

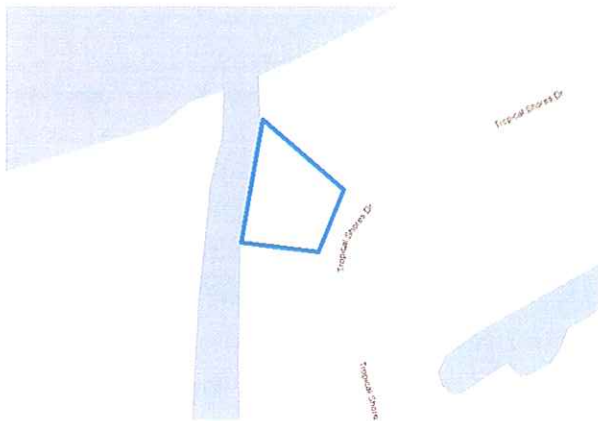


VARIANCE REQUEST
Presented to the
BOARD OF ADJUSTMENT
February 14, 2013

CASE NO.: BOA# 5-13-3	AGENDA ITEM #: 1
OWNERS & APPLICANTS: Tim and Sandra Earnest	

REQUESTED ACTION: : The owners are requesting a variance from Lake County Land Development Regulations, Section 6.02.02.A.2 Shoreline Protection, Development Standards for Shorelines to allow a roofed screen porch and concrete walkways to be permitted closer than 50 feet from the jurisdictional wetland line on a canal (+/- 0.4 acres).

GENERAL LOCATION: Tavares area – US Hwy 441 N, S on Blanton Ln, W on Tropical Shores Dr to site on left, #31937, AK# 1502462 (Sec. 25, Twp. 19, Rng. 25).



FUTURE LAND USE DESIGNATION: Urban Medium Density

EXISTING ZONING: R-6 (Urban Residential District)

<u>Direction</u>	<u>Future Land Use</u>	<u>Zoning</u>	<u>Existing Use</u>
North	Urban Medium Density (7 du / net acre)	R-6 (Urban Residential District) (6 du / acre)	single-family dwelling unit
South	Urban Medium Density (7 du / net acre)	R-6 (Urban Residential District) (6 du / acre)	single-family dwelling unit
East	Urban Medium Density (7 du / net acre)	R-6 (Urban Residential District) (6 du / acre)	single-family dwelling unit
West	canal	canal	canal
Posted:	January 24, 2013 at Tropical Shores Drive and Watts Court, Tavares		

14.15.02 Granting Variances and Appeals

Variances shall be granted when the person subject to the Land Development Regulation demonstrates that the purpose of the Land Development Regulation will be or has been achieved by other means, and when application of a Land Development Regulation would create a substantial hardship or would violate principles of fairness.

For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. For the purposes of this section "principles of fairness" are violated when the literal application of a Land Development Regulation affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Land Development Regulation.

Variances may also be granted to allow for the reconstruction, rehabilitation, or restoration of structures listed on, or classified as contributing to a district listed on the National Register of Historic Places, Florida Master Site File or local surveys of historical resources. In such instance, the variance shall be the minimum necessary to protect the historical integrity of the structure and its site.

ANALYSIS: The owners are requesting a variance to allow an existing roofed screen porch extension to remain 15 feet from the jurisdictional wetland line. The owners are also requesting that a concrete walkway be allowed to remain in its current location. The Code (6.02.02.A2) states that building structures and accessories shall be located 50 feet from jurisdictional wetland lines.

The parcel is located in Venetian Park, a residential subdivision that was platted in 1957. This subdivision was designed with canal or river access from all lots. The existing home was constructed in 1964 and the current owners purchased the home in 2006. Following the purchase of the home the owners began improving the parcel by constructing a garage, Florida room, boathouse expansion, concrete walkways and installing a roofed screen porch. A copy of the survey showing the location of all improvements is attached (Exhibit "A").

In 2011, the owners were cited by the Code Enforcement Division for construction of the roofed screen porch without a permit. This case was referred to the Code Enforcement Special Master and an Order of Enforcement was issued. The Order of Enforcement required the owners to obtain a zoning clearance and building permit for the roofed screen porch within 90 days or return the porch to its original state. All other structures on the parcel were found to be in compliance with the Code.

The parcel to the north, south and east are developed with single-family dwelling units; a canal is located west of the parcel. The sides of the parcel are screened by vinyl privacy fence and the roofed screen porch is not visible from the adjoining parcels. The parcel is approximately 9,100 square feet in size; the additions do not exceed the impervious surface ratio for this zoning district.

The **intent** of the Code (6.02.02) is to protect valuable natural resources requiring protection from erosion, sedimentation, water pollution and other negative impacts, which may be associated with land use activities. It is the intent of this section to minimize such negative impacts through protection standards for development of adjacent lands.

The owners are proposing to capture the first one-inch of storm water that runs off of the screen porch roof and additional concrete during a storm event. The first one-inch of storm water will be routed with gutters and downspouts to multiple storm water retention areas. The storm water retention areas will be 160 cubic feet in size and will be filled with rock. This retention area will capture the first inch of storm water and will filter the water through the soil prior to entering any wetlands systems.

The owners submitted the following reasons as proof of meeting the **intent of the Code**:

"Install 3-rock trenches as follows: Screen porch-14"x14"x66', 12"x12"x66' at seawall and 12"x12"x35'. This is to capture run-off. As concrete slopes towards trenches-more than the 1" of storm water in rain event. 149.7 cu. Ft required and proposed capture 189 cu. Ft".

The owners submitted the following as proof that the application of the Land Development Regulation would create a **substantial hardship or would violate principles of fairness**: *"Screen room and adjoining concrete to accommodate heal spa/whirlpool for wife's post cancer and continued chemotherapy treatments. Chemotherapy has accompanied loss of joint range of motion and intensified pain management. Addition + concrete for accessibility in eventual wheel chair access."*

FINDINGS OF FACT: Staff has reviewed the application for this variance request and found:

1. This request is consistent with LDR 6.02.02, which attempts to protect wetlands and water bodies from negative impacts of development.
2. The storage capacity of the retention area will capture the first one inch of storm water and will filter the water prior to entry into the canal.

The owners have shown proof of a substantial hardship or that the application of the Code would violate principles of fairness. The owners have also submitted proof of meeting the intent of the Code. Based on the Findings of Fact and Analysis, staff recommends **approval** of the variance request to allow the existing roofed screen porch to be located 15 feet from the jurisdictional wetland line and the existing concrete walkways to remain as shown on Exhibit "A", with the following **conditions**:

- The owners shall construct the rock filled storm water retention areas as shown on Exhibit "A".
- Gutters and downspouts shall be used to direct roof runoff to the storm water retention area.
- The slopes of the existing walkway will direct the runoff to the storm water retention area.
- The owners, and all subsequent owners, are required to maintain the storm water retention system.

LAND DEVELOPMENT REGULATION:

6.02.02 Development Standards for Shorelines.

A. Setbacks.

1. Principal Structures. Construction (unless vested under Chapter I) shall be located no closer than fifty (50) feet from the ordinary high water line, mean high water line, or jurisdictional wetland line.

On vacant lots in "Existing Development" if fifty (50) feet cannot be met (based on the dimensions of the lot), a setback based on an average shoreline and wetland setback may be approved.

2. **Accessory Structures, Additions, Paved Parking Areas, Pools, or Replacement Structures except for water dependent structures such as docks, boat ramps and seawalls Shall be placed no closer than fifty (50) feet from the ordinary high water line, mean high water line, or jurisdictional wetland line, or no closer than the setback established by the existing principal structure.**
3. **Septic Tanks.** The County Shall require a one hundred-foot setback, or a setback as far landward as possible based on the depth of the Lot, from the ordinary high water line of Lakes and wetlands for the installation of septic tanks and drainfields in addition to the requirements of Chapter 10D-6, F.A.C.

14.15.00 Variances and Appeals.

14.15.01 Purpose of Variances. Strict application of uniformly applicable Land Development Regulations can lead to unreasonable, unfair, and unintended results in particular instances. The Board of County Commissioners finds that it is appropriate in such cases to adopt a procedure to provide relief to persons subject to the Land Development Regulations. The Board of Adjustment is authorized to grant variances to requirements of the Land Development Regulations consistent with the rules contained in these regulations. This Section does not authorize the Board of Adjustment to grant variances inconsistent with the Comprehensive Plan nor to grant a variance to permit uses not generally permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of the Land Development Regulations in the zoning district. In addition, the existence of nonconforming use of neighboring lands or un-permitted use of neighboring lands shall not be considered grounds for authorization of a variance.

14.15.02 Generally. Variances shall be granted when the person subject to a Land Development Regulation demonstrates that the purpose of the Land Development Regulation will be or has been achieved by other means, and when application of a Land Development Regulation would create a substantial hardship or would violate principles of fairness. For purposes of this Section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance. For purposes of this Section, "principles of fairness" are violated when the literal application of a Land Development Regulation affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the Land Development Regulation. Variances may also be granted to allow for the reconstruction, rehabilitation, or restoration of structures listed on, or classified as, contributing to a district listed on the National Register of Historic Places, Florida Master Site File or local surveys of historical resources. In such instance, the variance shall be the minimum necessary to protect the historical integrity of the structure and its site.

ENVIRONMENTAL ISSUE: Structures and impervious surfaces located closer than 50 feet from the jurisdictional wetland line in the rear of the parcel.

FLOODPLAIN: Flood Zone "AE" in the rear of the parcel.

JOINT PLANNING AGREEMENT: N/A

WEKIVA RIVER PROTECTION AREA: N/A

LAKE APOPKA BASIN: N/A

TRANSPORTATION IMPROVEMENTS: N/A

GREEN SWAMP AREA OF CRITICAL STATE CONCERN: N/A

LETTERS OF CONCERN

SUPPORT: 0

OPPOSITION: 1

BOA# 5-13-3
Photo Evidence



Views of the site



Views of the postings

**Final Development Order
Tim and Sandra Earnest
BOA # 5-13-3**

A VARIANCE OF THE LAKE COUNTY BOARD OF ADJUSTMENT AMENDING THE LAKE COUNTY ZONING MAPS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Tim and Sandra Earnest (the "Owners") made a request to allow the existing roofed screen porch to be located 15 feet from the jurisdictional wetland line and the existing concrete walkways to remain as shown on Exhibit "A"; and

WHEREAS, the subject property consists of 0.21 acres +/- and is generally located west of Tavares in Section 25, Township 19 South, Range 25 East, being composed of alternate key number 1502462 and is more particularly described as:

VENETIAN PARK LOT 8, LOT 9--LESS BEG MOST E'LY COR OF LOT
9,RUN SW'LY ALONG SE'LY LINE OF LOT 9 32.01 FT, N 50DEG
21MIN W TO DEAD RIVER, NE'LY ALONG RIVER TO NE'LY COR OF
LOT 9, SE'LY ALONG NE'LY LINE OF LOT 9 TO POB PB 13 PG 53

AND, after giving Notice of Hearing on petition for a variance to the Lake County Land Development Regulations, including notice that said variance would be presented to the Board of Adjustment of Lake County, Florida, on February 14, 2013; and

WHEREAS, the Board of Adjustment reviewed said petition, staff report and any comments, favorable or unfavorable, from the public and surrounding property owners at a public hearing duly advertised; and

WHEREAS, on February 14, 2013, the Lake County Board of Adjustment approved the variance for the above property; and

NOW THEREFORE, BE IT ORDAINED by the Board of Adjustment of Lake County, Florida, that the Land Development Regulations of Lake County, Florida, be altered and amended as they pertain to the above subject property, subject to the following terms:

Section 1. Terms: The County Manager or designee shall amend the Official Zoning Map to reflect the approval of BOA# 5-13-3 variance request to allow an existing roofed screen porch over concrete to be remain located 15 feet from the jurisdictional wetland line and to allow existing concrete walkways to remain as shown on Exhibit "A", with the following **conditions**:

- The owners shall construct the rock filled storm water retention areas as shown on Exhibit "A".
- Gutters and downspouts shall be used to direct roof runoff from the existing screen porch to the storm water retention area.
- The slopes of the existing walkways will direct the runoff into the storm water retention area.

- The owners, and all subsequent owners, are required to maintain the storm water retention system.

Section 2. Severability: If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 3. Effective Date. This Ordinance shall become effective as provided by law.

ENACTED this 14th day of February, 2013.

EFFECTIVE February 14, 2013.

BOARD OF ADJUSTMENT
LAKE COUNTY, FLORIDA

Donald Schreiner, Chairman

STATE OF FLORIDA
COUNTY OF LAKE

The foregoing instrument was acknowledged before me this February 14, 2013 by DONALD SCHREINER, who is personally known to me.

(SEAL)

Signature of Acknowledger

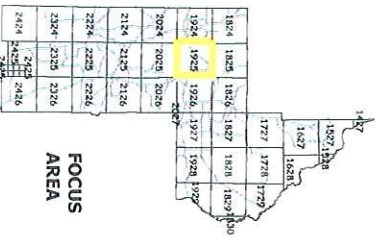
Serial Number: _____

My Commission Expires: _____


Legend

-  Tax Parcels
-  Zoning
-  Subject Property

Case Location (S-T-R):
25-19-25



Owners & Applicants: Tim and Sandra Earnest
BOA# 5-13-3


1 inch = 33,333.333 feet

William McAuley
31941 Tropical Shores Drive
Tavares, Florida 32778

February 4, 2013

Lake County Board of Adjustment
315 West Main Street
Tavares, Florida 32778

Re: Oppose Variance Request BOA# 5-13-3, Tim and Sandra Earnest

Dear Board Members,

I am a Florida native. I love Florida's waters and wildlife and I care deeply about preserving our precious natural resources. We moved into our two-bedroom, river front home in 1991. We planted trees and shrubs and put up bird feeders to make our yard critter friendly and created a "Backyard Wildlife Habitat" as certified by the National Wildlife Federation.

With the past aggressive growth in Lake County and the accompanying destruction of natural wildlife and water habitat, we all should protect our environment whenever and wherever we can. Despite how little it might seem, every detrimental act we do has a negative impact on the overall quality of our wetlands and other natural resources.

The Earnests bought a house next door in 2005 and began pouring concrete and adding to the house before they ever moved in. I don't believe they have enough green space left to meet the County's ISR requirements. Their screen porch was built without a permit and is much too close to the canal. So much concrete in their backyard surely upsets the balance of nature and violates Lake County's Land Development Regulation. I don't think there is enough grassy area for the rock filled trenches to adequately prevent more damage to the canal.

I respect that Mrs. Earnest had breast cancer a few years ago because I deal with chronic pain as a result of a double lung transplant in 2010. I do not, however, think my ill health, or Mrs. Earnest's, is a legitimate excuse to violate the County's codes, nor should it qualify as a "substantial hardship". The Earnests have plenty of room under roof for a spa (almost 2800 square feet according to the Property Appraiser's records).

We have no agenda against the Earnests themselves because we have always strongly believed in protecting Lake County's natural resources from harm which might be caused by anyone.

Please deny this variance request, direct the Earnest's to remove the 964 square foot screen porch and concrete and direct them to restore the grass or vegetation to help protect, not harm, the canal and wetlands and the fish and waterfowl who live in them.

Thank you,

William McAuley

Judy McAuley
31941 Tropical Shores Drive
Tavares, Florida 32778

February 4, 2013

Lake County Board of Adjustment
315 West Main Street
Tavares, Florida 32778

Re: Variance Request BOA# 5-13-3, Tim and Sandra Earnest

Ladies and Gentlemen,

I oppose the variance request of Tim and Sandra Earnest to allow a home addition closer than 50 feet from the Jurisdictional Wetland Line (JWL) on a canal.

This addition, a screen porch on a concrete pad, was constructed sometime in 2006-2007 without a permit by Mr. Earnest who is a certified general contractor. The porch runs the entire length of the back of the house. It's more than 70 feet long and is 964 square feet according to the Lake County Property Record Card. One end of the porch is about 18 feet from the canal.

The very large screen porch, the other concrete slabs and concrete walkways in the backyard, the double concrete driveway in front and the house/garage itself amount to so much impervious surface, the Earnest's lot almost certainly fails to meet the required impervious surface ratio (ISR) in R6 zoning. Their concrete in the backyard around decades old cypress trees may even deprive the tree roots of precious aeration. Because of lack of proper green space, the proposed rock filled trenches could be inadequate to protect the canal and adjacent Dead River during our frequent summer downpours. I believe fertilizer, pesticide, pet waste runoff and other negative impacts would harm the canal and river, thus failing to meet the intent of the Code (6.02.02.A.2).

I believe the application fails to meet the "substantial hardship" because an adequate spa or whirlpool for Mrs. Earnest's health issues could have easily been constructed in some other part of their house which has 2,795 square feet under roof. Perhaps it could have been placed outdoors or even in their 298 square foot screen room which was built above their boathouse in 2010 by Mr. Earnest's company.

Lastly, I don't believe any resident has the right to blatantly disregard the zoning and permitting process put in place by Lake County's officials. It is unfair to neighbors and all residents who follow the rules and who may themselves have been denied permission to add onto their homes because of the JWL regulation.

Thank you for considering my comments. Please deny this variance request for the existing screen porch and additional concrete.

Respectfully,

Judy McAuley

PLAT OF BOUNDARY SURVEY

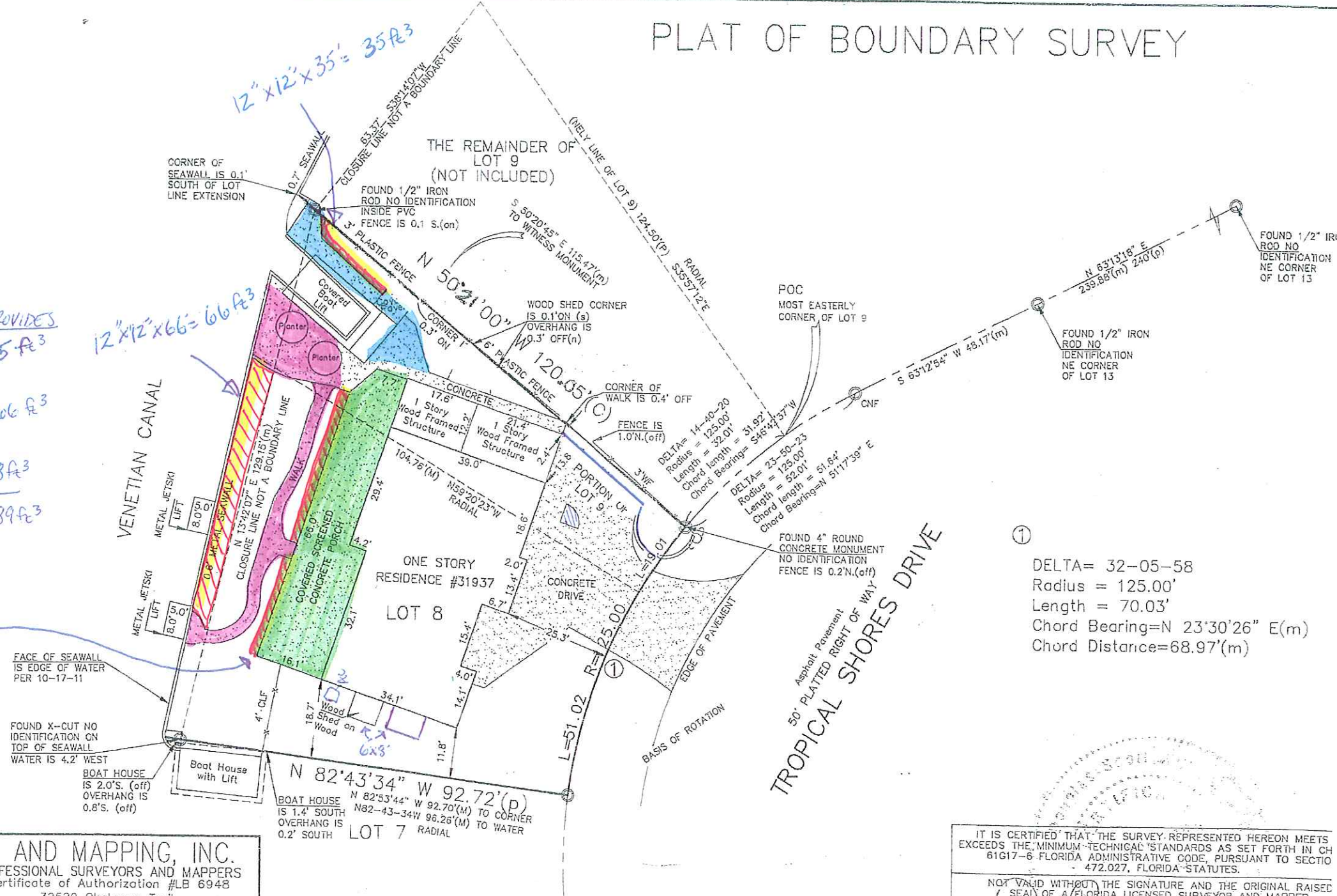


SCALE: 1" = 30'



NEEDS PROVIDES
 = 11.5A³ 35A³
 = 58.2A³ 66A³
 = 80A³ 88A³
 149.7A³ 189A³

14" x 14" x 66" = 83A³



HARRISON SURVEYING AND MAPPING, INC.
HSM INC.
 PROFESSIONAL SURVEYORS AND MAPPERS
 Certificate of Authorization #LB 6948
 32529 Okaloosa Trail
 Sorrento, Florida 32776
 Phone: (352) 735-1263
 JOB NO. 05-3315d Sheet 2 of 2

DRAWING: 05-3315d.DWG SURVEY DATE: 9/27/05
 INTENDED DISPLAY SCALE: 1" = 30' DRAWN: SGR

IT IS CERTIFIED THAT THE SURVEY REPRESENTED HEREON MEETS EXCEEDS THE MINIMUM TECHNICAL STANDARDS AS SET FORTH IN CH 61G17-6 FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

DOUGLAS S. WILLIS, Florida Registration # 5984 FOR FIRM

BOA#5-13-3
 EXHIBIT 'A'