



Legislation Text

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Interoffice Memorandum

DATE: June 28, 2024

TO: Mayor Jerry L. Demings and County Commissioners

THROUGH: N/A

FROM: Tanya Wilson, AICP, Director, Planning, Environmental, and Development Services Department

CONTACT: Renée H. Parker, LEP, Manager

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DIVISION: Environmental Protection Division

ACTION REQUESTED:

Acceptance of the findings and recommendation of the Environmental Protection Commission and denial of the request for after-the-fact waiver to Orange County Code, Chapter 15, Article IX, Section 15-343(a) to decrease the minimum allowable side setback from 10 feet to 4.2 feet and 0.2 feet from the southwestern and northern property lines, respectively, for the Anthony Thermenos and Jacklyn Thermenos After-The-Fact Dock Construction Permit BD-23-09-127. District 5. (Environmental Protection Division)

PROJECT: Environmental Protection Commission Recommendation for Request for Waiver for Anthony and Jacklyn Thermenos for After-the-Fact Dock Construction Permit BD-23-09-127

PURPOSE: The applicants, Anthony and Jacklyn Thermenos are requesting an After-the-Fact Dock Construction Permit with approval of a waiver to Orange County Code (Code), Chapter 15, Article IX, Section 15-343(a) (side setback). The project site is located at 4438 Bridgewater Drive, Orlando, FL 32817 (Parcel ID No. 06-22-31-9066-00-650) on Lake Pearl in District 5.

Background

On August 16, 2023, the Environmental Protection Division (EPD) investigated a complaint (Incident No. 23-627250) regarding an unpermitted dock at the subject parcel and discovered that a floating dock had been constructed without the required permit. On August 16, 2023, and August 23, 2023, EPD met onsite with one of the applicants, Jacklyn Thermenos, and explained that the dock required a permit through EPD. On August 23, 2023, EPD issued a Field Warning to Mrs. Thermenos. A

Notice of Non-Compliance (NONC) was emailed to the applicants on September 13, 2023, and subsequently mailed via USPS on September 18, 2023. In response, the applicants submitted an After-the-Fact Boat Dock Construction Application on September 21, 2023. Based on the preliminary as-built survey received with the application, EPD determined that the boat dock does not meet the side setbacks required in Chapter 15, Article IX.

On February 23, 2024, the applicants submitted an After-the-Fact Application for Waiver to Section 15-343(a) to allow the dock to remain as constructed with the existing setbacks. The complete as-built survey of the constructed boat dock was received by EPD on March 5, 2024. In reviewing the as-built survey, EPD determined that all other aspects of the boat dock meet the requirements of Chapter 15, Article IX.

After-the-Fact Side Setback Waiver

Chapter 15, Article IX, Section 15-343(a) of the Code states, "Private docks on lots or parcels having a shoreline frontage of one hundred (100) feet or less, including designated mooring areas, must have a minimum side setback of ten (10) feet from any property line or projected property line." The applicants' shoreline measures approximately 77.26 feet, which is allowed, per Code, the minimum 10-foot setback between the dock and projected property lines. The applicants' boat dock was constructed with a 4.2-foot and 0.2-foot setback from the southwestern and northern property lines, respectively. The applicants are requesting an after-the-fact waiver to allow the existing setbacks to remain.

Pursuant to Section 15-350(e), "At a minimum, the applicant must describe how the waiver would not negatively impact the environment and the effect of the proposed waiver on abutting shoreline owners."

To address how the after-the-fact waiver request does not negatively impact the environment, the applicants state, "*There is no known negative environmental impact.*"

To address the effect of the after-the-fact waiver on abutting shoreline owners, the applicants state, "*There would be no impact on abutting owner(s). The SW property line is shared with HOA open space that is not accessible to or usable by property owners. The Northern property line is shared with HOA non-recreational open park space. The floating island and vegetation buffer between property lines makes the floating dock not visible from the park. The dock does not in any way interfere with use and enjoyment of the non-recreational open park space.*"

Notifications

On March 5, 2024, a Notice of Application for after-the-fact waiver was sent to the owner of the two adjacent properties affected by the waiver request, in accordance with Section 15-347(a). Both adjacent affected parcels (Tract E, Parcel ID No. 06-22-31-9066-00-005; Tract G, Parcel ID No. 06-22-31-9066-00-007) are owned by Watermill Homeowners Association Inc. (HOA). On March 22, 2024, EPD received a letter from Ms. Elizabeth Gray, President of the Watermill Homeowners Association Inc. stating, "*...Watermill HOA's Board of Directors has met and unanimously voted to OBJECT to the waiver application filed by the Thermenos family at 4438 Bridgewater Drive to waive the 10-foot side setback requirements...*"

The letter from Watermill Homeowners Association Inc. also requested that EPD notify Duke Energy of the application, as the dock is located in a platted powerline easement (Plat Book 11, Page 9). Chapter 15, Article IX does not require noticing to the grantee of a utility easement, however, out of an abundance of caution, on April 1, 2024, EPD informed Duke Energy via email of the after-the-fact dock application and placement of the dock in relation to the power easement. No response has been received.

The applicants and HOA were sent notice on April 8, 2024, of the May 29, 2024 Environmental Protection Commission (EPC) public hearing.

On April 23, 2024, EPD received a letter of support from neighbor David Engilis (property owner of 4746 Lonsdale Circle). The letter stated, *"I am an HOA member since 2009 and have no challenges w/ the application. I've looked at the property and it was nicely done. Everything is non-permanent, w/little impact to the shoreline."*

On May 21, 2024, EPD received a second letter of support from neighbor Anita Castiglia (property owner of 4282 Peacham Court). The letter was submitted on the Notice of Public Hearing, with the "In Favor" box checked and a comment that they are a *"lakefront property owner."*

On May 28, 2024, EPD received letters of support from neighbors Nick and Kellie Dietel (property owners of 4342 Piedmont Court) and Terry Gullett (property owner of 4504 Bridgewater Drive). The letters were submitted on the Notice of Public Hearing, with the "In Favor" box checked.

On May 29, 2024 (the day of the EPC hearing), EPD received a letter of support from Barbara Hollis (property owner of 4445 Bridgewater Drive). The letter was submitted on the Notice of Public Hearing, with the "In Favor" box checked and a note that she the *"neighbor across from [the] park"* and the *"only neighbor with [a] park view from [their] home."*

Enforcement Action

The NONC required either submittal and completion of a Boat Dock Permit Application or removal of the boat dock. Approval of the after-the-fact waiver and issuance of BD-23-09-127 will bring the property into compliance with Code. However, if the after-the-fact waiver is ultimately denied by the Board, the applicants must either remove the boat dock or propose to reconstruct the dock in accordance with Code.

Consistent with Section 15-353(d), which states in part, "Any person determined to have violated section 15-324 for failure to obtain a permit prior to constructing a dock or modifying an existing dock such that a variance or waiver would be required, may be subject to an additional administrative penalty in the amount of one dollar (\$1.00) per square foot of the entire structure." EPD calculated the square footage of the portion of the dock located over the surface water to be approximately 336.83 square feet. The applicants submitted the penalty payment of \$336.83 to the Conservation Trust Fund (CTF) on February 26, 2024.

Staff Recommendation

Staff evaluated the after-the-fact waiver request for compliance with the criteria for approval. The recommendation of the Environmental Protection Officer (EPO) was to deny the request for after-the-fact waiver to Section 15-343(a) (side setback) based on a finding that the boat dock may have a negative effect on abutting shoreline owners, pursuant to Section 15-350(e), as an objection was received from the adjacent affected neighbor.

EPC Public Hearing

EPD presented the after-the-fact waiver request in a public hearing before the EPC at their May 29, 2024 meeting. Jacklyn Thermenos and Steve Butler (on behalf of the applicants) provided information in support of the request. Elizabeth Gray and Simon Fuentes, both representing the HOA, were present and spoke against the request. The HOA representatives expressed concerns over the location of the dock in a powerline easement, visibility of the subject dock from the HOA community dock on the adjacent Tract G, and drainage issues at the adjacent Tract E.

Based upon evidence and testimony presented at the hearing, the EPC voted 4 to 1 (four in favor and one opposed) to accept the findings and recommendation of the EPO, and made a finding that the request for after-the-fact waiver was inconsistent with Orange County Code, Chapter 15, Article IX, Section 15-350(e) and recommended denial of the request for after-the-fact waiver to Section 15-343(a) to reduce the minimum allowable side setback from 10 feet to 4.2 feet and 0.2 feet from the southwestern and northern property lines, respectively.

BUDGET: N/A