



April Fisher, AICP
PRESIDENT
407.494.8789
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September 14, 2020

Variance Application: 5842 COVE DRIVE (CONTINUED FROM AUGUST 25, 2020)

Applicant Request: PURSUANT TO BELLE ISLE CODE SEC. 48-33 THE BOARD SHALL CONSIDER AND TAKE ACTION ON A REQUESTED VARIANCE FROM SEC. 48-32 (A) (1) AND SEC. 48-34 TO ALLOW AN EXPANSION OF THE DOCK TO EXTEND THE ROOF OF AN EXISTING NONCONFORMING DOCK, ALLOW REPLACEMENT OF PILINGS AND DECKING ON THE NONCONFORMING DOCK, AND ALLOW A VARIANCE FROM THE REQUIRED SIDE SETBACK FOR THE EXISTING DOCK, SUBMITTED BY APPLICANT JEFFREY GILES, LOCATED AT 5842 COVE DRIVE, BELLE ISLE, FL 32812 ALSO KNOWN AS PARCEL NUMBER 20-23-30-1660-00-090.

Zoning/ Existing Use: R-1-AA/ Single-family Residence

Review Comments

Just prior to the August 25, 2020 Planning and Zoning Board meeting, the City received new information on the actual built condition of the property. This information is detailed in the attached memo from Bob Francis, City Manager. Staff provides an evaluation on the variance criteria for the application below, revised from the August staff report, based on the new information received.

This application filed seeks a variance from the Code regarding meeting the minimum side setback for docks, repairing pilings/decking, and extending the roof of a nonconforming existing dock. The repair work and roof extension were completed prior to seeking these variance requests as well as prior to seeking a building permit for the work.

The property is currently developed with a primary single-family home and has an existing dock. The dock was built prior to the current code that requires a five-foot side yard setback.

Property Appraiser aerials reveal that between 2017 and 2018, a new roof was put on the dock that enlarged the roof over what was previously there. Pictures provided to the City reveal several new pilings being installed more recently (please see the pictures attached in Mr. Francis' memo).

Both a new roof that changed the original design and new pilings requires full dock permit review with plans. Sec. 48-34 of the Code prohibits changes such as these on a non-conforming dock unless it comes into conformity with current City regulations through a new permit application or the City's determination that the modifications decrease the nonconformity.

Sec. 48-33 (b) states that the board shall not approve an application for a dock variance unless and until each of the following criteria have been met:

- (1) The dock shall not create conditions hazardous to navigation nor any safety hazards;

(2) The location and placement of the dock shall be compatible with other docks in the area, and the NHWC of the lake;

(3) The current level of the lake shall not be a factor in deciding whether to approve or deny a variance;

(4) The application does not confer a special benefit to the landowner over and above the adjoining landowners and does not interfere with the rights of the adjoining property owner to enjoy reasonable use of their property; and

(5) The requirements of subsection 42-64(1), except for subsection 42-64 (1) d.

Staff Recommendations

Staff provides an evaluation based on the dock variance criteria for the application below.

(1) The dock does create safety hazards as it is currently constructed. It is identified in the memo from Mr. Francis referenced above, that the roof of the dock comes into contact with the dock roof of the abutting property. This is an intrusion on the abutting owner's property. Anything that may happen on the dock could affect the neighbor's dock.

(2) The location and placement of the dock are not compatible with other docks in the area due to the fact that it is coming into contact with the abutting property's dock. It is not meeting any reasonable or perceived setback.

(3) The current level of the lake is not a factor in request of the variance as it is not seeking to augment the lake level or gain additional dock length based on lake level.

(4) The application confers a special benefit to the landowner over and above the adjoining landowners and interferes with the rights of the adjoining property owner to enjoy reasonable use of their property as identified in (1) and (2) above.

(5) The requirements of subsection 42-64(1), except for subsection 42-64(1)d are not met:

a) Special Conditions and/ or Circumstances (Section 42-64 (1) d):

Per Sec. 48-33 (b) (5), this criterion is not applicable to consideration of a dock variance.

b) Not Self- Created (Section 42-64 (1) e):

The request for a variance is a self-created situation, as the property owner has added on to the subject dock that, by the evidence provided in Mr. Francis' memo, clearly violate the Code and criteria established for a variance.

c) Minimum Possible Variance (Section 42-64 (1) f):

The requested variance is not the minimum possible variance to make reasonable use of the land and building as what has been built on the site does not match the proposed repairs and roof addition identified in the original variance

application. What is built, exceeds any minimum variance request.

d) Purpose and Intent (Section 42-64 (1) g):

The requested variance, and the actual built dock, could not be construed to be in harmony with the general purpose and intent of the land development code, and it is injurious to the neighborhood as the dock comes into contact with the dock roof of the abutting property.

Based on consideration of these review criteria staff **recommends denial** of the requested variance application.

Additional Notes

Please note that the Board may approve the proposed variance application as it is presented to them, approve with specific conditions, continue the application if additional information is being requested for consideration, or deny the application, citing which criteria are not met.

A decision by the Board may be appealed by an aggrieved person to the City Council pursuant to Code Sec. 42-71.



CITY OF BELLE ISLE, FL

1600 NELA AVENUE, BELLE ISLE, FL 32809 * TEL 407-851-7730

MEMORANDUM

From the Desk of Bob Francis, City Manager

To: April Fisher, City Planner
Date: September 10, 2020
Re: Comments on Public Hearing CASE #2020-08-006

I have the following comments on Case #2020-08-06, 5842 Cove Drive.

The applicant enlarged and extended his dock without a permit. He also replaced the pilings supporting the roof without a permit. The dock is also over the property line and is now in contact with the neighboring boat house. It appears that the applicant also installed lighting and a fountain without an electrical permit. If the fountain is a plug-in fountain and not "hard wired" into electrical system, then the fountain would not need a permit.

According to the OCPA the original dock was permitted by Orange County in 1996 (Attachment #1) and therefore would be considered a nonconforming "grandfathered" dock which according to the BIMC is "a dock that was duly permitted and authorized by the county when under county jurisdiction, or duly permitted and authorized by the city under and that complied with a previous version of the city's dock regulations, which dock does not conform with the city's current dock regulations under this article, shall be considered a "grandfathered" dock and shall be an authorized legally non-conforming structure." [BIMC Sec. 48-43(c)].

BIMC further states that "Except for maintenance and repair activities allowed by this article, the expansion or modification of a legally non-conforming (or "grandfathered") dock is not permitted except in situations where: (i) the dock is brought into conformance with the then current dock regulations of this article, or (ii) the city determines that the dock will be modified in such a way as to substantially decrease or mitigate the dock's non-conformity with the current dock regulations of this article." [BIMC Sec. 48-43(c)]. The dock does not meet the exception for 1 or 2 of this section.

For maintenance or repair to be done to a non-conforming grandfathered dock, BIMC states "when maintenance and repair of docks involves the repair or replacement of pilings or other portions of the dock at or below the water surface, or of any roofed structure, the permit holder shall submit an application for a permit pursuant to section 48-31 of this article. Maintenance or repair of the deck surface of a dock that does not involve activity at or below the water surface, or of any roofed structure, is allowed without notice or permit, except that all such maintenance and repair activities must maintain the original design and original footprint of the dock and structures located on such dock or associated therewith." [BIMC Sec. 48-34 (b)]

It is clear that this dock had a new roof put on 2018 (Attachment #2 and #3). There is no permit for this roof construction. According to BIMC, a permit would be needed for the roof. Additionally, there is evidence that new pilings were installed (Attachment #4 and #5) and that he enlarged the dock (Attachment #6 and #7) evidenced by the location of the pilings in the both photos.

When the dock pilings were added, the roof was altered so that it now comes in contact with the neighboring boathouse (Attachments #6 and #7). Whether the owner encroached over the property needs to be determined by an independent surveyor; however the owner was required to conform to the BIMC and therefore, should be at least 5 feet off the property line. Additionally as long as the structures are in contact with each other, damage to either structure could occur.

All of these improvements were done without a permit. Also, the City issued the property owner a Notice of Violation on April 20,2020 (Attachment #8) for not having a permit. However, the owner continued to complete the dock without applying for a permit. When the property owner filed for a permit, he listed the cost of the improvements to be \$1,500. Any reasonable person could see that this completed dock is far more than \$1,500 (Attachment #9).

Section 48-35 provides for penalties and enforcement. It is clear that the property owner purposely ignored the NOV issued in April 2020, because he completed the dock and that the information he provided on the permit was not factual for the true cost. It is also clear that he is in violation of the BIMC Section 48-34.

It is my recommendation to the Planning and Zoning Board that they strongly consider the following penalties:

1. The owner is subject to remedial action of removing the dock and resubmitting a valid permit according to BIMC Sections 48-31 and 48-32.; or
2. The owner must move his dock off the property line to the appropriate 5 foot setback so not to damage the neighboring boathouse.
3. If the owner does not remove his dock, then he is fined according to BIMC Section 14-37 (b) which states "if the code enforcement board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000.00 per violation." There are at four violations (No permits for the roof and for the dock, building after the NOV was issued, and failing to conform to the current code), and fine the property owner \$20,000.

APPLICATION TO CONSTRUCT
A BOAT DOCK IN ORANGE COUNTY
(See rules and regulations)



NAME OF LAKE CONWAY NHWE 86.9 DATE 7-11-1996

PROPERTY OWNER'S NAME MARK ELLEN BURG

ADDRESS 5842 Cove DR

PHONE: HOME (407) 226-7776 WORK SAME

LEGAL DESCRIPTION OF PROPERTY _____

APPLICANT'S NAME Christopher N Bump PHONE (352) 383-2531

ADDRESS 6839 OSAGE DR MT. DORA

NAMES AND ADDRESSES OF ADJOINING PROPERTY OWNERS:

1. _____
2. _____

3. NOTARIZED LETTER FROM EACH ADJOINING PROPERTY OWNER STATING "NO OBJECTIONS."

DISTANCE OF SETBACK FROM PROPERTY LINE OF ADJACENT OWNERS:

1. A. _____ B. _____

BRIEF DESCRIPTION OF WORK TO BE DONE (DOCK AND SITE PLANS MUST BE ATTACHED IN ACCORDANCE WITH RULES): _____

2. ELECTRIC POWER TO DOCK: YES _____ NO _____

3. TOTAL AREA OF STRUCTURE: 780 SQ. FT.

4a. LENGTH EXTENDING LAKEWARD FROM NHWE SHORELINE: 34 FT.

4b. LAKE CONWAY LENGTH EXTENDING LAKEWARD FROM 86.40 _____

5. DEPTH OF WATER ON DATE OF APPLICATION AT END OF PROPOSED DOCK: 4 FT.

6. HEIGHT OF STRUCTURE ABOVE NHWE CONTOUR: _____ FT.

TYPE OF MATERIALS TO BE USED: PT LUMBER

**PAYMENT OF \$112.00 FEE AND TWO SETS OF PLANS MUST ACCOMPANY THIS APPLICATION. SEND OR DELIVER TO : ENVIRONMENTAL PROTECTION DEPARTMENT, 2002 E. MICHIGAN ST., ORLANDO, FL 32806 (407) 836-7400





















CITY OF BELLE ISLE, FLORIDA

1600 Nela Avenue
Belle Isle, Florida 32809
(407) 851-7730 • FAX (407) 240-2222
www.cityofbelleislefl.org

Date: April 29, 2020

Certified Receipt: 7014-1200-0001-6578-0943

NOTICE OF VIOLATION

Property Address: 5842 Cove Drive, Belle Isle FL 32812-2819
Property Owner: Jeffrey and Jennifer L. Giles
Parcel ID: 20-23-30-1660-00-090

Violation(s)

1. **Belle Isle Land Development Code Chapter 48, Article II, Sec 48-34(b)- Dock maintenance and repair and minor modifications. Maintenance and repair of docks.** When maintenance and repair of docks involves the repair or replacement of pilings or other portions of the dock at or below the water surface, or of any roofed structure, the permit holder shall submit an application for a permit pursuant to section 48-31 of this article.

It has been brought to the City's attention that an existing dock on the property referenced above is being repaired without a permit being issued as required in the **Land Development Code Chapter 48, Article II, Sec 48-34(b)**. Any and all work must stop immediately on the subject dock and the property owner shall submit the required dock permit application required by **Land Development Code Chapter 48, Article II, Sec 48-34(b)** on the boat dock by the compliance date in order to avoid further code enforcement action.

Compliance Date: May 15, 2020

Since the work began prior to submitting the permit application and receiving approval, the permit is considered an "after the fact" permit and will be charged a double the permit fee pursuant to LDC Sec. 48-35(d).

2. **Belle Isle Land Development Code Chapter 10, Article V, Sec 10-186(c)- Security requirements.** Any excavations, swimming pools or other attractive nuisances must be filled in with dirt or properly enclosed in compliance with all applicable requirements of the City's Code of Ordinances and the Florida Building Code.

It has been brought to the City's attention that an existing swimming pool on the property referenced above is not enclosed as required by **Land Development Code Chapter 10, Article V, Sec 10-186(c)-**

Security requirements, and the Florida Building Code. This must be brought into compliance with applicable permit application(s) submitted for an enclosure in compliance with all applicable requirements of the City's Code of Ordinances and the Florida Building Code, with subsequent installation of the approved enclosure. Typically, enclosures are either fencing or screened enclosures.

Compliance Date: May 15, 2020

Dear Property Owner:

The property listed above has been issued a Notice of Violation of one or more City ordinances. Tax records show that you are the owner of record of this property. Florida Statutes state that the property owner is responsible for violations that occur on their property. The violation(s) and date for compliance are stated above and on the attached notice. If the violation(s) are not in compliance by the specified date, it will be necessary to schedule this matter to be heard by the City of Belle Isle Code Enforcement Special Magistrate.

Florida Statute 162.09 states that "fines imposed pursuant to this section shall not exceed \$250 per day for a first violation and shall not exceed \$500 per day for a repeat violation. If the Special Magistrate finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000 per violation."

In all cases presented to the Code Enforcement Special Magistrate, the City will request the Special Magistrate impose an administrative cost of \$100.00. It is in your best interest to resolve these violations prior to being summoned to the meeting.

Please contact me with any questions or concerns you may have at 407-851-7730.

Sincerely,

Bob Francis, ICMA-CM
City Manager

NOTICE OF VIOLATION

City of Belle Isle, Code Enforcement Division, 1600 Nela Avenue, Belle Isle, FL 32809

ADDRESS: 5842 Cove Drive
Belle Isle, FL 32812-2819

N.O.V. ISSUE DATE: 04/29/2020

COMPLIANCE DATE: 05/15/20
(And must thereafter remain in compliance)

ISSUED BY: Bob Francis, City Manager

PHONE #: 407-851-7730

Failure to comply with this notice may result in prosecution before the Code Enforcement Special Magistrate.

_____ **Landscaping - CC Chap 10, ART V, Sec 10-153(a)(1)**
The accumulation of rank growth of weeds, grass, invasive species, trees, plants or undergrowth in the condition that may serve to communicate fire or serve as a breeding place or harbor insects, rodents, snakes, vermin or other pests is prohibited.

_____ **Trash & Debris - CC Chap 10, ART V, Sec 10-152(a)**
All exterior property and premises must be maintained in a clean, safe, and sanitary condition. All exterior property shall be free from any accumulation or rubbish or garbage.

_____ **Outdoor Storage - CC Chap 10, ART V, Sec 10-158**
No outdoor storage will be permitted on any residential property. Items considered outdoor storage are materials not customarily stored outdoors and are visible from any public street, sidewalk, alley or from the ground level of abutting properties.

_____ **Fences - CC Chap, ART V, Sec 10-152(h)**
Fences shall be kept in good repair, free from holes, cracks, breaks, loose or rotting material mildew, mold or rust.

_____ **Exterior Structures - CC Chap 10, ART V, Sec 10-154(b)(1)**
All exterior surfaces, including, but not limited to, doors, door & window frames, porches, trim, fences, and walls shall be maintained in good condition.

- **Swimming Pools**
CC Chap 10, ART V, Sec 10-156 - Swimming pools, spas and hot tubs shall be maintained in a clean and sanitary condition, in good repair, and shall be kept free of discoloration of the water, algae growth and insect infestation.
- **LDC Chap 50, ART IV, Sec 50-102(d)(2)** - Enclosure requirements - each pool shall be enclosed by a barrier fence at least four feet in height. A screen enclosure pursuant to subsection (a)(6) of this section may be substituted for the barrier fence.

_____ **Stormwater - CC Chap 10, ART IV, Sec 10-91(3)**
Dumping of lawn clippings, leaves, branches, silt, construction material, direct dumping of soil that obstruct storm water flow is prohibited.

_____ **Building Permits - LDC Chap 54, ART I, Sec 54-1**
Building permits shall be required for all construction work within the city and obtained from city hall prior to commencing work.

_____ **Tree Removal - LDC Chap 48, ART III, Sec 48-63(d)**
No tree shall be removed from any developed property and no land clearing for development shall occur in the city without the owner first obtaining a permit from the city. All commercial tree removal services must be registered with the city before commencing work.

_____ **Boat Docks - LDC Chap 48, ART II, Sec 48-34(a)**
Dock maintenance & repair - The owner of property on which a dock is located is responsible for maintaining a dock in safe and useable condition.

_____ **Vehicle Parking - CC Chap 30, ART III, Sec 30-73**
Any motor vehicle when parked in the front yard of a residential property shall be parked on the driveway or on a surface specifically prepared for parking. No vehicle shall be permitted to be parked on the right-of-way between the edge of the street and private property lines within residential areas.

_____ **Vehicle Sales - CC Chap 30, ART III, Sec 30-79**
No motor vehicle, RV, watercraft or utility trailer shall be parked on any residential property within the city for the purpose of displaying the vehicle for sale without a permit issued by the city. A city issued "for sale" sign shall be displayed on vehicle being sold.

_____ **Abandoned/Wrecked/Junked Vehicles - CC Chap 30, ART II, Sec 30-31**
No person shall park, store, leave, or permit the parking, storing or leaving of any vehicle of any kind which is an abandoned, wrecked, dismantled, partially dismantled, severely rusted, inoperative, derelict or junked condition upon any public or private property within the city unless enclosed within a building or parked inside a carport. No vehicle can be parked or stored without a valid registration/tag.

_____ **Trailers, Rv's, Watercraft - CC Chap 30, ART III, Div 2, Sec 30-133**
No recreational vehicle or utility trailer shall be parked, stored or kept in the front yard of any property. Watercraft may be stored in front of property and are subject to the following restrictions: not to exceed 25 feet in length, must be on a watercraft trailer and parked on a prepared surface constructed of concrete pavers, asphalt, gravel or mulch. Only 1 watercraft unit/trailer may be kept in the front yard.

_____ **Commercial Vehicles - CC Chap 30, ART III, Div 2, Sec 30-102**
The parking of commercial vehicles or construction equipment on private or public property is prohibited within the city, except in the case of deliveries or labor services being performed, or a public utility vehicle that is kept by an employee of such utility for emergency purposes; this includes electric power, gas, water, sewer, telephone and cable television. A commercial vehicle is defined as having total signage exceeding 4 square feet, length greater than 21 feet, height exceeding 10 feet, gross weight more than 10,000 lbs, external tool or equipment racks, vehicles marked and used for transporting passengers such as taxi cabs, limousines or shuttle vans.

_____ **Occupational License - CC Chap 28, ART IV, Sec 28-91**
Occupational license is required to engage in business within the city limits.

_____ **Numbering of Buildings - CC Chap 6, ART II, Sec 6-31**
All buildings within the city shall have address number affixed to building or structure visible from the street.

_____ **Rental Registrations - CC Chap 7, Sec 7-26**
An annual license issued by the city clerk shall be required for any owner of residential property to rent or lease, or offer to rent or lease, any residential dwelling in the city.

_____ **Portable Storage Units (PODS) - LDC Chap 50, ART IV, Sec 50-102(e)**
A permit is required for the placement of a portable storage unit on residential property. (after 72 hours of placement)

_____ **Watering - CC Chap 32, ART II, Sec 32-31(c)**
Watering permitted only on designated days per St. Johns River Water Management
Daylight Savings Time:
Odd Number Addresses - Wed & Sat/Even Number Addresses - Thur & Sunday
Eastern Standard Time:
Odd Number Addresses - Saturday only/Even number addresses-Sunday only

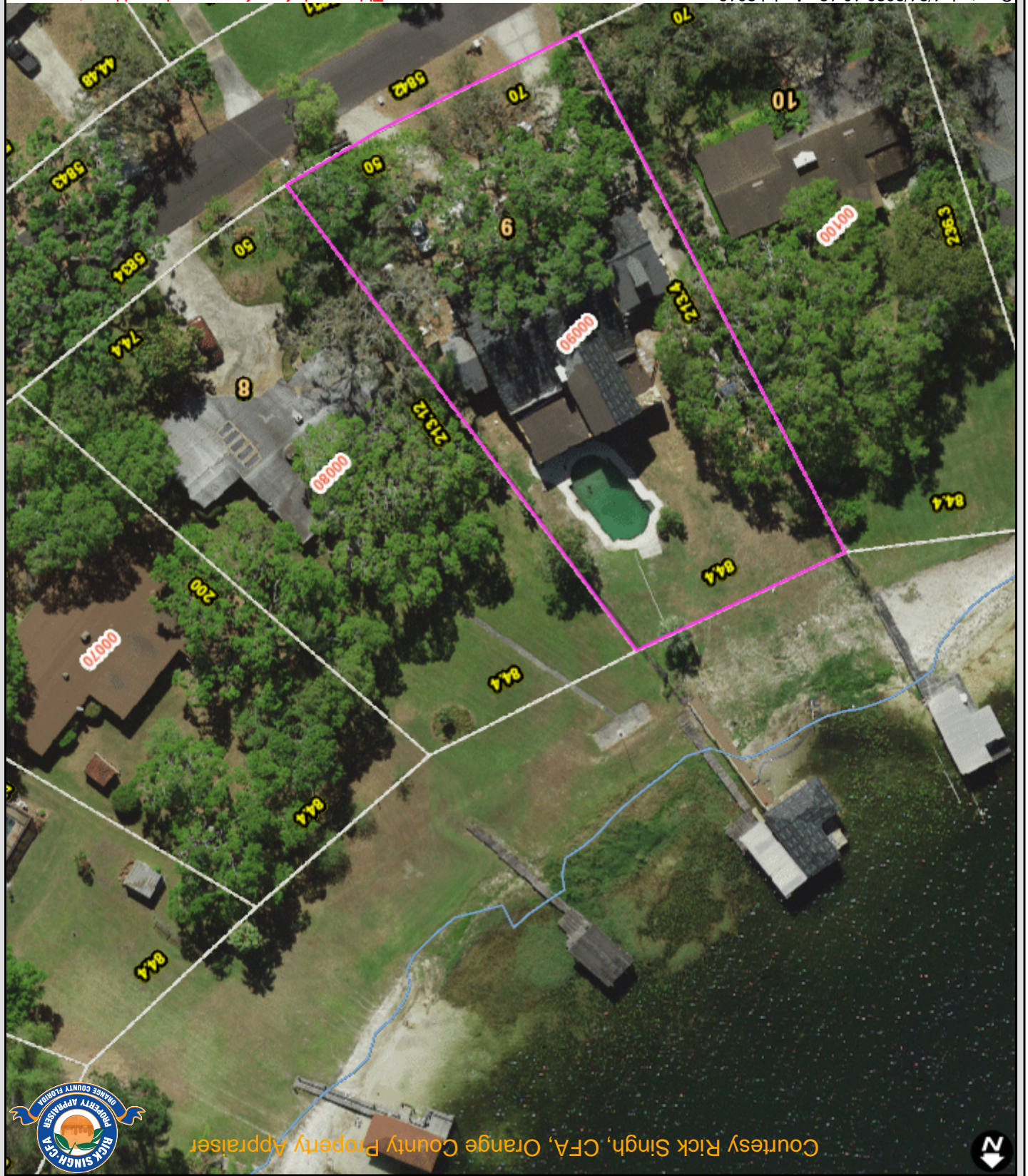
OTHER/DETAILS
Boat Docks- LDC Chap 48, ART II, Sec 48-34(b)
Swimming Pools- LDC Chap 10, ART V, Sec 10-186(c)





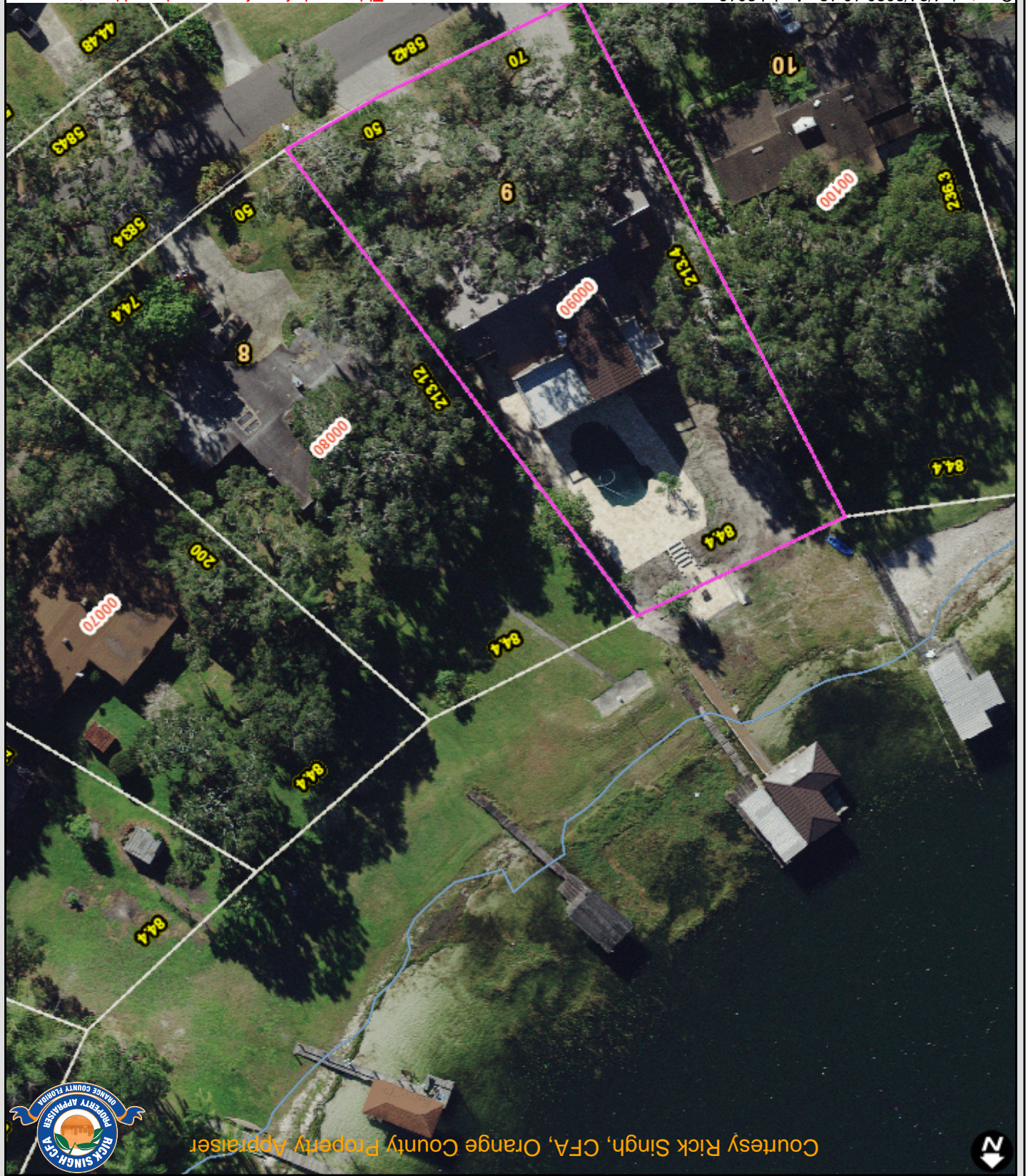






Courtesy Rick Singh, CFA, Orange County Property Appraiser

OCPA Web Map		Florida Turnpike		Interstate 4		Toll Road	
Proposed Road	Major Roads	Public Roads	Gated Roads	Road Under Construction	Lot Line	Block Line	Brick Road
Residential	Agriculture	Vacant Land	Commercial/Industrial	Commercial/Industrial/Misc	Waste Land	Hydro	Commercial
Industrial	Agricultural	Curtilage	Commercial/Industrial	Commercial/Industrial/Misc	Waste Land	Hydro	Commercial
Parks	Lakes and Rivers	Building	Block Number	Parcel Address	Parcel Address	Parcel Address	Parcel Address
6	06060	3106	111.9	111.9	111.9	111.9	111.9



Courtesy Rick Singh, CFA, Orange County Property Appraiser

OCPA Web Map		Florida Turnpike		Interstate 4		Toll Road	
Proposed Road	Major Roads	Public Roads	Gated Roads	Road Under Construction	Lot Line	Block Line	Brick Road
Residential	Agriculture	Vacant Land	Commercial	Industrial	Governmental	Commercial	Industrial
Commercial	Industrial	Agricultural	Curtilage	Hydro	Waste Land	Building	Block Number
Parks	Lakes and Rivers	Parcel Address	Parcel Dimension	Parcel Number	Parcel Number	Parcel Address	Parcel Dimension
6	06060	3106	111.9	6	06060	3106	111.9

