

AGENDA
TOWN OF INDIALANTIC BOARD OF ADJUSTMENT
Council Chamber, 216 Fifth Avenue, Indialantic, FL 32903
Wednesday, March 8, 2023 AT 5:30 P.M.

A. Call to Order:

David A Justice	Chair
Stephen Baughn	Vice Chair
Safvat Kalaghchy	Member
Michael Hill	Member
Eileen Mullen	Member
(Vacant)	1 st Alternate
(Vacant)	2 nd Alternate

B. Approval of Prior Meeting Minutes:

Minutes – December 7, 2022

C. Variance Request:

Site address: 500 S. Palm Avenue

Zoning: R-1-A

Applicant/Owner: Evan and Kelly Donahue

- 1. Code Section 113-238 (d) Swimming pools** -- Requesting a variance of 3' 9" from the required 10' setback to allow the water's edge to be located 6' 3" from the west (rear yard) property line.

D. Board of Adjustment regular meeting schedule:

The Town Council is considering adopting an ordinance to change the regular town council meeting time from 7pm to 6pm, which would likely conflict with the Board of Adjustment which typically meets at 5:30pm prior to the council meeting. The Board of Adjustment should discuss and choose an alternate date/time for Board of Adjustment meetings.

E. Adjournment:

Notice: Pursuant to section 286.0105, Florida Statutes, the town hereby advises the public that if a person decides to appeal any decision made by this board with respect to any matter considered at its meeting or hearing, he will need a record of the proceedings, and may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the town for the introduction or admission into evidence of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

Americans with Disabilities Act: Persons planning to attend the meeting who need special assistance must notify the office of the town clerk at 321-723-2242 no later than 48 hours prior to the meeting.

Meeting Minutes
TOWN OF INDIALANTIC BOARD OF ADJUSTMENT
Council Chamber, 216 Fifth Avenue, Indialantic, FL 32903
Wednesday, December 7, 2022 AT 5:30 P.M.

A. Call to Order:

A regular meeting of the Indialantic Board of Adjustment was called to order at 5:31 p.m. by Chair Justice with the following members present:

David A Justice	Chair
Stephen Baughn	Vice Chair
Safvat Kalaghchy	Member
Michael Hill	Member

Also present:

Michael Casey, Town Manager
Rebekah Raddon, Town Clerk
Paul Gougelman, Town Attorney
Cliff Stokes, Building Official
Mollie Carr, Admin. Asst.

B. Approval of Prior Meeting Minutes:

Minutes – September 7, 2022

Motion by Member Hill, seconded by Vice Chair Baughn, and vote unanimous to approve the meeting minutes. Motion carried 4-0.

C. Variance Request:

Site address: 500 S. Palm Avenue

Zoning: R-1-A

Applicant/Owner: Evan and Kelly Donahue

- 1. Code Section 113-238 (d) Swimming pools** – Requesting a variance of 3' from the required 15' setback to allow the water's edge to be located 12' from the north (side yard) property line, on a property whose side yard abuts a street.
- 2. Code Section 113-238 (d) Swimming pools** – Requesting a variance of 3' from the required 10' setback to allow the water's edge to be located 7' from the west (rear yard) property line.
- 3. Code Section 113-238 (e) Swimming pools** – Requesting a variance of 1' from the required 10' setback from the lot line to allow installation of pool decking 9' from the property line on a corner lot whose side yard abuts a street.
- 4. Code Section 113-222 (c) [2] Fences, walls** – Requesting a variance of 10' from the required 10' setback to allow construction of a fence on the north (side yard) property line.

Chair Justice invited the applicant to speak regarding their request.

Evan Donahue, 500 S. Palm Avenue, spoke regarding the power line and small size of the backyard which necessitate the variances. Without variances, only a spa or a plunge pool would be possible.

Town Attorney Gougelman asked to have the agenda packet, photos taken by staff, and a letter of support written by John and Simi Brady made part of the record.

Discussion ensued regarding what the practical difficulty is for the variances. The board inquired if it was possible to bury the powerline and cable; Mr. Donahue advised that there is not enough easement.

The applicant confirmed that all four variances are necessary to construct a pool and all are dependent on each other.

The board inquired if the applicant had considered a smaller pool; Mr. Donahue indicated it would have to be spa-sized or a plunge pool to fit. He noted that pools are common and affect the resale value. He advised that his neighbors do not mind and it is not a significant change to the neighborhood.

There was discussion regarding putting the pool closer to the home; building official Cliff Stokes spoke regarding the additional engineering required to do so. Town Manager Michael Casey expressed concern regarding sewer and water line maintenance if a fence is installed abutting the right-of-way.

The board pointed out that pulling the pool in 3' closer to the home would eliminate the need for variances, and suggested the applicant consider altering the plans and reapplying.

There were no public comments.

Motion by Member Hill, seconded by Vice Chair Baughn, and vote unanimous to deny all variances. Motion carried 4-0.

D. Adjournment:

There being no further discussion, the meeting was adjourned at 6:00 p.m.

David A. Justice, Chair

Attested by

Rebekah Raddon, Town Clerk



Application for Zoning Variance



Chapter 113 ZONING. Article II, Div. 4. Sec. 113-117 Authority:

(a) The board of adjustment may grant variances in specific cases to vary or alter the strict application of any of the requirements of this chapter, whereby such application of a particular requirement would result in a practical difficulty or an unnecessary hardship that would deprive the owner of the reasonable use of the land or building involved.

(b) To obtain a variance the applicant must demonstrate to the board of adjustment that:

- (1) A practical difficulty or an unnecessary hardship is caused by the literal application and enforcement of the zoning code provision from which a variance is sought;
- (2) The granting of the variance will not authorize a use prohibited, or result in a use variance, in the district in which the property is located;
- (3) The preponderance of evidence presented at the variance hearing does not demonstrate that the granting of the variance will seriously impair the use of adjacent property, or significantly reduce the value of adjacent property, regardless of the zoning district in which the adjacent property is located;
- (4) The need for the variance is made necessary by the unique character of the property;
- (5) The need for the variance is not caused in any way by the owner or occupant of the property upon which the variance is sought;
- (6) That the request for a variance is not solely based on an economic disadvantage to the owner or occupant of the property upon which the variance is sought, because an economic disadvantage to an applicant does not constitute a hardship or practical difficulty sufficient to warrant the granting of a variance; and
- (7) That the request for a variance is not solely based on a need or desire of the owner or occupant of the property upon which the variance is sought to be obtained to gain an economic benefit, because an economic advantage to an applicant does not constitute a hardship or practical difficulty sufficient to warrant the granting of a variance.

(c) In determining whether to grant a variance the board of adjustment may consider the goals, objectives and policies of the comprehensive plan.

(d) In granting a variance, the board of adjustment may prescribe any conditions that it deems necessary or desirable in the furtherance of the purpose of this chapter.

(e) If a variance is granted with the effect being that a building permit is required, the building permit must be obtained within twenty-four (24) months of the approval date, after that time, the variance is void. If a permit is issued and that permit expires then the variance is also terminated, or expires, with the permit. (Ord. No. 11-13, 3, 7-27-11; Ord. No. 17-08, 2, 4/12/17) ESD / KLD applicant initial.

1. Applicant states that the property is located at:

Lot(s) 7 Block B

Street Address 500 S. Palm Ave, Indian Lake, FL 32903

2. Applicant's contact information:

Name: Evan & Kelly Donahue Phone: 321-704-0932 /

217-637-2540

Address: 500 S. Palm Ave, Indialantic Email: evan@peacockharbor.com

3. Property Owner (If other than applicant): _____

Property Owner Address: _____

4. The relationship of the applicant to the property is:

OWNER: X ATTORNEY/AGENT*: _____ TENANT*: _____

*Owner authorization required.

5. The property is zoned (Circle one): R-1-A; R-1-B; R-2; R-3; R-P; C; C-1; C-2; SC; CH; T

6. The requested variance(s) is for the following non-conformities of the Indialantic Code:

Code Section	Explain Non-conformity (variance requested)
a. <u>113-238(d)</u>	<u>see attached</u>

b. _____	_____

Attach additional pages as necessary

7. Current Property Survey and Site Plan for proposed variance are attached to this application

EGD / KLD applicant initial

8. Site plans are the same as submitted to the Zoning Board, if applicable:

YES _____ NO _____ N/A X

9. Describe the **Practical Difficulty** or **Unnecessary Hardship** which will be imposed if the variance is not granted (see definitions, pg. 3). Attach additional pages as necessary:

see attached

Chapter 113 ZONING. Article I, Sec. 113-4 Definitions:

Practical difficulty.

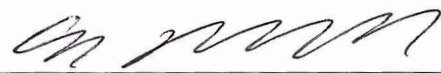
In the case of a variance, a practical difficulty is a standard which is similar to but less rigorous than the unnecessary hardship standard. It is a non-self created characteristic of the property. The standard asks whether a literal enforcement of a zoning regulation will create a practical difficulty in the use of the parcel of land for the purpose or in the manner for which it is zoned. Some of the factors that may be considered in determining whether a practical difficulty exists include: (i) how substantial the variance is in relation to the requirement sought to be varied; (ii) whether a substantial change will be produced in the character of the neighborhood; (iii) whether the difficulty can be obviated by some method feasible for the applicant to pursue other than by a variance; and (iv) whether, in view of the manner in which the difficulty arose, the interest of justice will be served by allowing the variance. Finding that factors (i) (that the variance requested is not substantial); (ii) (that a substantial change in the character of the neighborhood will not occur if the variance is granted); (iii) (that the difficulty occurring can only be obviated by grant of the variance); and (iv) (that the interest of justice will be served by granting of the variance), are all factors in support of the variance.

Unnecessary hardship.

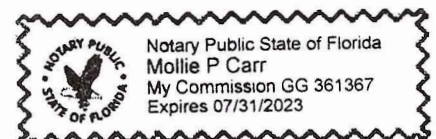
In the case of a variance, an unnecessary hardship is a standard which is similar to but much more rigorous than the practical difficulty standard. The unnecessary hardship standard is a very restrictive standard. It is a non-self created characteristic of the property in question which renders it virtually impossible to use the land for the purpose or in the manner for which it is zoned. The standard asks whether a literal enforcement of a zoning regulation will create an unnecessary hardship which makes it virtually impossible to use the land for the purpose for which it is zoned.

A nonrefundable fee of \$500.00 is required at the time the application is filed. Application does not guarantee variance will be granted.

I hereby agree to the payment of the fee as prescribed by the Indialantic Code of Ordinances. I hereby depose and say that all the above statements are true and correct to the best of my knowledge.

Signature of applicant  Date 2/10/23

The foregoing instrument was sworn to (or affirmed), subscribed, and acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 10 day of Feb, 2023, by Evan Donahue, who is personally known to me or has produced FC DL as identification.



NOTARY:  Commission expires: _____

FOR OFFICE USE ONLY

Application checked and accepted by Building Official: _____

Date _____

ACTION BY BOARD OF ADJUSTMENT:

Approved _____ Disapproved _____ Date _____

Board of Adjustment Chairman

Board of Adjustment Secretary

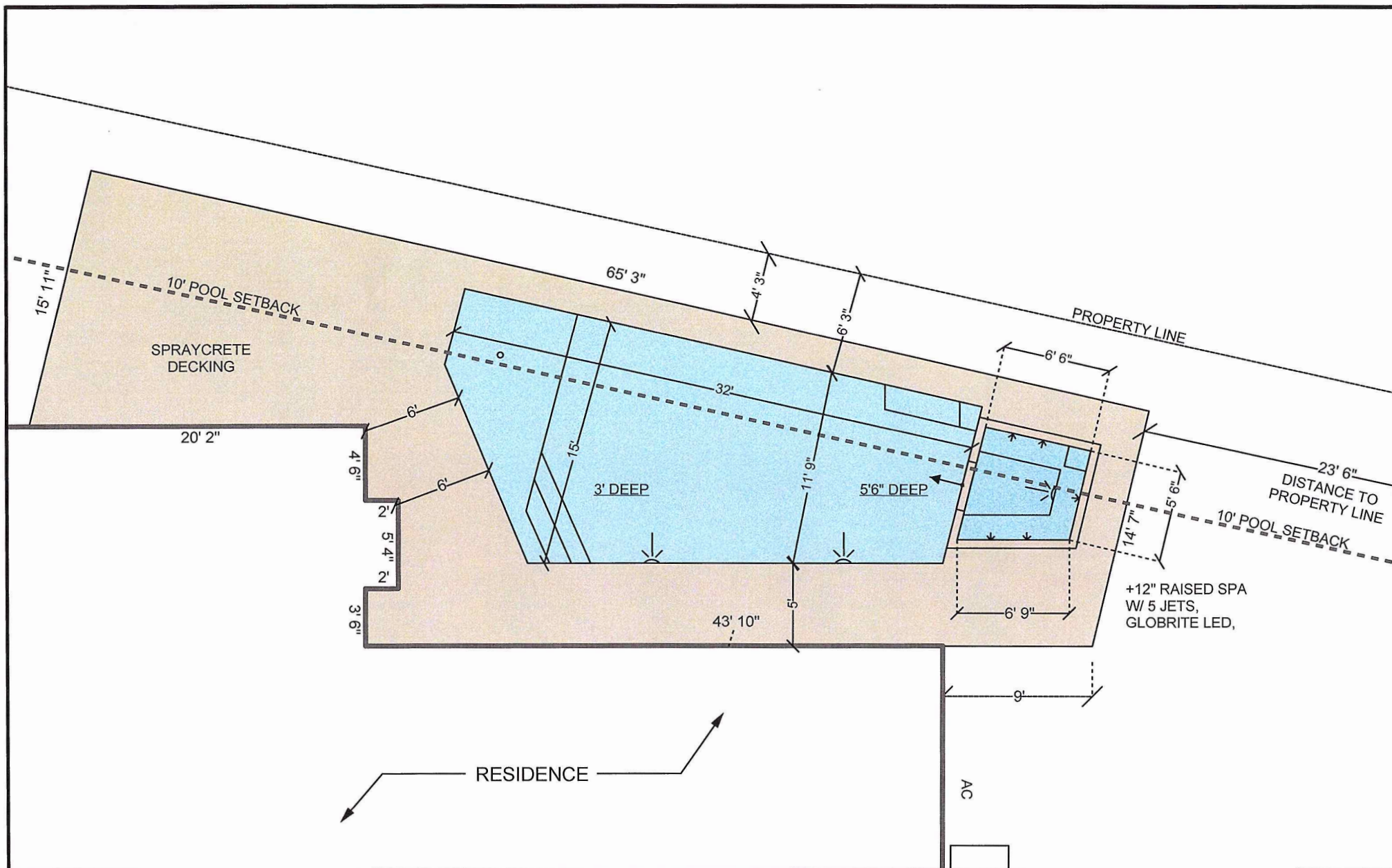
6. The requested variance(s) is for the following non-conformities of the Indialantic Code:

Code Section 113-238(d) "The inside edges of the swimming pool (the waterline) shall be setback at least ten feet from the lot lines for interior lots and at least 15 feet from the lot line on a corner lot whose side yard abuts a street."

Requesting a waterline setback reduction from 10' to 6'3" from ~west (back yard) interior property line.

9. The lot size and shape, as well as the orientation of the house on the lot reduces feasible location for a pool within setback constraints. Building closer to the house is restricted due to utility location and engineering constraints. A narrower pool fitting within the 10' interior setback would not allow room for low-impact exercise medically recommended for ongoing healthcare concerns. Additionally, we have been advised the interior finish of that narrow a pool could be compromised from the water flow needed.

In comparison to our previous variance request, this proposal moves the pool to primarily the back yard from the side yard, reducing the number of variance requests to one. It does not change the fence location, thereby does not impact curb appearance. This plan requires moving the power line from the current location overhead above the proposed pool location to a location on the ~east side of the house via underground conduit. Electrical service re-routing to other locations has been attempted but proven too difficult due to Attic design, utility pole location, and house orientation.



State Licenses:
CPC055620/ RX11066708

Intercoastal Pool & Spa Bldrs, Inc.
5101 Industry Dr. Suite B101
Melbourne, FL 32904

Designer: Rob Kurzawa
Cell: 321-795-3260
Office: 321-242-4921
Fax: 321-242-0034

Client: Donahue Residence
Email: KLDonahue14@yahoo.com
Client Phone: 217-637-2540
Address: 500 S. Palm Ave
City: Indialantic
State/Province: FL
Zip/Postal Code: 32903

Approval

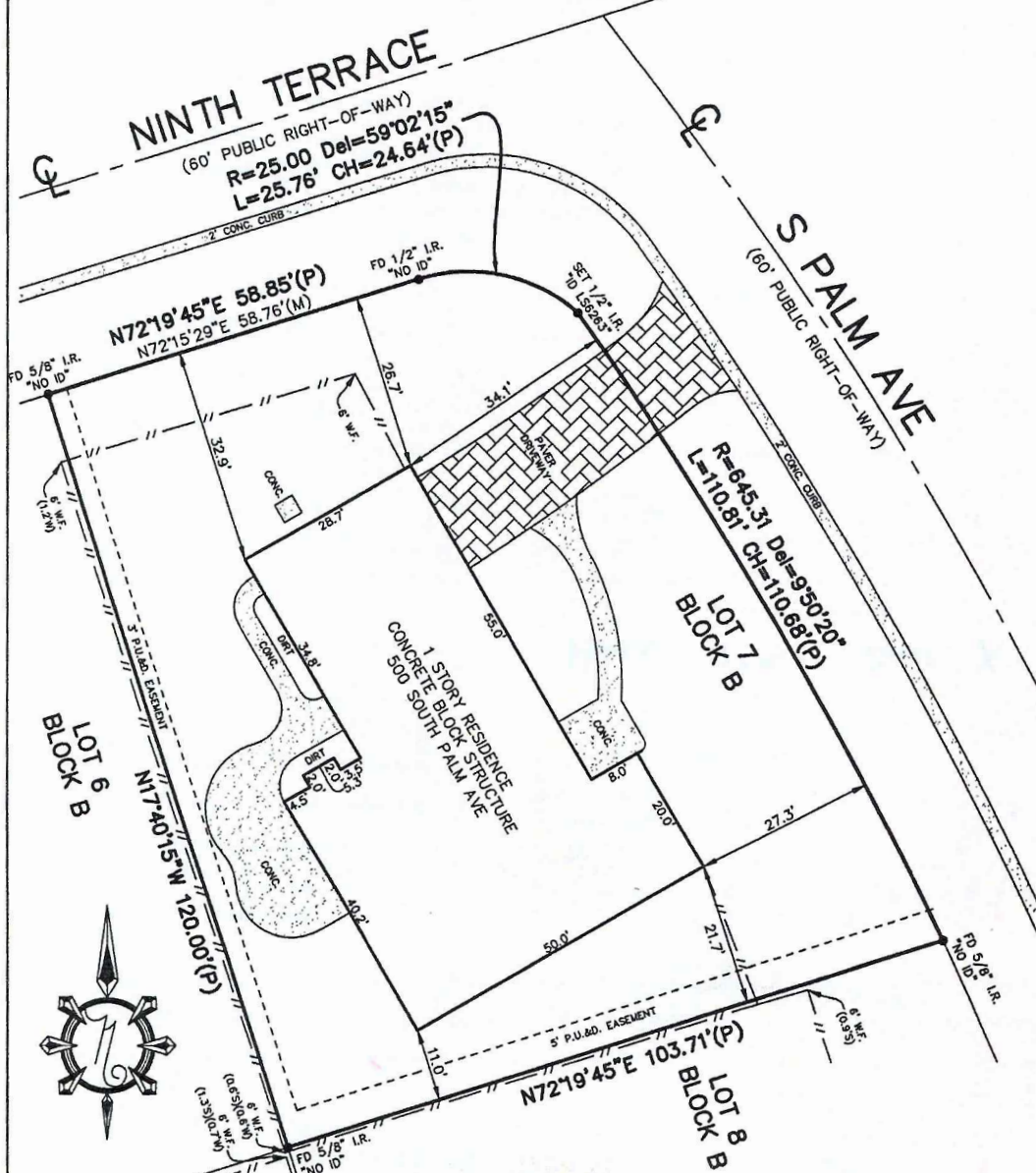
I/we (the undersigned) have reviewed this plan and approve it as correct within reasonable tolerance. I/we understand that any changes made to a shape or to a location may delay the project and/or result in additional cost.

X

DAVID A. BLOCK SURVEYING & MAPPING

BOUNDARY SURVEY OF:

LOT 7, BLOCK B AS SHOWN ON THE PLAT OF INDIANITC BY THE SEA SECTION G
AS RECORDED IN PLAT BOOK 14, PAGE 60 OF THE PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA.



LEGEND

(AKA)	ALSO KNOWN AS
CL	CENTERLINE
C.B.S.	CONCRETE BLOCK
C.B.S.	CONCRETE BLOCK STRUCTURE
C.L.F.	CHAIN LINK FENCE
CL.R.	CLEAR
C.M.	CONCRETE MONUMENT
CONC.	CONCRETE
COR.	CORNER
COVD	COVERED
D	DELTA
(D)	DEED
FD	FOUND
ID	IDENTIFICATION
I.P.	IRON PIPE
I.R.	IRON ROD
L	LENGTH
LB	LICENSE BUSINESS
LS	LICENSE SURVEYOR
(M)	MEASURED
N&D	NAIL & DISK
(P)	PLATTED
PC	POINT OF CURVATURE
PT	POINT OF TANGENCY
PL	PROPERTY LINE
P.S.M.	PROFESSIONAL SURVEYOR & MAPPER
PRC	POINT OF REVERSE CURVE
P.U.&D.	PUBLIC UTILITY & DRAINAGE
R	RADIUS
R/W	RIGHT-OF-WAY
(TYP.)	TYPICAL
W.F.	WOOD FENCE

CERTIFIED TO:

EVAN DONAHUE AND KELLY L. DONAHUE
BANK OF CHAMPAIGN, N.A.
PRECISE TITLE, INC.
COMMONWEALTH LAND TITLE INSURANCE COMPANY

SURVEYOR'S NOTES:

- 1) THE BEARING SYSTEM SHOWN HEREON IS BASED ON A ASSUMED BEARING OF N.72°19'45"E., ALONG THE SOUTH RIGHT-OF-WAY LINE OF NINTH TERRACE.
- 2) AS PER FLOOD INSURANCE RATE MAP NO.12009C 0604 H. INDEX DATED 01-29-2021, THE ABOVE DESCRIBED PROPERTY LIES IN ZONE X.
- 3) THIS SURVEY WAS PREPARED FROM TITLE INFORMATION PROVIDED TO THE SURVEYOR. THERE MAY BE ADDITIONAL RESTRICTIONS OR EASEMENTS THAT AFFECT THE PROPERTY.
- 4) THIS TRACT CONTAINS 10995 SQUARE FEET OR 0.25 ACRES OF LAND MORE OR LESS.
- 5) UNDERGROUND UTILITIES AND FOUNDATIONS HAVE NOT BEEN SHOWN.
- 6) NOT VALID WITHOUT SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

LIABILITY SHALL NOT EXCEED THE TOTAL AMOUNT PAID TO THE SURVEYOR BY THE CLIENT.

CERTIFIED BY:

DAVID A. BLOCK
FLORIDA P.S.M. 6263
(NOT VALID UNLESS SEALED)
2545 BREAM STREET
MERRITT ISLAND, FL 32952
PHONE: 321-452-7048
www.blocksurveying.com
dablock@blocksurveying.com

SCALE: 1" = 20'
DATE: 07/26/2021
SHEET: 1 OF 1
PROJECT: 21-346
REVISION:



Figure 1: Proposed water's edge (approx.) highlighted in yellow. 10' setback (approx.) shown in orange/black, highlighted in red.



Figure 2: Proposed water's edge (approx.) in yellow. 10' setback (approx.) shown in orange/black, highlighted in red.



Figure 3: Proposed water's edge (approx.) in yellow. 10' setback (approx.) shown in orange/black, highlighted in red.



Figure 4: Proposed water's edge (approx.) in yellow. 10' setback (approx.) shown in orange/black, highlighted in red.

MERRITT ISLAND FOOT AND ANKLE, INC.

2404 N. Courtenay Pkwy., Merritt Island, FL 32953
6549 N Wickham Road, Suite 103E Melbourne, Florida 32940

February 6, 2023

To Whom This May Concern,

Kelly Donahue is under my professional medical care for a foot condition. I have advised her that exercise in the form of swimming will be extremely beneficial for her.

Swimming is in her best interests to achieve optimal healing for her condition.

If you need any additional information, please feel free to contact my office.

Sincerely,



Dr Mark Beylin

Tel: (321) 452-1327

Fax: (321) 454-9208

www.brevardfootdoctor.com

DONAHUE, Kelly LYNETTE (id #18089230, dob: 02/12/1979)



Viera Office STE D
7125 Murrell Road Suite D
VIERA, FL 32940-7999
Phone: (321) 242-8790, Fax: 321-254-4960

Date: 02/10/2023

RE: Kelly Donahue, DOB: 02/12/1979, PT ID #18089230

Dear ,
To whom it may concern,

Mrs. Donahue is a patient of my office who has been seen for left knee pain to which was found over the years including evaluation and imaging by and orthopedic to be dearangement of the knee for which she has been highly advised to do low impact exercises such as swimming daily/multiple times a day to help with this injury without further damage to her knee. If you have any further questions or concerns regarding this matter please contact my office at 321-434-2524.

Sincerely,

Electronically Signed by: LAUREN BRATSCH, APRN

A handwritten signature in black ink, appearing to read "Lauren Bratsch". The signature is fluid and cursive, with a large initial 'L' and 'B'.

LAUREN BRATSCH APRN
7125 Murrell Rd Suite D
Melbourne, Fl 32940
Office: 321-434-2524
Fax: 321-254-4960