



## Interoffice Memorandum

February 5, 2019

TO: Mayor Jerry L. Demings  
-AND-  
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director  
Planning, Environmental, and Development  
Services Department

**CONTACT PERSON: David D. Jones, P.E., CEP, Manager  
Environmental Protection Division  
(407) 836-1405**

SUBJECT: February 26, 2019 – Public Hearing  
Scott Mathemeier Appeal of the Environmental Protection  
Commission Recommendation Regarding a Boat Dock  
Variance Request for Side-setback (BD-18-05-056)

On May 7, 2018, the Environmental Protection Division (EPD) received an Application to Construct a Dock from Scott Mathemeier. The project site is located at 9184 Grand Island Way on Lake Lartigue in District 1. The parcel identification number is 04-24-27-7555-05-100. Dock Construction Permit No. BD-18-05-056 was issued on June 5, 2018.

On July 16, 2018, EPD received an as-built survey of the constructed dock. The as-built showed that the side setback distance from the dock to the southwestern projected property line was only 5.4 feet, instead of 10 feet, as required by BD-18-05-056 and Orange County Code (Chapter 15, Article IX, Section 15-343(a)).

In order to keep the dock as constructed, the applicant elected to apply for an after-the-fact variance. On July 23, 2018, EPD received an after-the-fact Application for Variance to Section 15-343(a) (side setback).

On August 17, 2018, a Notice of Application for the variance request was sent to all shoreline property owners within 300 feet of the property, including Timothy James at 9178 Grand Island Way, Winter Garden, Florida 34787, the immediately adjacent affected property owner to the southwest.

### **Staff Findings**

Section 15-350(a)(1) *Variances* states, "A variance application may receive an approval or approval with conditions when such variance: (1) would not be contrary to the public interest; (2) where, owing to special conditions, compliance with the provisions herein would impose an unnecessary hardship on the permit applicant; (3) that the hardship is not self-imposed; and (4) the granting of the variance would not be contrary to the intent and purpose of this article."

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Pursuant to Section 15-350(a)(1), "The applicant shall also describe (1) how strict compliance with the provisions from which a variance is sought would impose a unique and unnecessary hardship on the applicant - the hardship cannot be self-imposed; and (2) the effect of the proposed variance on abutting shoreline owners."

To address Section 15-350(a)(1), the agent for the applicant states, "*The location of the Bay trees made it impossible to construct the boat dock as permitted.*" The agent further states, "*The proposed boat dock does not negatively impact the view or navigation for either adjacent property owner. However, the affected adjacent property owner is concerned about possible deed restrictions and was unwilling to sign a Letter of No Objection.*"

On August 17, 2018, a Notice of Application for the variance request was sent to all shoreline property owners within 300 feet of the property. On September 17, 2018, EPD received a written objection from Mr. James. The letter states "*...this variance request is nonessential and strongly opposed. It is injurious to my property and property value, potentially poses a threat to the safety of my future structure, while the scale of the applicant's project restricts my Lake views. Aesthetically, the proportions of the structure are an unsightly encroachment....*"

A public hearing was scheduled for October 31, 2018 before the Environmental Protection Commission (EPC). The recommendation of the Environmental Protection Officer (EPO) was to deny the after-the-fact variance based on the fact that the applicant could not demonstrate that the affected property owner, Mr. James, was not adversely affected and that the hardship of complying with Orange County Code was not self-imposed. After hearing testimony from the applicant, the agent, and the objector, the EPC voted unanimously to deny the after-the-fact request for variance to Orange County Code, Chapter 15, Article IX, Section 15-343(a) (side-setback).

On November 5, 2018, EPD received an appeal from Scott Mathemeier of the EPC recommendation of denial. In accordance with Orange County Code, Chapter 15, Article IX, Section 15-349(b), the appeal shall be filed with the EPO and shall be scheduled for a public hearing before the Board. The notice of the appeal will be provided to the applicant and to parties who have previously objected in writing. The Board may affirm, reverse, or modify the decision of the EPC. The decision of the Board shall be final.

There is currently an open enforcement case (18-520440) for this property associated with the dock. There are eight trees that need to be planted in the conservation easement per Condition 10 of BD-18-05-056. Payment of a \$4,000 administrative penalty will be required for failure to build the dock in accordance with the approved plans.

### **Public Notification**

The agent, appellant, and objector were notified on January 17, 2019 of this public hearing.

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**ACTIONS REQUESTED: To affirm, reverse, or modify the decision of the Environmental Protection Commission to recommend denial of the variance to Orange County Code, Chapter 15, Article IX, Section 15-343(a) (side-setback) for the Scott Mathemeier Boat Dock Construction Permit BD-18-05-056. District 1**

JVW/DDJ: mg

Attachments