

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In re: Sarasota County Snook Haven

Petition for Variance from Provisions of Rule[s] 62D-15, F.A.C.
OGC No.: 20-0947
DEP File No. 216693-003

ORDER GRANTING PETITION FOR VARIANCE

On June 1, 2020, Sarasota County, (Petitioner), filed a petition with the Florida Department of Environmental Protection (Department) requesting a section 120.542, Florida Statutes, variance from the requirements of Rule 62D-15, Florida Administrative Code (F.A.C.). Rule 62D-15 F.A.C., Section (3)(a)1. States “No dock or marina and its associated pilings shall extend waterward of the mean or ordinary high-water line more than 20 feet or 10 percent of the width of the waterbody at that particular location, whichever is less. The Petitioner seeks a variance in order to construct an ADA compliant dock that extends approximately 12.5 feet further waterward than the rule allows.

Notice of receipt of the petition was published in the Florida Administrative Register on June 11, 2020. No public comment was received.

BACKGROUND AND APPLICABLE REGULATORY CRITERIA

To build an approximately 365 square foot dock with a 5 foot wide access walkway for a public kayak launch site to provide recreational access to people with disabilities in order to adhere to the Americans with Disabilities Act (ADA).

The activities authorized by this variance are located at Myakka River at 4076 Venice Avenue, Venice, FL 34292 in Section 8, Township 39 South, Range 20 East in Sarasota County.

The applicant seeks a variance from the requirements of Rule 62D-15, Florida Administrative Code (F.A.C.):

- Section (3)(a)1. States “No dock or marina and its associated pilings shall extend waterward of the mean or ordinary high-water line more than 20 feet or 10 percent of the width of the waterbody at that particular location, whichever is less.
- Section (3)(a)5. Terminal platform size shall be no more than 120 square feet and the length of the platform shall be no more than 12 feet and the width shall be no more than 10 feet.
- Section (3)(a)6. Any main access dock shall be limited to a maximum width of four feet.

THE VARIANCE OR WAIVER WILL MEET THE UNDERLYING PURPOSE
OF THE STATUTE

Section 120.542(2), Fla. Stat., states “variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.” The variance procedure is intended to provide relief from unreasonable, unfair, and unintended results in unique cases.

Section 258.501(2) aka Myakka River; wild and scenic segment states:

"The Legislature finds and declares that a certain segment of the Myakka River in Manatee, Sarasota, and Charlotte Counties possesses outstandingly remarkable ecological, fish and wildlife, and recreational values which are unique in the State of Florida. These values give significance to the river as one which should be permanently preserved and enhanced for the citizens of the State of Florida, both present and future. The permanent management and administration of the river involves a complex interaction of state, regional, and local interests which require balancing and coordination of purpose. It is the intention of the Legislature to provide for the permanent preservation of the designated segment of the Myakka River by way of development of a plan for permanent administration by agencies of state and local government which will ensure the protection necessary but retain that degree of flexibility, responsiveness, and expertise which will accommodate all of the diverse interests involved in a manner best calculated to be in the public interest.

The Petitioner demonstrated that the purpose of the underlying statute will be achieved by providing access to citizens with disabilities for recreation.

Section 258.501(5)(c) “Regulation, control, and distribution of public access where necessary to protect and enhance the resource values of the river area” will be achieved by constructing a dock that allows for citizens with disabilities to utilize the river.

SUBSTANTIAL HARDSHIP TO THE PETITIONER and
VIOLATIONS OF PRINCIPLES OF FAIRNESS

“Substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. “Principles of fairness” are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. Section 120.54(2), Florida Statutes.

Petitioner requests a variance or waiver of the strict application of Rule 62D-15, Florida Administrative Code (F.A.C.), because applying the rules for licensure application would be would violate the principles of fairness.

The Petitioner demonstrated that literal application of the rule would affect the Petitioner in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

Granting of the requested variance under Section 120.542 F.S. will accommodate ADA-access while maintaining the integrity of the shoreline and the river both in terms of scenic quality and resource values that are consistent with the underlying requirements of the Wild and Scenic River Statutes, Section 258.501 F.S. The existing dock (to be removed) was originally constructed as an amenity to the residential structure for private access only. If left in place, it would provide minimal public benefit since it does not meet ADA specifications and is not in the public interest.

THEREFORE, IT IS ORDERED:

Based on the foregoing reasons, the Petitioner has demonstrated that it [has met the requirements for a variance of Rule 62D-15, F.A.C. PETITIONERS REQUEST FOR A VARIANCE IS GRANTED.

This variance shall remain in effect for the duration of the permitted facility.

All activities shall be implemented following the plans, specifications and performance criteria approved by associated permits. Any deviations must be authorized in a permit modification in accordance with Rule 62-330.315, F.A.C. Any deviations that are not so authorized may subject the permittee to enforcement action and revocation of the permit under Chapter 373, F.S.

PUBLICATION OF NOTICE

You (the petitioner) are required to publish at your own expense the enclosed notice of this variance. The notice is required to be published one time within 30 days, in the legal advertisements section of a newspaper of general circulation in the area affected. For the purpose of this rule, “publication in a newspaper of general circulation in the area affected” means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county where the activity is to take place. The applicant shall provide proof of publication to:

Department of Environmental Protection
Submerged Lands & Environmental
Resource Protection
South District
PO Box 2549
Fort Myers, FL. 33902
SouthDistrict@floridadep.gov

The proof of publication shall be provided to the above address within seven days of publication. Failure to publish the notice and provide proof of publication within the allotted time shall be grounds for denial of the variance or waiver.

NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the request for a variance or waiver.

Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rule 28-106.201, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, telephone number, and any e-mail address of the petitioner; the name, address, telephone number, and any e-mail address of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the

Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing must be filed within 21 days of receipt of this written notice. The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C.

Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation

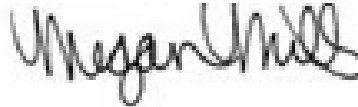
Mediation is not available in this proceeding.

Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rules 9.110 and 9.190, Florida Rules of Appellate Procedure, with the Clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this action is filed with the Clerk of the Department.

DONE AND ORDERED this 19 day of October 2020 in Bay County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Megan Mills
Permitting Program Administrator

Attachments:
Notice of Publication
Site Plan

Copies furnished to:
Kim Humphrey, Project Manager Sarasota County, khumphre@scgov.net
Joint Administrative Procedures Committee

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this Order, including all copies, were mailed before the close of business on October 19, 2020, to the above listed persons.

FILING AND ACKNOWLEDGMENT

FILED, on this date, under 120.52(7) of the Florida Statutes, with the designated Department Clerk, receipt of which is hereby acknowledged.



Clerk

October 19, 2020
Date

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF ORDER GRANTING VARIANCE

The Department of Environmental Protection gives notice of its determination pursuant to section 120.542, Florida Statutes, in File No. 0216693-003 to grant a variance to Sarasota County from Rule 62D-15.008, Florida Administrative Code (F.A.C.), in order to build a 356 square foot public kayak dock at 4076 East Venice Ave. (parcel ID #0736003003010) Snook Haven, Venice, Florida 34292, in Section 8, Township 39 S, Range 20 E in Sarasota County.

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rule 28-106.201, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests are or will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

In accordance with rule 62-110.106(3) of the Florida Administrative Code, petitions for an administrative hearing must be filed within 21 days of publication of this notice or receipt of written notice, whichever occurs first. However, any person who has previously asked the Department for notice of this agency action may file a petition within 21 days of receipt of such notice, regardless of the date of publication. The failure to

file a petition within

the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it.

A person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, before the applicable deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation is not available in this proceeding.

On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, this process may result in a modification of the agency action or even a denial of the request for a variance or waiver.

A copy of the Order may be obtained by visiting the Florida Public Information Portal <https://prodenv.dep.state.fl.us/DepNexus/public/searchPortal> under Snook Haven and/or Facility/Site ID **216693** or by emailing the Department of Environmental Protection at SD_ERP_Permit@floridadep.gov during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.

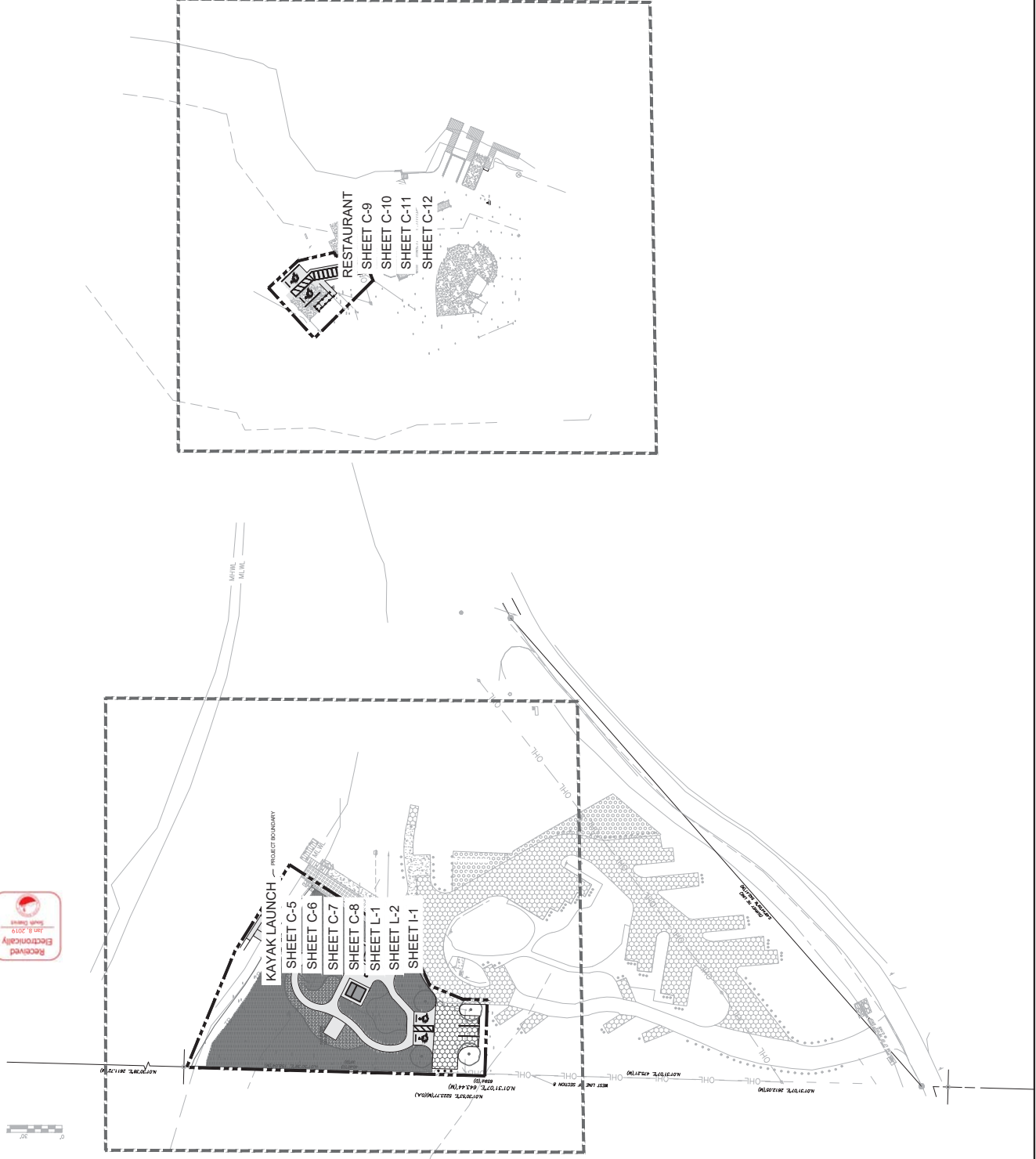
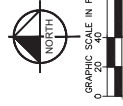
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DATE	DEC. 2019
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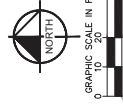
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KAYAK LAUNCH

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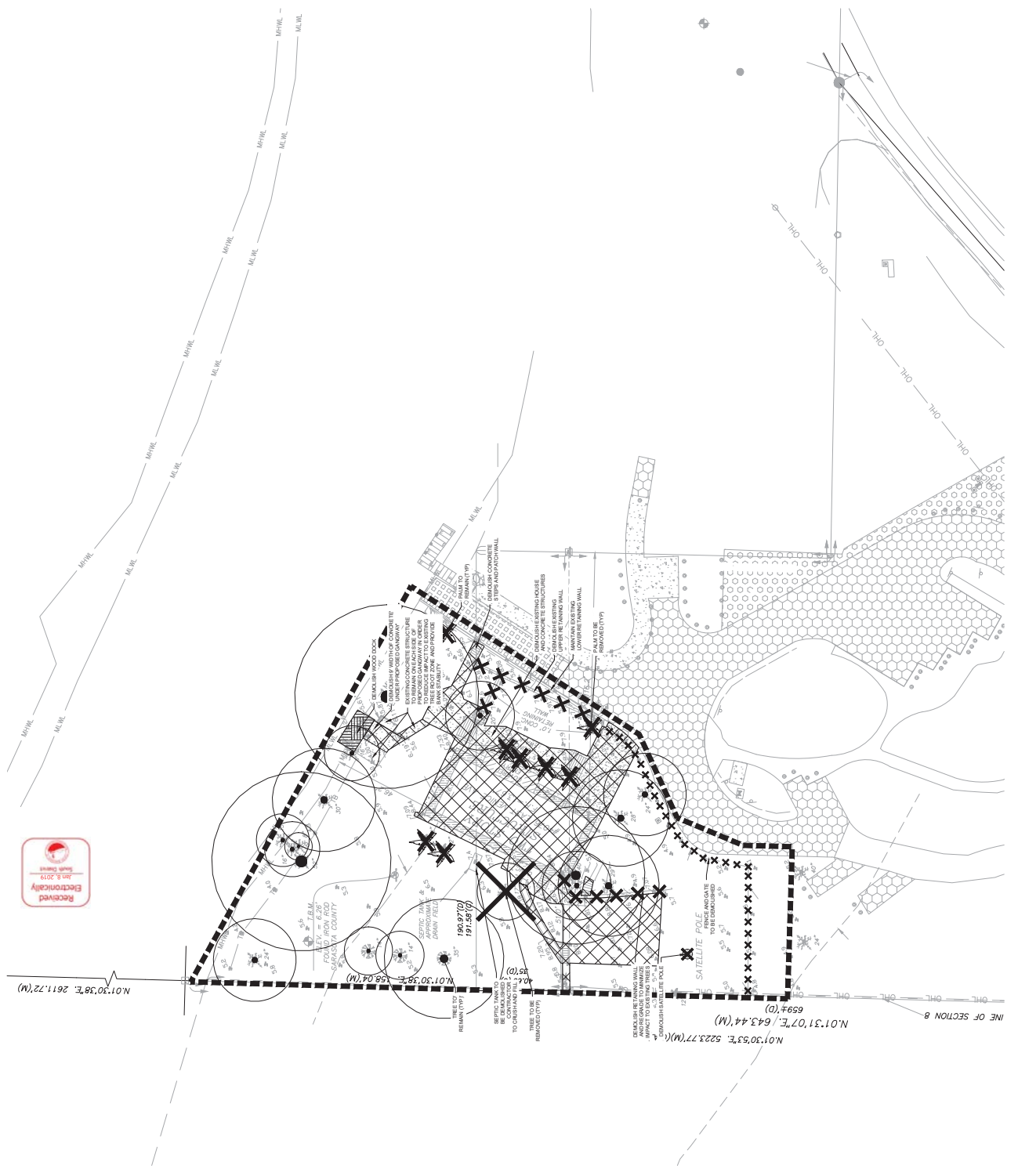
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KEY

- TREE TO REMAIN (circle with dot)
- TREE TO BE REMOVED (circle with X)
- PALM TO REMAIN (palm symbol)
- PALM TO BE REMOVED (palm with X)
- CONCRETE TO BE DEMOLISHED AND REMOVED (cross-hatch)
- WOOD DECK TO BE DEMOLISHED AND REMOVED (horizontal lines)
- FENCE TO BE DEMOLISHED (X-X-X-X)
- WALL TO BE DEMOLISHED (X-X-X-X)
- POLE TO BE DEMOLISHED (X)



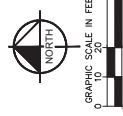
AERIAL SITE PLAN -
 KAYAK LAUNCH

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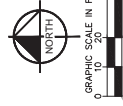
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- FENCE TO BE DEMOLISHED
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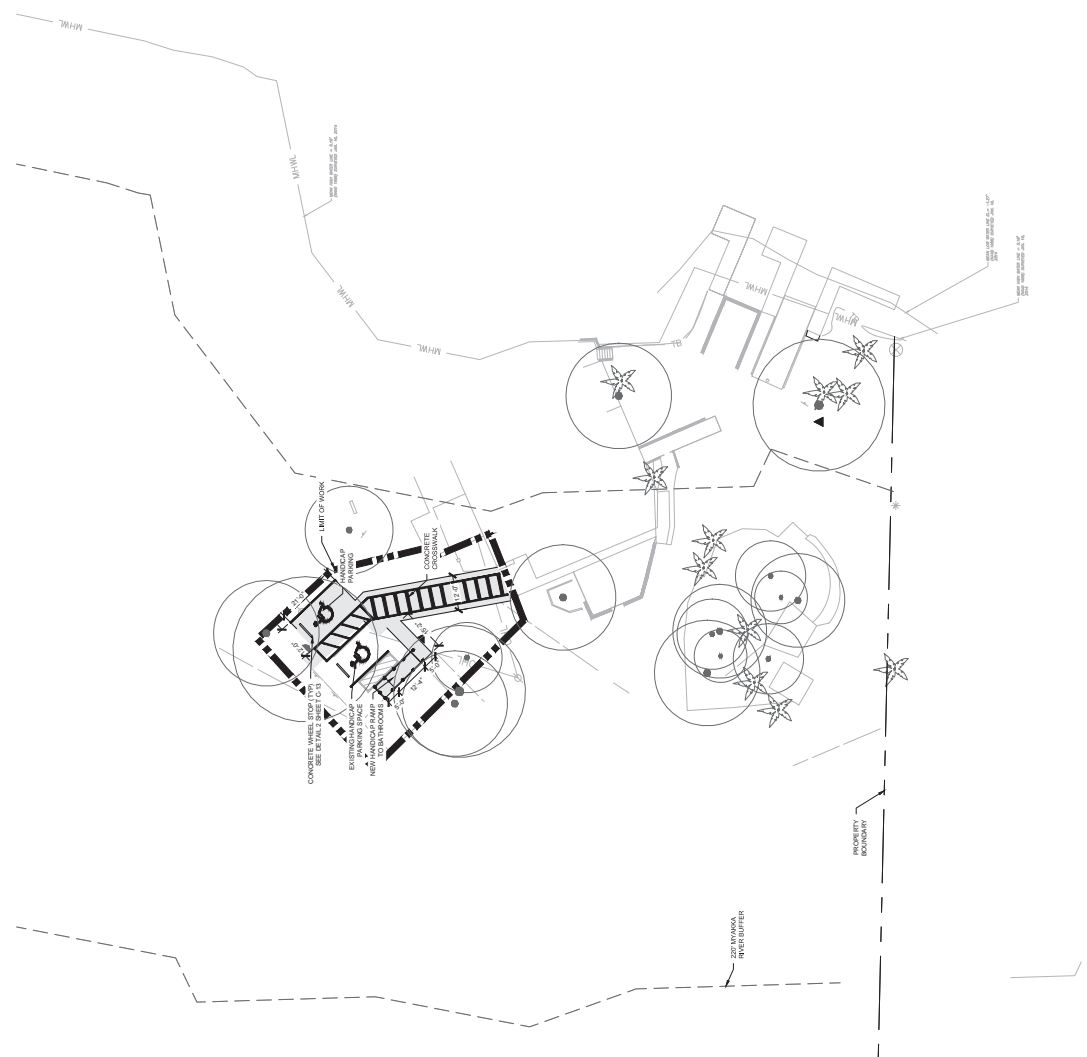
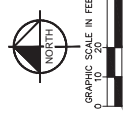
SITE PLAN -
RESTAURANT

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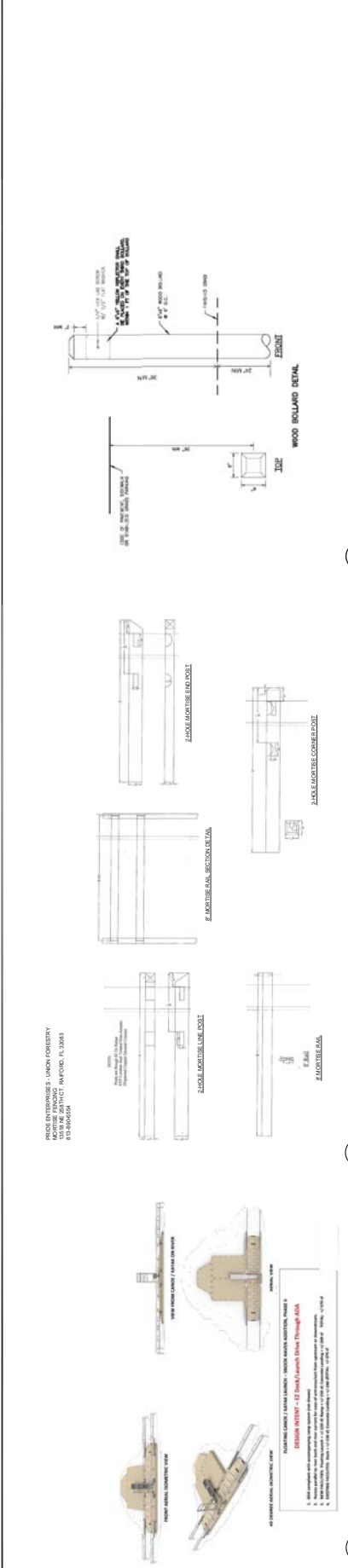
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EQUIPMENT DETAILS

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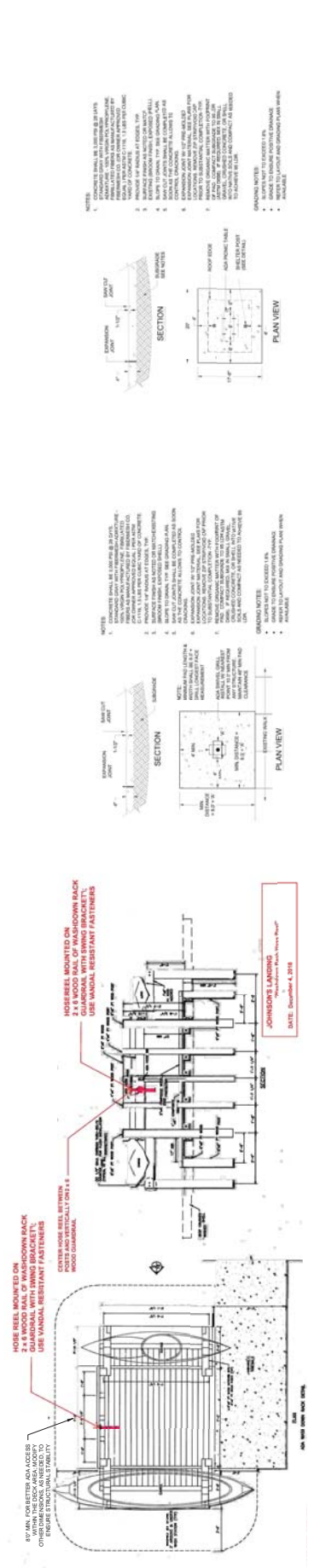


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