



Interoffice Memorandum

August 9, 2019

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) 836-1405**

SUBJECT: September 10, 2019 – Public Hearing
Shoreline Alteration/Dredge and Fill Permit Application
(After-the-Fact) for George Sullivan (SADF-18-02-004)

George Sullivan is requesting an after-the-fact Shoreline Alteration/Dredge and Fill (SADF) permit to authorize construction of a new vinyl seawall, measuring approximately 130 linear feet with two returns. The subject property is located at 10545 Down Lakeview Circle, Windermere, Florida 34786. The Parcel ID No. for the site is 05-23-28-4818-00-140. The subject site is located on Lake Down in District 1.

Pursuant to Orange County Code, Chapter 33, Article IV, Environmental Protection Division (EPD) staff have evaluated the SADF permit application and required documents.

On June 16, 2017, EPD received a complaint of a seawall being installed without a permit along the shoreline of the subject property. After further investigation, it was determined that there was a permit issued by the Orange County Division of Building Safety for a retaining wall. This permit required the wall to be located 5 feet landward of the Normal High Water Elevation (NHWE). However, EPD determined that the wall was constructed at the NHWE and therefore, an SADF permit was required.

Accordingly, EPD initiated an enforcement case (#17-488900) and sent a Notice of Violation (NOV) to the applicant on August 25, 2017. The NOV included timeframes to bring the property into compliance. The property owner did not take any corrective actions within the stipulated timeframes. Therefore, EPD presented the violation to the Special Magistrate (SM) in February 2019. The SM found the property to be out of compliance and ordered the property owner to correct the violation by April 2019.

In February 2019, EPD received an SADF permit application for the seawall from the applicant's agent. However, the application was mostly incomplete. EPD did not receive all of the required documents to complete the application until June 25, 2019.

Due to the applicant's failure to meet the timeframes for corrective actions identified in the SM Order, there is a lien on the property of \$250 per day that has been accruing since April 2019. The total lien as of the date of this report is \$18,000.

An administrative penalty of \$600 has been assessed and has been paid by the applicant for construction of the new wall without a permit. Additionally, the applicant's agent has agreed to install riprap and aquatic plantings waterward of the new seawall. Issuance of the after-the-fact SADF permit and installation of the riprap and plantings will bring the property into compliance with Orange County Code.

Staff Recommendation

Approval of the after-the-fact 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. Riprap and plantings shall be installed along the portion of the seawall fronting Lake Down in accordance with the plans submitted by Kona Docks, received by the Environmental Protection Division (EPD) on April 11, 2019 and June 25, 2019.
3. Riprap shall be installed at a 2 (horizontal): 1 (vertical) slope, and extend at least halfway up the face of the seawall.
4. The installation of riprap must commence within 60 days and be completed within 90 days from the date of issuance of the permit. In the event that installation of the riprap has not commenced within 60 days or been completed within 90 days, this permit is void and a new permit application with fee will be required.
5. Installation of aquatic plantings must be initiated within 30 days of the installation of the riprap. After one year, if 80% coverage of native, emergent or aquatic plant species is not established, additional replanting may be required.
6. This permit does not authorize any dredging or filling, except that which is necessary for the installation of the riprap and plantings.
7. The permittee may maintain a clear access corridor below the Normal High Water Elevation of 98.52 feet (NAVD 88) above mean sea level for Lake Down, not to exceed 30 feet in width, of sufficient length waterward from the shoreline, to allow access to open water. Any existing or future structures, such as a boat dock, must be located within this corridor.
8. Native vegetation may not be removed from the shoreline outside of the access corridor.
9. Any permit extensions for the activities authorized herein may be approved by way of Consent Agenda if there are no changes.

General Conditions:

10. Subject to the terms and conditions herein, the permittee is 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.
11. The permittee binds itself and its 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.
12. 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.
13. 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.
14. Prior to construction, the permittee shall clearly designate the limits of construction on-site. The permittee shall advise the contractor that any work outside the limits of construction, including clearing, may be a violation of this permit.
15. The permittee shall require the contractor to maintain a copy of this permit, complete with all approved drawings, plans, conditions, attachments, exhibits, and modifications in good condition at the construction site. The permittee shall require the contractor to review the permit prior to commencement of the activity authorized by this permit. The complete permit shall be available upon request by Orange County staff.
16. Issuance of this permit does not warrant in any way that the permittee has riparian or property rights to construct any structure permitted herein and any such construction is done at the sole risk of the permittee. 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 permittee agrees to either obtain written consent or to remove the offending structure or encroachment within 60 days from the date of the adjudication. Failure to comply shall constitute a material breach of this permit and shall be grounds for its immediate revocation.
17. This permit does not release the permittee 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.
18. This permit does not convey to the permittee or create in the permittee 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 permittee, or convey any rights or privileges other than those specified in the permit and Chapter 33, Article IV of the Orange County Code.

19. If these permit conditions conflict with those of any other regulatory agency, the permittee shall comply with the most stringent conditions. The permittee shall immediately notify EPD of any conflict between the conditions of this permit and any other permit or approval.
20. The permittee is 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 permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.
21. Should any other regulatory agency require changes to the property or permitted activities, the permittee 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.
22. The permittee shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
23. EPD staff shall have permission to enter the site at any reasonable time to inspect the property for conformity with the plans and specifications approved by the permit.
24. The permittee shall hold and save the County harmless from all damages, claims or liabilities, which may arise because of the activities authorized by the permit.
25. 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 permittee.
26. The permittee agrees that any dispute arising from matters relating to this permit shall be governed by the laws of Florida, and initiated only in Orange County.
27. 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 permittee shall implement them as necessary to prevent adverse impacts to wetlands and/or surface waters.
28. 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 applicant 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 applicant fails 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.

29. Pursuant to Section 125.022, FS, the applicants shall obtain all other applicable state or federal permits before commencement of the activity authorized herein.

This item was previously scheduled to be heard by the Board on August 6, 2019, but was canceled due to inadequate public noticing to all affected property owners within the 500 foot radius of the subject property. Appropriate notification of today's hearing was sent in accordance with the requirements of Orange County Code, Chapter 33, Article IV, Section 33-129(d).

ACTION REQUESTED: Approval of After-the-Fact Shoreline Alteration/Dredge and Fill Permit (SADF-18-02-004) for George Sullivan, subject to the conditions listed in the staff report. District 1

JVW/DDJ: mg

Attachments