



Interoffice Memorandum

June 11, 2021

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: June 22, 2021 – Public Hearing
Appeal of the Environmental Protection Commission
Recommendation for a Request for Waiver to Side-Setback for the
Richard Benton Dock Construction Permit (BD-20-04-067)

On April 22, 2020, the Environmental Protection Division (EPD) received an Application to Construct a Dock (**Exhibit 1**) on the subject property located at 919 Springwood Drive, Orlando, FL 32839. The parcel identification number is 11-23-29-9592-04-010. The subject property is located adjacent to Lake Holden in District 3. A location map is provided as Page 3 of the Environmental Protection Commission (EPC) Staff Report (**Exhibit 2**).

The applicant submitted several revised plans, with the final site plan dated as received on February 4, 2021. This site plan is included as Page 4 of the EPC Staff Report. The applicant is requesting a reduction of the required side setback from 25 feet to 10 feet from the eastern projected property line. The applicant submitted a complete Application for Waiver on November 10, 2020, provided as Page 5 of the EPC Staff Report.

There is no open EPD enforcement action on the property. However, in March 2020, EPD received a complaint (#20-567848) for unauthorized shoreline clearing and an unpermitted jetski lift that had been constructed. EPD conducted an investigation on April 2, 2020, and a Notice of Violation (NOV) was sent to the property owner on June 23, 2020. The NOV included a penalty and corrective actions including the removal of the jetski lift and restoration of the shoreline. The penalty was paid on May 19, 2021. The jetski lift was removed, and the shoreline restoration was completed. The enforcement case was closed on May 19, 2021.

Side-Setback Waiver Request Analysis

Pursuant to Section 15-343(b), “On lots or parcels having a shoreline frontage of seventy-five (75) feet or greater, docks shall have a minimum side setback of twenty-five (25) feet from the projected property line, unless such requirement is reduced by an appropriate waiver which shall be reviewed by the environmental protection division.” Further, Section 15-323 defines projected property lines as “a continuation of, and extension to, the upland property line.” Thus, for the purposes of determining the setback requirements and placement of the dock, property lines are projected in a straight line into the lake from the point where the upland property line intersects with the Normal High Water Elevation (NHWE).

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The applicant's parcel has a shoreline measuring approximately 90 feet at the NHWE. The required side setback is 25 feet from the projected property lines. The applicant is requesting a side setback of ten feet from the eastern projected property line. The neighboring property owner affected by the request (the appellant) was duly noticed of the Application for Waiver pursuant to the requirements of Section 15-347(a).

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. Kyle Goonen of Prestige Deck and Dock states, "*Adjusting the dock to be closer to the property line will not have a negative impact due to there not being any vegetation or wildlife that will be removed or affected in any way for this adjustment.*"

To address Section 15-350(a)(2)(2), Mr. Goonen states, "*The proposed plan does not effect [sic] any abutting shoreline owners. Abutting shoreline owners already have docks installed.*"

Objections

On February 3, 2021, EPD received a written letter of objection from the appellant. His letter states, "*I object to any variance and would like the 25-set foot [sic] back rule observed.*" The objection letter is provided as Pages 6-9 of the EPC Staff Report.

Section 15-350 – Variance and Waiver

Section 15-350(b) states, "*Except as otherwise provided in section 15-343(b), the environmental protection officer shall make a recommendation to approve, deny, or approve with conditions a variance or waiver application to the environmental protection commission. The environmental protection commission shall render to the board a recommendation to approve, approve with conditions, or deny the variance or waiver application. The recommendation of the environmental protection commission shall be provided to the board within twenty-one (21) days, provided that if no meeting is scheduled within the twenty-one day period, then the recommendation shall be presented at the first meeting of the board following the expiration of the 21-day period. The board may accept the recommendation or call for a public hearing.*"

On February 24, 2021, the EPC held a duly noticed public hearing. The following is a summary of the proceedings:

- EPD provided a presentation to EPC with the recommendation of the Environmental Protection Officer (EPO) to deny the waiver to Section 15-343(b) 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 an objection had been received. A copy of the EPC Staff Report is provided as **Exhibit 2**.
- Ms. Amy Giannotti with AquaStem and Kyle Goonen, agents for the applicant, spoke in favor of the request.
- The applicant, Richard Benton, spoke in favor of the request.

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- Ms. Sheila Cichra with Streamline Permitting, Inc., spoke on behalf of Mr. Underwood, the objector.

Based on testimony and discussion during the hearing, the EPC voted to overturn the recommendation of the EPO and made a finding that the request for waiver 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 15-343(b) to reduce the minimum side setback from 25 feet to 10 feet on the eastern projected property line. The motion passed unanimously. A copy of the EPC Recommendation Letter is included as **Exhibit 3**.

Section 15-349 – Appeals from decisions of environmental protection officer.

Section 15-349(b) 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 March 3, 2021, Mr. Michael Underwood (appellant), represented by Ms. Sheila Cichra submitted an appeal of the decision of the Environmental Protection Commission (EPC) to overturn the recommendation of the EPO to deny the request for waiver to Orange County Code, Chapter 15, Article IX, Section 15-343(b) (side setback), pursuant to Orange County Code, Chapter 15, Article IX, Section 15-349(b). On March 22, 2021, the appellant, represented by Ms. Mary Solik, Esquire, of Doty Solik Law P.A., submitted an updated appeal. The Orange County Attorney’s Office confirmed that the appeal was timely and complete. The original and amended appeal is included as **Exhibit 4**.

Additional Review

In response to several of the statements made during the EPC public hearing, and statements made as part of the appeal, staff conducted an independent assessment of the water depths of Lake Holden at the applicant’s lot on April 14, 2021. The assessment confirmed the finding of the OCSO that water depths are shallower on the western portion of the lot and that the dock can achieve the 5 foot maximum mooring depth at a length of 70 feet from both the 10 foot and 25 foot setback lines. **Exhibit 5** is a graphic provided by staff indicating the required 25-foot side setback, the requested 10-foot side setback, and water depths relative to the NHWE of Lake Holden.

Subsequent to the EPC meeting on April, 27, 2021, another revised site plan (**Exhibit 6**) was received that proposed a dock length of 75 feet from the NHWE, a 10-foot increase from the February 4, 2021 plan. The plan also clarified that the dock will be one level, not two, by removal of a note from the plan that indicated two levels. The dock was otherwise the same as depicted on the February 4, 2021 site plan with a side setback of 10 feet from all portions of the dock to the eastern projected property line. **However, as this plan was received after the EPC meeting, it is not the plan under consideration for this appeal.**

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On May 5, 2021, the appellant, applicant, Ms. Solik, Ms. Cichra, Ms. Giannotti, and Mr. Goonen were sent notices to inform them of the public hearing of the appeal before the Board.

On March 24, 2021, the applicant notified EPD that he intended to sell the subject property. The closing occurred on May 7, 2021. The new property owner, Mr. Benjamin Lytle, submitted all required documentation to proceed with the permit application (**Exhibit 7**).

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 15-343(b) to reduce the minimum side setback from the eastern projected property line from 25 feet to 10 feet for the Richard Benton Dock Construction Permit BD-20-04-067. District 3

DDJ/JW: dj

Exhibits:

Exhibit 1: Richard Benton Application to Construct a Dock

Exhibit 2: Environmental Protection Commission (EPC) Staff Report

Exhibit 3: Environmental Protection Commission Recommendation Letter

Exhibit 4: Michael Underwood Letter of Appeal of the Decision of the Environmental Protection Commission

Exhibit 5: Environmental Protection Division Water Depth Measurements

Exhibit 6: April 27, 2021 Revised Site Plan

Exhibit 7: Lytle Updated Dock Application Documentation