission and public. Discussion ensued regarding the applicant being required to provide materials to staff in advance to ensure time to review, and regarding potential specific dates and deadlines to be included in the motion.

MOTION: Chair Kettelman moved, seconded by Vice Chair Grogman to continue to a date certain of January 28, 2020, with the requirement of a complete application packet submission by January 3, 2020 and staff report submission deadline by January 13, 2020. The motion carried 6-1 with Commissioner Storjohann opposed.

At the continued hearing of January 28, 2020 Director Williams read into record the description of Application 19-11618V.

The Commissioners were polled for site visits, ex-parte Communications, and conflict:

- Chair Kettelman	Site Visit	No new ex-parte	No Conflict
- Vice Chair Grogman	Site Visit	No new ex-parte	No Conflict
- Commissioner Hullihan	Site Visit	No new ex-parte	No Conflict
- Commissioner Kirchner	Site Visit	No new ex-parte	No Conflict
- Commissioner Nichols	Site Visit	No new ex-parte	No Conflict
- Commissioner Pfeifer	Site Visit	Ex-parte	No Conflict
- Commissioner Storjohann	Site Visit	No new ex-parte	No Conflict

Commissioner Pfeifer read into record his notice of ex-parte communication and provided the report to the Recording Secretary. He noted he spoke to Lindsey Cantor regarding the application.

Scotty Lynn Kelly, Recording Secretary, swore in the following:

- Keith Williams, City of Sanibel, Director of Community Services
- Craig Chandler, City of Sanibel, Planner
- Steve Hartsell, on behalf of Applicants Chris & Lisa Heidrick
- Chris Heidrick, Applicant
- Hans Wilson, Engineer
- Ian Fisher, Hans Wilson & Associates
- Bob Devore, 1270 Bay Drive Resident
- Bruce Gurall, 1238 Isabel Drive Resident
- Ryan Orgera, Sanibel Captiva Conservation Foundation (SCCF)
- Linsay Meisner, 1210 Bay Drive Resident
- Ann Denise Conlon, 1208 Bay Drive Resident
- Larry Conlon, 1208 Bay Drive Resident
- Andrew Shott, 1272 Isabel Drive Resident
- Linda Essig, 1196 Bay Drive Resident
- David Essig, 1196 Bay Drive Resident
- Fred Fielding, 1219 Isabel Drive Resident
- Lindsey Cantor, 1230 Bay Drive Resident
- Paula McMichael, Director of Planning at Hole Montes
- Beverly Grady, Roetzel & Andress, Attorney representing certain neighbors on Isabel Drive
- Frank Fernandez, 1255 Isabel Drive Resident
- Erika Steiner, 1232 Isabel Drive Resident
- Robert Pritt, Roetzel & Andress, Attorney representing James & Christine Herrick
- Marty Harrity, 1263 Isabel Drive Resident
- Holly Milbrandt, City of Sanibel, Natural Resources Deputy Director

Commissioner Kettelman spoke to the process and procedures for the hearing due to the amount of public in attendance today.

Attorney Agnew reiterated that Commission Members had reported prior ex-parte communications at the October 8, 2019 meeting. These reports are for transparency purposes in the hearings, in the event

anyone wished to inquire further into the details of the discussions. He further spoke about the variance process being a part of the Land Development Code, which provides an applicant the opportunity to seek a variance, and the Commission's responsibility is to determine if the seven variance standards have been met and either approve or deny the request. If an appeal of the decision is made, the process will entail a review of the testimony and evidence heard and received, and hinge upon whether there was competent substantial evidence in the record to warrant upholding the decision made.

Craig Chandler, Acting Planning Staff Supervisor, entered the Staff Report and attachments as City Exhibit C-1. Attachments include: A) Variance Application; B) Applicants' Summary and Response to Variance Standards; C) Survey; D) Proposed Dock Plans; E) Natural Resources Department Memorandum; F) Ordinance 95-15; G) Location Map; and H) Attorney Steve Hartsell's September 30, 2019 Memorandum in Response to Public Comments.

Mr. Chandler stated the Public Comments received through January 13, 2020 had been distributed along with the Staff Report. Fourteen additional public comments had been received between January 13 and January 24 and had been distributed. Three public comments were received after the January 24 posting and hardcopies had been provided to Commission along with a diagram designating the locations of the homes that had made public comment.

The request is for two variances, one from Section 126-875 for waterward extension and the second from Section 126-882 deck planking. The applicant proposes to remove an existing accessory concrete boat dock and construct a new dock with a 3 foot wide by 37 foot long walkway that provides access to a 4 foot wide by 40 foot long dock with an accessory "elevator" style boat lift that will extend (at its waterward most point) approximately 54.5' southward of the mean high water line of a boat canal adjacent to a parcel with an existing single-family residence located at 1203 Isabel Drive. Because boat access to the existing dock is inhibited by shallow water depths and the presence of seagrasses, the applicants are requesting variances to the City's waterward extension limit and deck plank spacing requirement to allow for the walkway portion of the new boat dock to be constructed with open cell decking and to allow the dock and boat lift to extend beyond existing seagrasses and where there's more water depth to accommodate vessels on an accessory boat lift.

The original application sought accommodation for two boat lifts but has been revised to include only one lift. Extension of the dock beyond the waterward extension limit is proposed to mitigate the hardships of the lot. There is a significant distance from the end of the proposed dock to the navigable portion of the canal and was designed to not impede navigation.

Staff finds the seven variance standards are satisfied but makes no recommendation as to approval or denial of the request. If the Planning Commission finds the seven standards have been met, the seven conditions listed in the Staff Report should be included in the approval. Staff noted the Planning Commission should determine if the applicant's proposed dock plan with a boat lift that extends waterward up to 54.5' past the seawall is within the rhythm, harmony or character of docks within the established Sanibel Harbours neighborhood with respect to their appearance and size.

Chair Kettelman requested Holly Milbrandt speak to the Natural Resources memorandum dated January 13, 2020. Natural Resources Staff has been on site noting there is a dense, healthy growing bed of sea grass which includes three types of sea grasses. The design of the dock being considered requires two variances and Natural Resources Staff finds that it minimizes impacts to the seagrasses and mitigates for impacts that are unavoidable. The applicant has incorporated additional features such as the minimum allowable walkway width, piling pairs spaced 15 feet apart, railings placed to eliminate additional mooring spots, and incorporates standards for docks located in the Bay Beach Zone, though this property is located outside that zone.

Commission inquired of Ms. Milbrandt if sea grasses were protected by Ordinance such as mangroves, and it was confirmed they are not. Sea grass protections are more general through the Sanibel Plan and the Environmental Performance Standards, but all sea grass projects and impacts are subject to State and Federal permitting. The Bay Beach Zone was established prior to the prohibition of docks in a certain section of the zone. It is Staff's understanding that amendment to the Bay Beach Zone was specific to the permitted use of accessory docks but did not otherwise affect the zoning. The property in question was never included in the Bay Beach Zone, though it contains protected resources akin to the Bay Beach Zone. The area with the prohibition for docks in the Bay Beach Zone runs from the Sanibel Lighthouse to the end of Dixie Beach Road and does include the strip of homes on the bay side of Isabel Drive.

The home in question is in the G – Altered Lands Zone.

Commission inquired if the property at 1204 Isabel which currently has a dock, was ever deeded a dock lot at the end of Isabel Drive. Staff did not know the history of that property. Discussion ensued regarding the home on the opposite corner of the inlet canal having two docks and lifts that are much closer to the navigable waterway than the dock being considered. Further discussion ensued regarding whether the existing dock on the applicants' property was legally constructed and the purpose for the creation of Ordinance 95-15, pertaining to Dock Lots A-Q of Sanibel Harbours Subdivision. The City's Environmental Performance Standards do not state specifics regarding driving pilings into or placing shade over sea grass beds though they do speak to minimizing impacts to the protected resources.

Further discussion focused on the fact that if it were not for the seagrass and depth issues the applicant could build a dock close to the home and no variance would be needed. The variance requests for both the open cell planking and the length of the dock were due to the seagrass. Staff is not aware of another home having a similar seagrass issue. The closest point from the dock or a moored vessel would be 52 feet away from the channel and is not expected to impede navigability.

Steve Hartsell, attorney for the applicants, provided a brief PowerPoint presentation. The Applicants agree with the Staff Report findings, conclusions, and conditions. Mr. Hartsell requested to qualify Ian Fisher and Hans Wilson as expert witnesses in the application of the Sanibel Land Development Code and the Sanibel Plan to docks and lifts regarding marine environmental and coastal engineering, including dock design and location. There were no objections from the public or counsel for the opposition, and Chair Kettelman accepted them as experts on the requested subject matter. Mr. Wilson's and Mr. Fisher's resumes were provided to the clerk for the record. Mr. Hartsell submitted the PowerPoint presentation as Applicant Exhibit A1.

Mr. Hartsell explained the property is located on the peninsula at the mouth of the canal onto San Carlos Bay and has 157 feet of water frontage. From the original application to the present application Mr. Hartsell stated the applicants reduced the extent of waterward extension, removed the outside pilings by incorporating an elevator style lift, and gave up the right for a second boat lift which is allowed by Sanibel Code. Mr. Hartsell further stated that Land Development Code Section 126-875 recognizes that waterfront property owners have riparian rights to build dock and boat lifts that extend into the water a distance to provide reasonable use of the facility.

Engineer Hans Wilson spoke to the process used to determine the ability and location for construction of a dock and lift. In an effort to protect the resources on the property, the width of the walkway was reduced, special open-cell planking was proposed to be used to improve light to the environment, the proposed location provides the least resource impact, and elevator lift is proposed to further minimize impact by reducing the number of pilings needed. Mr. Wilson's professional opinion is that the seven standards have been met with the design of the dock and boat lift.

Mr. Hartsell spoke to slide #19 of his presentation which shows location of the channel and the location of the channel markings in relation to the Heidrick property and submits the proposed dock will have no adverse impact on navigability. He reminded Commission that the revised application had been submitted in December, in advance of the deadline; and at that time Mr. Heidrick also provided copies of the application to neighbors to ensure adequate time for review and consideration. The proposed dock and lift provide access to the canal which is consistent with the neighborhood scheme.

The meeting recessed at 11:00 a.m. and reconvened at 11:10 a.m.

Mr. Hartsell spoke to the documentation provided with the staff report and the necessity for the open cell decking. The dock lots at the end of Sanibel Harbours are not clearly associated with a specific home lot, and the purchase of the home lot was not dependent on the purchase of a dock lot. Applicant Chris Heidrick spoke to the desired vessel being 30-40 feet to meet the specifications of the dock, boat lift and fit the scheme of the neighborhood. Applications have already been submitted with State and Federal permitting authorities to help reduce time to begin construction if the variances are approved.

Discussion ensued regarding a legal right to a view by neighboring homes. Mr. Hartsell stated that the homes that would have impacted views already have docks and boats of their own which impact their views. Mr. Hartsell submits that the new dock will change the view but not diminish the value of the properties.

Public Comment:

- Beverly Grady, attorney on behalf of neighbors, Mr. & Mrs. Fernandez and Mr. & Mrs. Harrity, entered a copy of a letter dated January 9, 2020 as public exhibit P1. Ms. Grady submitted opposition to the waterward extension, asserting it fails to meet the seven variance standards, including that the owner has not been deprived of reasonable use of the property. She also asserted that the presence of sea grass has been a basis the City used to prohibit docks not to provide a reason to build a longer, obtrusive dock. Ms. Grady further stated the applicant has no right to a variance, and by asking for a variance the applicants are asking the Commission to allow them to go against the Code. Ms. Grady also argued that the Staff Report neither addressed the existence of the neighborhood plan nor the massive variance being requested. On behalf of the neighbors Ms. Grady requests the denial of the application.

- Paula McMichael, Director of Planning with Hole Montes, submitted a copy of a report and PowerPoint she prepared as Public Exhibit P2. Ms. McMichael was presented as an expert witness by Attorney Beverly Grady and provided a brief background for her expertise in the matter, including time spent as a Planner for the City and extensive private practice experience. She further stated that the presence of riparian rights does not mean that the City is required to approve the variance or is prohibited from enforcing the Land Development Code. Ms. McMichael spoke to the presence of sea grass not being a unique hardship to the property. Ms. McMichael noted the measurements of the canal and distance from the proposed dock were inaccurately calculated and presented by the applicants and the application is under-estimating the amount of the variance requested. She also asserted that neither the dock nor the lift will comply with the Land Development Code, and the presence of the sea grass makes the location poorly suited for launching watercraft. She further stated that approval of the variance and the establishment of the dock in the canal would be inharmonious and have a negative impact on the character of Sanibel Harbours.

Discussion ensued regarding the discrepancies in measurements, between those presented by the applicants and those presented by Ms. McMichael. Mr. Hartsell noted the exhibits used by Ms. McMichael to demonstrate measurements were from previous versions of the request, not the request that

was being considered. Mr. Hartsell confirmed the arms of the lift will extend 12 feet out. The Commission noted they had not seen previous versions of the design.

Discussion ensued regarding boat slip "I" having been originally owned together with the parcel at 1203 Isabel Drive; however, the boat slip was sold separately from the parcel in the 1980s. Additional discussion continued about the possibility that a dock at the end of Sanibel Harbours may be available for purchase by the applicants.

- Todd Smith, neighborhood resident, was sworn in and spoke in opposition to the application, stating he had sent in public comment three times and appeared at the first hearing. Mr. Smith feels that the Commission should deny the variance and uphold the developed neighborhood scheme. The Applicant was a previous Planning Commissioner for the City and should be aware of the Code and standards demonstrating the request does not meet the variance standards.

- Lindsay Meisner, neighborhood resident, spoke in opposition to the application. She previously attended the October 8, 2019 hearing and stated there are broader issues on the bay side of the island regarding the lower elevations and the absence of dunes. Ms. Meisner stated a decision in favor of the application today would be boxing ourselves in and suggested the possibility of a moratorium on construction on the bay side.

- Dave Essig, neighborhood resident, spoke in opposition to the application and disagreed with Mr. Wilson's statement that the view would not be affected by the proposed dock. Mr. Essig argued that if this variance is granted the people on the bay side would be allowed to install additional docks with open planking.

- Frank Fernandez, neighborhood resident, spoke in opposition to the application and previously submitted a petition in opposition that highlights his concerns. This request is 82% in excess of the waterward extension that the code allows. Approval would be setting precedence for the island and the adjacent homes on the bay. All homes in Sanibel Harbours were developed with docking availability. Approving a variance for a dock and lift would be inconsistent with and adverse to the developed neighborhood scheme.

- Marty Harrity, neighborhood resident, spoke in opposition to the application and detailed previously being a Planning Commissioner and the task of interpreting the seven standards to make a ruling. Mr. Harrity stated the existing dock at the neighboring property at 1204 Isabel should be evidence that the location is not ideal for docking purposes due to accretion and sea grasses, and he requested the variance be denied.

- Robert Pritt, attorney on behalf of Mr. & Mrs. Herrick, spoke in opposition to the application. He stated the existing canal docks were adjacent to the sea walls, and he asserted this request will be an invitation for other neighbors to make similar requests. He further spoke to not hearing any testimony relating to erosion issues and that the neighbors had riparian rights to views.

- Larry Conlon, neighborhood resident, spoke in opposition to the application and inquired if the stakes currently in the water were marking the location of the proposed dock, which Mr. Hartsell confirmed to be true. Mr. Conlon stated he had seen two boats hitting the stakes the past weekend as evidence boats travelled through the proposed dock location and he provided four photographs which were entered as Public Exhibit P3.

- Lindsey Cantor, neighborhood resident, spoke in opposition to the application. Ms. Cantor spoke to the lack of awareness of the unique constraints of a property as being a burden belonging to the applicants not

the neighboring homeowners. If approved, Ms. Cantor stated the dock and boat lift will ruin the million-dollar views of the neighbors in the canal inlet. Neighbors are seeking protection of the inlet and appealing to the Commissioners to deny the request.

- Andrew Shott, neighborhood resident, spoke in opposition to the application. He stated the applicant had no claim of right for the dock. He also opined that the Staff Report position that the request was the minimum variance necessary which was inaccurate. Further, he stated the price the applicant paid for the lot reflected the fact that a dock was not included in the home purchase. Mr. Shott stated the dock would increase use and value of the property, but the applicants have not been denied reasonable use and enjoyment of the property the past five years they have owned it.

- Fred Fielding, neighborhood resident, spoke in opposition to the application. He stated a variance was a request for equitable relief; and there is a legal doctrine that holds that a person cannot seek equitable relief with "unclean hand" and the applicants in this case have unclean hands. He further stated this request is to the detriment of the other neighbors and suggests denial of the request.

- Ryan Orgera, CEO of Sanibel Captiva Conservation Foundation (SCCF), spoke in opposition to the application. Dr. Orgera stated there has been a 40% reduction in sea grass in the general region over the past 20 years and although this home is not in the legal Bay Beach Zone, due to the healthy stable grass bed, the home should legally be considered part of the Bay Beach Zone. Dr. Orgera stated he confirmed through research the subject grass bed has been thriving there since 1985, and that this natural resource should be protected, and the application be denied.

- Bruce Gurall, neighborhood resident, spoke in opposition to the application and stated the property at 1222 Bay Drive is currently being marketed and may be a point of relief for the applicant.

- Bob DeVore, neighborhood resident, spoke in opposition to the application. He spoke to previously submitting public comments, noted he has had no communication with the applicant, and requested the denial of the application.

Mr. Hartsell stated the variance requested was the minimum necessary, but that it was as significant as it was due to the size of the grass bed and its protection. The applicants do respect their neighbors and have done their due diligence to ensure that information has been shared with neighbors or their representatives in a timely manner.

Discussion ensued regarding riparian rights and the "right to a view". Mr. Hartsell stated the side setbacks in the City's Code were written in a manner to protect a property owner from an adjacent neighbor building out into the water at an angle that would obstruct the property's view, and it did not prevent a property owner on the other side of the canal from building a dock. Attorney Agnew stated he did not disagree with this point and noted that the "right to a view" argument asserted by legal counsel for the opposition was clarified on this subject, not to be focused on an alleged legal right to an unobstructed view of the bay, but rather that the view of the dock as proposed was a disruption to the rhythm, harmony, and character of the neighborhood.

Further discussion ensued regarding the lack of opposition when the property opposite the applicants' property on the corner of the mouth of the inlet relocated the dock for its property from the bay side to the mouth of the canal and installed two boatlifts. Ms. Milbrandt noted Staff feels the applicant has sufficiently worked to minimize the impact to the sea grasses based on the current design of the proposed dock. Additionally, Ms. Milbrandt clarified there were a number of factors that went into the delineation of what properties were in the Bay Beach Zone versus other zones. Staff maintains that the applicant has done enough to meet the standard and for support of the proposal.

Mr. Chandler spoke to public concerns that approving this application may open the way for further similar requests on the bay. The property at 1203 is legally allowed the accessory dock, whereas the properties on the bay side of Isabel Drive, which are in the Bay Beach Zone, are prohibited by Code from having an accessory dock. Mr. Hartsell further spoke to the property not being in the Bay Beach Zone, that the accessory dock is not prohibited, and all steps have been taken to reduce the impacts on the natural resources.

Discussion ensued amongst the Commissioners regarding hearing all the evidence and public comments and applying all points for and against the case to the seven variance standards. Commissioner Hulihan stated he was prepared to call a vote but did not indicate whether he was supportive or not of approval. Commissioner Pfeifer noted that five of the standards were successfully debated by the parties and attorneys on both sides of the issue, such that those standards are not black and white as to being met or not having been met; however, he felt the applicants clearly did not meet the sixth and seventh standards, so he could not support approval of the application. Commissioner Storjohann noted her position was that it was an unsafe place for a boat and the decision was between one other property who would have a marginally affected view and safety, but she was inclined to oppose approval based upon safety-related reasons. Commissioner Grogman noted his position was that it was a difficult decision, but he believed all the standards had been met, so he was supportive of the approval. Commissioner Kirchner thanked Commissioner Pfeifer for the analysis and indicated was ready to entertain a motion without indicating whether he was supportive or not of approval. Commissioner Nichols indicated the difficulty of the decision and the struggle was with rhythm and harmony but did not feel there was enough against the seven conditions to deny approval. Chair Kettelman noted the difficulty of the decision and stated he ultimately could not support the application based upon it being inconsistent with the Sanibel Plan and the harm to the sea grass beds as detailed by Dr. Orgera.

Continued discussion ensued regarding sea grass impacts, potential dangers associated with navigation based upon the proposed location of the dock, and the views of the neighbors being marginally obstructed. It was also noted there is a dock that came with the property that will be removed, in addition to the new dock being installed. It was reiterated that the homes in the inlet have docks with lifts and boats and the only home that might have the view obstructed is a single story with their own lift and boat blocking the view. The Commission expressed rhythm and harmony of the neighborhood and the environmental issues are the biggest concerns.

Mr. Hartsell stated navigability should not be an issue or cause safety issues. Commissioner Storjohann clarified her safety concerns were in terms of the wisdom of the location of the dock for the safety of the boat, not navigation. Mr. Heidrick spoke to knowing that the property came with a dock when he purchased it. Regarding the price of the property, Mr. Heidrick stated his timing was fortunate as the heirs were more motivated to sell the home, and he was aware that the variance process was available to improve the condition of the dock. Mr. Heidrick also stated he had done everything in his proposal to protect the sea grass in addition to providing further enjoyment of the property. Regarding Ms. Storjohann's concerns, he stated there are four other docks in inlet that will receive the same wave action as the proposed dock.

MOTION: Commissioner Hulihan moved, seconded by Commissioner Storjohann to approve Application 19-11618V with the seven conditions listed in the staff report, to direct staff to prepare a Resolution in conformance with this motion, to close the public hearing in this matter, and to bring back the Resolution at a later date for review and approval. The motion carried 4-3 with Commissioners Kettelman, Kirchner, and Pfeifer opposed.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Commission of the City of Sanibel, that all application requirements have been met and that **Application 19-11618V** was **approved** with the following 7 conditions:

1. The boat dock and boat lift shall not extend more than 54.5 feet waterward of the MHWL and shall be installed in general conformance with the proposed plans provided as **Attachment D** of the Community Services Department - Planning Staff Report dated January 28, 2020. The existing boat dock shall be removed.
2. An as-built survey shall be submitted to the City demonstrating compliance with the approved plans including, but not limited to, the waterward extension (as approved) prior to the issuance of the completion certificate.
3. The size of any boat to be placed on the lift shall be such that the boat does not pose an impediment to navigation or boat canal access.
4. Conical piling caps or any other anti-bird roosting devices shall not be placed on the dock and lift pilings.
5. Any proposed outdoor dock lighting shall be in compliance with the standards and requirements of the Land Development Code, including:
 - a. Lights on docks, boat lifts, boat davits, and mooring pilings shall be no more than the minimum necessary as an aid to navigation and to illuminate the surface of the dock and access walkway as a safety measure for those walking on these surfaces at night.
 - b. Any light installed as an aid to navigation shall be in conformance with the U.S. Coast Guard standards.
 - c. Existing or installed lights to illuminate the surface of a dock or walkway shall:
 - i. Be a minimum of 11 feet apart.
 - ii. Be so shielded and directed that the light falls only on the surface of the dock or walkway.
 - iii. Use an incandescent bulb with a maximum of 25 watts.
 - iv. Number no more than six (6).
 - v. Be installed so that no part of the light fixture is more than 30 inches above the surface of the dock or walkway.
6. Apart from the waterward extension limit and deck plank spacing standards, all other requirements for accessory marine structures contained in the Land Development Code shall be met including, but not limited to, the following:
 - a. No fill or dredging is authorized by the approved variance or development permit.
 - b. The height of the dock structures and boat lift pilings shall be limited to a maximum of three (3) feet and ten (10) feet, respectively, above mean high water level.
 - c. Materials used in the boat lift construction shall comply with the standards in Land Development Code Section 126-885.
 - d. No double berthing of vessels shall be permitted.
 - e. Roofing and enclosures are not permitted on any dock, boat davit, or boat lift structure, including mooring pilings.
 - f. Turbidity screening shall be employed during subsurface construction, to remain in place a minimum of twenty-four (24) hours to ensure protection of water quality in the area.
7. The applicant shall obtain all applicable development and building permits and approvals required from other governmental agencies, including the Florida Department of Environmental Protection and the United States Army Corps of Engineers.

EXPIRATION OF PLANNING COMMISSION ACTION: In accordance with land Development Code Section 82-116. Variances shall expire if any necessary development permit to implement such approval is not obtained within a period of 12 months after Planning Commission approval, or, if a development permit is obtained within 12 months, upon expiration of the development permit.

EFFECTIVE DATE OF PLANNING COMMISSION ACTION: In accordance with Land Development Code Section 82-97, all actions of the Planning Commission, including those which constitute final decisions, shall be effective upon the date of filing of the adopted resolution with the City Manager, or at a later date if provided in the resolution. However, permits authorized by final decisions shall not be issued until the expiration of the time-period for filing an appeal to City Council, if applicable, has elapsed; or if an appeal has been timely filed, until the City Council has finally disposed of the matter.

RIGHT TO APPEAL PLANNING COMMISSION ACTION: In accordance with Land Development Code Section 82-98. Appeals. The applicant is hereby advised that the following persons have the right to appeal a final decision of the Planning Commission adverse to their interests: 1) The applicant; 2) The owner of the property proposed for development; 3) The developer of the property proposed for development; 4) Any other person residing upon, or owning property within the City, or owning or operating a business within the City, who participated by written comment before or at the Planning Commission hearing or who participated in person or through an authorized agent at the Planning Commission hearing.

FIFTEEN DAY TIME LIMIT FOR FILING APPEALS OF PLANNING COMMISSION ACTION: In accordance with Land Development Code Section 82-98. Appeals. The appeal shall be filed within 15 days after the date that the Planning Commission decision was filed. The appeal shall be filed with the City manager, and the filing fee shall be paid as a prerequisite to filing.

The foregoing Resolution was adopted by the Planning Commission upon a motion by Commissioner Storjohann and seconded by Commissioner Grogman, and the vote was as follows:

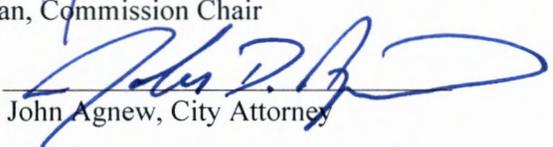
Chuck Ketteman	<u>Yea</u>	Roger Grogman	<u>Yea</u>
Michael Hullihan	<u>Yea</u>	Matthew Kirchner	<u>Yea</u>
Paul Nichols	<u>Yea</u>	Eric Pfeifer	<u>Yea</u>
Karen Storjohann	<u>Yea</u>		

DULY PASSED AND ADOPTED this 11th day of February 2020.

SANIBEL PLANNING COMMISSION

Signed: 
Chuck Ketteman, Commission Chair

2/11/20
Date Signed

Approved As To Form: 
John Agnew, City Attorney

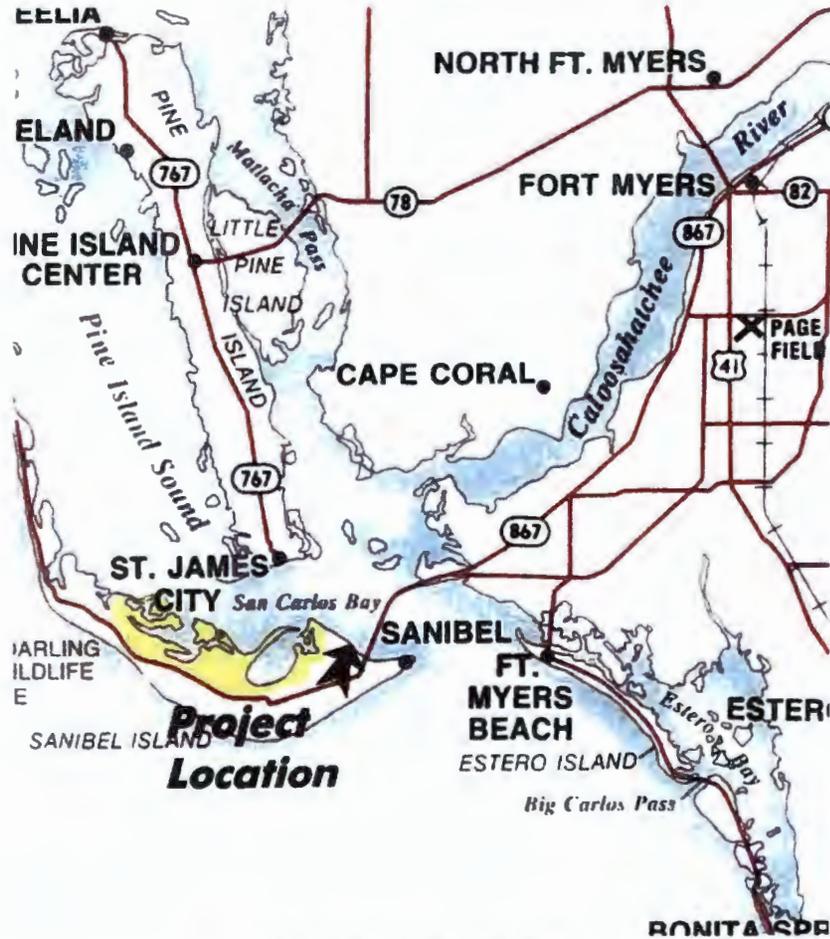
2/11/20
Date Signed

Date Filed with City Manager: February 11, 2020

SECTION: 18
 TOWNSHIP: 46 S.
 RANGE: 23 E.

0 2.5mi 5mi
 SCALE FEET

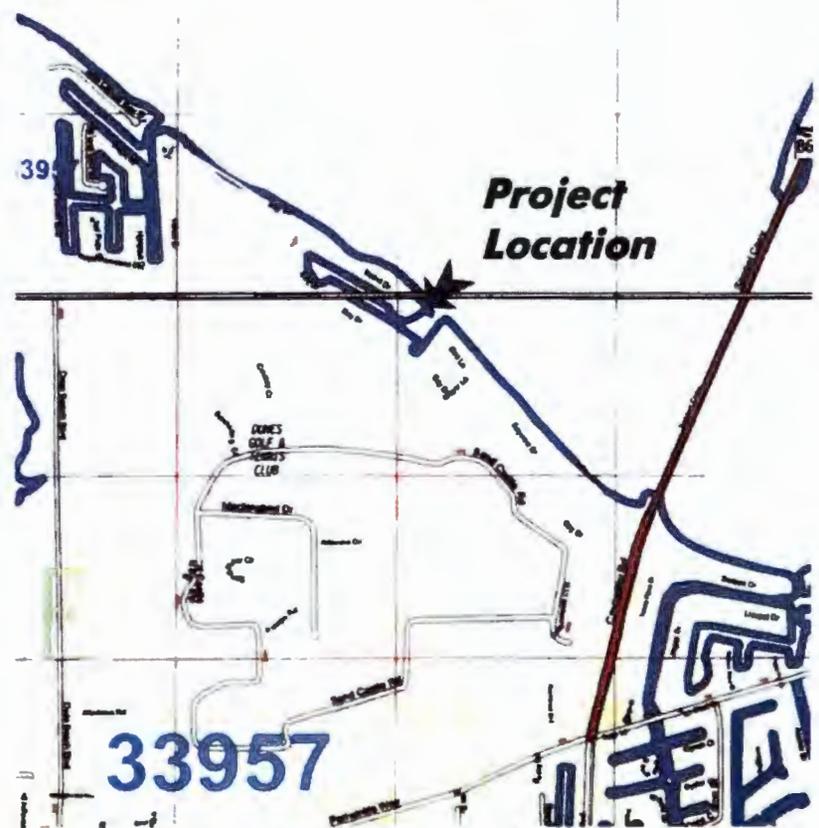
0 1000 2000
 SCALE FEET



Vicinity Map

SCALE: 1" = 5mi

ATTACHMENT D
 Application 19-11618V
 Heidrick - Boat Dock and Lift
 1203 Isabel Drive



Location Map

SCALE: 1" = 2000'

November 22, 2019 2:24:34 p.m.
 Drawing: HEIDRICK1MASTER.DWG

DISCUSSION PLANS, NOT FOR CONSTRUCTION



1938 Hill Avenue, Fort Myers, Florida 33901
 Office: 239-334-6870 Fax: 239-334-7810
 MARINE and ENVIRONMENTAL CONSULTANTS

11-22-19

IMF

Chris Heidrick

SHEET

1/6

SECTION: 18
TOWNSHIP: 46 S.
RANGE: 23 E.

Lee County Aerial 2018

0 100 200
SCALE FEET



Note: Property line per Lee County Property Appraiser.
Elevation reference Mean Low Water per DEP Tidal
Interpolation Point #1082. Mean High Water @
0.08' NAVD. Mean Low Water @ -1.45' NAVD.

Overall Site Plan

SCALE: 1" = 200'

November 22, 2019 2:24:34 p.m.
Drawing: HEIDRICK1MASTER.DWG

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Chris Heidrick

SHEET
2/6

SECTION: 18
 TOWNSHIP: 46 S.
 RANGE: 23 E.

0 50 100
 SCALE FEET

Lee County Aerial 2018

Contour Legend	
	> -1
	-1 to -2
	-2 to -3
	-3 to -4
	-4 to -5
	-5 to -6
	-6 to -7
	< -7



Note: Property line per Lee County Property Appraiser.
 Elevation reference Mean Low Water per DEP Tidal
 Interpolation Point #1082. Mean High Water @
 0.08' NAVD. Mean Low Water @ -1.45' NAVD.

Bathymetric Survey

SCALE: 1" = 100'

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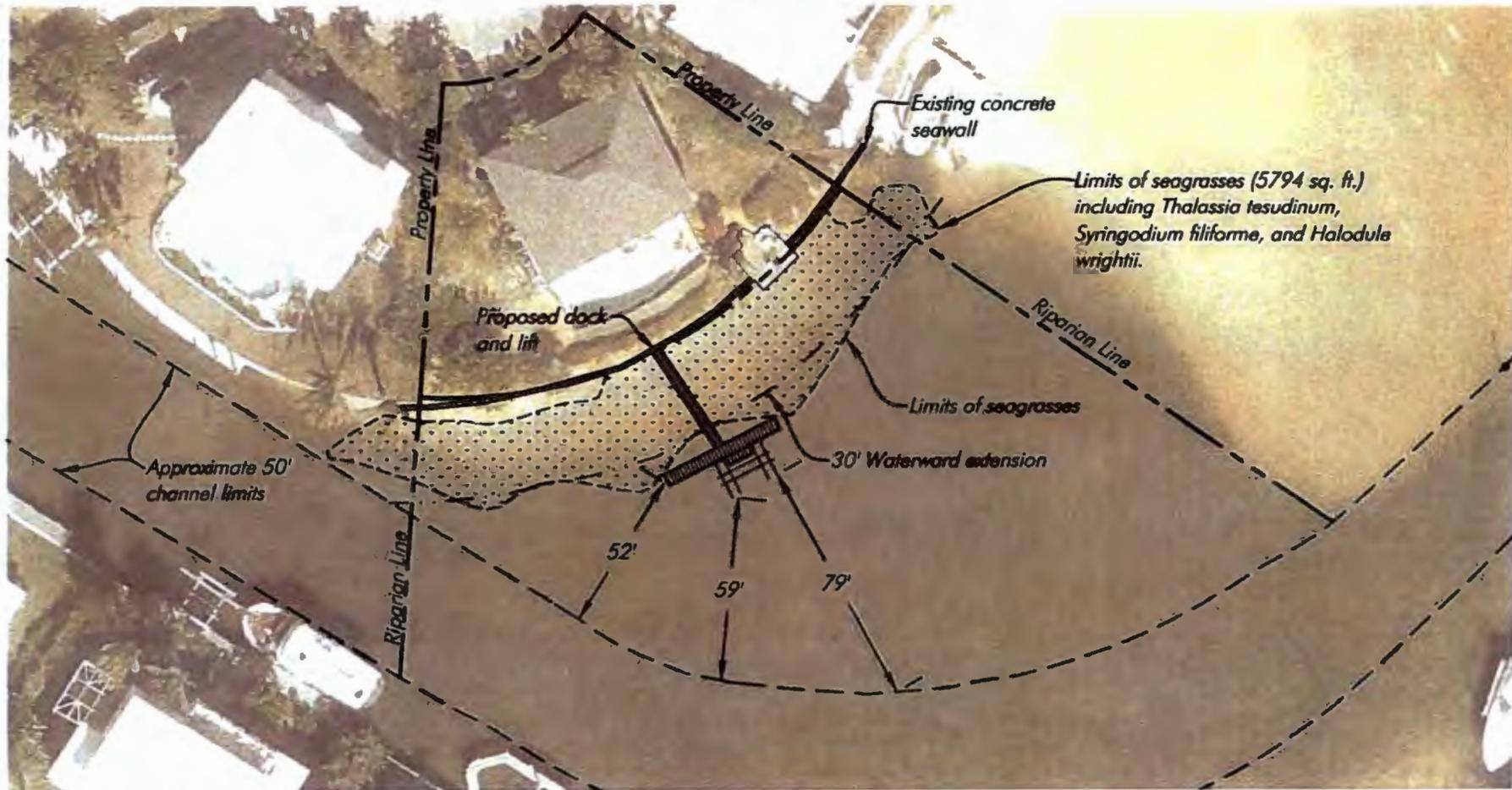
SHEET

3/6

SECTION: 18
TOWNSHIP: 46 S.
RANGE: 23 E.

Lee County Aerial 2018

0 25 50
SCALE FEET



Note: Property line per Lee County Property Appraiser.
Elevation reference Mean Low Water per DEP Tidal
Interpolation Point #1082. Mean High Water @
0.08' NAVD. Mean Low Water @ -1.45' NAVD.

Benthic Survey

SCALE: 1" = 50'

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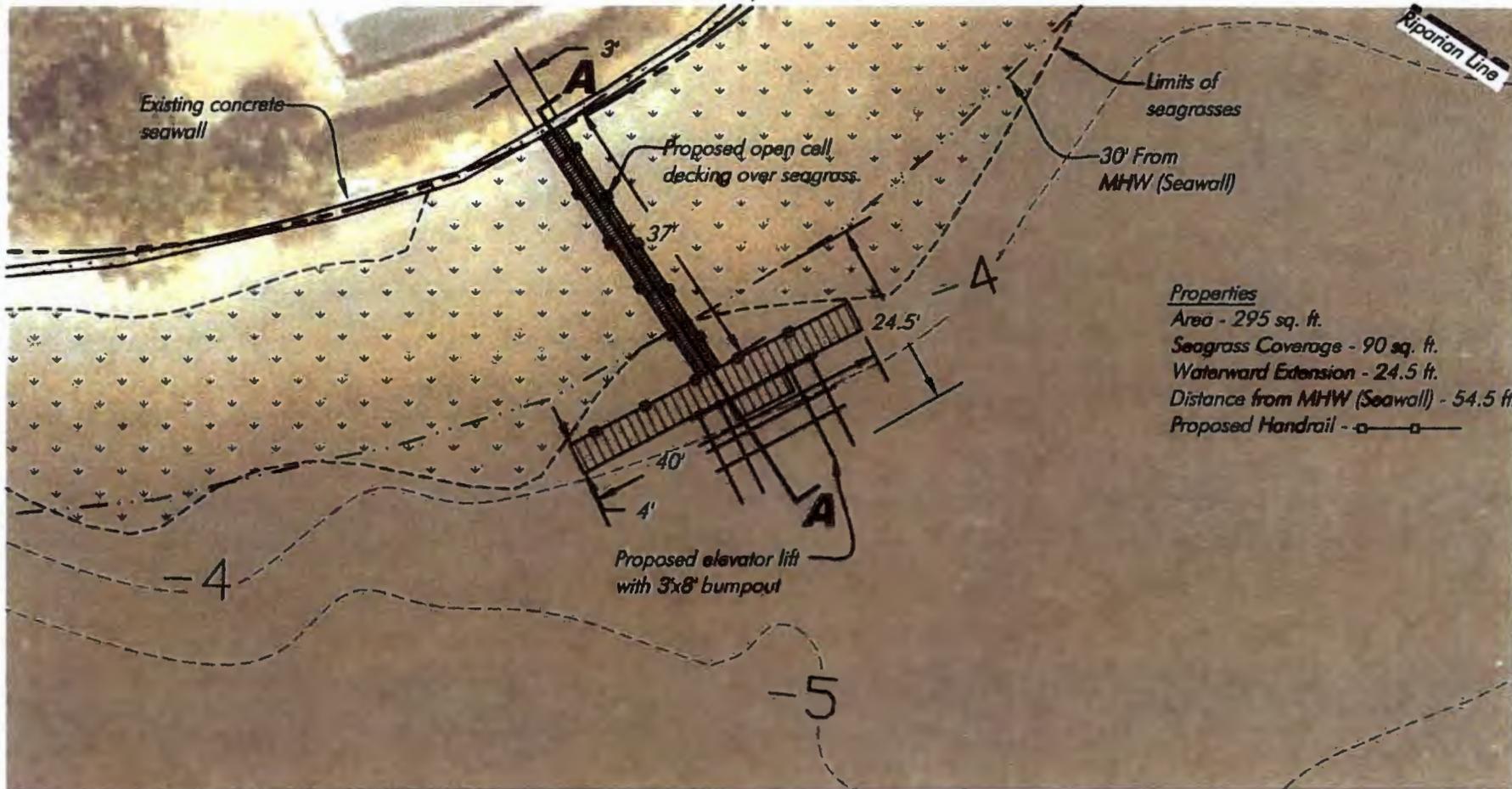
Chris Heidrick

SHEET
4/6

SECTION: 18
 TOWNSHIP: 46 S.
 RANGE: 23 E.

0 10 20
 SCALE FEET

Lee County Aerial 2018



Properties
 Area - 295 sq. ft.
 Seagrass Coverage - 90 sq. ft.
 Waterward Extension - 24.5 ft.
 Distance from MHW (Seawall) - 54.5 ft.
 Proposed Handrail - □-□-□

Note: Property line per Lee County Property Appraiser. Elevation reference Mean Low Water per DEP Tidal Interpolation Point #1082. Mean High Water @ 0.08 NAVD. Mean Low Water @ -1.45' NAVD.

Proposed Docks/Lifts

SCALE: 1" = 20'

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November 22, 2019 2:24:34 p.m.
 Drawing: HEIDRICKMASTER.DWG



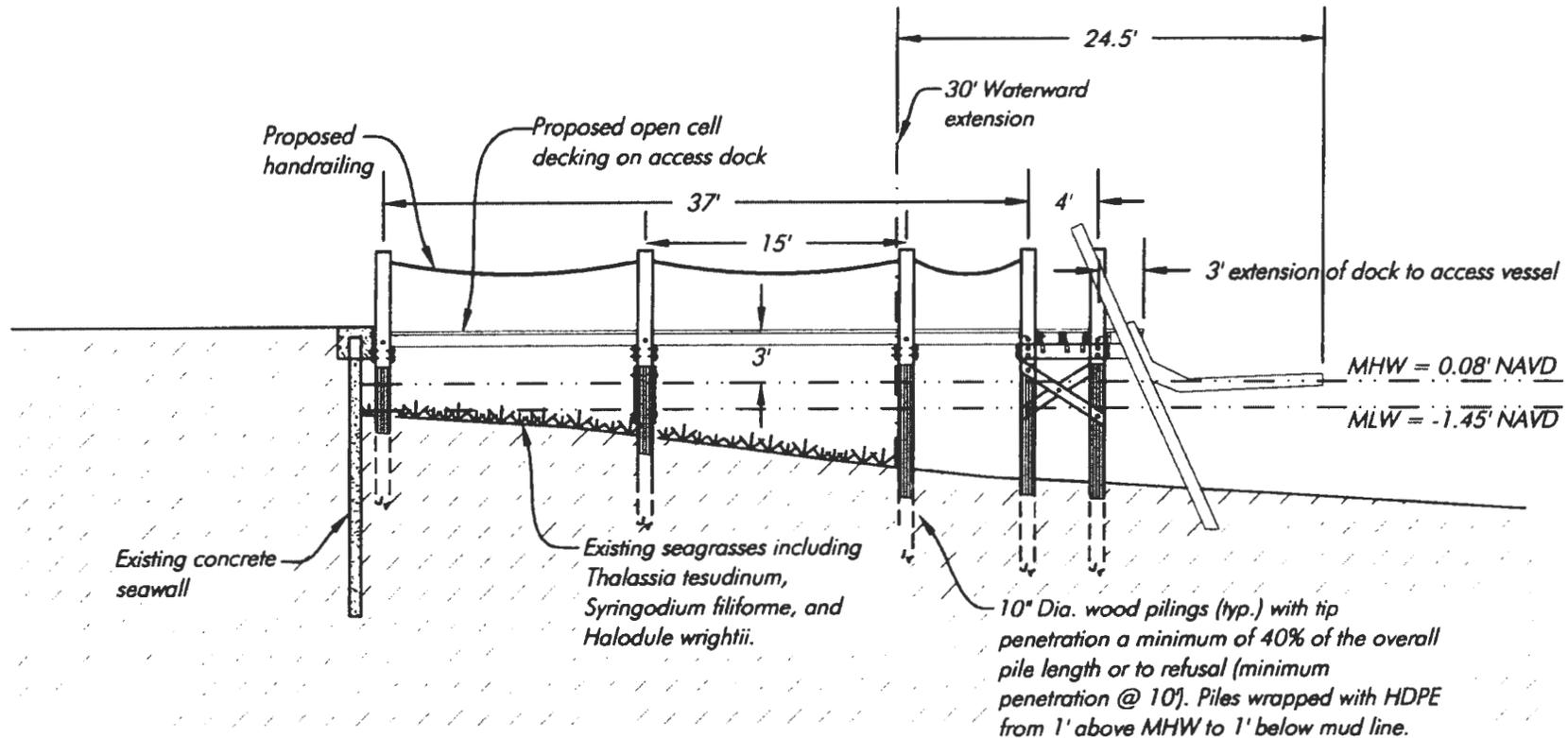
1938 Hill Avenue, Fort Myers, Florida 33901
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 MARINE and ENVIRONMENTAL CONSULTANTS

11-22-19
 IMF

Chris Heidrick

SHEET
5/6

SECTION: 18
 TOWNSHIP: 46 S.
 RANGE: 23 E.



Cross Section A-A

SCALE: 1" = 10'

Note: Elevation reference Mean Low Water per DEP Tidal Interpolation Point #1082. Mean High Water @ 0.08 NAVD. Mean Low Water @ -1.45' NAVD.

DISCUSSION PLANS, NOT FOR CONSTRUCTION

November 22, 2019 2:24:34 p.m.
 Drawing: HEIDRICK1MASTER.DWG



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11-22-19

IMF

Chris Heidrick

SHEET

6/6