



CITY OF MADEIRA BEACH

PLANNING & ZONING DEPARTMENT
300 MUNICIPAL DRIVE ♦ MADEIRA BEACH FLORIDA 33708
(727) 391-9951 EXT. 255 ♦ FAX (727) 399-1131



SPECIAL MAGISTRATE – VARIANCE APPLICATION

\*Applicant: Name and Address

Richard J & Stephanie L Gish

850 Bay Point Drive

Madeira Beach, FL 33708

Telephone: ( 210 ) 273-4965

Email: jgish@bscforensics.com

\*Property Owner: Name and Address

Richard J & Stephanie L Gish

850 Bay Point Drive

Madeira Beach, FL 33708

Telephone: ( 210 ) 273-4965

Email: jgish@bscforensics.com

Application for the property located at: (Street Address or Location of the Vacant Lot)

850 Bay Point Drive, Maderia Beach, FL 33708

Legal Description: BAY POINT ESTATES 2ND ADD BLK 1, LOT 51, Parcel 10-31-15-04500-001-0510

Lot Area: 7,345

Width: 50.2 (var) ft.

Depth: 110 ft.

Zoning District: R-1

Present Structures on Property: One-Family Residence; Dock

Present Use of Property: 0110 Residential

Date Building Permit Request denied: September 14, 2022

Variance(s) needed from the zoning requirements: Install a lift adjacent to the existing dock; the elements will extend beyond half the distance of the width of the lot, and outside the middle third

PLEASE ATTACH REQUIRED SUPPORTING MATERIALS:
SITE PLAN, PICTURES, DEED, SURVEYOR'S SKETCH, DRAWINGS, EXPLANATION, ETC.

DISCLAIMER: According to Florida Statues, Chapter 119, it is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency. All Documents and information not specified in F.S. 119.071 and 119.0713 are subject to public record requests.

RECEIVED

SEP 23 2022



Special Magistrate Case #: VAR 2022-07

**\*\* For City of Madeira Beach Use Only \*\***

Fee: \$1730  **Check #** 2531  **Cash**  **Receipt #** CR 587

**Date Received:** 9 / 23 / 22 **Received by:** S. Postal

**Special Magistrate Case # Assigned:** VAR 2022-07

**Special Magistrate Hearing Date:** 10 / 24 / 22  **Approved**  **Denied**

- Zoning Variance for Residential Dwelling Units (One, Two or Three Units) \$1,730.00 per Variance
- Zoning Variance for Multi-Family, Tourist Dwellings or Commercial \$1,735.00 per Variance
- After-the-fact Variance \$3,460.00 per Variance

X *Jenny Rowan*  
Linda Portal, Community Development Director  
Jenny Rowan, Senior Planner

Date: 10 / 03 / 2022

X \_\_\_\_\_  
Robin Gomez, City Manager

Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

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**APPLICATION (Must submit the following analysis)**

**This application to the Special Magistrate is requesting permission to:** Install a boat lift alongside  
the existing (recently constructed) dock in accordance with the permit application on file, submitted on  
or about September 13, 2022. The design, construction, function, use, and placement of the lift is consistent  
with existing lifts at the majority of the residential properties on Bay Point Drive.

The special magistrate shall authorize, upon application to appeal, after public notice has been given and public hearing held, such variance from the terms of the city land development regulations as not being contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the land development regulations, subpart B of this Code will result in unnecessary and undue hardship. In order to authorize any variance from the terms of the city land development regulations, the special magistrate shall consider the following criteria and shall find that the criteria has been satisfied in full and that a hardship exists.

**On a separate attached page, explain in detail how your request meets City Code Sec. 2-507 by complying with the following rules. Please note that your explanation demonstrate that your request meets one or more of the conditions listed under criteria #1 below and that it also meets in full criteria 2 through 6 below:**

1. Demonstrate that special conditions and circumstances exist which are particular to the land, building, or other structures in the same district. Special conditions to be considered shall include but are not limited to:
  - a. *Substandard or irregular shaped lot.* If the site involves the utilization of an existing lot that has unique physical circumstances or conditions, including irregularity of shape, narrowness, shallowness, or the size of the lot is less than the minimum required in the district regulations.
  - b. *Significant vegetation or natural features.* If the site contains significant native vegetation or other natural features;
  - c. *Residential neighborhood character.* If the proposed project promotes the established historic or traditional development pattern of a block face, including setbacks, building height, and other dimensional requirements;
  - d. *Public facilities.* If the proposed project involves the development of public parks, public facilities, schools, or public utilities;
  - e. *Architectural and/or engineering considerations.* If the proposed project utilizes architectural and/or engineering features that would render the project more disaster resistant.

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2. Demonstrate that special condition (s) and circumstance (s) do not result from the actions of the applicant. A self-created hardship shall not justify a variance.
3. Demonstrate that the granting of the variance will not confer on the applicant any special privilege that is denied to other lands, buildings, or structures in the same zoning district.
4. Demonstrate that the literal interpretation would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Land Development regulations, subpart B of the code and would work unnecessary and undue hardship on the applicant.
5. Demonstrate that the variance granted is the minimum variance that will make possible the reasonable use of the land.
6. Demonstrate that the granting of the variance will be in harmony with the general intent and purpose of the City Land Development Regulations, and that such Variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

**OWNER CERTIFICATION**

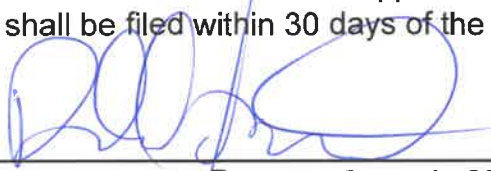
I hereby authorize permission for the Special Magistrate, Building Official and Planning & Zoning Director to enter upon the above referenced premises for purposes of inspection related to this petition.

I hereby certify that I have read and understand the contents of this application, and that this application, together with all supplemental data and information, is a true representation of the facts concerning this request; that this application is made with my approval, as owner and applicant, as evidenced by my signature below.

It is hereby acknowledged that the filing of the application does not constitute automatic approval of the request; and further, if the request is approved, I will obtain all the necessary permits and comply with all applicable orders, codes, conditions, rules and regulations pertaining to the subject property.

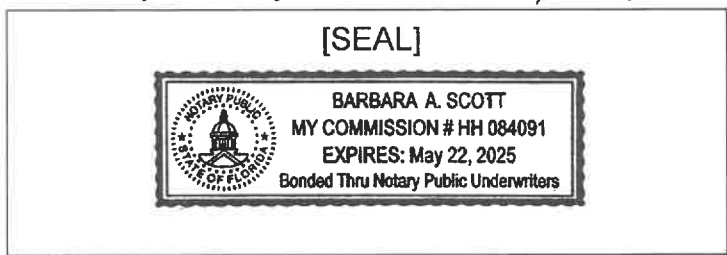
***I have received a copy of the Special Magistrate Requirements and Procedures (attached), read and understand the reasons necessary for granting a variance and the procedure, which will take place at the Public Hearing.***

**Appeals.** (City Code, Sec. 2-109) An aggrieved party, including the local governing authority, may appeal a final administrative order of the Special Magistrate to the circuit court. Such an appeal shall not be a hearing *de novo* but shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within 30 days of the execution of the order to be appealed.

X  Date: 03 / Oct / 2022  
Property Owner's Signature

STATE OF Florida  
COUNTY OF Pinellas

Before me this 3<sup>RD</sup> day of October, 2022, Richard Gish appeared in person who, being sworn, deposes and says that the foregoing is true and correct certification and is  personally known to me or  has produced Florida Drivers License as identification.



  
Public Notary Signature

**NOTICE:** Persons are advised that, if they decide to appeal any decision made at this hearing, they will need a record of the proceedings, and for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

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**NON-OWNER (AGENT) CERTIFICATION**

I hereby authorize permission for the Special Magistrate, Building Official and Planning & Zoning Director to enter upon the above referenced premises for purposes of inspection related to this petition.

I hereby certify that I have read and understand the contents of this application, and that this application, together with all supplemental data and information, is a true representation of the facts concerning this request; that this application is made with my approval, as owner and applicant, as evidenced by my signature below.

It is hereby acknowledged that the filing of the application does not constitute automatic approval of the request; and further, if the request is approved, I will obtain all the necessary permits and comply with all applicable orders, codes, conditions, rules and regulations pertaining to the subject property.

***I have received a copy of the Special Magistrate Requirements and Procedures (attached), read and understand the reasons necessary for granting a variance and the procedure, which will take place at the Public Hearing.***

**Appeals.** (City Code, Sec. 2-109) An aggrieved party, including the local governing authority, may appeal a final administrative order of the Special Magistrate to the circuit court. Such an appeal shall not be a hearing *de novo* but shall be limited to appellate review of the record created before the Special Magistrate. An appeal shall be filed within 30 days of the execution of the order to be appealed.

X \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_  
*Property Owner's Signature (If other than the property owner)*

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, \_\_\_\_\_ appeared in person who, being sworn, deposes and says that the foregoing is true and correct certification and is  personally known to me or  has produced \_\_\_\_\_ as identification.

[SEAL]

\_\_\_\_\_  
Public Notary Signature

**NOTICE:** Persons are advised that, if they decide to appeal any decision made at this hearing, they will need a record of the proceedings, and for such purpose, they may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

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**FOR YOUR RECORDS****SPECIAL MAGISTRATE: REQUIREMENTS AND PROCEDURES (City Code Sec. 2-507)**

- 1) Demonstrate that special conditions and circumstances exist which are particular to the land, building, or other structures in the same district. Special conditions to be considered shall include but are not limited to:
  - a. *Substandard or irregular shaped lot.* If the site involves the utilization of an existing lot that has unique physical circumstances or conditions, including irregularity of shape, narrowness, shallowness, or the size of the lot is less than the minimum required in the district regulations.
  - b. *Significant vegetation or natural features.* If the site contains significant native vegetation or other natural features;
  - c. *Residential neighborhood character.* If the proposed project promotes the established historic or traditional development pattern of a block face, including setbacks, building height, and other dimensional requirements;
  - d. *Public facilities.* If the proposed project involves the development of public parks, public facilities, schools, or public utilities;
  - e. *Architectural and/or engineering considerations.* If the proposed project utilizes architectural and/or engineering features that would render the project more disaster resistant.
- 2) The special conditions and circumstances do not result from the actions of the applicant. A self-created hardship shall not justify a variance.
- 3) Granting the variance will not confer on the applicant any special privilege that is denied to other lands, buildings, or structures in the same zoning district.
- 4) Literal interpretation would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the land development regulations, subpart B of this Code and would work unnecessary and undue hardship on the applicant.
- 5) The variance granted is the minimum variance that will make possible the reasonable use of the land.
- 6) The granting of the variance will be in harmony with the general intent and purpose of the city land development regulations, and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

In granting any variance, the Special Magistrate may prescribe appropriate conditions and safeguards in conformity with the city land development regulations. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted shall be deemed a violation of this Code. The Special Magistrate may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both. Under no circumstances except as permitted in the applicable zoning district of the city land development regulations. A nonconforming use of neighborhood lands, structures or buildings in the same zoning district shall not be considered grounds for the authorization of a variance. **Financial loss** standing alone is not sufficient justification for a variance.

The hearing will be conducted in the following manner:

1. Public notice will be read along with correspondence received.
2. City presents its case, and the applicant may cross-examine.
3. The Applicant presents his or her case supported by witnesses and evidence; and the City has the right to cross-examine each witness.
4. Public comment will only be solicited or received from parties directly affected by the variance. Individuals testifying do not have the right to cross-examine the parties.
5. Public participation will be closed, the Special Magistrate deliberates and makes a decision to grant or deny each variance requested in the application.

All variances granted by the Special Magistrate and not acted on within on (1) year of being granted will automatically expire.

The granting of a variance does not relieve the applicant from obtaining a building permit. The Special Magistrate does not have the authority to grant variances from the 100 Year Flood Level for Residential or Commercial Property.

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**SPECIAL MAGISTRATE – VARIANCE APPLICATION  
850 BAY POINT DRIVE, MADEIRA BEACH, FL 33708  
RICHARD J & STEPHANIE L GISH**

**SUPPLEMENTAL INFORMATION**

1. Demonstrate that special conditions and circumstances exist which are particular to the land, building, or other structures in the same district. Special conditions to be considered shall include but are not limited to:

- a. *Substandard or irregular shaped lot.* If the site involves the utilization of an existing lot that has unique physical circumstances or conditions, including irregularity of shape, narrowness, shallowness, or the size of the lot is less than the minimum required in the district regulations;

**Response:** The lot at 850 Bay Point Drive is pie-shaped with a narrower lot line at the waterfront (50.5 feet), which results in reduced allowable area for improvements (i.e., dock and lift placement) as compared to neighboring properties. The unique shape and dimensions of the lot make it not possible to comply with the code limitations of dock and lift dimension requirements, thus a variance is requested to proceed. The existing dock, which is 46 feet and 6 inches in length, was constructed less than one (1) year ago prior to our purchase of the residence and is in like-new condition (the dock was a reconstruction of the previous dock of same footprint); it exceeds the allowable length of 25 feet per the Madeira Beach Code of Ordinances, Division 3, Sec. 14-205 – Design criteria for private docks (i.e., the current dock extends from the seawall of the property further than one-half the width of the property at waterfront). The most reasonable and appropriate placement for a boat lift is alongside the existing dock that is less than one year old, as detailed in the permit application (attached). In addition to extending further than one-half the width of the property at waterfront, the dock and lift combined would extend beyond the center one-third of the lot line projections (dictated by the smaller-than-normal area that results from the pie-shaped lot) as stated in the code.





*Figure 1. Screen capture from the Pinellas CAD; note the subject lot in Green. Photo captured during dock reconstruction this past year (Permit No. WND-21-01245); note widespread boat lifts on neighboring lots along the street.*



*Figure 2. Nearmap aerial image dated August 19, 2022; note the completed dock (arrow).*

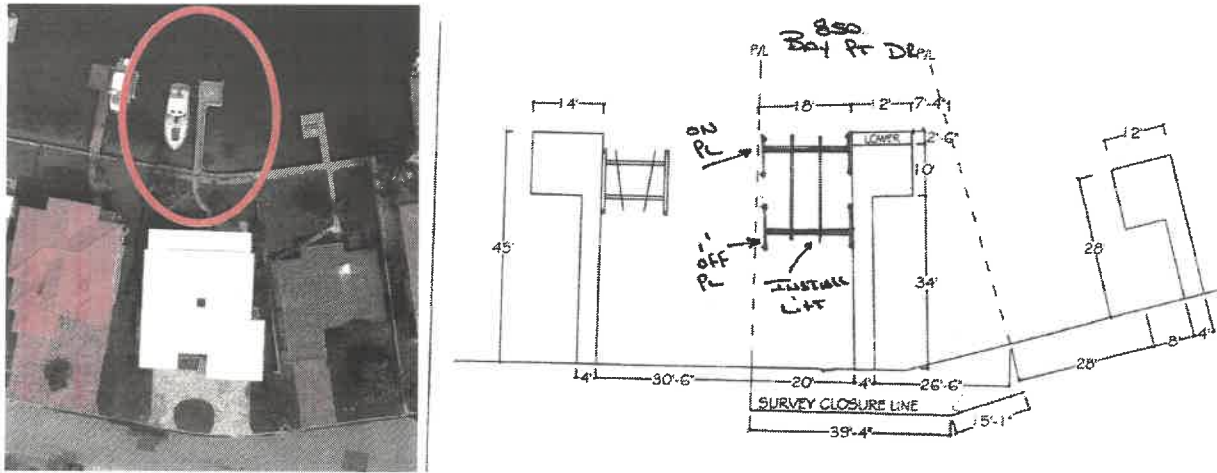


Figure 3. Left (red oval): Drone image of the applicants' boat in the approximate location of the proposed dock. Right: Excerpt from the permit application with the proposed lift depicted in plan view.

- b. *Significant vegetation or natural features.* If the site contains significant native vegetation or other natural features;

**Response:** N/A

- c. *Residential neighborhood character.* If the proposed project promotes the established historic or traditional development pattern of a block face, including setbacks, building height, and other dimensional requirements;

**Response:** The proposed lift for 850 Bay Point Drive is consistent with boat lifts installed at the majority of the residential properties on the same street and throughout the Florida coast. On Bay Point Drive, there are at least 56 lots with boat lifts across 82 lots (68 percent). As can be viewed on aerial imagery, a majority of the lots with lifts have a dock/lift combination that extends beyond the center one-third of the waterfront and/or the length is more than one-half the width of the property at waterfront. Thus, the requested variance would be in keeping with the neighborhood's character. The aerial imagery further illustrates that a variance would be required for the majority of properties on Bay Point Drive, except for the ones with larger corner lots that have much greater waterfront dimensions. The seven properties in a row directly to the left of 850 Bay Point Drive all have dock/lift combinations; the house immediately to the right is vacant and the house following that has a dock/lift combination.



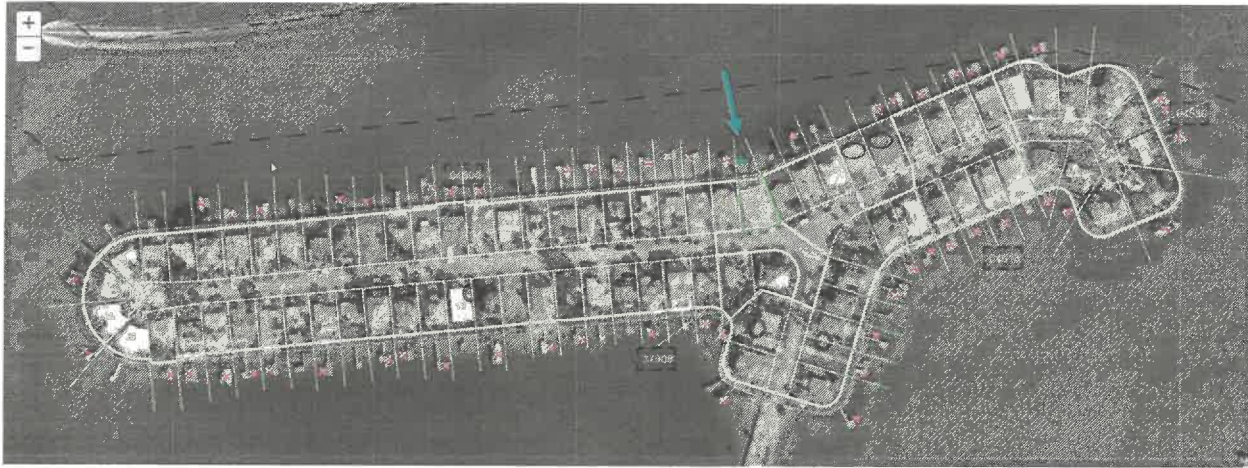


Figure 4. Screen capture from the Pinellas CAD, with projected lot lines added (green) and existing boat lifts denoted (red X's).

- d. *Public facilities.* If the proposed project involves the development of public parks, public facilities, schools, or public utilities;

**Response:** N/A

- e. *Architectural and/or engineering considerations.* If the proposed project utilizes architectural and/or engineering features that would render the project more disaster resistant.

**Response:** The applicants' boat at 850 Bay Point Drive is currently in the water, moored to the dock. When significant winds occur, and/or when boat traffic is heavy (nearly every weekend), the boat is subjected to damaging wave action, which has in the last month caused several thousand dollars in damage to the applicants' boat. The mooring whips are simply not capable of preventing the boat from hitting the dock with enough force to cause damage. The current location of the boat, in the water, renders both the boat and dock vastly more susceptible to damage from expected boat traffic and storm events—such as winter storms and hurricanes, including the recent storms where we experienced heavy rains, higher-than-normal tides, and wind. Denying construction of the lift can be expected—to a reasonable degree of engineering certainty—to result in increased property damage to the subject property as well as surrounding property in the event of a catastrophic event/storm.

- 2. Demonstrate that special condition (s) and circumstance (s) do not result from the actions of the applicant. A self-created hardship shall not justify a variance.

**Response:** The special condition(s) and circumstance(s) are a result of actions taken long before the current owners' purchase of the property. The lot size and shape were determined more than 70 years prior, during platting, and the dock has been in its current location and configuration (albeit reconstructed circa early 2022) since at least February 2006 (more than 16 years). The Madeira Beach code on dock and lift dimensions limiting dock length to 50 percent of the width of the seawall and limiting construction to the center

one-third of the waterfront property line was adopted in 1983. The combination of platting and code adoption created the special conditions long before the applicants' ownership of the lot.



Figure 5. Google Earth images dated February 2006 (top) and March 2022 (bottom); note the dock in the same configuration in both images.

3. Demonstrate that the granting of the variance will not confer on the applicant any special privilege that is denied to other lands, buildings, or structures in the same zoning district.

**Response:** To the contrary, the granting of the variance will afford the property owners the same opportunity to install a boat lift, as is currently enjoyed by the overwhelming majority of the neighbors on Bay Point Drive. More specifically, multiple neighboring properties feature a lift on or near property lines. Granting the variance will confer no special privilege and will bring the subject property into closer conformance with the majority of the properties in the vicinity.



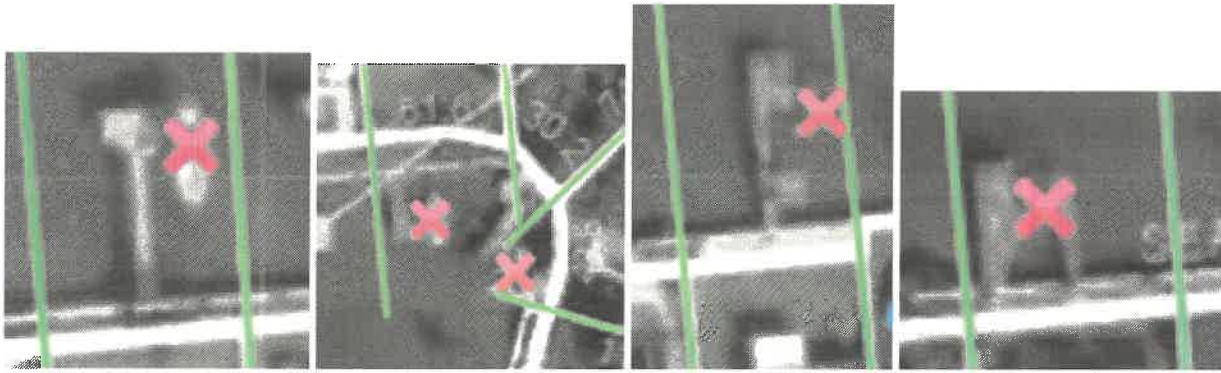


Figure 6. Screen captures from the Pinellas CAD of representative lots with projected lot lines added (green) and existing boat lifts denoted (red X's), which depicted lifts in similar locations as the proposed lift for 850 Bay Point Drive.

4. Demonstrate that the literal interpretation would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the Land Development regulations, subpart B of the code and would work unnecessary and undue hardship on the applicant.

**Response:** The literal interpretation would deprive the applicants of the protection, convenience, enjoyment, and increased property value that are enjoyed by the majority of the surrounding properties that have boat lifts installed at their docks. In addition to depriving the applicants of the rights enjoyed by their immediate neighbors, the literal interpretation would create unnecessary and undue hardship on the applicants by forcing the applicants to leave their boat in the water moored to the dock where it is susceptible to damage from waves and storms and faster deterioration caused by leaving the boat in saltwater at all times requiring more frequent maintenance. The literal interpretation deprives the applicants from being able to care for and protect their personal property.

5. Demonstrate that the variance granted is the minimum variance that will make possible the reasonable use of the land.

**Response:** Given the location and spacing of the various docks both at the subject property and the neighboring properties on Bay Point Drive, granting the variance to allow construction of the lift alongside the current dock as outlined in the applicants' proposed permit would result in a generally uniform distribution of the improvements across the waterfront and is the minimum variance that will make possible the reasonable use of the land. The only other alternatives would be to place the lift at the back of the existing dock, which would encroach upon the very busy and active Intracoastal Waterway, or to demolish the existing dock that is less than one year old and construct a new dock and lift closer to the middle of the projected lot lines. However, this would still result in the dock exceeding the rules, both for projection to the back as well as beyond the center one-third of the waterfront of the pie-shaped lot. Furthermore, it would also result in significant financial and environmental waste as the brand-new dock would be demolished. Applicants' contractor, Docks, Inc., has estimated that to move and reconstruct the dock would increase the overall project cost from \$37,960 to more than \$100,000, more than 2-1/2 times the current proposed cost. Finally, based on the limited area within the projected



lot lines (caused by the pie-shape of the lot), demolishing and rebuilding the dock and lift more in the center of the lot lines would effectively only move the structures a few feet toward the right, as compared to placing the lift alongside the existing dock. Increasing the project cost by more than 2-1/2 times, while also producing several tons of waste material (of near brand-new dock elements) to move the structure only a few feet, when the current proposed plan is consistent with existing structures on Bay Point Drive, is economically and environmentally irresponsible.

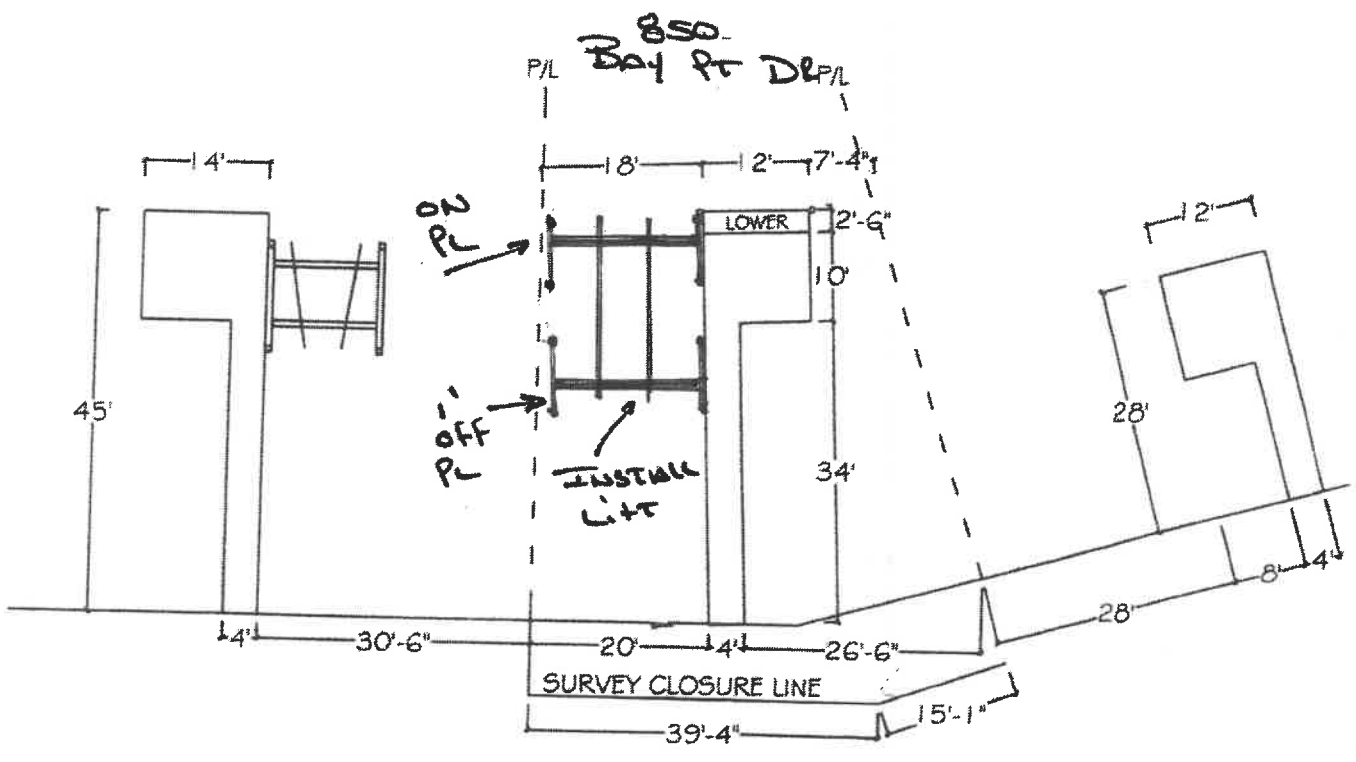
6. Demonstrate that the granting of the variance will be in harmony with the general intent and purpose of the City Land Development Regulations, and that such Variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

**Response:** Granting this variance will not be injurious to the area involved or otherwise detrimental to the public welfare. The proposed lift will not alter the character of the neighborhood; it will be on par with the other lifts in the neighborhood that are on the majority of lots and will provide for a more uniformly just land use pattern. The applicants' proposed lift will be minimally disruptive to the surrounding environment as a lift will only be added to the existing dock and there will not be excessive waste in demolishing what is already there. Installing the lift alongside the current dock also prevents the lift and dock from extending closer to the Intracoastal Waterway; as can be seen on the aerial imagery, the applicants' proposed variance would be less intrusive to the waterway than neighboring boat lifts that extend further toward the active waterway. In harmony with the general intent and purpose of the City Land Development Regulations, this variance will not interfere with or abrogate or annul any easements, covenants or other agreements. It will, however, grant the applicants the same rights to use and enjoy their waterfront property the same as their immediate and surrounding neighbors.

Owner Name: GISH, RICHARD or STEPHANIE Site Address: 850 BAY POINT DR

Nature and Size of Project: Install boat lift.

Total Project Square Footage:	<u>286</u>	New Square Footage:	<u>0</u>
Total Number of Pilings:	<u>8</u>	Diameter of Pilings:	<u>Min 8" tip</u>
Waterway Width	<u>400+</u>	Waterfront Width	<u>50.5' - 54.2</u>



**SHORELINE**

The undersigned does not object to the proposed project as drawn in the space provided above.

Left Owner		Right Owner	
Signature	Date	Signature	Date
Municipality Approval		Water and Navigation Approval	