




## Interoffice Memorandum

## AGENDA ITEM

August 20, 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: September 28, 2021 — Consent Item  
Environmental Protection Commission Recommendation for  
Request for After-the-Fact Variance for Kenneth G Musculus  
Life Estate and Joyce M Musculus Life Estate Dock  
Construction Permit BD-21-04-060

The applicants, Kenneth G Musculus Life Estate and Joyce M Musculus Life Estate, are requesting a dock construction permit with an after-the-fact variance to Orange County Code (Code), Chapter 15, Article IX, Section 15-342(g) (enclosed docks) for an existing, previously grandfathered dock. The project site is located at 12748 S. Lake Mary Jane Road, Orlando, FL, 32832 (Parcel ID number 23-24-31-4660-00-670). The subject property is on Lake Mary Jane in District 4.

On July 16, 2019, the Environmental Protection Division (EPD) received an anonymous complaint regarding possible unauthorized boat dock construction at the subject property. On July 18, 2019, EPD visited the site and found that an addition to the terminal platform had been constructed. According to historic aerials, the subject dock was originally constructed prior to establishment of the dock code (Chapter 15, Article IX); therefore, notwithstanding any modifications, the existing dock was considered an unpermitted, grandfathered structure. However, per Section 15-346(c), "The repair of unpermitted docks constructed on or before December 19, 1988, requires a permit." Section 15-346(c) also states, "It is intended that docks constructed before December 19, 1988, be allowed to remain as constructed."

Since the improvements to the dock structure changed the design and footprint, the dock no longer has grandfathered status. Notwithstanding that the modifications were completed without a permit, the unauthorized improvements were constructed per Code. However, since the dock is no longer considered grandfathered, several original aspects of the dock that do not meet current Code requirements must be addressed and require approval of either a waiver or variance to keep the dock as constructed. As a penalty for the

unauthorized boat dock improvements (Enforcement Case #19-549611), EPD has required the applicants to remit an administrative penalty in the amount of \$1,200.

On April 15, 2021, EPD received an After-the-Fact Application to Construct a Dock at the subject property, which included an Application for Waiver to Section 15-343(b) to allow the existing setback of 22.5 feet from the northeastern projected property line and an Application for Variance to Section 15-342(g) to allow the existing enclosed portion of the dock to remain.

A notarized Letter of No Objection (LONO) to the side setback was received from the affected neighbor (Brian T. Van of BNA Properties of Orlando, LLC) at 12712 S. Lake Mary Jane Road; therefore, pursuant to Section 15-343(b), the side setback waiver can be approved by the Environmental Protection Officer (EPO) and no action is required by the Environmental Protection Commission (EPC) or the Board on this item.

#### **After-the-Fact Variance Request – Enclosed Dock**

Regarding the variance request, Section 15-350(a)(1) states that “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), “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)(1), the applicants state, “*The walled 7’x12” enclosure with a 13’ above HNWE [sic] roof has been in place for over 40 years (since 1980). To be in compliance with 15-342(g) would require redesigning part of the dock structure and demolition of the wall segments. This would create a financial hardship and not benefit anyone.*”

To address Section 15-350(a)(1)(2), the applicants state, “*None since this has been in place for over 40 years and both of the abutting shoreline owners do not have any objections to leaving the dock structure as it exists today. No Objection letter have been signed by both abutting property owners [sic].*” However, it should be noted that EPD did not receive LONOs from the abutting property owners regarding the variance request for the enclosed dock.

#### **Public Noticing**

On April 28, 2021, Notices of Application for After-the-Fact Variance were sent to all shoreline property owners within a 300-foot radius of the property. No objections were received.

### **EPD Staff Evaluation**

Staff evaluated the after-the-fact variance request for compliance with the criteria for approval and made a finding that the hardship is not self-imposed because the structure (including the enclosed portion and northeastern side setback) was existing prior to establishment of the Orange County Dock Ordinance and to the applicants' purchase of the property.

### **Environmental Protection Commission Public Hearing**

EPD presented the after-the-fact variance request in a public hearing before the EPC at their August 4, 2021 meeting. Mr. Kenneth Musculus (property owner) attended and stated that prior to initiating construction they shopped around for contractors, and each told him that a permit was not required. Additionally, he explained that once EPD informed him the work did require a permit, he worked quickly to try to resolve the issue. Chairman Mark Ausley closed the public hearing. He stated that it is unfortunate that the applicants received bad information from contractors prior to initiating work, but they have now worked in good faith to bring the dock into compliance.

The recommendation of the EPO was to approve the request for after-the-fact variance to Section 15-342(g) (enclosed docks) based on a finding that the applicant has demonstrated the hardship is not self-imposed pursuant to Section 15-350(a)(1)(1), since the enclosed dock was a grandfathered structure and no modifications to the enclosure are being proposed. Additionally, pursuant to Section 15-350(a)(1)(2), no negative effects on the abutting shoreline owners are anticipated as no objections have been received.

Based upon evidence and testimony presented at the hearing, the EPC voted unanimously to accept the findings and recommendation of the EPO, and recommended approval of the request for after-the-fact variance to Section 15-342(g) (enclosed docks) with a payment of \$1,200 to the Conservation Trust Fund.

**ACTION REQUESTED:**      **Acceptance of the findings and recommendation of the Environmental Protection Commission and approval of the request for after-the-fact variance to Section 15-342(g) to allow the enclosed dock to remain as constructed with the payment of a \$1,200 penalty to the Conservation Trust Fund within 60 days of the decision of the Board of County Commissioners for the Kenneth G Musculus Life Estate and Joyce M Musculus Life Estate Dock Construction Permit BD-21-04-060. District 4**

JVW/DDJ: jk  
Attachments

# Dock Construction Application for After-the-Fact Variance



## Dock Construction Application for After-the-Fact Variance

BD-21-04-060

District #4

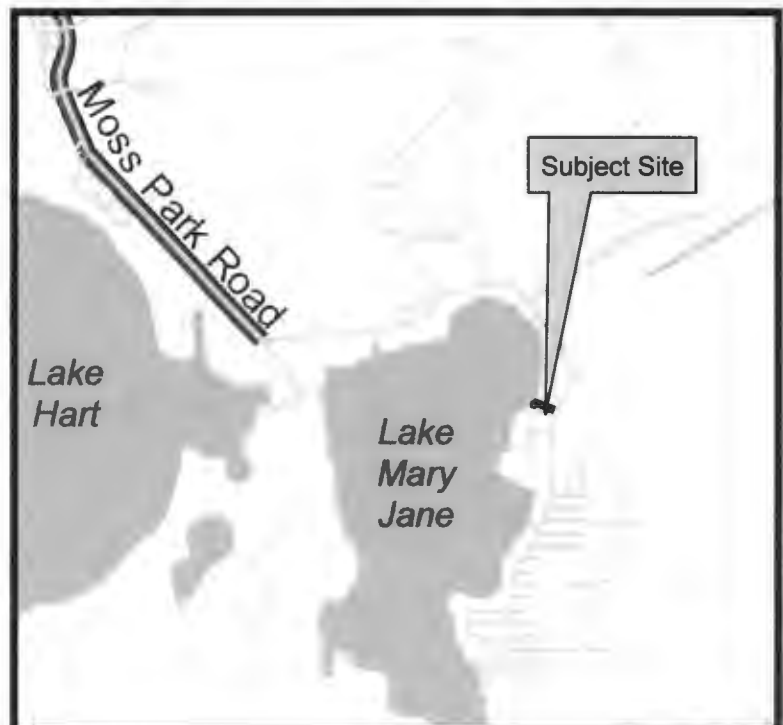
**Applicant:** Kenneth G Musculus Life  
Estate & Joyce M Musculus  
Life Estate

**Address:** 12748 S Lake Mary Jane Rd

**Parcel ID:** 23-24-31-4660-00-670

**Project Site** 

**Property Location** 



received  
4/19/2021

EXISTING  
ENCLOSED ROOM

EXISTING ROOM  
ENCLOSED ROOM

28'1"  
32'8"  
12'1"  
7'  
4'8"  
6'1"  
6'3"  
DOCK

62.2'  
28'1"  
DOCK  
62.2'

DECK ELEVATION = 62.2'  
ROOF HEIGHT = 13.0  
(ABOVE NHWE)

NEW  
JET  
SKI  
LIFT  
11' x 12'

62.2'

NEW  
SCREEN  
ENCLOSURE  
11' x 11'

MARY JANE  
5857 (08/20/2019)

LAKE MARY JANE  
WATER ELEVATION - 59.57 (09/20/2019)

1701

SURVEY CLOSURE LINE  
S40°23'58"W  
393.57'

NORMAL HIGH WATER LINE  
ELEVATION = 60.52'

**CONCRETE  
WALK**

**LEGEND:**

69

N79°30'52"W N.E. CORNER, LOT 20-  
242.00



## APPLICATION TO CONSTRUCT A DOCK APPLICATION FOR VARIANCE

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

Mail or  
Deliver To: Orange County Environmental Protection Division  
3165 McCrory Place, Suite 200  
Orlando, Florida 32803  
(407) 836-1400, Fax (407) 836-1499

received  
4/15/2021

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

I, Kenneth Musculus on behalf of self (if applicable) pursuant to Orange County Code Chapter 15, Article IX, Section 15-350(a)(1) am requesting a variance to section 15-342(g) 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):

The walled 7'x12" enclosure with a 13' above HNWE roof has been in place for over 40 years (since 1980). To be in compliance with 15-342(g) would require redesigning part of the dock structure and demolition of the wall segments. This would create a financial hardship and not benefit anyone.

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

None since this has been in place for over 40 years and both of the abutting shoreline owners do not have any objections to leaving the dock and structure as it exists today.

No Objection letters have been signed by both abutting property owners.

### 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: Kenneth Musculus

Signature of Applicant/Agent

Date: 3/29/2021

Corporate Title (if applicable): \_\_\_\_\_



## 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  
Deliver To: Orange County Environmental Protection Division  
3165 McCrory Place, Suite 200  
Orlando, Florida 32803  
(407) 836-1400, Fax (407) 836-1499

**received**  
4/15/2021

I Kenneth Musculus on behalf of Self (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:

The existing dock that was built around 1980 is not in compliance with Section 15-343 (b) side setback requirement.

The dock as was constructed in 1980 is 22.5' from the abutting property line. Since it has been that way for over 40 years it has not negatively impacted the environment.

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

No impact on the abutting property and the impacted neighbor has signed a no objection letter that is included.

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: Kenneth Musculus

Signature of Applicant/Agent: 

Date: 03/29/2021

Corporate Title (if applicable): \_\_\_\_\_



**AFFECTED ADJACENT PROPERTY OWNER  
NOTARIZED STATEMENT OF NO OBJECTION  
TO BOAT DOCK SIDE-SETBACK WAIVER REQUEST**

The following is to be completed by the affected adjacent property owner as required by Section 15-343, Orange County Code. Section 15-343(b) states: "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. **Waivers from side-setback requirements may be granted by the environmental protection officer if a notarized letter of no objection to the waiver is received from the shoreline property owner abutting the applicant's property line affected by the waiver.**"

I, BRIAN T. VAN, a legal property owner of property located at 12712 Lake Mary Jane Rd  
(Adjacent Property Owner Name) (Address ORLANDO FL 32832)  
have reviewed the dock construction plans dated 9/20/19, for the property located at  
12748 LAKE MARY JANE ROAD  
ORLANDO FL 32832, and have no objections.

The dock construction plans include a side setback waiver request of 22.5 feet, in lieu of the minimum 25 feet required by Code.

[Signature]  
(Signature - Adjacent Affected Property Owner)  
BRIAN T. VAN  
(Print Name - Adjacent Affected Property Owner)

9/30/19  
(Date)

**ACKNOWLEDGEMENT:**

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 30 September day of 2019, by BRIAN VAN.



[Signature]  
(Signature of Notary Public - State of Florida)

Personally Known        OR Produced Identification   L  

Type of Identification Produced FLDL [REDACTED] exp 01-01-2025









**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  
COMMISSION**

**Mark Ausley**  
*Chairman*

**Oscar Anderson**  
*Vice Chairman*

**Florman Blackburn**

**Billy Butterfield**

**Mark Corbett**

**Blaine Imbruglia**

**Vacancy** *Regulated  
Business  
Municipal*

**ORANGE COUNTY  
ENVIRONMENTAL PROTECTION COMMISSION  
August 4, 2021**

Project Name: Joyce M Musculus Life Estate

Permit Application Number: BD-21-04-060

Location/Address: 12748 S Lake Mary Jane Road, Orlando

**RECOMMENDATION:**

**Acceptance of the findings and recommendations of the Environmental Protection Officer, and make a finding that the after-the-fact variance request is consistent with Orange County Code, Chapter 15, Article IX, Section 15-350(a)(1) and recommend approval of the request for after-the-fact variance to Section 15-342(g) to allow the enclosed dock to remain as constructed with the payment of a \$1,200 penalty to the Conservation Trust Fund within 60 days of the decision of the Board of County Commissioners for the Kenneth G Musculus Life Estate and Joyce M Musculus Life Estate Dock Construction Permit Modification BD-21-04-060. District 4**

☒ **EPC AGREES WITH THE ACTION REQUESTED, AS PRESENTED**

**EPC DISAGREES WITH THE ACTION REQUESTED, AS PRESENTED AND HAS  
MADE THE FOLLOWING RECOMMENDATION:**

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Signature of EPC Chairman: \_\_\_\_\_

*Mark Ausley*

DATE EPC RECOMMENDATION RENDERED: \_\_\_\_\_

*8-4-21*