



Interoffice Memorandum

June 29, 2022

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

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

CONTACT PERSON: **David D. Jones, P.E., CEP, Manager** *Elizabeth R. Johnson* for
Environmental Protection Division
(407) 836-1406

SUBJECT: July 26, 2022 – Public Hearing
Shoreline Alteration/Dredge and Fill Permit Application for
Phu Van and Elizabeth Nguyen (SADF-22-05-015)

The applicants, Phu Van and Elizabeth Nguyen, are requesting a Shoreline Alteration/Dredge and Fill (SADF) permit to authorize the construction of a new seawall along the shoreline of Fischer Canal (Lake Down) for the property located at 19 Main Street, Windermere, FL 34786. The Parcel ID for the site is 08-23-28-1948-01-070 and the subject property is located in District 1.

The applicants are proposing to construct a new 100-foot long, vinyl seawall along the entire length of their shoreline at the Normal High Water Elevation of Fischer Canal on Lake Down with 10-foot returns on each property line. There is an existing seawall on the adjacent northern property and none on the southern property. There are other seawalls on the Fischer Canal. There are no enforcement actions by EPD on the subject property.

In accordance with Orange County Code, Chapter 33, Article IV, Section 33-129(d), notification of the public hearing was sent to property owners within 500 feet of the project site. No objections were received.

Pursuant to Orange County Code, Chapter 33, Article IV, EPD staff has evaluated the proposed SADF application and required documents and has made a finding that the request is consistent with Section 33-129.

Staff Recommendation

Approval of the SADF permit, subject to the following conditions:

Specific Conditions:

1. This permit shall become final and effective upon expiration of the 30-calendar-day appeal period following the date of issuance, unless an appeal has been filed within

this timeframe. Any appeal shall stay the effective date of this permit until all appeals are resolved.

2. Construction activities shall be completed in accordance with the engineered plans signed and sealed Darcy Unroe, P.E., received by the Environmental Protection Division (EPD) on May 2, 2022. The permitted activity must commence within six months and be completed within two years from the date of issuance of the permit. In the event that the project has not commenced within six months or been completed within two years, this permit shall be void and a new permit application will be required.
3. Any permit extensions for the activities authorized herein may be approved by way of Consent Agenda if there are no changes.
4. This permit does not authorize any dredging or filling except that which is necessary for the installation of the seawall.

General Conditions:

5. Subject to the terms and conditions herein, the permittees are hereby authorized to perform or cause to be performed, the impacts shown on the application and the approved drawings, plans, and other documents attached hereto or on file with EPD.
6. The permittees bind themselves and any successors to comply with the provisions and conditions of this permit. If EPD determines at any time that activities are not in accordance with the conditions of the permit, work shall cease and the permit may be revoked immediately by the Environmental Protection Officer. Notice of the revocation shall be provided to the permit holders and/or agent promptly thereafter.
7. A copy of this permit, along with EPD stamped and approved drawings, should be taken to the Orange County Zoning Division (OCZD) at 201 South Rosalind Avenue for approval. For further information, please contact the OCZD at (407) 836-5525.
8. After approval by the OCZD, the certified site plans will need to be reviewed by the Orange County Building Safety Division (OCBSD) in order to obtain a building permit. For further information, please contact the OCBSD at (407) 836-5550.
9. Prior to construction, the permittees shall clearly designate the limits of construction on-site. The permittees shall advise the contractor that any work outside the limits of construction, including clearing, may be a violation of this permit.
10. Construction plans shall be submitted to EPD prior to initiating any construction activities for review and approval. The construction plans shall include, but are not limited to, a site plan clearly depicting the location of the seawall.
11. The permittees shall require the contractor to maintain a copy of this permit, complete with all approved drawings, plans, conditions, attachments, exhibits, and modifications in good condition at the construction site. The permittees shall require the contractor to review the permit prior to commencement of the activity authorized

by this permit. The complete permit shall be available upon request by Orange County staff.

12. Issuance of this permit does not warrant in any way that the permittees have riparian or property rights to construct any structure permitted herein and any such construction is done at the sole risk of the permittees. In the event that any part of the structure permitted herein is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent property owner's riparian or other property rights, the permittees agree to either obtain written consent or remove the offending structure or encroachment within 60 days from the date of adjudication. Failure to comply shall constitute a material breach of this permit and shall be grounds for its immediate revocation.
13. This permit does not release the permittees from complying with all other federal, state, and local laws, ordinances, rules and regulations. Specifically, this permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittees or create in the permittees any property rights, or any interest in real property, nor does it authorize any entrance upon or activities upon property which is not owned or controlled by the permittees, or convey any rights or privileges other than those specified in the permit and Chapter 33, Article IV of the Orange County Code.
14. If these permit conditions conflict with those of any other regulatory agency, the permittees shall comply with the most stringent conditions. The permittees shall immediately notify EPD of any conflict between the conditions of this permit and any other permit or approval.
15. The permittees are hereby advised that Section 253.77 Florida Statutes (FS), states that a person may not commence any excavation, construction, or other activity involving the use of sovereignty or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund, without obtaining the required lease, license, easement or other form of consent authorizing the proposed use. Therefore, the permittees are responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.
16. Should any other regulatory agency require changes to the property or permitted activities, the permittees shall provide written notification to EPD of the change prior to implementation so that a determination can be made whether a permit modification is required.
17. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
18. The permittees shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
19. EPD staff shall have permission to enter the site at any reasonable time to inspect the property for conformity with the plans and specifications approved by the permit.

20. The permittees shall hold and save the County harmless from all damages, claims or liabilities, which may arise because of the activities authorized by the permit.
21. All costs, including attorney's fees, incurred by the County in enforcing the terms and conditions of this permit shall be required to be paid by the permittees.
22. The permittees agree that any dispute arising from matters relating to this permit shall be governed by the laws of Florida, and initiated only in Orange County.
23. Turbidity and sediments shall be controlled to prevent violations of water quality pursuant to Rules 62-302.500, 62-302.530(70) and 62-4.242 Florida Administrative Code. Best Management Practices, as specified in the Florida Stormwater, Erosion, and Sedimentation Control Inspector's Manual, shall be installed and maintained at all locations where the possibility of transferring suspended solids into wetlands and/or surface waters may occur due to the permitted activity. If site specific conditions require additional measures, then the permittees shall implement them as necessary to prevent adverse impacts to wetlands and/or surface waters.
24. Pursuant to Section 125.022 FS, issuance of this permit by the County does not in any way create any rights on the part of the permittees to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the permittees fail to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertake actions that result in a violation of state or federal law.
25. Pursuant to Section 125.022 FS, the permittees shall obtain all other applicable state or federal permits before commencement of the activity authorized herein.

ACTION REQUESTED: Acceptance of the findings and recommendation of the Environmental Protection Division staff and approval of Shoreline Alteration/Dredge and Fill Permit SADF-22-05-015 for Phu Van and Elizabeth Nguyen, subject to the conditions listed in the staff report. District 1

DDJ/JW: jk

Attachments