



Interoffice Memorandum

02-25-19A09:53 RCVD

February 19, 2019

02-25-19A10:45 RCVD

TO: Katie Smith, Manager
Comptroller Clerk's Office

THROUGH: Cheryl Gillespie, Agenda Development Supervisor
Agenda Development

FROM: David D. Jones, P.E., CEP, Manager
Environmental Protection Division
(407) 836-1405

STAFF PERSON: Elizabeth R. Johnson, CEP, Assistant Manager
Environmental Protection Division

PHONE #: 407-836-1511

SUBJECT: Request for Public Hearing on April 9, 2019, at 2:00 p.m., for the Appeal of the Environmental Protection Commission recommendation of denial of a request for waiver (after-the-fact) to side setback, denial of a request for variance (after-the-fact) to access walkway width, and denial of a request for variance (after-the-fact) to access walkway height for the Michael Thompson dock permit application (BD-16-02-016), for property located at 5518 Isleworth Country Club Drive, on Lake Butler; Parcel ID No. 16-23-28-3899-01-480; District 1

Appellant: Michael Thompson

Type of Hearing: Appeal of the Environmental Protection Commission (EPC) recommendation of denial of a request for waiver (after-the-fact) to side setback, denial of a request for variance (after-the-fact) to access walkway width, and denial of a request for variance (after-the-fact) to access walkway height for dock permit application #BD-16-02-016.

Hearing required by
Florida Statute # or Code: Chapter 15, Article IX, Section 15-349(b)

Advertising requirements: None

Advertising timeframes: N/A

Notification Requirements: The applicant (appellant) and agent will be notified at least seven days prior to the public hearing by the Environmental Protection Division (EPD).

LEGISLATIVE FILE # 19-361

April 9, 2019
@ 2 pm

February 19, 2019

Request for Public Hearing—Michael Thompson Appeal of the Environmental Protection Commission Recommendation (BD-16-02-016)

Page 2

Lake Advisory Board
to be notified:

Windermere Water and Navigation Control District
Ijaz Ahmed (Chairman) – ijazahmed736@gmail.com

Municipality or other
Public Agency to be
notified:

Florida Department of Environmental Protection –
DEP_CD@dep.state.fl.us

Estimated time required
For public hearing:

2 minutes

Hearing Controversial:

No

District #:

1

Materials being submitted as backup for public hearing request:

1. Boat Dock Waiver and Variance Applications
2. Site Plan
3. Location Map
4. EPC Staff Report
5. EPC Recommendation Letter
6. Letter of Appeal from Michael Thompson

Special Instructions to Clerk:

1. Once the Board of County Commissioners makes a decision on the Appeal, please submit the decision letter to Michelle Gonzalez of EPD. EPD will issue the decision to the appellant.

JR/~~NT~~/TMH/ERJ/DJ: mg

Attachments



**APPLICATION TO CONSTRUCT A BOAT DOCK
APPLICATION FOR WAIVER**

(Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(a)(2))

Mail or Orange County Environmental Protection Division
Deliver To: 800 Mercy Drive, Suite 4
Orlando, Florida 32808
(407) 836-1400, Fax (407) 836-1499

I Sheila Cichra on behalf of Michael Thompson (if applicable) pursuant to Orange County Code Chapter 15, Article IX, Section 15-350(a)(2) am requesting a waiver to section (choose and circle from the following: 15-342(b), 15-343(b), 15-344(a) and 15-345(a)) of the Orange County Dock Construction Ordinance.

1. Describe how this waiver would not negatively impact the environment:

This lot is about three times as wide as most lake front parcels. The impact of one slightly over-sized terminal platform is less than three regular boat docks would be.

The path of the new dock was altered slightly from the old path to allow more room for the adjacent Cypress trees, so it is less of an environmental impact than the old dock.

2. Describe the effect of the proposed waiver on abutting shoreline owners:

The proposed structure will not adversely affect the adjacent property owner's view or navigability.

The environmental protection officer and the board may require of the applicant information necessary to carry out the purposes of this article.

By signing and submitting this application form, I am applying for a waiver to the Section indicated of the Orange County Dock Construction Ordinance identified above, according to the supporting data and other incidental information filed with this application. I am familiar with the information contained in this application, and represent that such information is true, complete, and accurate. I understand this is an application and not a permit, and that work conducted prior to approval is a violation. I understand that this application and any permit issued pursuant thereto, does not relieve me of any obligation for obtaining any other required federal, state, or local permits prior to commencement of construction. I understand that knowingly making any false statements or representation in this application is a violation of Sections 15-341 & 15-342, Orange County Code.

Name of Applicant: Sheila Cichra
Signature of Applicant/Agent *Sheila Cichra* Date: 09/28/2018
Corporate Title (if applicable): President, Streamline Permitting, Inc.



APPLICATION TO CONSTRUCT A DOCK APPLICATION FOR VARIANCE

(Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(a)(1))

Mail or Orange County Environmental Protection Division
Deliver To: 800 Mercy Drive, Suite 4
Orlando, Florida 32808
(407) 836-1400, Fax (407) 836-1499

****Enclose a check for \$409.00 payable to The Board of County Commissioners****

I Sheila Cichra on behalf of Michael Thompson (if applicable) pursuant to Orange County Code Chapter 15, Article IX, Section 15-350(a)(1) am requesting a variance to section 15-342 (c) of the Orange County Dock Construction Ordinance.

1. Describe 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):

This small deck was existing on the previous dock. The irrigation pump and PVC lines have been there since the house was built, so ripping everything out and starting over would be pretty disruptive to the wetland vegetation and the adjacent Cypress roots/knees. Most of the year, this deck is over land.
The dock was built too low by mistake. Raising it 9" would require replacing the pilings, which would also be very disruptive.

2. Describe the effect of the proposed variance on abutting shoreline owners:

The proposed structure will not adversely affect the adjacent property owner's view or navigability. It is not appreciably different than the previous dock.

Notice to the Applicant:

The environmental protection officer, environmental protection commission and the Board of County Commissioners may require additional information necessary to carry out the purposes of this article.

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.

By signing and submitting this application form, I am applying for a variance to the Orange County Dock Construction Ordinance identified above, according to the supporting data and other incidental information filed with this application. I am familiar with the information contained in this application, and represent that such information is true, complete, and accurate. I understand this is an application and not a permit, and that work conducted prior to approval is a violation. I understand that this application and any permit issued pursuant thereto, does not relieve me of any obligation for obtaining any other required federal, state, or local permits prior to commencement of construction. I understand that knowingly making any false statements or representation in this application is a violation of Sections 15-341 & 15-342, Orange County Code.

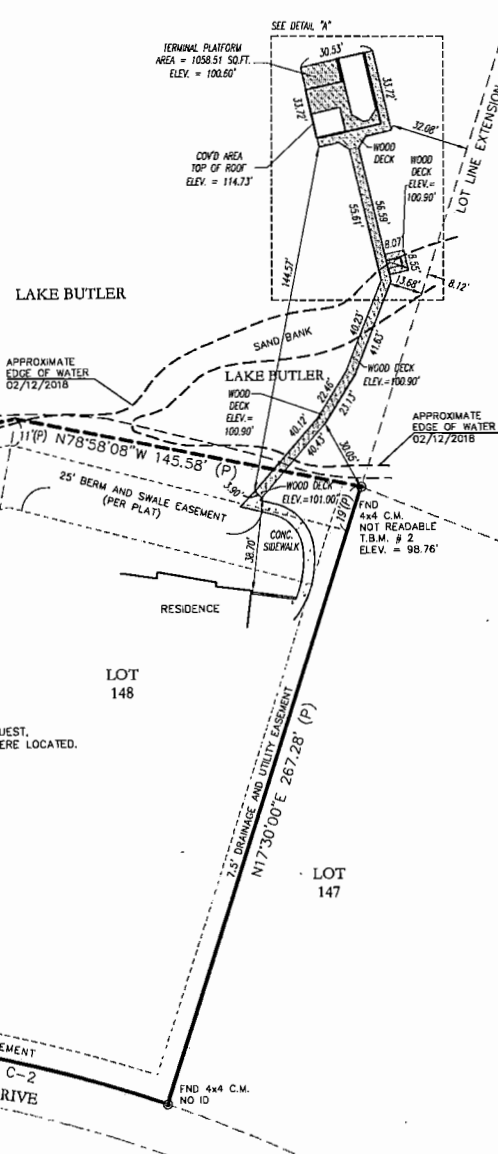
Name of Applicant: Sheila Cichra

Signature of Applicant/Agent  Date: 09/28/2018

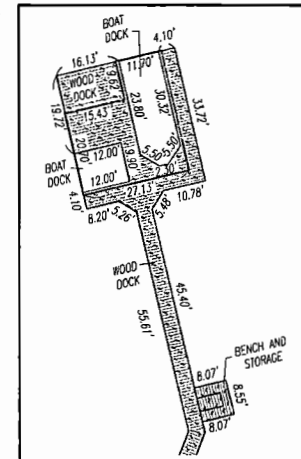
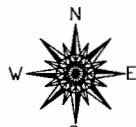
Corporate Title (if applicable): President, Streamline Permitting, Inc.

AS-BUILT SURVEY

- Legal Description:**



DETAIL "A"
SCALE 1":30'

[illegible]

SCALE 1":50'
North per Plat

Flood Insurance Rate Map:

Community Number: 120179 Panel: 0385

Suffix "F" Flood Insurance Rate Map

Dated September 25, 2009 Flood Zone: " AE "
Map ID: 12095C0385F

Certified to/for the exclusive use of:
Sheila Cichra
Streamline Permitting, Inc.

Basis of Bearing:

Bearings shown hereon are based on the WEST-
line of Lot 149, being N01°40'00"W per Plat.

THIS SURVEY MEETS THE "STANDARDS OF PRACTICE" AS REQUIRED BY CHAPTER 5J-17, BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, PURSUANT TO SECTION 472.027 OF THE FLORIDA STATUTES.



CODE: 561815LE/NORTH/2302016 DATE: 10/10/2018
 HECTOR LEBRON PSM #6634 JOSE R. NEGRON PSM #6850
 Professional Surveyor and Mapper Professional Surveyor and Mapper
 "NOT VALID WITHOUT AN AUTHENTICATED ELECTRONIC SIGNATURE AND AUTHENTICATED RAISED/
 ELECTRONIC SEAL OF THIS FLORIDA LICENSED SURVEYOR AND MAPPER."

[illegible]

Appeal of EPC Recommendation

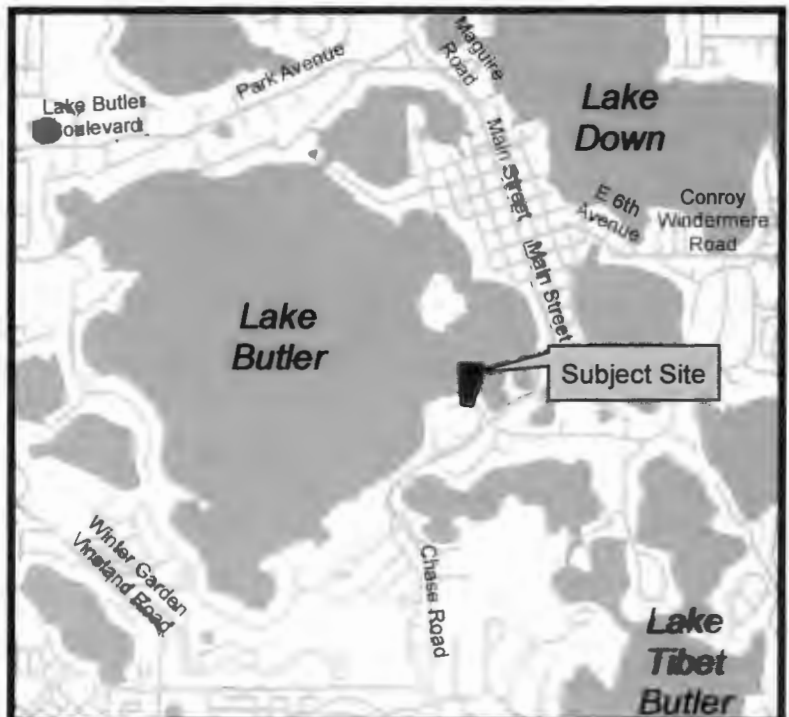


Appeal of EPC Recommendation BD-16-02-016 District #1

Applicant: Michael Thompson
Address: 5518 Isleworth County
Club Drive
Parcel ID: 16-23-28-3899-01-480

Project Site 

Property Location 





Interoffice Memorandum

January 18, 2019

To: Environmental Protection Commission

From: David D. Jones, P.E., CEP, Manager *Elizabeth R. Johnson* for
Environmental Protection Division

Subject: Michael Thompson Request for After-the-Fact Waivers and Variance for Dock Construction Permit BD-16-02-016

Reason for Public Hearing

Michael Thompson is requesting approval of after-the-fact 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 an after-the-fact variance to Section 15-342(c) (access walkway width and floor height).

Location of Property/Legal Description

The project site is located at 5518 Isleworth Country Club Drive in Windermere. The Parcel ID number is 16-23-28-3899-01-480. The subject property is located on Lake Butler in District 1.

Public Notifications

On October 12, 2018 a Notice of Application for Waivers and Variance (after-the-fact) was sent to all shoreline property owners within a 300-foot radius of the property. To date, the Environmental Protection Division (EPD) has received no objections to the requested waivers and variance.

The applicant and his agent were sent notices on January 9, 2019 to inform them of the Environmental Protection Commission (EPC) meeting on January 30, 2019.

Background

Dock Construction Permit BD-16-02-016 was originally issued on August 8, 2016 and included a variance to roof height (Section 15-342(e)) to allow for a roof with a maximum height of 14 feet instead of 12 feet, and a waiver to side setback to allow for a 12-foot setback from the eastern projected property line instead of the required 25-foot setback. No other waivers or variances were either requested or approved at that time.

On September 1, 2016, EPD received a request to approve a minor modification of the terminal platform configuration. The original plans consisted of a terminal platform that was 996 square feet in size. The modified plans depicted one of the boat slips relocated to the opposite side of the dock and a smaller terminal platform totaling only 972 square feet in size. The proposed modification was not contrary to the conditions of the previously issued permit or Chapter 15, Article IX, Orange County Code. Accordingly, the modified plans were stamped approved.

On September 10, 2018, EPD received an as-built survey of the completed dock. During review of the as-built survey, staff identified several issues out of compliance with the permit and the Code, including a

terminal platform that exceeds the allowed maximum by 89 square feet, a portion of the access walkway that is 7.1 feet greater in width than allowed, and an access walkway over wetlands that is 2.2 feet high instead of the required three feet above the wetland elevation. Subsequently, EPD issued a Notice of Violation for the unauthorized modifications to the dock.

(After-the-Fact) 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 300 linear feet at the Normal High Water Elevation, allowing for a maximum terminal platform size of 1,000 square feet. The applicant is requesting after-the-fact approval in order to keep the dock as constructed with a terminal platform size of 1,089 square feet, which is 89 square feet larger than allowed by Code.

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 15-350(a)(2), the applicant's agent states, *"This lot is about three times as wide as most lake front parcels. The impact of one slightly over-sized terminal platform is less than three regular boat docks would be."* The agent also states, *"The proposed structure will not adversely affect the adjacent property owner's view or navigability."*

EPD notified the affected neighbor of the request for waiver by certified mail on October 12, 2018. To date, EPD has not received any objection to the request. 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 \$870 to the Conservation Trust Fund (CTF).

(After-the-Fact) Side Setback Waiver

The original permit included approval for a reduced side setback from 25 feet to 12 feet. However, when the as-built survey was received, it showed the side setback to be eight feet to the projected property line. Accordingly, the applicant submitted a new Application for Waiver to Chapter 15, Article IX, Section 15-343(b) (side setback), as received on September 28, 2018. EPD notified the affected neighbor of the request for waiver by certified mail on October 12, 2018. To date, EPD has not received any objection to the request.

(After-the-Fact) Access Walkway Width and Height Variance

Chapter 15, Article IX, Section 15-342(c) of the Code states in part that, "Access walkways shall be limited to a five-foot width." The majority of the constructed access walkway meets Code with the exception of a storage bench/deck area that is approximately 12.1 feet in width, exceeding the Code requirements by 7.1 feet.

Chapter 15, Article IX, Section 15-342(c) also states, "Access walkways traversing any wetland shall be elevated a minimum of three feet above the ground surface." The access walkway was constructed at a height of approximately 2.2 feet above the wetland floor elevation. A variance is required to keep the access walkway as constructed.

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), the agent states, *“This small deck was existing on the previous dock. The irrigation pump and PVC lines have been there since the house was built, so ripping everything out and starting over would be pretty disruptive to the wetland vegetation and the adjacent Cypress roots/knees. Most of the year, this deck is over land. The dock was built too low by mistake. Raising it 9” would require replacing the pilings, which would also be very disruptive.”* The agent also states, *“The proposed structure will not adversely affect the adjacent property owner's view or navigability. It is not appreciably different than the previous dock.”*

No objections to the variance request were received from the nearby property owners. EPD acknowledges that should the variance be denied, reconfiguration of the dock pilings may result in some temporary disturbance to the wetland vegetation.

Enforcement Action

There is an open enforcement case (#18-510968) on the property for the unauthorized dock modifications. The applicant paid a \$3,048 penalty to the CTF. The property could achieve compliance with the Code through either the approval of the after-the-fact waivers and variance requests, including mitigation, or modification of the dock to meet the originally permitted design.

Staff Recommendation

The recommendation of the EPO is to approve the after-the-fact waiver to Section 15-342(b) (terminal platform size), with the condition that the applicant pay \$870 to the CTF as mitigation for the additional shading impacts of the larger-than-allowed terminal platform; approve the request for waiver to Section 15-343(b) (side setback); and deny the after-the-fact variance to Section 15-342(c) (increased access walkway width and reduced access walkway height through the wetlands), due to the inability of the applicant to demonstrate that the hardship is not self-imposed. If the after-the-fact variance request is approved, staff recommends that the applicant make a payment of \$580 to the CTF as mitigation for the additional shading associated with the increased access walkway width and reduced access walkway height over wetlands. If the variance request is denied, staff recommends the access walkway be modified to meet the originally permitted design within 90 days of the Board of County Commissioners decision.

ACTIONS REQUESTED: Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(b), approve the request for waiver (after-the-fact) to Orange County Code, Chapter 15, Article IX, Section 15-342(b) (terminal platform size) with the condition that the applicant pay \$870 to the Conservation Trust Fund within 60 days of the decision of the Board of County Commissioners; approve the request for waiver (after-the-fact) to Section 15-343(b) (side setback); and deny the request for variance (after-the-fact) to Section 15-342(c) (access walkway width and height) and require the applicant to modify the access walkway to meet the originally permitted design within 90 days of the decision of the Board of County Commissioners for the Michael Thompson Dock Construction Permit BD-16-02-016.

JR/NT/TMH/ERJ/DJ: mg

Attachments



ENVIRONMENTAL PROTECTION DIVISION

David D. Jones, P.E., CEP, Manager

3165 McCrory Place, Suite 200

Orlando, FL 32803

407-836-1400 • Fax 407-836-1499

www.ocfl.net

ENVIRONMENTAL
PROTECTION
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Perry Barnasi

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Mark Corbett

Theodore Gelez

ORANGE COUNTY ENVIRONMENTAL PROTECTION COMMISSION January 30, 2019

PROJECT NAME: Michael and Georgette Thompson
PERMIT APPLICATION NUMBER: BD-16-02-016 (After-the-Fact)
LOCATION/ADDRESS/LAKE: 5518 Isleworth Country Club Drive, Lake Butler

RECOMMENDATION:

PURSUANT TO ORANGE COUNTY CODE, CHAPTER 15, ARTICLE IX, SECTION 15-350(b), APPROVE THE REQUEST FOR WAIVER (AFTER-THE-FACT) TO ORANGE COUNTY CODE, CHAPTER 15, ARTICLE IX, SECTION 15-342(b) (TERMINAL PLATFORM SIZE) WITH THE CONDITION THAT THE APPLICANT PAY \$870 TO THE CONSERVATION TRUST FUND WITHIN 60 DAYS OF THE DECISION OF THE BOARD OF COUNTY COMMISSIONERS; APPROVE THE REQUEST FOR WAIVER (AFTER-THE-FACT) TO SECTION 15-343(b) (SIDE SETBACK); AND DENY THE REQUEST FOR VARIANCE (AFTER-THE-FACT) TO SECTION 15-342(c) (ACCESS WALKWAY WIDTH AND HEIGHT) AND REQUIRE THE APPLICANT TO MODIFY THE ACCESS WALKWAY TO MEET THE ORIGINALLY PERMITTED DESIGN WITHIN 90 DAYS OF THE DECISION OF THE BOARD OF COUNTY COMMISSIONERS FOR THE MICHAEL THOMPSON DOCK CONSTRUCTION PERMIT BD-16-02-016.

☐ EPC AGREES WITH THE ACTION REQUESTED, AS PRESENTED

☒ EPC DISAGREES WITH THE ACTION REQUESTED, AS PRESENTED, AND HAS MADE THE FOLLOWING RECOMMENDATIONS:

Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(b), approve the request for waiver (after-the-fact) to Orange County Code, Chapter 15, Article IX, Section 15-342(b) (terminal platform size) with the condition that the applicant pay \$870 to the Conservation Trust Fund within 60 days of the decision of the Board of County Commissioners.

Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(b), deny the request for waiver (after-the-fact) to Section 15-343(b) (side setback) and deny the request for variance to Section 15-342(c) (access walkway width) and require the applicant to modify the access walkway width to meet the originally permitted design within 90 days of the decision of the Board of County Commissioners.

Pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(b), approve, in part, the request for variance to Section 15-342(c) (access walkway height) for the portion of the walkway below the Normal High Water Elevation (NHWE) with the condition that the applicant pay additional mitigation to the Conservation Trust Fund (to be determined by EPD) for the additional shading impacts; and deny the request for access walkway height for the portion of the walkway landward of the NHWE and require that it be raised to meet the three feet height requirement within 90 days of the decision of the Board of County Commissioners for the Michael Thompson Dock Construction Permit BD-16-02-016.

Signature of EPC Chairman: _____

EPC Recommendation Date: _____

1/30/19

Date: February 6, 2019
To: Jason Root
From: Sheila Cichra for Michael Thompson
5518 Isleworth Country Club Drive (407) 529-3300
Re: BD-16-02-016

On January 30th, the EPC denied our variance to deck height and dock width. They also denied our waiver request for a reduced side setback.

Please allow this email to serve as our appeal of that decision.

Regarding the dock height: if the variance is not approved, we will simply build up the dock level 9 inches, because the existing dock framing houses the irrigation and electrical pipes and would be very difficult to move. The resulting dock would meet code, but would not increase the clearance and therefore have no positive environmental impact.

Regarding the dock width: the section of dock that is 'too wide' is a small irrigation pump platform that was rebuilt in the same location as the previous dock. This area was included in the *approved* permit for the *old* dock, but inadvertently left off the new dock permit application. The platform location did not change – the old pilings and framing can be seen in the attached photos. The environmental impact of this small deck is so minimal, as the entire shoreline is heavily vegetated – see attached aerial. There were so many Cypress trees around the existing dock that the new dock's location couldn't really be altered, unless it was moved to the other side of the property.

Regarding the setback: the adjacent property owner has not objected to this location and regardless of what the old survey showed, the section of dock in question was rebuilt in the same location – the old pilings and framing are still there – again, because removing them would require tearing out the existing electrical and irrigation pipes.

Therefore, we believe that pursuant to Article IX Section 15.350(a)(1), the proposed variances and waiver cause *negligible* or no environmental impact, since the dock and irrigation motor platform were rebuilt in the same location as the previously *permitted* structure. The owner is willing to make a generous donation of three times the recommended mitigation fee to the Conservation Trust Fund, in lieu of altering the dock.

We hope that the BCC will see that the new dock does not negatively impact the lake, reverse the EPC's decision and approve the variances and the waiver.

Thank you.

