

VARIANCE JUSTIFICATION STATEMENT – BOARD OF ADJUSTMENT

PROPERTIES OUTSIDE OF A HISTORIC AREA

The following questions pertain to the criteria upon which the Board of Adjustment will consider this application, per LDR Section 2.4.7(A)(5). Please address each question separately as the answers provided will assist reviewing the proposal and can be included as part of the staff report presented to the Board:

☒ **JUSTIFICATION STATEMENT IS ATTACHED, WHICH ADDRESSES THE CRITERIA OF APPROVAL BELOW:**

- a) Describe which special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings subject to the same zoning (The matter of economic hardship shall not constitute a basis for the granting of a variance):
- b) Describe which literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning:
- c) Explain how the special conditions and circumstances have not resulted from actions of the applicant:
- d) Explain how granting the variance will not confer onto the applicant any special privilege that is denied to other lands, structures, and buildings under the same zoning. Neither the permitted, nor nonconforming use, of neighborhood lands, structures, or buildings under the same zoning shall be considered grounds for the issuance of a variance:
- e) Describe the reasons set forth in the variance petition justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure:
- f) Explain how the granting of the variance will be in harmony with the general purpose and intent of existing regulations, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare:
- g) Please provide any other comments and information which can be relevant or assist the Board in reviewing this request

JUSTIFICATION STATEMENT

442 COMMODORE POOL

September 1, 2023

City of Delray Beach
Board of Adjustment

Re: Variance for new pool Construction

Project Name: 442 Commodore Pool

Owners: Glen and Kara Gammill

Subject Property: 442 Commodore Cir
Delray Beach, FL 33483

To whom it may concern:

The existing use of the subject property is a single-family home with a pool. The subject property is located in Pelican Harbor, which is a gated, zero lot line, planned residential development. It is our hope to add an attached office to the northeast corner of our home. There is an existing pool which would have to be removed in order to accommodate the new office measuring approximately 12' X 13'. A new at grade pool would be built. If we stay within the current regulations, the new pool could be no larger than approximately 7' x 12'. (See Exhibit 1)

We are requesting relief from the regulations which require that a swimming pool have a front setback of 20 feet within the subject zoning district. We are requesting that the swimming pool be installed 10 feet from the front property line which would encroach 10 feet into the 20 foot required set back. Staying within current regulations, the existing front wall would be moved as much as possible toward the front property line and be rebuilt as a 6 foot solid masonry wall. (See Exhibit 2) This would allow for a reasonably sized pool measuring approximately 17' x 12'. The new wall would be approximately the same distance from the street as both of our adjacent neighbors.

In response to the Variance Justification Statement, please see below.

- a. Our property is restricted by a utility easement on the east side of the proposed pool, a condition which is not applicable to other homes in the neighborhood. Said easement runs north and south from the front of the property to the rear of the property. (See

Exhibit 3) Because of the easement we are restricted to a 12 foot setback from the east interior property line instead of 5 feet for a zero lot line development (LDR Section 4.6.15(G)(4). This is a condition not applicable to other homes in the development.

The easement likewise makes it impractical to build a pool in the rear of the home. Because of the easement we would have to move the pool toward the west side of the lot which would not work because of the two double sliding doors allowing ingress/egress to the family room and the one double sliding door allowing ingress/egress to the master bedroom. Furthermore, the rear of our home abuts the C-15 Canal seawall. It seems imprudent to disturb the integrity of a seawall which is over 40 years old and back filled with loose sand.

b. The existing pool of the subject property is approximately 15' from the front property line encroaching on the set back by 5 feet. From aerial maps we attempted to identify every home in Pelican Harbor with a pool in the front; we identified 8 homes in addition to ours. We then searched the Delray property records for surveys of those 8 homes. No relevant records were found for 3 of the homes. The 5 surveys we were able to find are attached as group Exhibit 4. EVERY pool on these five surveys encroaches into the front setback. Additionally, see Exhibit 5, a photo of my home and the home adjacent to mine on the west (428 Commodore). It shows the 428 pool even with mine, thereby encroaching by 5 feet.

At a minimum, 7 of the 9 homes in Pelican Harbor with a pool in the front encroach into the front set back. The right for a pool to encroach on the front property set back is clearly enjoyed by other homes in the development with the same zoning.

c. I have taken no action which would create special conditions or circumstances.

d. Inasmuch as all/almost all the other front pools in Pelican Harbor are encroaching on the front set back, I am not requesting any special privilege. I am requesting only the same rights that my neighbors enjoy. Furthermore, from the standpoint of square footage, I am only trying to catch up with my neighbors who are not limited by an easement.

e. For the reasons set forth in item g below, we need to add an office on the first floor. Without the variance, we cannot have a reasonably sized pool. By moving the front wall toward the front property line as allowed by the regulations we will create room for the office addition, the pool, and still have plenty of room for vegetation and landscaping required by the regulations. Granting the 10 foot variance will allow for a 17' x 12' pool. This would seem to be the minimum variance to allow a small, but usable pool.

f. NONE of my neighbors, adjacent or otherwise, have a view of my pool or back yard. The view from the street will be essentially the same as the existing view. In fact, with the addition of a solid wall it will be impossible to see the pool unless you are standing in my driveway and looking through the side gate. My neighbors on either side have front walls which are approximately 5 feet closer to the street than my current wall. My

new front wall will be in line with both of my neighbors' front walls. As a zero lot line development, all of the homes in Pelican Harbor have front walls that either mostly or totally block the view of the back yard/pool. My wall will be in complete harmony with the neighborhood. My new pool would not affect the harmony of the neighborhood inasmuch as it cannot be seen.

It would seem that the intent and general purpose of the 20 foot setback regulation is for aesthetic purposes and/or safety. With regard to aesthetics, the regulation would apply to homes where the pool is visible. Therefore, the aesthetic intent of the regulation has no applicability in this case.

With regard to safety, I can only assume the issue is accessibility. We don't want children or anyone to be able to access the pool, or stumble into it. Once again, the intent/general purpose of the setback regulation has no real purpose with respect to my property. Granting the variance will leave the property with the same accessibility that it has currently. In fact, with the new solid wall the pool will be less accessible than it is currently.

Our proposed plan is an improvement, not a detriment. It will increase the value of our home, and thereby increase the value of the neighborhood and the tax base. On the other hand, if we are forced to remove the pool, it will decrease the value of our home, the tax base, and the neighborhood.

g. Both my wife and I work from home with no plans to retire. I am 60 years old and my wife is 58. We share an office on the second floor of our home. There is no room for an office on the first floor. As we age it will become increasingly difficult to go up and down the stairs many times per day. In addition, my wife is bone on bone in both knees. Furthermore, the pool will provide us with much needed low impact exercise. This is why we must have an office addition on the first floor, and we would like to have a pool in keeping with the fact that a pool existed when we bought the property.

Thank you for your consideration.

Glen Gammill

Kara Gammill

Exhibit +
Justification Statement

4.54'
EAST
50.00'

17.5'

F.I.R.
NO I.E

BRICK
DRIVEWAY

B
DRI'

CBS
WALL

20.00'

12.00'

1.50'

ARAGE
EV.: 5.73'

11'-7"
NEW
POOL

I ASSUME THE
COPING COULD
GO ON THE U.E.

4.32'

pool edge
should be flush
w/ pavers

24.07'

4'

12'-9"

new
ROOM

OFFICE

2.04'

10.19'

3.30'

2.20'

12.06'

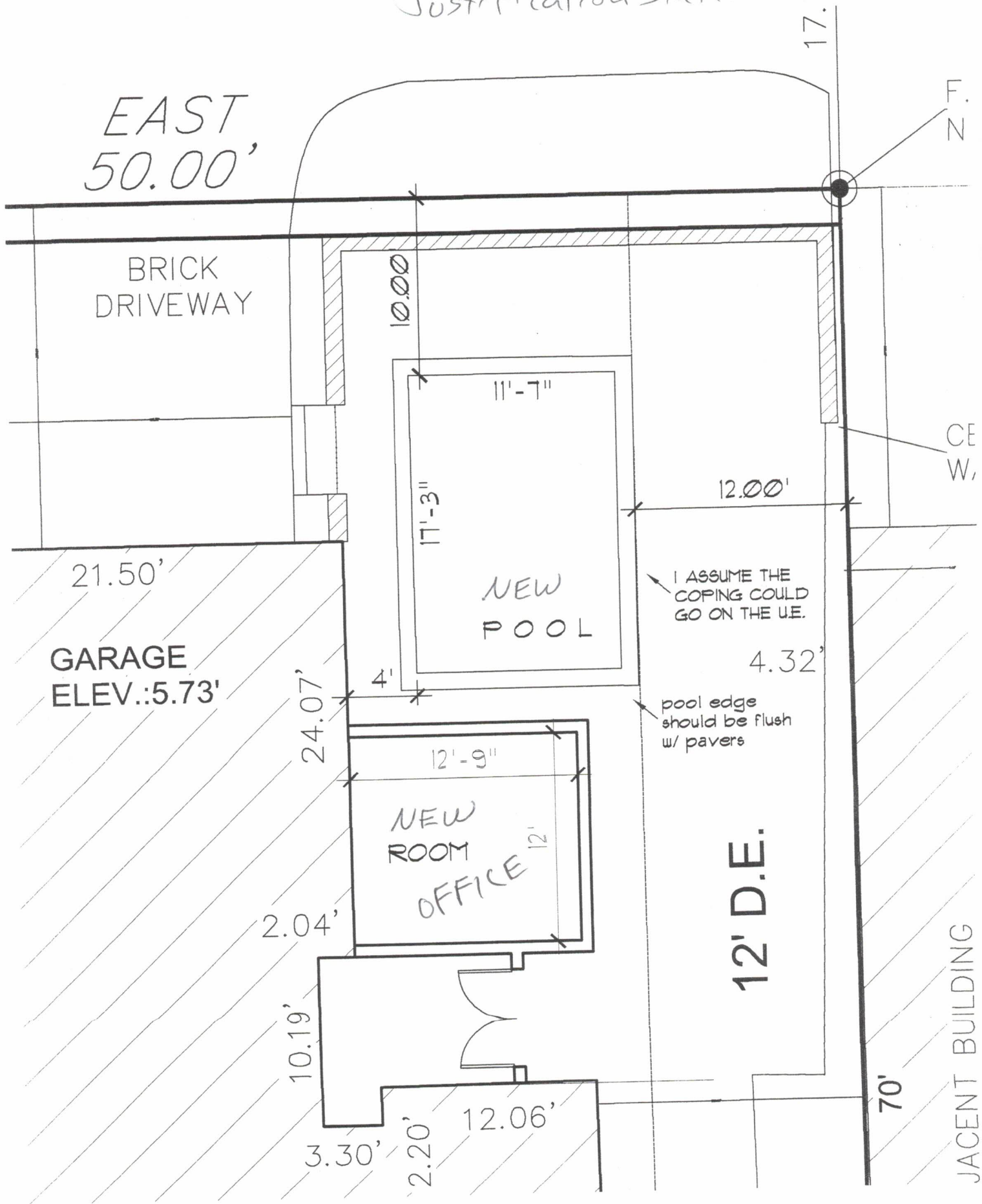
12' D.E.

70'

ACENT BUILDING

SOUTH

Exhibit 2
Justification Statement

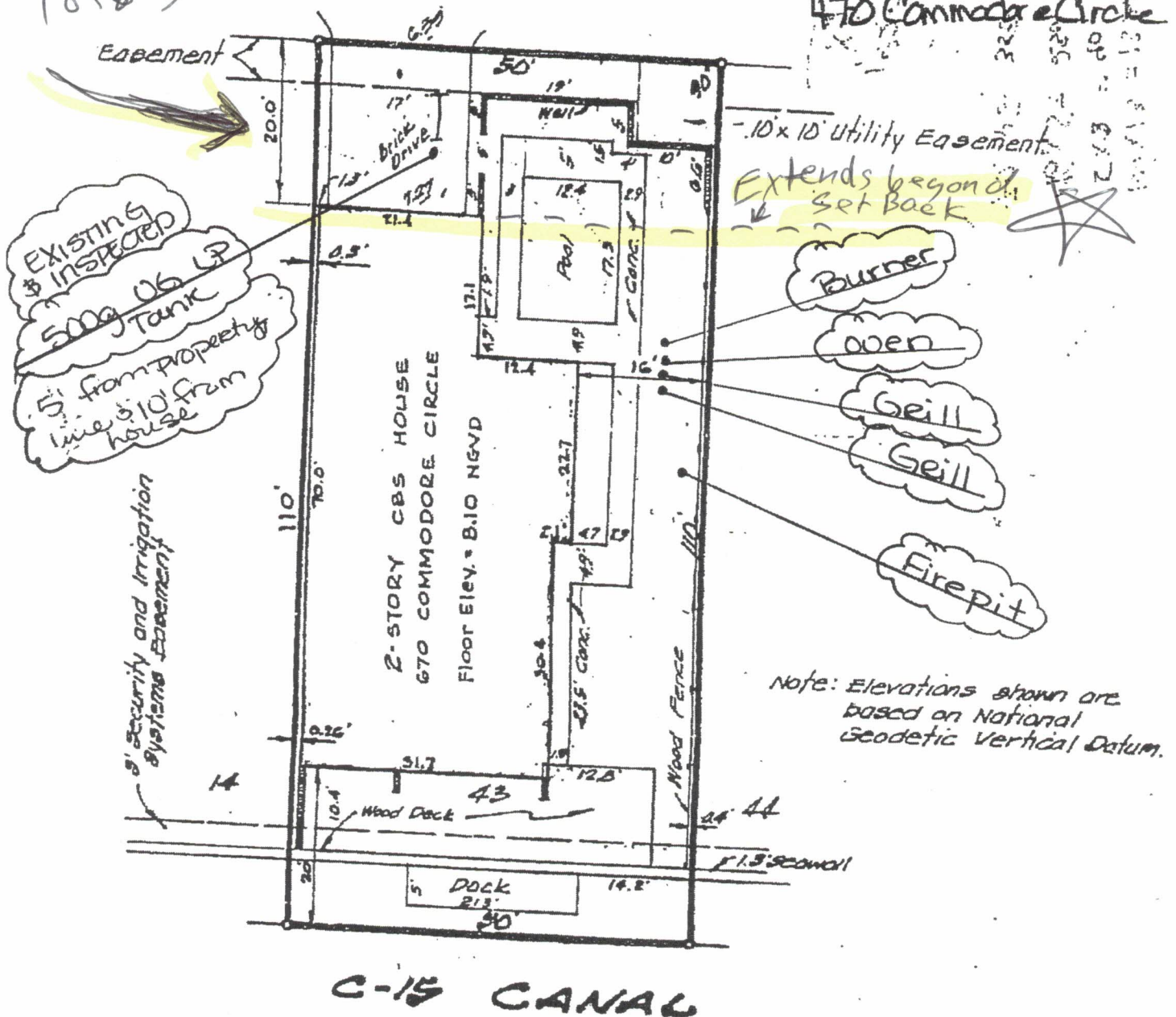


GROUP
EXHIBIT 4
10 of 5

470 Commodore

COMMODORE CIRCLE
25' Utility and Drainage Easement

470 Commodore Circle



ARTIES INTERESTED IN TITLE TO PREMISES SURVEYED:

I, MAURICE E. BERRY II, hereby certify that I have made a recent survey of the described property as indicated, and that there are no above-ground encroachments as shown. I further certify that the survey represented hereon meets the requirements of the Florida Land Title Association and that this plat is true and correct. Witness my hand and the seal of my office at Hollywood, Broward County, Florida, this 25th day of JUNE, A.D. 1981

BERRY & ASSOCIATES
.....

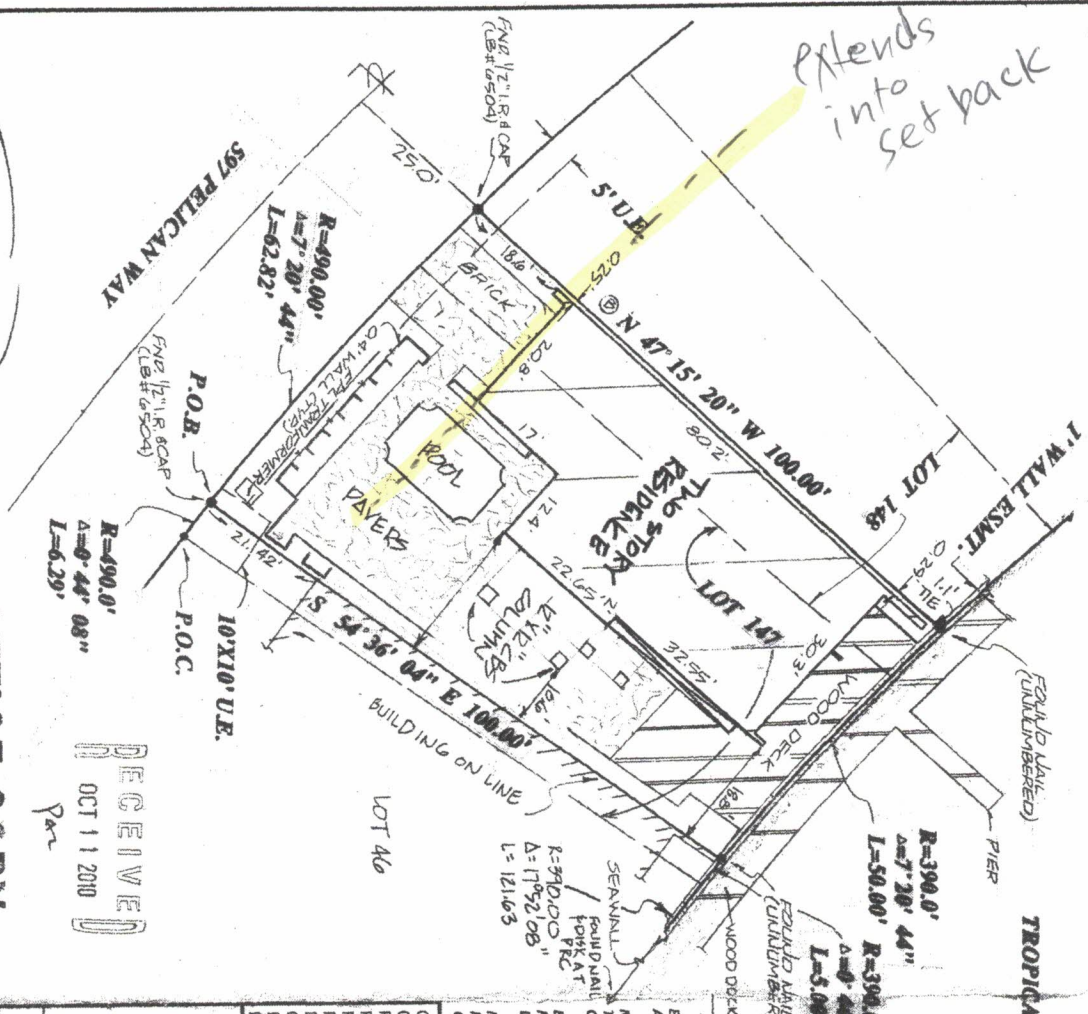
Maurice E. Berry II

202

10-129710

OFFICE COPY

RECEIVED
OCT 11 2010

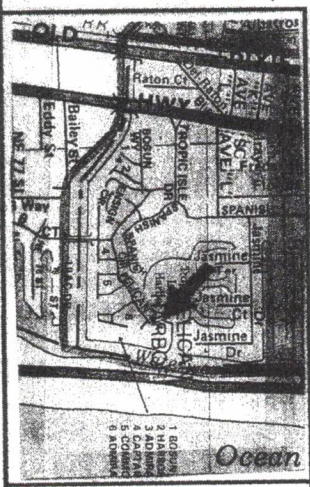


TROPICAL ISLE HARBOR

LEGAL DESCRIPTION

THAT PORTION OF LOTS 147 AND 148, "PELICAN HARBOR PHASE THREE", AS RECORDED IN PLAT BOOK 37, PAGE 34, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE FRONT COMMON CORNER OF LOT 146 AND SAID LOT 147, RUN SOUTHWESTERLY ALONG A 480 FOOT RADIUS CURVE TO THE RIGHT WHOSE CENTER BEARS N 55° 20' 12" W FROM SAID CORNER THROUGH A CENTRAL ANGLE OF 0° 44' 08" AN ARC DISTANCE OF 629 FEET TO A POINT OF BEGINNING; THENCE CONTINUE SOUTHWESTERLY ALONG SAID 480 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 7° 20' 44" AN ARC DISTANCE OF 628.2 FEET; THENCE N 47° 15' 20" W 100 FEET ALONG A RADIAL LINE TO A POINT ON A 360 FOOT RADIUS CURVE WHICH IS CONCENTRIC WITH THE LAST DESCRIBED CURVE; THENCE NORTHEASTERLY ALONG SAID 360 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 7° 20' 44" AN ARC DISTANCE OF 50 FEET; THENCE S 54° 38' 04" E 100 FEET TO THE POINT OF BEGINNING.



BEARINGS SHOWN HEREON ARE RELATIVE TO PLAT AND ARE ASSUMED.
NO ABSTRACT OR TITLE SEARCH WAS PERFORMED TO DISCOVER THE EXISTENCE OF ANY EASEMENTS OR RESTRICTIONS OF RECORD.
ELEVATIONS SHOWN HEREON ARE BASED ON NATIONAL GEODETIC VERTICAL DATUM OF 1929 UNLESS OTHERWISE NOTED.
NO BELOW GROUND IMPROVEMENTS, FOOTERS, FOUNDATIONS OR UTILITIES HAVE BEEN LOCATED OR SHOWN ON THIS SURVEY.

- O.R.B. = official record book
- C.R.S. = concrete block structure
- P.C.C. = point of compound curve
- P.C.P. = permanent control point
- P.O.C. = point of commencement
- P.O.B. = point of beginning
- D/E = drainage easement
- C.M.P. = corrugated metal pipe
- R.L.S. = registered land surveyor
- L.B. = licensed business
- Tran. = transformer pad
- F.P. & L. = Florida Power & Light
- C.M. = concrete monument
- P.R.C. = point of reverse curve
- P.I. = point of intersection
- P.T. = point of tangency
- * = not field measured
- W.P.F. = wood privacy fence
- Chail. = chain link fence
- Elev. = elevation
- P.B. = plat book
- Typ. = typical
- R/W = right-of-way
- Δ = central angle
- ③ = bearing base line
- Asph. = asphalt
- M.H. = manhole
- U/E = utility easement
- CL/F = chain link fence
- P.R.M. = permanent reference monument
- P. = plat
- δ = power pole
- M = measured
- I.P. = iron pipe
- R.P. = radius point
- L = arc length
- CL = centerline
- ALUM. = aluminum
- P.C. = point of curvature
- Pg. = page
- I.R. = iron rod
- R = radius
- D = deed
- O/S = offset
- Conc. = concrete
- Estmt. = easement
- Calc. = calculated

Renner, Burgess, Inc.

1 S.E. 4th Ave., Suite 205
Delray Beach, FL 33483
Phone 561-243-4624
Fax 243-4889
West Palm 735-7639
West Palm Fax 735-7641
Toll Free 1-800-773-5531
Fax Free 1-800-954-4408

Authorization Number LB9504

I hereby certify that the Sketch of Boundary Survey shown hereon meets the minimum technical standards set forth in Chapter 61G17-6, Florida Administrative Code, pursuant to Section 472.027, Florida Statutes.

Harry A. Burgess
P.L.S. No. 5089

Flood Zone: "AE" (EL=7.1)
Map No: 125102 000000
Map Date: 1.5.89
Date: 6-29-2010
Job No: 6-10-036
Revised: 10-6-10

Not valid unless sealed with embossed surveyor's seal

WATER RESOURCES AND CLIMATE	
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.	1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.



516 COMMODORE CIRCLE, DELRAY BEACH, FL 33483

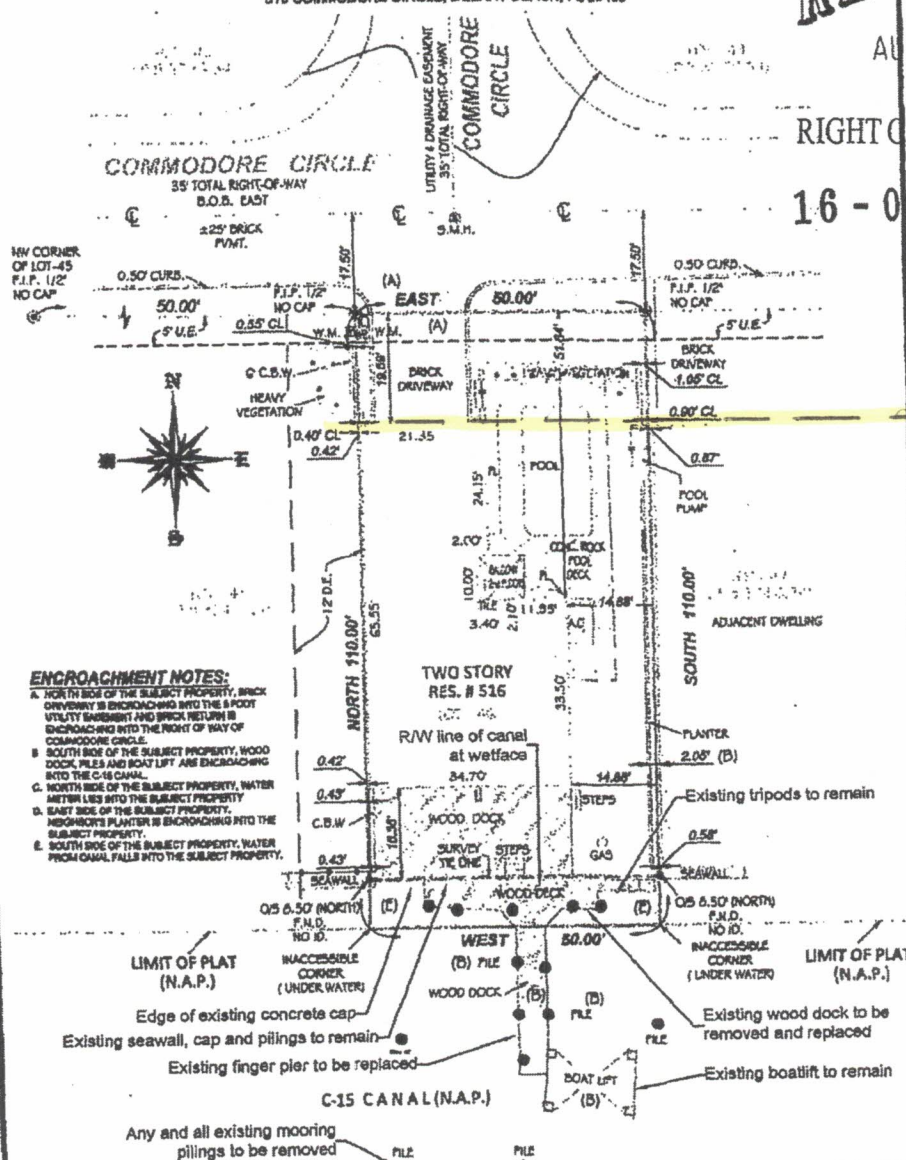
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AUG - 9 2016

RIGHT OF WAY DIVISION

16 - 0718 - 3

Extends into setback



ENCROACHMENT NOTES:

- A. NORTH SIDE OF THE SUBJECT PROPERTY, BRICK OVERLAY IS ENCROACHING INTO THE 5 FOOT UTILITY EASEMENT AND BRICK RETURN IS ENCROACHING INTO THE FRONT OF WAY OF COMMODORE CIRCLE.
- B. SOUTH SIDE OF THE SUBJECT PROPERTY, WOOD DOCK, PILES AND BOAT LIFT ARE ENCROACHING INTO THE C-16 CANAL.
- C. NORTH SIDE OF THE SUBJECT PROPERTY, WATER METER LIES INTO THE SUBJECT PROPERTY.
- D. EAST SIDE OF THE SUBJECT PROPERTY, HEDGEWOOD PLASTER IS ENCROACHING INTO THE PROPERTY.
- E. SOUTH SIDE OF THE SUBJECT PROPERTY, WATER PUMP CANAL FALLS INTO THE SUBJECT PROPERTY.

JOHN BARBA
CERTIFICATE
NO. 5204
STATE OF
FLORIDA
PROFESSIONAL LAND SURVEYOR

LB-7806 SEAL

LEGAL DESCRIPTION:

LEGAL DESCRIPTION:
LOT 46, PELICAN HARBOR PHASE THREE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 37, PAGE 34, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CERTIFICATION:
PETER JENSEN AND JENNIFER JENSEN
LANDIS & MALLINGER, P.I.
CHICAGO TITLE INSURANCE COMPANY

DRAWN BY: NGH

SCALE: 1"=20'

FIELD DATE: 05/23/2016

SURVEY NO: 16-002075-1

SHEET:	2 OF 2
---------------	---------------

EXISTING CONDITIONS
SCALE: 1" = 20'-0"

DOCK, PIER, LIFT & DECK FOR:
JENSEN RESIDENCE
516 COMMODORE CIRCLE
DELRAY BEACH, FL

PREPARED FOR:

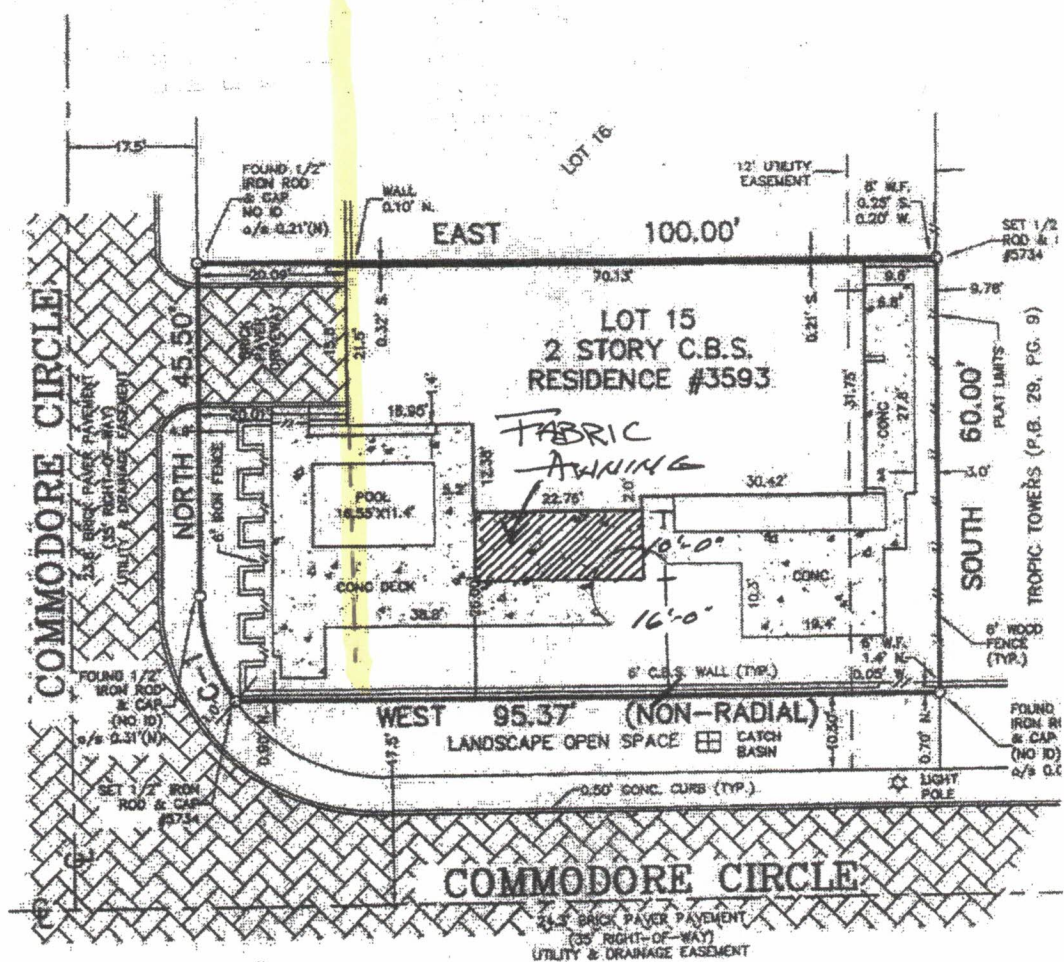
**B & M MARINE
CONSTRUCTION, INC.**
3500 S.W. 14TH. STREET
DEERFIELD BEACH, FL 33442
954-421-1700 CGC052820

FC

NEW ~~BOOK~~ 5/28/14
 1/12/14

Extends into setback

14-151154



C-1
R = 25'
A - 35'27"02"

5 of 5

LB2LS1-S1

[illegible]

SHOWING THE LOCATION OF THE CORNER-LINE OF FENCE WALL TIES TO THE FACE OF WALL TIES. THESE TIES ARE TO BE EXAMINED AND GRAPHIC REPRESENTATIONS MADE TO MORE CLEARLY ILLUSTRATE THE CONTROL OF THE IMPROVEMENTS OVER SCALED POSITIONS. THE DIMENSIONS SHOWN HEREON ARE IN SUBSTANTIAL AGREEMENT WITH RECORD WALL TIES AND CORNERS NOTED.

9. EXISTING WALLS ARE CENTERED ON PROPERTY LINE AND ARE 0.7' WIDE UNLESS OTHERWISE NOTED.

10. EXISTING CORNERS FOUND OFF WITNESS PROPERTY CORNERS.

11. THE LOCATION OF THE CORNERS OF THE PROPERTY ARE NOTED BY THE FOLLOWING:

12. NO ATTEMPT WAS MADE TO LOCATE WRITTEN OR UNWRITTEN EASEMENTS OR RIGHTS-OF-WAY, OTHER THAN THOSE SHOWN HEREON.

OFFICE: 954.587.2100 FAX: 954.587.2101

PAUL J STOWELL
PROFESSOR NAME: STOWELL
STOWELL

PAUL J. STOWELL
PROFESSIONAL LAND SURVEYOR
FLORIDA CERTIFICATION NO. 5241
ATLANTIC COAST SURVEYING, INC.
6129 STIRLING RD SUITE 2 DAVE, FLORIDA 33314
OFFICE: 954.587.2100 FAX: 954.587.5418

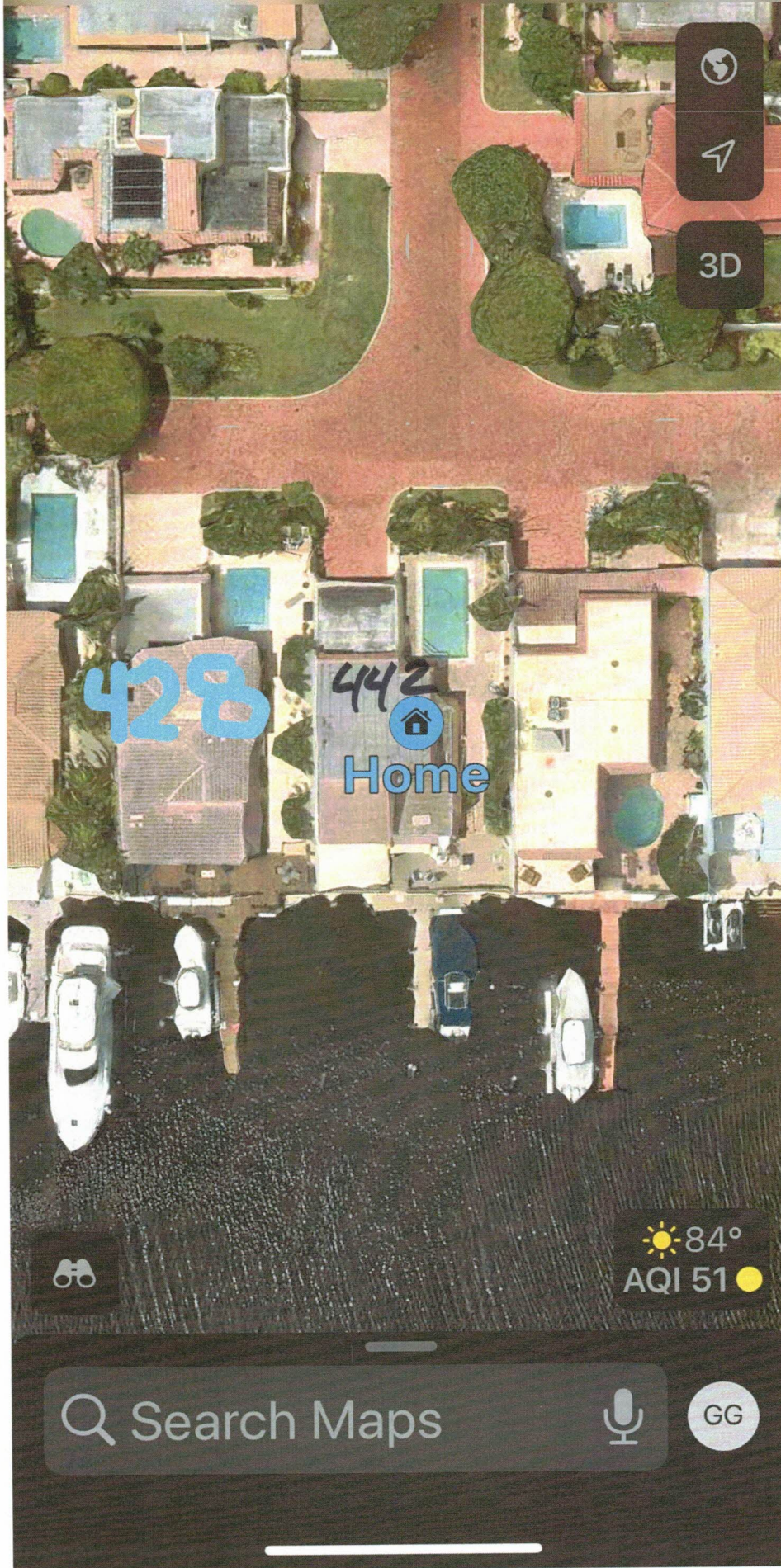


THIS APPROVAL DOES NOT RELIEVE THE
ENGINEER OF RECORD FROM ENSURING
THAT THESE PLANS ARE CONSISTANT
WITH GENERAL ENGINEERING
PRACTICES.

6:00

EXHIBIT 5

47



84°
AQI 51

Search Maps



GG