



Interoffice Memorandum

July 5, 2017

TO: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

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

**CONTACT PERSON: Lori Cunniff, CEP, CHMM, Deputy Director
Community, Environmental and Development
Services Department
(407) 836-1405**

SUBJECT: July 18, 2017 – Public Hearing
Appeal to the Recommendation of the Environmental
Protection Commission regarding a Boat Dock Waiver (BD-
16-07-079)

Sergio Divine and Hasan Baig are appealing the recommendation of approval by the Environmental Protection Commission (EPC) of a request for waiver to Section 15-342(b) (terminal platform size) for the Via Rosa Revocable Trust Boat Dock construction application.

The subject site is located at 8313 Via Rosa, Orlando, Florida 32836. The Parcel ID for the site is 34-23-28-5670-00-180. The subject property is located on Little Sand Lake in Orange County Commission District 1.

Dock Construction Permit BD-16-07-079 was originally issued on July 29, 2016, to the Via Rosa Irrevocable Trust (c/o Rajinder Singh Lally Trustee) for a boat dock that met the requirements of Chapter 15, Article IX. No waivers or variances were required. To date, no construction has begun on the dock.

Dock Construction Permit BD-16-07-079 approved a 520 square foot terminal platform. On November 7, 2016, the Environmental Protection Division (EPD) received a request to increase the size of the terminal platform from the approved 520 square feet to 605 square feet. The proposed increases are located at the waterward end (1.5 feet waterward) and the southern side (2.8 feet south). The applicant stated that the increases are needed in order for him to achieve suitable mooring depths for his boat. The applicant has 52 feet of shoreline; therefore, the allowed terminal platform size is 520 square feet and a waiver is required. The Agent provided an Application for Waiver to Section 15-342(b) (terminal platform size).

In accordance with Chapter 15, Article IX, EPD reviewed the terminal platform waiver criteria which states:

“The applicant shall also 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 15-350(a)(2)(1), the applicant stated, *“The purpose of this waiver is to request that the allowable terminal platform square footage be increased from 520 sq. ft. to 605 sq. ft. The waiver would not negatively impact the environment.”*

Furthermore, the impact of the proposed dock was evaluated by EPD using the Uniform Mitigation Assessment Method (UMAM), and the applicant has agreed to offset the environmental impact associated with the larger terminal platform size with a payment of \$406 to the Conservation Trust Fund (CTF).

To address 15-350(a)(2)(2), the applicant stated, *“The majority of the increase in square footage is due to lengthening the dock lakeward thus the effect on the abutting shoreline owners is minimal.”*

On November 21, 2016, EPD sent a total of twelve (12) notifications for the waiver request. Each of the shoreline property owners within 300 feet of the subject property received a letter. Per Code, the recipient has thirty-five (35) days from receipt of the letter to object, in writing, to EPD, which in this case was until January 14, 2017.

After the objection period expired with no objections received, EPD staff scheduled the waiver request to be heard by the EPC on January 25, 2017. The applicant had adequately addressed the Code requirements and no objections had been received, therefore, the recommendation of the Environmental Protection Officer to the EPC was approval.

On January 25, 2017, several minutes before the start of the EPC meeting, EPD received two untimely objections letters; one from Mr. Hasan Baig and the second from Mr. Sergio Divine.

Mr. Baig of 8319 Via Rosa, the owner of the property located immediately to the south of the subject property stated: *“the applicant does not demonstrate that the strict compliance with terminal platform size would impose a unique and unnecessary hardship on the applicant, furthermore it clearly appears the hardship to be self-imposed by dock builder/applicant. The effect of the proposed variance on my abutting shoreline property may be detrimental resulting in reduced view of the lake, given the increased size of terminal platform and the roof on the dock as shown in proposed boat dock building plans”*.

Mr. Divine of 8226 Livorno Drive stated: *“It appears the applicant does not demonstrate that the strict compliance with terminal platform size would impose a unique and unnecessary hardship on the applicant, furthermore it clearly appears the hardship to be self-imposed by dock builder/applicant. The effect of the proposed variance on abutting shoreline owners may be detrimental resulting in reduced view of the lake, given the increased size of terminal platform and the roof on the dock as shown in proposed boat dock building plans”.*

Mr. Divine resides outside of the 300-foot notification buffer but within the Vizcaya Phase 1 Subdivision.

At the January 25, 2017 EPC hearing, EPD gave a presentation for the request for waiver and informed EPC that two untimely objection letters were received just minutes prior to the start of the EPC Meeting. Discussion ensued about accepting the letters into the record as well as how these letters would affect EPD’s recommendation. EPD informed EPC that because two letters of objection were received EPD would revise the recommendation from approval to denial to allow the objectors to be heard on the waiver request.

Mr. Divine was in attendance and spoke against the request. Mr. Baig was not present. After hearing testimony, the public hearing was closed and EPC voted to overturn EPD’s revised recommendation and approve the request for waiver to a larger than allowed terminal platform size.

Per Section 15-349(b), “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.”

On February 9, 2017, EPD has received an Appeal of the Recommendation of the EPC from both Mr. Baig and Mr. Divine. The Appeals reference concerns over the proposed roof, reduced view of the lake, and property values of the community being affected.

Upon receipt of the two Appeals, EPD met with the County Attorney’s Office. Concern arose about the statements made by Mr. Baig and Mr. Divine regarding Mr. Baig’s ability to provide testimony at the EPC hearing.*“Unfortunately, I was not able to physically attend the hearing, however I was available to attend via telephone, which the EPC was informed and apparently did not wish to hear my plea.”*

To address this concern raised, EPD recommended bringing the matter back to EPC on March 29, 2017, requesting that EPC re-hear the waiver request at the April 26, 2017 meeting of the Environmental Protection Commission. At their March 29, 2017 meeting, EPC agreed to re-hear the request for waiver at their April 26, 2017 meeting.

The Appeals, as agreed to by all parties involved, were put on hold until the EPC could reconsider the matter at the April meeting. The applicant, agent, and objectors were all notified of the re-hearing.

On April 12, 2017, EPD received a new objection to the request for waiver from the Mirabella at Vizcaya Homeowners Association Inc. Michele Markham, Vice President of the Mirabella at Vizcaya HOA, states in her objection, *"The homeowner submitted a different plan for dock construction to the Association's ARB Architectural Review Board review than the plan submitted to Orange County. The dock proposed to the County is of different size as it includes a roof."* Mrs. Markham asserts that the HOA had notified the homeowner that they did not have approval to build the structure as submitted to Orange County EPD. She further states, *"The Association considered the objection of the abutting neighbor, the discrepancy in submitted plans above mentioned, thus the Association's decision not to allow new docks with waivers/variances to Orange County Code, Chapter 15, Article IX, Dock Construction."*

At the April 26, 2017 EPC hearing, EPD gave a presentation for the request for waiver. EPD's recommendation was denial of the waiver request based on the three objections received. Mr. Divine and Ms. Pamela Wolters, who was representing the Mirabella at Vizcaya HOA, were in attendance and spoke against the request. Mr. Baig was not present.

After hearing testimony, the public hearing was closed and EPC voted to overturn EPD's recommendation and approve the request for waiver to a larger than allowed terminal platform size.

EPD again received appeals from Mr. Divine and Mr. Baig on May 15, 2017 and May 17, 2017, respectively. The revised appeals reference concerns over the proposed roof, reduced view of the lake, and property values of the community being affected. No appeal was received by the Mirabella at Vizcaya HOA.

The applicant, agent, and appellants were notified of the BCC public hearing on June 2, 2017.

ACTION REQUESTED: Uphold, overturn, or modify the recommendation of the Environmental Protection Commission for approval of the Request for Waiver for the Via Rosa Revocable Trust Dock Construction Permit BD-16-07-079, with the condition the Applicant pay \$406 the Conservation Trust Fund. District 1

JVW/LC: mg

Attachments