



Interoffice Memorandum

July 2, 2020

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) 836-1406**

SUBJECT: July 28, 2020 – Public Hearing
After-the-Fact Shoreline Alteration/Dredge and Fill Permit
Application for John and Jean Amm (SADF-20-03-008)

The applicants, John and Jean Amm, are requesting an after-the-fact Shoreline Alteration/Dredge and Fill Permit (SADF) to authorize an existing aluminum seawall along the shoreline of Lake Conway and portions of an existing vinyl privacy fence along the southern property line, located at 4091 Conway Place Circle, Orlando, FL 32812. The Parcel ID for the site is 17-23-30-1685-01-010. The subject property is located in District 3.

The applicants installed a seawall without authorization sometime in early 2020. The wall consists of aluminum panels driven into the lake bottom along the shoreline and is also located below the Normal High Water Elevation (NHWE) of Lake Conway. The seawall measures 89.20 linear feet and ties into an existing seawall on the north and ties back to meet the existing vinyl fence on the south. The wall extends approximately 12-15 inches above the lake bottom to match the existing yard level. The vinyl privacy fence was installed sometime in 2018. The fence runs along the southern property line and extends approximately 38 feet below the NHWE. Due to the installation of the Daetwyler weir in the 1960s, lake water levels were lowered, and subsequently lands below the NHWE that were previously wet, are now dry, including the areas around the seawall and fence. Authorization for the structures is required because Orange County utilizes the NHWE as the boundary for Waters of the County.

Based on prior Board direction, riprap and plantings are normally required for new seawalls and replacement seawalls. In this case, riprap and plantings are not being required for the following reasons:

- The height of the wall (~12") is only as high as the existing adjacent sod.
- The existing wall will not redirect wave energy or adversely affect adjacent properties to the same extent that a higher wall would.

- The required minimum riprap size required is 12” in diameter. The required slope to place riprap is 2:1. This would completely cover the seawall.
- Due to the abundance of the existing submerged vegetation, additional plantings are not being required. A condition has been added prohibiting the removal of plants outside of the access corridor.

Environmental Protection Division (EPD) staff reached out to the Division of State Lands (DSL) with the Florida Department of Environmental Protection in order to verify that the land between the NHWE and the shoreline, where the seawall is located, would not be considered sovereignty submerged lands. DSL found no evidence of fill below the NHWE and confirmed that the deed for this property conveys lands above the Ordinary High Water Elevation (i.e., the limit of state waters) to the owner; therefore, state proprietary requirements would not apply.

In accordance with Orange County Code, Chapter 33, Article II, Section 33-37(d), notification of the public hearing was sent to property owners within 500 feet of the project site. EPD has received no objections to the request.

Pursuant to Orange County Code, Chapter 33, Article II, EPD staff has evaluated the proposed SADF application and required documents and has made a finding that the request is consistent with Section 33-37.

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. This permit does not authorize any new construction activities. The existing seawall and vinyl privacy fence may remain in-place as depicted in the “Boundary Survey”, signed and sealed by Ellis Surveys, LLC and the “Overall Site Plan”, submitted by Randall Architectural, received by the Environmental Protection Division (EPD) on May 1, 2020. Additionally, the wall shall conform to the “Magic Wall” specification sheet, submitted by Randall Architectural and received by EPD on June 22, 2020.
3. This permit does not authorize any dredging or filling.
4. Any permit extensions for the activities authorized herein may be approved by way of Consent Agenda if there are no changes.
5. The removal of plants outside of the access corridor is prohibited.

General Conditions:

6. 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.
7. The permittees bind themselves and their 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 holder and/or agent promptly thereafter.
8. 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.
9. 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.
10. 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.
11. 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 II of the Orange County Code.
12. 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.
13. 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 of the Internal Improvement Trust Fund

prior to commencing activity on sovereignty lands or other state-owned lands.

14. 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.
15. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
16. The permittees shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
17. EPD staff shall have permission to enter the site at any reasonable time to inspect the project for conformity with the plans and specifications approved by the permit.
18. 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.
19. 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.
20. 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.
21. 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.
22. 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 applicants 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 applicants fail to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.
23. Pursuant to Section 125.022, FS, the applicants 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-20-03-008 for John and Jean Amm, subject to the conditions listed in the staff report. District 3**

DDJ/JW: mg

Attachments