



Interoffice Memorandum

March 28, 2019

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

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

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SUBJECT: April 9, 2019 – Public Hearing
Michael Thompson Appeal of the Environmental Protection
Commission Recommendation for After-the-fact Boat Dock
Variance and Waiver Requests (BD-16-02-016)

The project site is located at 5518 Isleworth Country Club Drive on Lake Butler; Parcel ID No. 16-23-28-3899-01-480. The property is located in District 1.

On August 8, 2016 the Environmental Protection Division (EPD) issued Dock Construction Permit BD-16-02-016, which included a variance to roof height (Orange County Code, Chapter 15, Article IX, 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 (Section 15-343(b)) 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 reconfigured on 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 April 11, 2018 EPD received an as-built survey of the completed dock. Staff identified several compliance issues:

- A larger than allowed terminal platform (exceeding the maximum size of 1000 by 89 square feet);

- A portion of the access walkway is 7.1 feet greater in width than the five feet allowed by Code;
- A portion of the access walkway is 2.2 feet above the ground elevation in wetlands instead of the required three feet; and,
- A side setback of eight feet to the projected property line instead of the previously approved reduced setback of 12 feet.

EPD issued a Notice of Violation for the unauthorized modifications to the dock on April 27, 2018.

On September 28, 2018, the applicant's agent submitted after-the-fact Applications for Waiver to Section 15-342(b) (terminal platform size) and Section 15-343(b) (side setback) and an after-the-fact Application for Variance to Section 15-342(c) for access walkway width and height.

EPD presented the requests to the Environmental Protection Commission (EPC) with the following recommendations (EPC staff report is attached):

- Approval of the after-the-fact waiver to Section 15-342(b) (terminal platform size) with the condition the applicant pay \$870 to the Conservation Trust Fund (CTF) as mitigation for the additional shading impacts of the larger-than-allowed terminal platform;
- Approval of the request for waiver to Section 15-343(b) (side setback) because no letters of objections have been received, to date; and;
- Denial of the after-the-fact variance to Section 15-342(c) (walkway width and height) due to the inability of the applicant to demonstrate that the hardship is not self-imposed.

At the January 30, 2019 public hearing, the EPC made the following recommendations:

- Approve the request for after-the-fact waiver to Section 15-342(b) (terminal platform size) with the condition the applicant pay \$870 to the CTF within 60 days of the decision of the Board;
- Denial of the after-the-fact waiver request to Section 15-343(b) (side setback) and denial of the after-the-fact variance request 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;
- Approval of the after-the-fact variance request to Section 15-342(c) (access walkway height) for the portion of the walkway below the Normal High Water Elevation (NHWE) with the condition the applicant pay additional mitigation to the CTF (to be determined by EPD) for the additional shading impacts; and;
- Denial of the after-the-fact variance request to Section 15-342(c) (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.

On February 6, 2019 the applicant's authorized agent submitted an appeal of the EPC recommendations (see attachment), which cited the following rationale for the waiver and variances they are seeking:

- After-the-fact waiver to side 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.”
- After-the-fact variance to access walkway elevation – “ . . . 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.”
Note: staff does not agree that building up the top of the access walkway as suggested by the appellant would meet the requirements of Section 15-342(c).... “Access walkways traversing any wetland shall be elevated a minimum of three (3) feet above the ground surface.” The proposed suggestion would not elevate the walkway floor as required.
- After-the-fact variance to access walkway 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 piling 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.”

On March 12, 2019, the appellant and agent were notified of the April 9, 2019 public hearing.

There is an open enforcement case (#18-510968) on the property for the unauthorized dock modifications. The applicant has paid a \$2,248 penalty to the CTF for not building the dock in accordance with the approved plans.

ACTION REQUESTED: To affirm, reverse, or modify the decisions of the Environmental Protection Commission for the Michael Thompson Boat Dock Construction Permit BD-16-02-016. District 1

JVW/DDJ/mg
Attachments