



## Interoffice Memorandum

October 10, 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  
Environmental Protection Division  
(407) 836-1406**

SUBJECT: October 25, 2022 – Public Hearing  
Appeal of the Environmental Protection Commission  
Recommendation for a Request for Waiver to Terminal  
Platform Size for the Calvin Wimbish Dock Construction Permit  
(BD-21-10-140)

The Appellants, Ms. Kimberly Marshall and Mr. James Lynde, are appealing the Environmental Protection Commission's (EPC's) recommendation to approve a request for waiver to Orange County Code (Code), Chapter 15, Article IX, Section 15-342(b) (terminal platform size) for a Dock Construction Permit for the Applicant, Mr. Calvin Wimbish.

### **Background**

The property subject to the appeal is located at 9000 Easterling Drive, Orlando, FL 32819 (Parcel ID Number 28-23-28-0535-02-060). The property is adjacent to Lake Tibet Butler in District 1. A location map is included as **Exhibit 1**. Currently, there is a boat dock on the subject property. In November 2000, Permit 00-212 was issued to the previous owner authorizing a boat dock with a 10-foot side setback on both sides of the property and a 380 square feet terminal platform. The plans for the current dock are provided in **Exhibit 2**.

On October 6, 2021, the Applicant submitted an Application to Construct a Dock to the Environmental Protection Division (EPD) to replace the existing dock. Included with the dock application was:

- An Application for Waiver to Section 15-342(b) requesting to authorize a larger than allowed terminal platform of 612 square feet in size. Pursuant to current Code, the maximum allowable terminal platform size for this parcel is 350 square feet. Based on concerns raised during the first Environmental Protection Commission (EPC) public hearing on March 30, 2022, the Applicant subsequently decreased the size of the proposed terminal platform to 486 square feet (136 square feet larger than allowed by Code).
- An Application for Variance to Section 15-343(a) requesting to reduce the side setback from the northern projected property line from the required 10 feet to 4.75 feet. A Letter of No Objection (LONO) from the affected neighbor to the north, Mr. James Lynde (9010 Easterling Drive) was included. The plans depicted the required 10-foot

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side setback from the southern property line (adjacent owner Kimberly Marshall - 9190 Cypress Cove Drive), meeting the code requirements for that side of the Applicant's property. Mr. Lynde rescinded his LONO prior to the first public hearing before the EPC on March 30, 2022. Subsequent to the first EPC public hearing, the applicant's agent submitted revised plans that were received by EPD on April 5, 2022, which had side setbacks meeting the minimum 10-foot side setbacks from both adjacent properties. Therefore, there was no longer a need for the side setback variance.

**Terminal Platform Size Waiver Request**

Pursuant to Section 15-342(b), *"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."* Further, Section 15-323 defines projected property lines as *"a continuation of, and extension to, the upland property line."*

The Applicant has a shoreline that measures 35 feet at the Normal High Water Elevation, which allows for a maximum terminal platform of 350 square feet. The Applicant originally requested a terminal platform size of 612 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, Mr. Robin Lopez, states, *"If granted approval, this waiver request will give way to the removal and replacement of an existing dilapidated dock structure. It's expected that the construction of the proposed dock will provide a more habitable location for aquatic plants and animals when compared to the existing structure. The Applicant has agreed to pay any mitigation fees that may be imposed as a result of the additional square footage."*

To address Section 15-350(a)(2)(2), Mr. Lopez states, *"Given that we have received and provided our Letter of No Objection from the neighbor most closely impacted by this waiver request, we don't expect there to be any additional impact caused by the approval of this waiver."*

As noted above, the Applicant subsequently submitted plans that reduced the terminal platform size to 486 square feet prior to the second EPC public hearing on May 25, 2022 and has agreed to pay \$325.38 to the Conservation Trust Fund (CTF) as mitigation to offset the additional shading impacts to Lake Tibet Butler associated with the larger terminal platform size should the waiver request be approved.

**Initial Letters of Objection**

On February 2, 2022, the Agent, Applicant, and Objectors were provided notice of the EPC Public Hearing on March 30, 2022.

On February 6, 2022, EPD staff received a letter of objection from Mr. Lynde (9010 Easterling Drive; the adjoining property to the north). The letter states that Mr. Lynde previously received a request to authorize a variance from Mr. Wimbish; however, Mr. Lynde did not fully

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understand the request and believes he was verbally misinformed about the nature of the requested variance.

The letter states, *"I do object to this variance to the setback and withdraw and cancel any and all documentation indicating my consent to this setback variance. For the safety of boaters, paddleboarders, kayakers and swimmers, I believe it is essential to maintain this setback to provide for safe entry and exit from the shoreline. Granting this variance will provide inadequate clearance and both personal safety of people using the lake as well as property damage could easily occur due to the reduced space for people and watercraft. The larger platform will make it too narrow and potentially block visibility of both swimmers and kayaks and paddle boarders while lying horizontally on the board. It will also make it much more difficult to navigate watercraft between the docks to the beach. There is no need for this infringement of the setback. The existing dock dimensions provide adequate ability to dock a boat, comply with the setback requirements and provide for safe entry and exit from the shoreline."*

On February 6, 2022, EPD staff receive a letter of objection from Ms. Marshall (9190 Cypress Cove Drive; the adjoining property to the south). The letter states, *"I previously received a request to authorize this variance from Mr. Wimbish in the fall of 2021. However, I did not sign the request and shared with Mr. Wimbush [sic] the reasons for my objections, I believe it is essential to maintain this setback to provide for safe entry and exit from the shoreline. Granting this variance will provide inadequate clearance and both personal safety of people using the lake as well as property damage could easily occur due to the reduced space for people and watercraft. The larger platform will make it too narrow in that area for proper navigation between the docks to the beach. There is no need for this infringement of the setback. The existing dock dimensions provide adequate ability to dock a boat, comply with the setback requirements and provide for safe entry and exit from the shoreline."*

On February 8, 2022, EPD staff received a letter of objection from Dr. Winston Bedford (9030 Easterling Drive; three parcels to the north of the Applicant's property). The letter states, *"I object to the variance requested to build a dock with a terminal platform of 612 feet when the maximum allowed is 350 square feet. This parcel is one of the most narrow in the neighborhood and they are asking for one of the largest platforms, if not the largest, I have seen. I live 3 homes to the north, and have lived here for 30 years. If every home had a terminal platform of 612 feet (a huge living room) the lakeshore would certainly be overwhelmed by wooden structure. I strongly, in no uncertain terms, oppose this variance being approved."* However, on March 28, 2022, EPD staff received a signed copy of the Notice of Public Hearing from Dr. Bedford marked as "In Favor" of the request for waiver and request for variance. In the commentary section it states, *"No objection to construction of dock as illustrated on permit drawing. I rescind my previous objection."*

A map showing the location of the objectors' properties in relation to the Applicant's property is provided as **Exhibit 3**.

### **First EPC Public Hearing on March 30, 2022**

On March 30, 2022, the request was heard by the EPC at a duly noticed public hearing. The following is a summary of the proceedings:

- EPD provided a presentation to the EPC with recommendations of the Environmental Protection Officer (EPO) as follows:

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- Deny the request for waiver to Section 15-342(b) (terminal platform size) based on a finding that the Applicant has not demonstrated that there will be no negative effect on the abutting shoreline owners pursuant to Section 15-350(a)(2)(2), as objections have been received.
- Deny the request for variance to Section 15-353(a) requesting to reduce the side setback from the northern projected property line from the required 10 feet to 4.75 feet, based on a finding that the Applicant has not demonstrated that there will be no negative effect on the abutting shoreline owners pursuant to Section 15-350(a)(1)(2), as objections have been received.
- Mr. Robin Lopez and Mr. Matt Langbehn (Summertime Deck and Dock), Agents for the Applicant, spoke in favor of the request.
- Mr. Lynde, abutting neighbor to the north (9010 Easterling Drive) spoke against the request.

During the hearing, EPC Chairman Ausley asked Mr. Lynde if he would support the dock if the Applicant shortened the overall length. Mr. Lynde responded that he would support the dock plans if the dock stayed at the same width and the same side setbacks as approved in Permit 00-212. EPC approved a motion to continue the public hearing to April 27, 2022 to provide the Applicant an opportunity to revise the plans.

### **Submission of Revised Plans**

The Applicant subsequently submitted several revised plans, with the final site plan dated as received by EPD on April 5, 2022. The plans were provided to Ms. Marshall and Mr. Lynde based on their objections to the original plans. The final site plans are included as **Exhibit 4**.

The plans depict:

- a proposed ten foot side setback from the northern and southern property boundaries; therefore, a variance to Section 15-343(b) (side setback) is no longer necessary; and,
- a reduction in proposed terminal platform size from 612 square feet to 486 square feet in size.

### **Subsequent Letters of Objection**

On April 8, 2022, EPD staff received an additional letter of objection from Mr. Lynde stating that he “*objects to any dock which is bigger than the current footprint/size (which already has a larger than permitted terminal platform).*” Mr. Lynde states the following: “*. . . the bigger roof will block views and also sight lines when paddle boarding and kayaking to and from the shore. I have two paddleboards and use them with friends. Blocking views of other craft moving nearby is a safety issue. I know I said I was okay with a larger terminal platform at the meeting because I wanted to be kind and considerate. However, one of the property owners at 9000 Easterling has threatened to put up umbrellas to block our views if objections were raised to the dock plans. I have objected and the larger terminal platform would let them do exactly that. That might seem like a hollow threat, but the same new neighbor has already cut off nearly half of a 40 year old oak tree, crossing my property line by over 4 feet to do so. They cut the tree when they knew I was out of town and could not object. Three professional arborists have advised that hacking off those major branches will kill the tree and that it is*

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*now at significant risk of falling on my house (all branches on one side) and must come down for safety. Given this behavior, I think it is reasonable to believe she will place umbrellas on the larger terminal platform to block our views as she stated she would. That would also block visibility and decrease safety. Net--the current dock is not in bad repair from what I see. If a new one is permitted, it should be no bigger than the current dock to: 1) not exceed the code standards any more than the current dock, 2) create safe access to and from the shoreline by preserving visibility and 3) not enable retaliation for objections which has been threatened and is consistent with other behavior by the property owner."*

On April 18, 2022, EPD staff received an additional letter of objection from Ms. Marshall. The letter states that *"I have carefully reviewed and considered the revised dock plan the Wimbush's [sic] submitted through their dock builder. I am opposed to the revised dock plan because it is still larger than the 350 square feet allowed since their lake front is only 35 square feet. I understand the current platform is already 380 square feet and is "grandfathered" as it stands which will allow them to rebuild it to 380 square feet without a variance. The revised plan still has a roof that covers 513 square feet and will look huge compared to what is there now. I am opposed to the larger platform and the larger roof. As you can see from the attached picture, we are already very close together (the Marshall dock and the Wimbish dock). If the Wimbish dock is built larger than the current dock it will block my view and cause crowding when paddle boarding or boating in the area. It is a safety issue and it is also a problem for the view in our beautiful but very small area of the lake."*

**Second EPC Public Hearing on May 25, 2022**

During the first public hearing concerning the Wimbish dock application on March 30, 2022, the EPC voted to continue the public hearing to April 27, 2022. During their April 27, 2022 meeting, the EPC voted to continue the public hearing a second time to May 25, 2022. The request for waiver with a reduced terminal platform size in accordance with the revised plans was presented to the EPC during a public hearing during their meeting on May 25, 2022. The following is a summary of the proceedings:

- EPD provided a presentation to the EPC with a recommendation of the EPO to deny the waiver to Section 15-342(b) (terminal platform size) based on a finding that the Applicant has not demonstrated that there will be no negative effect on the abutting shoreline owners pursuant to Section 15-350(a)(2), as objections have been received.
- Commission Member Oscar Anderson asked if the proposed replacement dock was any wider than the current dock. Mr. Neal Thomas from EPD indicated that he did not think the proposed dock is any wider, but longer than the current dock. Mr. Anderson asked if the proposed dock was taller than the current dock. Mr. Langbehn indicated that he was not sure what the height of the current dock is, but the proposed dock would be a maximum of 12 feet in height (i.e., what is allowed by Code).
- Commission Member Peter Fleck noted that the plans for the current dock showed it is 16 feet wide while the current plans show a width of 13.6 feet. Mr. Langbehn confirmed that was correct and stated that the proposed dock is a bit narrower.
- Mr. Robin Lopez and Mr. Matt Langbehn (Summertime Deck and Dock), Agents for the Applicant, spoke in favor of the request. Mr. Langbehn indicated that the intent is to rebuild the existing dock, which is dilapidated, has a lean to it, and is in need of repair. He noted that part of the increase in size for the terminal platform comes from the boat slip area, which needs to be larger to accommodate the size of the Applicant's

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current boat. He noted that the general trend is toward bigger boats. In addition, Mr. Langbehn noted that they shaved area off the sides to give the Applicants the minimum size needed to navigate around the boat slip. He confirmed that the proposed dock is not wider than the current dock, but another reason for the increased length was to provide a storage area and a small sitting area on the landward side of the dock. He indicated that he thought the objections were punitive based on a neighbor squabble.

- Mr. Lynde, abutting neighbor to the north (9010 Easterling Drive), spoke against the request. He questioned whether the existing dock is dilapidated and in need of replacement. He indicated that he thought the proposed dock was the same width as the current dock. Mr. Lynde noted that during the previous EPC public hearing it was his understanding the Wimbishes desired to have a sitting area on the shore side; however, he said that afterwards Ms. Wimbish told the neighbors that because of the objections she plans to retaliate by putting up umbrellas to block the neighbors' views. He noted that there is a neighbor dispute because of that kind of behavior. He said the proposed dock does not meet the setback requirements and is not needed, which is the essence of his objections.
- Ms. Marshall, abutting neighbor to the south (9190 Cypress Cove Drive), spoke against the request. She indicated that she is the most impacted neighbor. She noted her parcel has 40 feet of lakefront and the Wimbishes have only 35 feet of lakefront, so it is a very narrow area. She recently rebuilt her dock exactly the way it was and stated she would have loved a bigger dock with a covered sitting area like the Wimbishes were requesting, but chose to build within the code requirements. She said she did not think it was fair to ask either of their neighbors for a variance from length or width. She said she bought a smaller boat to accommodate the size dock her parcel would allow. She noted that the roof of the Wimbishes' proposed dock is 513 square feet whereas her dock roof is only 264 square feet, which is a huge difference. She indicated her concerns that the roof would obscure her view. She said she refused to grant the variance because she did not think it was being a good neighbor to even ask for it. She indicated that she thought the proposed dock was the same width as the current dock. She noted that the Wimbishes wanted a longer dock to accommodate not only the bigger boat, but also a covered sitting area. She indicated that she thought they already had existing sitting areas that provide a beautiful view of the lake and they do not need an additional covered sitting area as part of the dock. She disagreed the larger roof would have less impact on the environment. She stated that if the Wimbishes rebuilt the dock to the same size as their existing dock there would be no issues.
- Mr. Wimbish, the Applicant, indicated that the existing dock is dilapidated and in need of repair and that Mr. Lynde does not have the ability to see the dilapidated condition from his property. He indicated that he was not requesting a huge dock that would block his neighbors' views. He denied that his wife ever said that they were going to put a covered patio or umbrella on the dock. He noted that the covered portion of their proposed dock would be within the 12-foot height limitation allowed by code. He stated that the cut within the boat slip needed to be a little wider. He said that the environmental impact on fish and other aquatic life would not be significant and that their neighbors' views would not be blocked. He noted that the Marshalls had made changes to their dock and that the original plans do not include a skidoo that requires an additional five feet of setback. He said that he did not find that any permits were pulled when Mr. Lynde changed the materials on his dock. He thought the neighbors'

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concerns were based on bias and that what he was asking for would not impede the ability of his neighbors to enjoy their docks.

- Ms. Chong Wimbish, wife of the Applicant, spoke in favor of the request. She indicated that the neighbors who are objecting are doing so because they do not like them. She indicated concerns about Mr. Lynde's personal interactions with them and stated she wanted to enjoy her dock in peace.
- Chairman Mark Ausley noted the Applicants had done a good job of working within the constraints of a fairly narrow lot. He noted that they had made a couple of adjustments to decrease the width of the dock, such that a variance to side setback was no longer needed. He stated that the length of the proposed dock was not excessive and was consistent with other dock applications the EPC typically sees. He indicated that the Orange County Sheriff's Office performed a navigational assessment and determined that the proposed dock did not pose a navigation hazard. Based on these factors, he indicated he was inclined to support the request.
- Commission member Flormari Blackburn asked for clarification regarding the length of the proposed dock versus the length of the current dock. The representatives from Summertime Deck and Dock indicated that the length of the proposed dock is 38 feet and they estimated that the length of the current dock is approximately 27 feet long, so the Applicant is requesting a dock that is approximately 11 feet longer, but with the additional length on the landward side.
- Vice Chairman Alan Horn indicated that he was not in favor of recommending approval of the waiver request because the neighbors are not in agreement. If everyone was in agreement, he said he would have supported the request. Mr. Horn said he thought it might be possible to decrease some of the dimensions of the dock (e.g., boat slip and catwalk width) to reduce the terminal platform size to something closer to the original dock and asked if that might be acceptable to the Applicant.
- Commission member Billy Butterfield asked for further clarification regarding why the Applicant needed the dock to be approximately 11 feet longer than the current dock, if they just wanted to add a small sitting area. The representatives from Summertime Deck and Dock explained that some of the additional length was for a dock box and some was needed to make the boat slip bigger to accommodate a larger boat and that the catwalk needed to be increased somewhat for safety reasons.
- Mr. Fleck recalled that during the previous EPC public hearing Mr. Lynde had agreed to not object to a dock that was longer than allowed by Code, if certain changes were made to the dock width. He noted that the proposed catwalk width of 2 feet and 9 inches on the left side was smaller than the standard 4-foot width. He said he thought the Applicant's dock contractor had done a good job in redesigning the dock given the constraints of the site. He noted that he had been on the Applicant's dock and that it does need attention. Therefore, he stated he was in favor of recommending approval of the waiver request.
- Mr. Anderson noted that the Applicant had made changes discussed during the previous EPC public hearing, including reducing the dock width. He said he was not inclined to go against what had been agreed to during the previous public hearing. He

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said he had no confidence that the objectors would agree even if a few feet were shaved off the length of the dock.

Based on testimony and discussion during the hearing, the EPC voted to overturn the recommendation of the EPO and made a finding that the waiver request was consistent with Orange County Code, Chapter 15, Article IX, Section 15-350(a)(2) and recommended approval of the request for waiver to Section 15-342(b) to increase the maximum allowable terminal platform size from 350 square feet to 486 square feet. The motion passed five to one. A copy of the EPC Recommendation Letter is attached as **Exhibit 5**.

**Appeal from the Decision of the Environmental Protection Commission**

Chapter 15, Article IX, Section 15-349(b) of the Code states, "*Parties who have previously filed written objections and whose substantial interests are adversely affected by the recommendation of the environmental protection commission may appeal to the board within ten days of the rendering of the recommendation. The appeal shall be filed with the environmental protection officer 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 environmental protection commission. The decision of the board shall be final.*"

On June 2, 2022, Ms. Marshall and Mr. Lynde, submitted an appeal of the decision of the EPC to overturn the recommendation of the EPO, pursuant to Orange County Code, Chapter 15, Article IX, Section 15-349(b). The appeal outlined the Appellants' concerns that the request for a larger terminal platform may cause safety issues and an obstruction of views. Additionally, the Appellants mention that the request for an 11-foot longer platform for a sitting area and storage is not a necessity and the larger platform creates safety issues and obstructs the view more than is necessary to accommodate the size of the Applicant's boat. The Orange County Attorney's Office confirmed that the appeal was timely and complete. The appeal is included as **Exhibit 6**.

On September 9, 2022, the Appellants, and the Applicant and his Agent, were sent notices to inform them of the public hearing of the appeal before the Board.

There is currently no open EPD enforcement action on the property.

**ACTION REQUESTED:** To affirm, reverse, or modify the recommendation of the Environmental Protection Commission to approve the waiver to Orange County Code, Chapter 15, Article IX, Section 15-342(b) to increase the maximum allowable terminal platform size from 350 square feet to 486 square feet with a mitigation payment of \$325.38 to the Conservation Trust Fund within 60 days of the decision of the Board of County Commissioners for the Calvin Wimbish Dock Construction Permit BD-21-10-140. District 1

DDJ/JW: dj

Exhibits:

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Exhibit 1: Site Map

Exhibit 2: Plans for Current Dock

Exhibit 3: Appellants and Applicant Location Map

Exhibit 4: Final Site Plans

Exhibit 5: Environmental Protection Commission Recommendation Letter

Exhibit 6: Kimberly Marshall and James Lynde Appeal of the Decision of the EPC