



Interoffice Memorandum

AGENDA ITEM

April 11, 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: May 7, 2019 – Consent Item
Environmental Protection Commission Recommendation for
Requests for Waivers and Variances for the Martin Krytus Dock
Construction Permit BD-18-08-092

Martin Krytus is requesting approval of two waivers to Orange County Code (Code), Chapter 15, Article IX, Section 15-342(b) (terminal platform size) and Section 15-343(b) (side setback), and two variances to Section 15-342(g) (enclosed docks) and Section 15-342(a) (water depth). The project site is located at 803 West 2nd Avenue in Windermere. The Parcel ID number is 07-23-28-0044-00-061. The subject property is located on Lake Butler in District 1.

On August 27, 2018, the Environmental Protection Division (EPD) received an Application to Construct a Dock at the subject property with requests for a waiver and two variances. Another waiver request was subsequently submitted on March 7, 2019. The applicant is requesting:

- A waiver to terminal platform size to construct a dock that measures 1,392 square feet in lieu of the 1,000 square feet allowed by Code.
- A waiver to reduce the side setback to 1.93 feet from the adjacent property in lieu of the 25 feet required by Code. The adjacent property is owned by the applicant.
- A variance to allow the existing enclosed boathouse to remain. The applicant is proposing to keep this enclosed boathouse and add an additional walkway and a new terminal platform in the lake.
- A variance to allow the dock to be placed in 10.6 feet of water in lieu of the five feet allowed by Code.

Pursuant to Orange County Code, Chapter 15, Article IX, EPD staff evaluated the proposed variance and waiver applications and required documents. Notifications of the applications for variance and waiver were sent to all shoreline owners within 300 feet of the subject property on January 3, 2019.

Page Two

May 7, 2019 - Consent Item

Environmental Protection Commission Recommendation for Requests for Waivers and Variances for the Martin Krytus Dock Construction Permit BD-18-08-092

EPD received four objections to the proposed dock from neighboring property owners. The objections were primarily opposed to the increased terminal platform size and the increased water depth.

During the March 27, 2019 Environmental Protection Commission (EPC) public hearing, the EPC voted to:

- Uphold the recommendation of the Environmental Protection Officer (EPO) and approve the request for waiver to Section 15-343(b) (side setback).
- Uphold the recommendation of the EPO and approve the request for variance to Section 15-342(g) (enclosed docks).
- Overturn the recommendation of the EPO and approve the request for waiver to Section 15-342(b) (terminal platform size) with the condition the applicant pay \$1,160 to the Conservation Trust Fund as mitigation to offset the additional shading from the larger terminal platform.
- Overturn the recommendation of the EPO and approve the request for variance to Section 15-342(a) (water depth) subject to the added conditions that (1) the existing dock on the adjacent, eastern parcel (Parcel ID No 07-23-28-0044-00-040) that is also owned by the applicant is removed prior to the certificate of completion of the new dock, and that (2) the new dock shall not extend more than 62 feet waterward of the Normal High Water Elevation.

ACTION REQUESTED: **Acceptance of the recommendation of the Environmental Protection Commission to approve the request for waiver to Section 15-343(b) (side setback); the request for variance to Section 15-342(g) (enclosed docks); the request for waiver to Section 15-342(b) (terminal platform size) with the condition the applicant pay \$1,160 to the Conservation Trust Fund; and the request for variance to Section 15-342(a) (water depth), subject to the additional conditions that the existing dock on the adjacent, eastern parcel is removed prior to the Certificate of Completion of the new dock and the new dock shall not extend more than 62 feet waterward of the Normal High Water Elevation for the Martin Krytus Dock Construction Permit BD-18-08-092. District 1**

JVW/DJ: mg

Attachments

Dock Construction Application for Variances and Waivers



Dock Construction Application for Variances and Waivers

BD-18-08-092

District #1

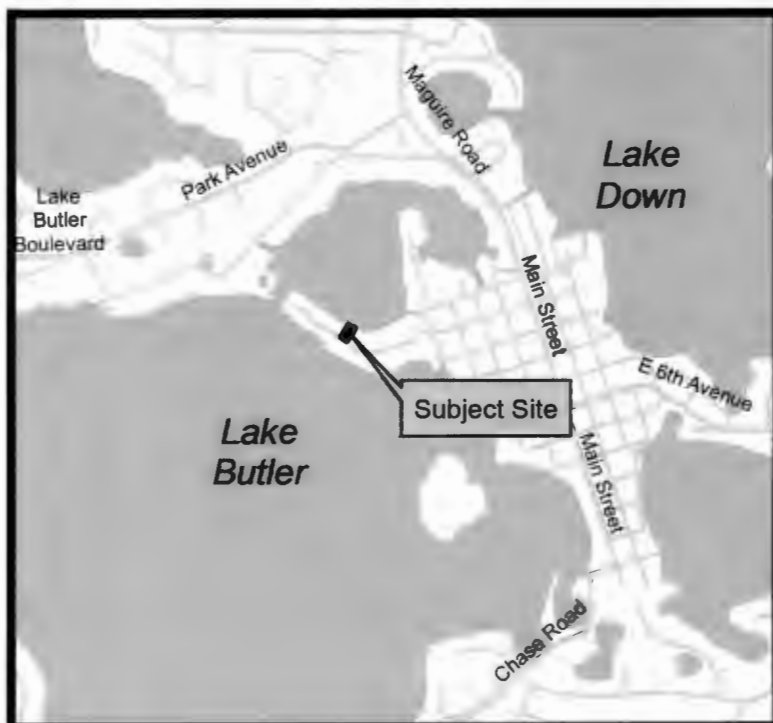
Applicant: Martin Krytus

Address: 803 W. 2nd Avenue

Parcel ID: 07-23-28-0044-00-061

Project Site 

Property Location 





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ENVIRONMENTAL
 PROTECTION
 COMMISSION

**ORANGE COUNTY
 ENVIRONMENTAL PROTECTION COMMISSION
 March 27, 2019**

- Johnathan Huels
Chairman
- Mark Ausley
Vice Chairman
- Oscar Anderson
- Perry Barnasi
- Florian Blackburn
- Mark Corbett
- Theodore Geltz

PROJECT NAME: Martin Krytus
PERMIT APPLICATION NUMBER: BD-18-08-092
LOCATION/ADDRESS/LAKE: 803 West 2nd Avenue, Lake Butler

RECOMMENDATION:

PURSUANT TO ORANGE COUNTY CODE, CHAPTER 15, ARTICLE IX, SECTION 15-350(b), APPROVE THE REQUEST FOR WAIVER TO SECTION 15-343(b) (SIDE SETBACK); APPROVE THE REQUEST FOR VARIANCE TO SECTION 15-342(g) (ENCLOSED DOCKS); DENY THE REQUEST FOR WAIVER TO SECTION 15-342(b) (TERMINAL PLATFORM SIZE); AND DENY THE REQUEST FOR VARIANCE TO SECTION 15-342(a) (WATER DEPTH) FOR THE MARTIN KRYTUS DOCK CONSTRUCTION PERMIT BD-18-08-092.

- EPC AGREES WITH THE ACTION REQUESTED, AS PRESENTED
- EPC DISAGREES WITH THE ACTION REQUESTED, AS PRESENTED AND HAS MADE THE FOLLOWING RECOMMENDATION:

Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(b), approve the request for waiver to Section 15-343(b) (side setback); approve the request for variance to Section 15-342(g) (enclosed docks); approve the request for waiver to Section 15-342(b) (terminal platform size) with the condition the applicant pay \$1,160 to the Conservation Trust Fund; and approve the request for variance to Section 15-342(a) (water depth) subject to the added conditions that (1) the existing dock on the adjacent, eastern parcel owned by the applicant is removed prior to the certificate of completion of the new dock, and (2) the new dock should extend no more than 62 feet waterward of the Normal High Water Elevation for the Martin Krytus Dock Construction Permit BD-18-08-092.

Signature of EPC Chairman: *Johnathan Huels*
 EPC Recommendation Date: 3/27/19



Interoffice Memorandum

March 12, 2019

To: Environmental Protection Commission

From: David D. Jones, P.E., CEP, Manager
Environmental Protection Division

Subject: **Martin Krytus Request for Waivers and Variances for Dock Construction Permit
BD-18-08-092**

Reason for Public Hearing

The applicant, Martin Krytus, is requesting approval of two waivers to Orange County Code (Code), Chapter 15, Article IX, Section 15-342(b) (terminal platform size) and Section 15-343(b) (side setback); and two variances to Section 15-342(g) (enclosed docks) and Section 15-342(a) (water depth).

Location of Property/Legal Description

The project site is located at 803 West 2nd Avenue in Windermere. The Parcel ID number is 07-23-28-0044-00-061. The subject property is located on Lake Butler in District 1.

Background

On August 27, 2018, the Environmental Protection Division (EPD) received an Application to Construct a Dock at the subject property. Included with the application were applications to request two waivers; 1) a request to increase terminal platform size greater than the maximum allowed by Code from 1,000 square feet to 1,392 square feet, and 2) a request to reduce the eastern side setback from 25 feet to 11.49 feet. The applicant's agent subsequently submitted a revised request to reduce the setback to 1.93 feet. The applicant also submitted applications to request two variances; (1) to keep an existing enclosed dock/boathouse, and (2) for water depth (10.6 feet) greater than allowed by Code (5.0 feet) at the waterward end of the terminal platform.

Currently, there is an enclosed, double-slip boathouse and an existing seawall. The boathouse is mainly positioned landward of the existing seawall and appears to have been excavated from uplands in order to provide a sheltered mooring area. A single finger pier extends waterward from the center of the boathouse out into the lake. The current application proposes to keep the existing enclosed boathouse, and add additional walkway with a new terminal platform and boat slips.

Terminal Platform Size Waiver

Chapter 15, Article IX, Section 15-342(b) of the Code states, "the maximum square footage of the terminal platform shall not exceed the square footage of ten times the linear shoreline frontage for the first seventy-five (75) feet of shoreline and five times the linear shoreline frontage for each foot in excess of seventy-five (75) feet, not to exceed a maximum of one thousand (1,000) square feet." The applicant has a shoreline that measures approximately 140 linear feet at the Normal High Water Elevation (NHWE), allowing for a maximum terminal platform size of 1,000 square feet. The applicant is requesting a terminal platform of 1,392 square feet.

Pursuant to Section 15-350(a)(2), “the applicant shall describe (1) how this waiver would not negatively impact the environment, and (2) the effect of the proposed waiver on abutting shoreline owners.”

To address Section 15-350(a)(2)(1), the applicant’s agent states, “*The applicant is requesting a waiver to construct a terminal platform larger than 1,000 sq. ft. This waiver will not negatively impact the environment. The larger terminal platform will increase shading effects on the lake bottom. Currently, the water depth at which the terminal platform is proposed does not support submerged vegetation that would be affected by the increase in size. The terminal platform provides shade to fish and wildlife species that utilize open water areas. The applicant will fully mitigate for secondary impacts through purchase of credits from a mitigation bank.*”

To address Section 15-350(a)(2)(2), the applicant’s agent states, “*The larger terminal platform will have a negligible effect on the abutting shoreline owners. The boat dock is located on the western boundary of the parcel and the applicant owns the adjacent parcel to the east. The larger terminal platform will not impede lake view or access for either adjacent owner nor any other lakeshore owner.*”

The additional shading impacts from the larger-than-allowed terminal platform were evaluated by EPD staff using the Uniform Mitigation Assessment Method. The applicant has agreed to provide mitigation for the additional shading with a payment of \$1,160 to the Conservation Trust Fund.

Side Setback Waiver

Chapter 15, Article IX, Section 15-343(b) of the Code states, “On lots or parcels having a shoreline frontage of seventy-five (75) feet or greater, docks shall have a minimum side setback of twenty-five (25) feet from the projected property line...” The applicant’s shoreline measures 140 feet; therefore, the required side setback is 25 feet to the projected property line. The applicant is requesting a reduced side setback of 1.93 feet to the eastern projected property line. The affected adjacent lot at 801 West 2nd Avenue is also owned by the applicant.

Enclosed Dock Variance

Based on a review of historic aerial photos, the enclosed boathouse appears to have been constructed prior to the effective date of Article IX on February 19, 1988 and prior to the applicant purchasing the property. In 1997, EPD approved a request to repair the dock structure; however, no site plans are available in the file.

Chapter 15, Article IX, Section 15-342(g) of the Code states, “Enclosed docks are prohibited.” As noted above, the property has an existing enclosed boathouse landward of the seawall with a short finger pier extending into the lake. The applicant is proposing to keep this enclosed boathouse, add to the access walkway, and construct a new terminal platform.

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.”

Pursuant to Section 15-350(a)(1) *Variances*, “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)(1), the applicant's agent states, "*The existing structure includes an enclosed boathouse on the uplands of the site. The enclosed structure is an existing lawful structure. The applicant proposed to attached the dock to this structure.*"[sic]

To address Section 15-350(a)(1)(2) the applicant's agent states, "*No effect. The structure already exists.*"

Water Depth Variance

Chapter 15, Article IX, Section 15-342(a) of the Code states, "The dock shall extend only to the point where reasonable water depth for vessel mooring is achieved. The maximum water depth allowed for mooring areas is five feet, as measured from the NHWE, unless the natural conditions of the water body necessitate a greater water depth to allow reasonable mooring conditions. The dock shall not adversely affect the rights of other persons and property owners' use of, and access to, the water body." The applicant is proposing a water depth of 10.6 feet at the deepest portion of the mooring area.

To address Section 15-350(a)(1)(1), the applicant's agent states, "*The dock length is consistent in length and size as the adjacent docks measuring 72- feet from the shoreline. The applicants shoreline is located out further than the adjacent properties.*"[sic]

To address Section 15-350(a)(1)(2), the Applicant's agent states, "*The variance will have no effect on the navigation or view of abutting owners since the dock is located at the furthest point from the western parcel line and the applicant owns the eastern adjacent parcel.*"

The applicant staked the landward extent of the proposed terminal platform in order for the Orange County Sherriff's Office (OCSO) to make a determination regarding navigation. The OCSO observed the stakes and responded with the statement, "*The stakes are further offshore than the neighboring dock ends but I don't see any additional hazards from the staked location in this case.*"

Public Notifications

On January 3, 2019 a Notice of Application for Waivers and Variances was sent to all shoreline property owners within a 300-foot radius of the property. The applicant, his agent, and objectors were sent notices on March 12, 2019 to inform them of the Environmental Protection Commission meeting on March 27, 2019.

Objections

On February 26, 2019 EPD received two objections:

1. Mr. and Mrs. Nicholas Cotton who reside at 805 West 2nd Avenue, the adjacent property to the west of the project site, state that the length of the dock is "*...projecting out roughly 24 feet from all other boat docks presents a safety concern for boaters and skiers*" and, "*...this dock would clearly obstruct our water view to the right when facing away from our property.*"
2. Evelyn H. Tucker who resides at 740 West 2nd Avenue states, "*... (terminal platform size) The requested waiver should be denied because the Size allowed by code is more than ample... (enclosed docks) The enclosed dock should be allowed to remain only if it is included as part of the structure of the proposed dock... (water depth) This waiver should be denied because the depth of five feet is sufficient for use by water craft used on the Butler chain of lakes.*"

On March 7, 2019 EPD received two additional objections:

3. Joan and Joel Strickland who reside at 745 and 727 West 2nd Avenue state, *"It is clearly in conflict with the existing codes for docks; if we do not enforce these codes, we can expect even more unbounded applications in the future...approving these variances would set a dangerous precedent...(water depth). The request asks for the dock to be placed in 10.6 feet of water rather than the 5 feet allowed by the code; even a 39 foot Hatteras sport fisherman draws less than 5 feet so requesting placement in 10 feet is clearly not justifiable...(terminal platform size) the proposed dock is almost half again as large as permissible under those codes...this proposed dock is simply too large and obtrusive for this site...The obtrusive nature of the proposed dock also will serve to decrease the property values of the neighbors on the lake."*
4. Carol Fosgate who resides at 711 West 2nd Avenue states, *"I am writing to object to the variance/waiver of the county code for the terminal size and the depth with which Mr. Krytus wants to place his dock. The dock being so far out in the water becomes a hazard to boats and skiers on Wauseon Bay and the size of the platform exceeds the county code by almost 400 sq. feet. If he is building a new dock and platform, he needs to abide by the codes."*

Enforcement Action

There is no current enforcement action for this property.

Staff Recommendation

The recommendation of the Environmental Protection Officer (EPO) is to approve the waiver to Section 15-343(b) (side setback) based on the fact the affected property is also owned by the applicant. The EPO recommends approval of the variance to Section 15-342(g) (enclosed docks) because the enclosed boathouse is an existing grandfathered structure that was present when the applicant purchased the property and none of the objections are to the variance for the enclosed dock.

The EPO recommends denial of the waiver to Section 15-342(b) (terminal platform size) based on the failure of the applicant to meet Section 15-350(a)(2)(2) (effect on abutting shoreline owners) and denial of the variance to Section 15-342(a) (water depth) based on the failure of the applicant to meet Section 15-350(a)(1)(1) (self-imposed hardship) and Section 15-350(a)(1)(2) (effect on abutting shoreline owners).

ACTIONS REQUESTED: Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(b), approve the request for waiver to Section 15-343(b) (side setback); approve the request for variance to Section 15-342(g) (enclosed docks); deny the request for waiver to Section 15-342(b) (terminal platform size); and deny the request for variance to Section 15-342(a) (water depth) for the Martin Krytus Dock Construction Permit BD-18-08-092.

JR/NT/TMH/ERJ/DJ: mg

Attachments