

Persson & Cohen, P.A.

Attorneys and Counselors At Law

David P. Persson
Andrew H. Cohen
Kelly M. Fernandez*
Maggie D. Mooney-Portale**

R. David Jackson, P.A. – Of Counsel

Telephone (941) 306-4730.

Facsimile (941) 306-4832

Email: mmooney@swflgovlaw.com

* Board Certified State and Fed. Govt. & Admin. Practice
** Board Certified City, County and Local Government Law

Reply to: Lakewood Ranch

March 25, 2014

Ms. Alaina Ray
Zoning Board of Adjustment
Town of Longboat Key
501 Bay Isles Road
Longboat Key, FL 34228

Re: Petition: Jane Wittlinger, 590 Channel Lane, Longboat Key, FL 34228
Petition for Daylight Plane Waiver

Dear Ms. Ray:

Enclosed is a request filed by Jane Wittlinger for a Waiver from the Daylight Plane regulations in accordance with the Town Code Section 158.026(F)(3) of the Longboat Key Zoning Ordinance requesting permission to increase the required 53 degree Daylight Plane angle to 65 degrees. The subject property is located at 585 Channel Lane, Longboat Key, FL 34228.

It is my opinion that the Zoning Board of Adjustment has jurisdiction pursuant to Section 158.026(F)(3) to consider this request. Kindly forward this opinion to the Members of the Zoning Board of Adjustment.

This letter is an opinion of jurisdiction and is not intended to address the merits of the application. Should you have any questions, please contact me.

Respectfully,

Maggie Mooney-Portale

MMP/vlg
cc: Donna Chipman

Lakewood Ranch
6853 Energy Court
Lakewood Ranch, Florida 34240

Venice
217 Nassau Street S.
Venice, Florida 34285

Site

590
585

560

410

400

450

501

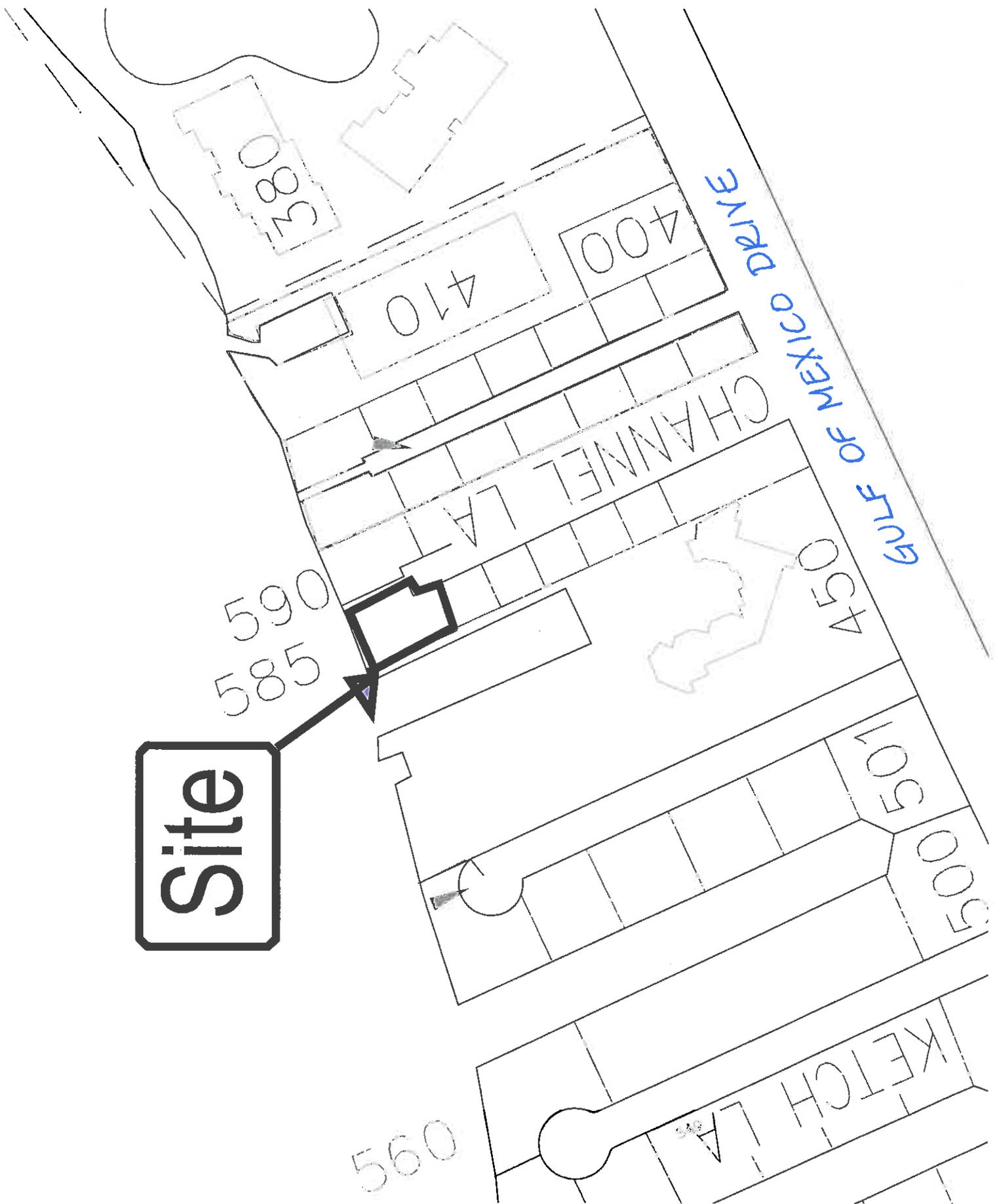
500

KETCH LA

CHANNEL LA

GULF OF MEXICO DRIVE

380



MEMORANDUM

DATE: March 21, 2014

TO: Zoning Board of Adjustment

FROM: Steve Schield, AICP, ASLA, CFM, Planner

THROUGH: Alaina Ray, AICP, Planning, Zoning and Building Director

SUBJECT: PETITION #3-14, DAYLIGHT PLANE WAIVER,
585 CHANNEL LANE

APPLICANT/
PROPERTY OWNER: Jane Wittlinger

LOCATION: 585 Channel Lane
Longboat Key, Florida

ZONING DISTRICT: R-4SF (Single-Family Medium Density Residential District)

REQUEST: The applicant is petitioning the Zoning Board of Adjustment (ZBA) for a waiver of the Daylight Plane regulations in accordance with Section 158.153 (C) of the Town Zoning Code to increase the required 53-degree Daylight Plane angle to 65 degrees on the right side of the parcel.

STAFF BACKGROUND AND SUMMARY

The subject property is located at 585 Channel Lane. The site contains a two-story residence that was built in 1972, prior to the establishment of the Daylight Plane Ordinance. The applicant proposes to build a new two-story residence fronting on the bay. The lot area of the subject site is approximately 10,153 square feet. The proposed structural coverage is 2,966 square feet (29.22percent), and the proposed non-open space will be 3,690 square feet (36.35percent) of the lot.

Background and Assessment

In 1997, the Town Commission adopted Ordinance 97-09, Light and Air, also referenced as the Daylight Plane Ordinance. The intent was to preserve and protect existing developed properties in accordance with the Town's Comprehensive Plan, through the regulation of residential buildings as to their scale, bulk, and relationship to the adjacent environment in order to enhance residential buildings within the community. Pursuant to the Daylight Plane Ordinance, it is in the public interest to

maintain an appropriate balance of the scale of buildings to preserve and protect the public health, safety, light, air, access, privacy, and maintain sufficient exterior exposure to promote the general welfare of the community.

STAFF ASSESSMENT

Staff reviewed the Petition for a Daylight Plane Waiver for the increase of the maximum allowed 53-degree Daylight Plane angle to 65 degrees on the left side of the parcel (see Sheet W-1.0). The following is an assessment of the waiver petition.

Development Standards

The plans provided with the application indicate that the proposed new residence complies with the remaining applicable development standards for the Town of Longboat Key. Staff's review found the following:

- The front lot width measures approximately 80 feet. The applicant's parcel area is approximately 10,153 square feet.
- The subject property's structure is 20 feet from the street.
- The subject property's proposed structure will be 12 feet from the property line on the right side of the parcel and eight (8) feet from the property line on the left side.
- Upon completion of construction, the lot coverage would be approximately 29.22 percent and the non-open space would be 36.81 percent, both in compliance with the maximum percentages allowed by code, which are 30 and 50 percent, respectively.
- The architectural renderings measure daylight plane from the side lot line boundary, projecting up toward the center of the lot, from the base flood elevation, as defined in the Zoning Code.

Impacts on Adjacent Properties

The house on the adjacent lot to the right is a two-story residence at the end of the street on the bay and is also owned by the applicant. The adjacent house meets the daylight plane requirements on this side of the house, which helps to maintain the view at the end of the street. On the left side of the applicant's house is a condominium property (Bay Harbor), with a 20-foot strip of land (unbuildable) and a 60-foot wide private marina. The nearest condominium building is located approximately 170 feet from the applicant's lot. The proposed house will be located eight (8) feet from the side property line and 30 feet from the bay.

The applicant is proposing a waiver of 12 degrees. The largest degree waiver granted in the past five (5) years was 11 degrees on an 80-foot wide lot for an addition to a home located at 801 Penfield Street. The length of the proposed two-story portion of the structure would be 65 feet.

Daylight Plane Criteria (Section 158.026)

As per Town Code Section 158.026(F)(3), the Zoning Board of Adjustment may authorize a daylight plane waiver from the zoning code requirements if such a waiver is not contrary to the public interest, and if compliance with town codes results in an unnecessary and undue hardship. In determining whether to grant a waiver, the ZBA shall review the waiver application including both site and schematic design drawings and shall consider three criteria. To facilitate the Board's review and consideration of the subject waiver petition, Staff has provided an assessment of each of the three criteria.

RECOMMENDED FINDINGS OF FACT

Impacts to view of neighbors and neighborhood: The applicant's existing structure is two (2) stories above grade and the proposed structure would be two (2) stories above one (1) level of parking. The proposed waiver does not impact the view or the light and air space for the condominium to the left of the applicant's property (Bay Harbor).

The proposed waiver does not adversely impact the view or the light and air space for the residence to the right of the applicant's property (590 Channel Lane) in its current location on the parcel, which is also owned by the applicant.

- a) Uniqueness of the configuration of the lot upon which the structure is proposed: The subject lot has some unique characteristics in that it is located adjacent to an open space area and marina located within a condominium complex. It is a rectangular-shaped lot that complies with the lot area requirements of the code. The applicant is proposing to build a new two-story residence on the property. The design and placement of the proposed residence appears to be consistent with the remaining town zoning regulations.
- b) Special circumstances or conditions affecting the property, such that the strict application of the daylight plane requirements would inordinately burden the property owner and would deprive the property owner of a reasonable design for the building as it relates to its environs: The subject property consists of two (2) habitable stories over ground level. The applicant wishes to replace it with a new structure with two (2) habitable stories over a ground level non-habitable area that would be FEMA compliant. The desire to build a new residence does not override the purpose of the Daylight Plane Ordinance. Since a new FEMA-compliant home

could be constructed on the property without a waiver from the Daylight Plan Ordinance, Staff cannot conclude that a hardship exists.

STAFF RECOMMENDATION

Based on the above assessment of the waiver petition and applicable criteria, Staff finds that the proposed addition is not contrary to the public interest. However, Staff is unable to conclude that the conditions represent a hardship, as defined by code. Therefore, Staff cannot recommend approval.

ATTACHMENTS

Attached, please find a copy of the waiver petition and supporting documentation. If you should have any questions, or desire any additional information, please do not hesitate to contact me at the Planning, Zoning and Building Department.

xc: Jane Wittlinger, Property Owner
Maggie Mooney-Portale, Town Attorney
Alaina Ray, AICP, Planning, Zoning and Building Director



Planning, Zoning & Building Department
501 Bay Isles Road
Longboat Key, Florida 34228
Fax Number: (941) 373-7938
Web: <http://www.longboatkey.org>

(941) 316-1966

PETITION FOR DAYLIGHT PLANE WAIVER

Date Filed 2-4-14 Receipt # (\$390.00) _____ Petition No. 3-14

THE APPLICANT IS REQUIRED TO SUBMIT SEVENTEEN (17) (ORIGINAL PLUS SIXTEEN (16) COPIES) INDIVIDUAL, COLLATED SETS OF THIS APPLICATION, SUPPORTING PLANS AND DOCUMENTS.

(I) (We) Jane Wittlinger of 590 Channel Lane
(name) (mailing address)

Longboat, Key, FL 34228 request a Waiver from the Daylight Plane regulations

in accordance with Town Code Section 158.26 (F)(3) of the Town of Longboat Key Zoning Ordinance to increase the required 53 degree Daylight Plane angle to 65 degrees.

Subject property is located at 585 Channel Lane, Longboat Key, FL
(street number location) 34228

The legal description is as follows: 9 New Pass Shares
(Lot(s)) (Block) (Subdivision or Plat)

or See Attached BOUNDARY Survey
(if otherwise legally described)

LIST OF NAMES AND ADDRESSES OF ALL OWNERS OF PROPERTY WITHIN A DISTANCE OF 500 FT. FROM THE OUTSIDE EDGES OF THE PROPERTY INVOLVED WILL BE PROVIDED BY THE TOWN.

(I) (WE) believe that the Zoning Board of Adjustment should grant this petition pursuant to Section 158.026 of the Town Code because the following criteria are factually supported by this petition:

- (1) The proposed does not adversely impact the view of neighbors and the neighborhood.
- (2) The lot upon which the structure is proposed is unique in its configuration.
- (3) Special circumstances or conditions are effecting the property such that the strict application of the Daylight Plane requirements inordinately burden the property owner and deprives the property owner of a reasonable design for the building as it relates to its environs.

STATE SEPARATELY HOW EACH OF THE ABOVE THREE (3) CRITERIA ARE FACTUALLY PRESENT IN YOUR WAIVER REQUEST:

- 1.) SEE ATTACHED _____
- 2.) SEE ATTACHED _____
- 3.) SEE ATTACHED _____

(ATTACH EXTRA SHEET, IF NECESSARY)

(I) (WE) understand that this Petition becomes a part of the permanent records of the Zoning Board of Adjustment. (I) (WE) hereby certify that the above statements and the statements or showings made in any paper or plans submitted herein are true to the best of (my) (our) knowledge and belief.

Jim Creek Investments
 (Signature of Owner) Jane Wittlinger
Jane Wittlinger
 (Please print or type Owner's Name)

Jane Wittlinger
 The Owner has hereby designated the above signed person to act as his agent in regard to this Petition. (To be executed when Owner designates another to act on his behalf.)
Jane Wittlinger
 Print or Type Agent Name

Mailing address you wish information sent to and telephone number:

590 Channel Ln
Longboat Key, FL
34228

Phone # 941-383-2606
 Fax # 941-383-6053

Notarization of Agent's Signature:

State of Florida
 County of Sarasota

The foregoing instrument was acknowledged before me this 3 day of Feb, 2014 by

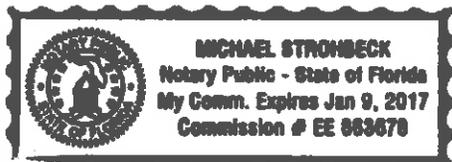
Jane C Wittlinger
 as _____ for _____
 (type of authority) (name of party acting on behalf of)

Michael Stronbeck
 Notary Public

Michael Stronbeck
 Name of Notary (print, typed or stamped)

Personally know _____ OR produced identification Type of Identification FLDL# W345-443-40-929-0

Σ 4-24-2012
Exp 11-29-2020



CERTIFICATE

The undersigned, being the Company and all of the initial Members of the Company hereby agree, acknowledge, and certify that the foregoing Operating Agreement constitutes the Operating Agreement of the Company adopted by the Members as of the date first stated in the Operating Agreement.

THE COMPANY:

JIM CREEK INVESTMENTS, LLC,
a Colorado limited liability company

By: Jane C. Wittlinger, Mgr
Jane C. Wittlinger, Manager

INITIAL MEMBERS:

JANE C. WITTLINGER REVOCABLE
TRUST u/a/d July 24, 2007

By: Jane C. Wittlinger, tr
Jane C. Wittlinger, Trustee

FRED A. WITTLINGER DESCENDANTS
TRUST u/a/d July 24, 2007

By: Jane C. Wittlinger
Jane C. Wittlinger, Co-Trustee

By: Jack R. Allen
Jack R. Allen, Co-Trustee

JC Drafting & Design, Inc.
(A residential drafting and design company)

February 18, 2014

Planning, Zoning & Building Department
501 Bay Isles Road
Longboat Key, Florida 34228

ATTACHMENT TO PETITION FOR DAYLIGHT PLANE WAIVER

(1) The proposed does not adversely impact the view of neighbors and the neighborhood.

A.) We feel that the requested increase of the daylight plane at the westerly property line from the required 53 degrees to 65 degrees does not adversely impact the view of the adjacent lots in that it is in line with the rear property lines of all the other properties on that same side of Channel lane. This side of the property is adjacent to an approximate twenty foot wide piece of unbuildable land owned by the Bay Harbour Apartments with an approximate eighty foot wide boat basin beyond to the west.

(2) The lot upon which the structure is proposed is unique in its configuration.

B.) We feel that because the roadway extends into the southeast corner of the property and that there is no cul-da-sac we feel that the configuration of the new residence as proposed is necessary for adequate vehicle access.

We also feel that the placement of the proposed new residence as shown adjacent to the southerly property line with the elevated 1 story section of the home being setback 25'-0" versus 8'-0" and the elevated 2 story section of the home being setback 40'-0" versus 8'-0" actually provides more daylight plane view for the adjacent properties.

(3) Special circumstances or conditions are effecting the property such that the strict application of the Daylight Plane requirements inordinately burden the property owner and deprives the property owner of a reasonable design for the building as it relates to its environs.

C.) We feel that since this lot has 2 required front setbacks, 1 required rear bay side setback and 3 required side setbacks with a road way that creates a non-rectangular lot which is unique from the other 4 properties located along the same side of Channel Lane that the proposed residence provides for the best accessible home design that might otherwise be restrictive with keeping in line with other similar bay front properties on Longboat Key.

JC Drafting & Design, Inc. (A Residential Drafting and Design Company)

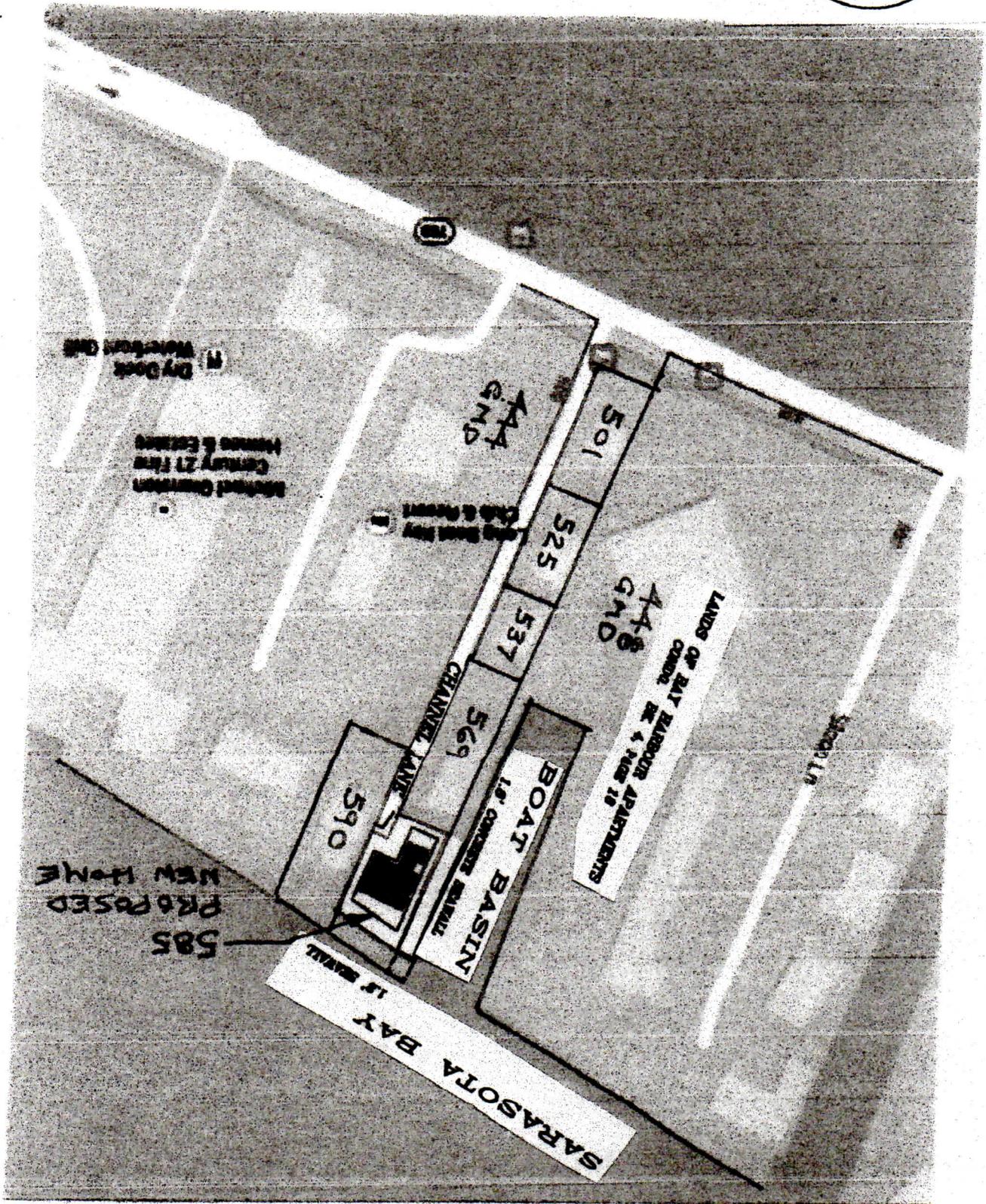
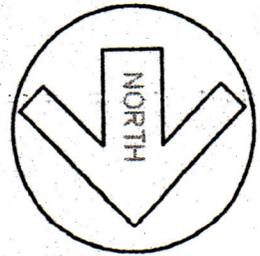
Jon R. Coulthurst, President

7350 South Tamiami Trail #126, Sarasota, Florida 34231

Phone no. 941 925-3009 / Cell no. 941 376-2047

adad15@verizon.net

2013-51 Daylight Plane Wavier 2-17-2014.doc

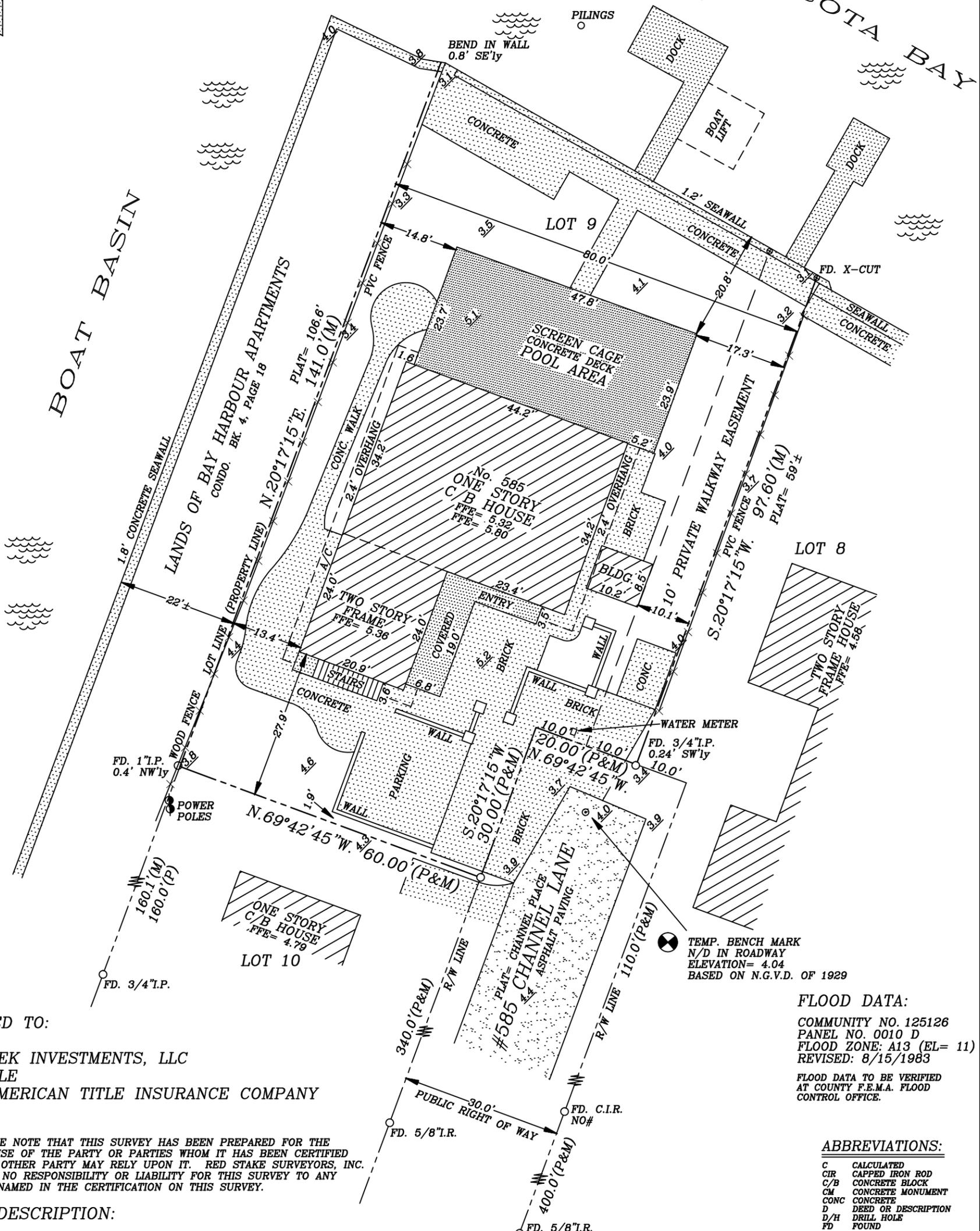


BOUNDARY SURVEY

IN SECTION 22, TOWNSHIP 36 SOUTH, RANGE 17 EAST
LONGBOAT KEY, SARASOTA COUNTY, FLORIDA

SARASOTA BAY

SCALE 1" = 20 FEET



CERTIFIED TO:

JIM CREEK INVESTMENTS, LLC
MSC TITLE
FIRST AMERICAN TITLE INSURANCE COMPANY

NOTE: PLEASE NOTE THAT THIS SURVEY HAS BEEN PREPARED FOR THE EXCLUSIVE USE OF THE PARTY OR PARTIES WHOM IT HAS BEEN CERTIFIED TO, AND NO OTHER PARTY MAY RELY UPON IT. RED STAKE SURVEYORS, INC. SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR THIS SURVEY TO ANY PARTY NOT NAMED IN THE CERTIFICATION ON THIS SURVEY.

LEGAL DESCRIPTION:

LOT 9, NEW PASS SHORES, as per plat thereof recorded in Plat Book 5, Page 32, of the Public Records of Sarasota County, Florida; TOGETHER with private walkway, 10 feet wide, adjoining Lot 9 on the South and extending to the Bay, subject to same easement granted to the benefit of all lot owners 1 thru 16 in New Pass Shores.

FLOOD DATA:

COMMUNITY NO. 125126
PANEL NO. 0010 D
FLOOD ZONE: A13 (EL= 11)
REVISED: 8/15/1983

FLOOD DATA TO BE VERIFIED
AT COUNTY F.E.M.A. FLOOD
CONTROL OFFICE.

ABBREVIATIONS:

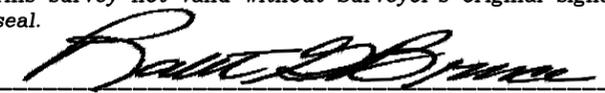
C	CALCULATED
CIR	CAPPED IRON ROD
C/B	CONCRETE BLOCK
CM	CONCRETE MONUMENT
CONC	CONCRETE
D	DEED OR DESCRIPTION
D/H	DRILL HOLE
FD	FOUND
IR	IRON ROD
IP	IRON PIPE
LB	LICENSED FOR BUSINESS
M	MEASURED
N/D	NAIL & DISK
P	PLAT
PC	POINT OF CURVATURE
PCC	POINT OF COMPOUND CURVE
R/W	RIGHT OF WAY

* RED STAKE SURVEYORS *

ROBERT G. BRUCE - 7123 PROCTOR RD. - SARASOTA, FL - 34241 - PHONE - (941) 923-9997 FAX (941) 925-8684

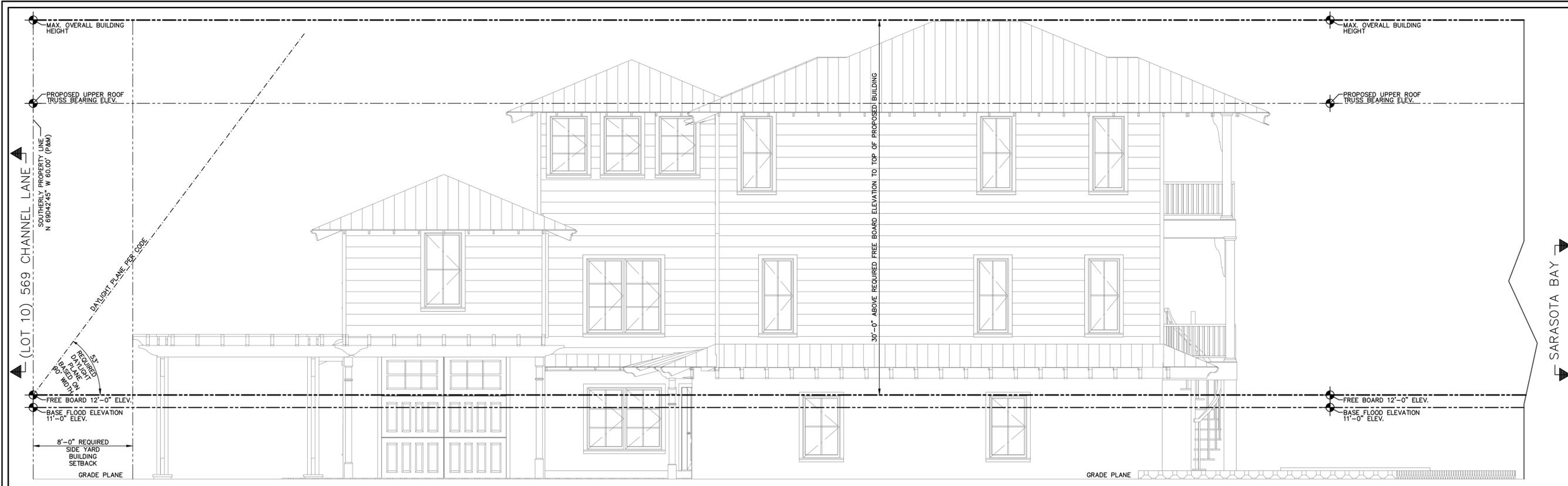
CLIENT: JIM CREEK INVESTMENTS, LLC
DATE OF SURVEY: 11/16/2013
FILE NUMBER: 13110450
DRAWN BY: GWH
REVISIONS: _____

CERTIFICATE OF SURVEYOR: I hereby certify that this record of survey represents a Boundary Survey of the property as shown and described hereon. Also that the survey was recently performed under my direction and that it is true and correct to the best of my knowledge and belief. I also certify that it meets the Minimum Technical Standards for Land Surveying in the State of Florida, as described in Chapter 61G17, Florida Administrative Code. This survey not valid without Surveyor's original signature and raised seal.

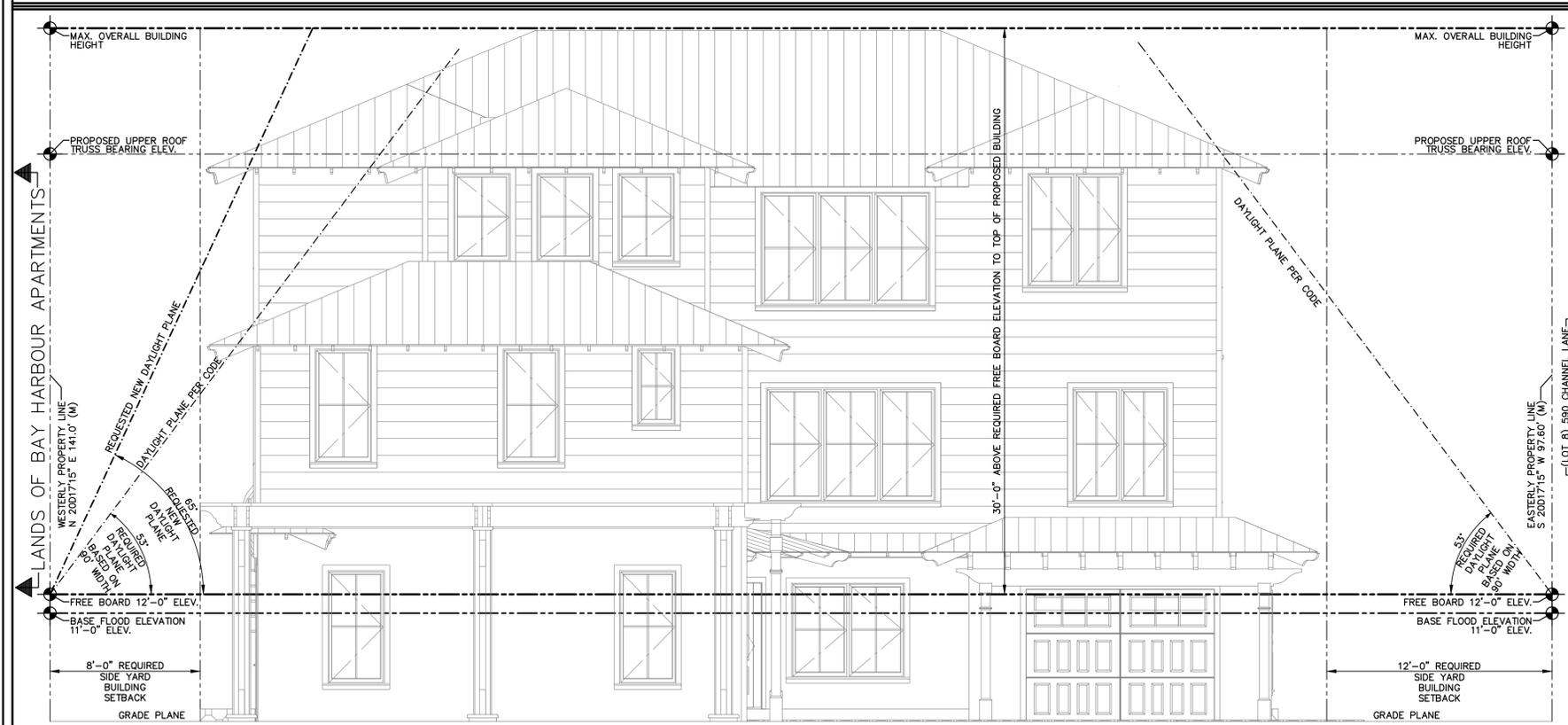
 11/18/2013
ROBERT G. BRUCE, P.S.&M. #4519, LB #5929 DATE

NOTES:

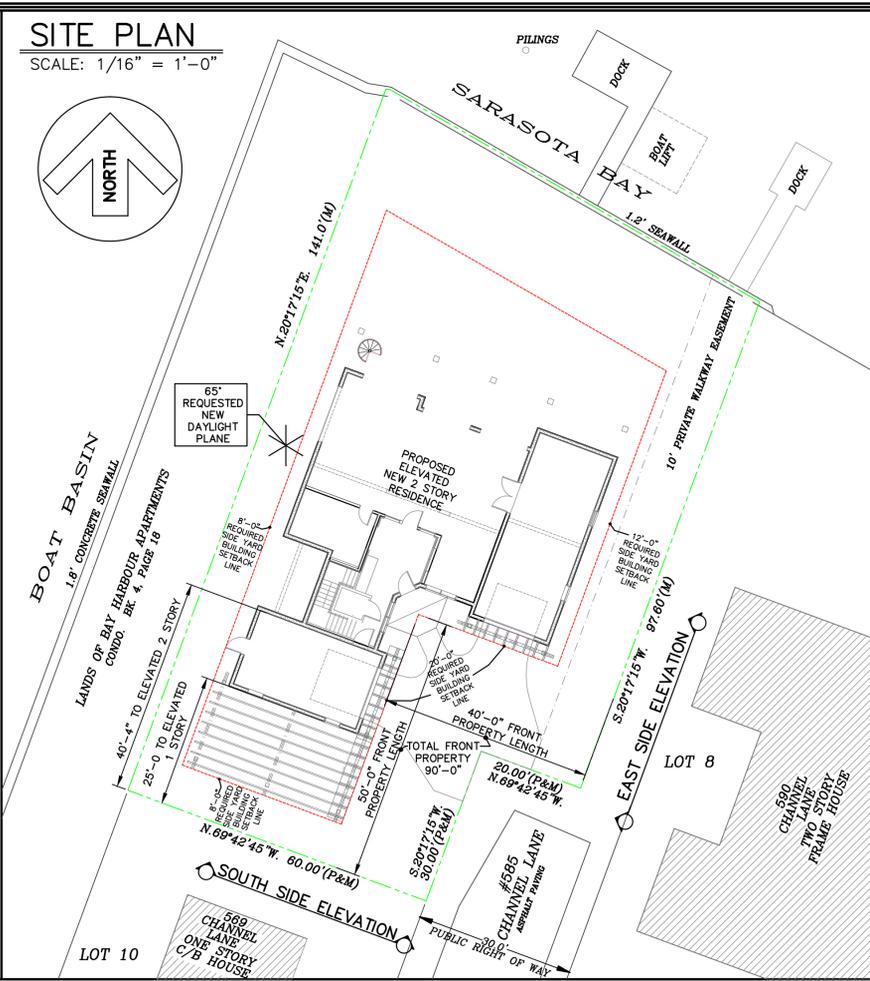
"SET CIR" IS 5/8" DIAMETER IRON ROD WITH RED PLASTIC SURVEYORS CAP. DISTANCES FROM HOUSE CORNERS TO PROPERTY LINE ARE AT RIGHT ANGLES TO THE PROPERTY LINE. UNDERGROUND UTILITIES AND THEIR ENCROACHMENTS HAVE NOT BEEN LOCATED EXCEPT AS SHOWN.



EAST SIDE ELEVATION
SCALE: 1/4" = 1'-0"



SOUTH SIDE ELEVATION
SCALE: 1/4" = 1'-0"



SITE PLAN
SCALE: 1/16" = 1'-0"

Plan no.
2013-51W1.0

PROJECT DESCRIPTION:
FRED & JANE WITTLINGER
585 CHANNEL LANE
Longboat Key, FL 34228
1-941-383-2606

JC Drafting & Design, Inc.
7350 S. Miami Trail, Suite 126
Sarasota, Florida 34231
Phone (941) 925-3009 Cell (941) 376-2047
jcdraftingdesign.com
Jan R. Coulthurst, President
Copyright 2013
JC Drafting & Design, Inc.

REVISIONS:

NO.	DESCRIP.	BY	DATE

DATE: 2/18/2014

SCALE: AS SHOWN

SHEET TITLE:
PROPOSED SITE PLAN AND EXTERIOR BUILDING ELEVATIONS
SHEET NO.
W1.0