



Interoffice Memorandum

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS

JUN 16 2015 *NPL/S*

AGENDA ITEM

May 14, 2015

TO: Mayor Teresa Jacobs
-AND-
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director *JVW*
Community, Environmental and Development
Services Department

CONTACT PERSON: **Lori Cunniff, CEP, CHMM, Deputy Director
Community, Environmental and Development
Services Department
(407) 836-1405**

SUBJECT: June 16, 2015 — Consent Item
Environmental Protection Commission Recommendation for After-
the-Fact Waiver Requests for a Dock for Jim Wear, Jr.

On January 28, 2013, the Environmental Protection Division (EPD) received a complaint about a dock being constructed without a permit. EPD staff visited the site on January 30, 2013, and confirmed that a dock had been constructed without any EPD permit, or an Orange County Building permit. The project site is located on Big Sand Lake (Parcel ID: 34-23-28-8881-09-450) in Orange County Commission District 1.

On February 17, 2013, EPD issued Mr. Jim Wear Jr., the property owner, a Notice of Violation and a Consent Agreement to either remove the dock or submit for a permit to allow the structure to remain as constructed. In addition to the unpermitted dock, a wetland conservation area (protected by a recorded Conservation Easement) was cleared, sodded, and landscaped as an extension of the yard. To address the unpermitted wetland violation, the Applicant has provided a restoration plan (that has been approved by EPD) for wetland restoration within the Conservation Easement, pending implementation when lake levels recede. Currently, lake levels in Big Sand Lake are approximately two to three feet higher than normal.

On November 24, 2014, EPD received an after-the-fact Application to Construct a Dock from Summertime Deck and Dock, as Agent, on behalf of the property owner, Mr. Wear.

Upon receipt of the as-built survey for the dock, EPD discovered the dock was constructed with a terminal platform size of 960 square feet, which is 190 square feet larger than what is

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allowed by code (Section 15-342(b)). EPD also discovered the dock was built too close to the eastern projected property line. The eastern side setback of the dock is 18.6', which is 6.4' short of the required 25-foot minimum side setback for a property greater than 75-feet-wide (Section 15-343(b)). Therefore, a waiver to Section 15-342(b) and Section 15-343(b) is required.

On January 15, 2015, EPD received applications for waiver to Section 15-342(b) and 15-343(b) for consideration.

Terminal Platform Size - Waiver

Section 15-342(b) states that 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 feet of shoreline and five times the linear shoreline frontage for each foot in excess of seventy-five feet, not to exceed a maximum of one thousand square feet. The shoreline length on this property is 79.4 feet at the NHWE; therefore, the applicant's property allows a 770 square foot terminal platform. The as-built survey for the dock depicts the dock with a terminal platform size of 960 square feet.

Section 15-350(a)(2) states that applications for waivers from Section 15-342(b) shall be made to the Environmental Protection Officer (EPO) and must describe: 1) how the waiver would not negatively impact the environment; and 2) the effect of the waiver on abutting shoreline owners.

To address the environmental impacts from the larger dock footprint, the Applicant has agreed to pay \$1,080 to the Conservation Trust Fund (CTF) to mitigate for the additional shading impacts to the surface water. Based on the Uniform Mitigation Assessment Methodology (UMAM), the contribution is equivalent to the mitigation required for the impacts.

Side Setback - Waiver

Section 15-343(b) states that 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.

According to Section 15-343(b)...waiver requests to the side setback requirement may be granted by the EPO if a notarized Letter of No Objection (LONO) is received from the shoreline owner abutting the applicant's property line affected by the waiver. As required by code, notification of the waiver requests were sent by certified mail to the property owners located within 300 feet of the shoreline on January 29, 2014. However, after discovering an error on a measurement on the survey for the side setbacks, the affected adjacent property owner was re-noticed on March 13, 2015. Neither a LONO nor any objection has been received from the noticed affected neighbor.

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However, on February 13, 2015, EPD received an e-mail from the Vizcaya Master Homeowner Association (HOA) objecting to the requests for waivers. The Association stated that the Wear's property is within the HOA and further *"the HOA wants docks built within its subdivision to meet and not exceed, O.C. code when it comes to platform size and all setbacks."*

On April 28, 2015, this objection was withdrawn.

Since the Vizcaya Master Homeowner Association withdrew their objection just prior to the Environmental Protection Commission (EPC) hearing, the EPO changed their published recommendation, and recommended approval of the after-the-fact waiver requests, with the condition the Applicant pay \$1,080 to the CTF as mitigation for the larger than allowed terminal platform size and payment of \$2,500 to the CTF as a penalty for unpermitted dock construction and unauthorized impacts to a conservation easement. EPD has also requested the applicant remove a set of stairs and some ornamental shrubs that were planted near the stairs, located in the conservation easement.

Based upon the evidence and testimony presented at the April 29, 2015 public hearing, pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(b), the EPC made a recommendation to approve the request for waivers to Orange Code, Chapter 15, Article IX, 15-342(b) and 15-343(b) for the Wear Boat Dock Permit, BD-14-11-143 with a requirement that \$1,080 be paid to the CTF to offset shading impact from the oversized terminal platform; \$2,500 be paid to the CTF as a penalty for construction of a dock and impacts to a conservation easement without permits; and that the Applicant complete the EPD approved restoration plan for the conservation easement within 30 days of BCC approval.

ACTION REQUESTED: Approval of Recommendation of the Environmental Protection Commission to uphold the Environmental Protection Officer's recommendation to approve an after-the-fact request to a waiver for Section 15-342 (b) (terminal platform size) and 15-343 (b) (side setback) with the condition the Applicant pay \$1,080 to the Conservation Trust Fund (CTF) to offset shading impacts for the oversized terminal platform, pay \$2,500 to the CTF as a penalty for unauthorized boat dock construction and impacts to a conservation easement, and that the applicant, Jim Wear, Jr. complete the Environmental Protection Division approved restoration plan for the conservation easement area within 30 days of this approval. District 1

JVW/LC: mg

Attachments

After-the-fact Waiver Request



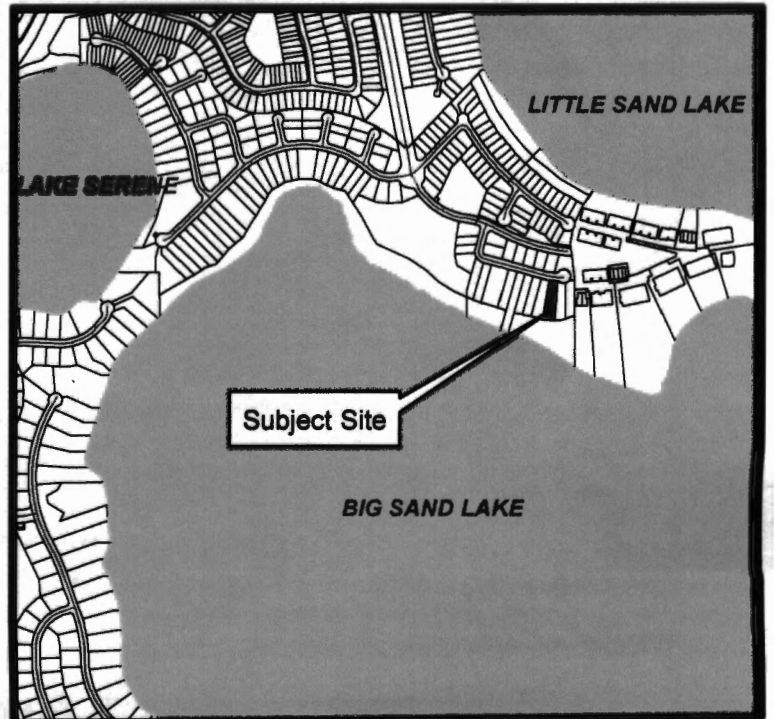
After-the-fact Side Setback and Terminal Platform Waiver Request

District 1

Applicant: Jim Wear, Jr.
Parcel IDs: 34-23-28-8881-09-450

Project Site

Property Location ●





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ORANGE COUNTY
ENVIRONMENTAL PROTECTION COMMISSION

Recommendation regarding a request for an after-the-fact boat dock waiver for terminal platform size and an after-the-fact waiver request to Section 15-342 (b) (terminal platform size) and 15-343 (b) side setback for the property located at 7910 Versilia Drive on Big Sand Lake; Parcel ID 34-23-28-8881-09-450.

ACTION TAKEN BY THE ENVIRONMENTAL PROTECTION COMMISSION ("EPC") on April 29, 2015 for the above application was as follows:

REQUEST: The applicant, Summertime Dock & Deck, on behalf of the property owner, Jim Wear Jr., is requesting an after-the-fact waiver to Section 15-342(b) (terminal platform size) and an after-the-fact waiver to Section 15-343(b) (side setback distance) to bring the previously constructed boat dock into compliance with Orange County Code.

BACKGROUND: After receiving a complaint about the dock, EPD discovered that the subject property had an unpermitted dock structure present. In an effort to allow the structure to remain as constructed, an after-the-fact Application to Construct a Dock from Summertime Deck and Dock was submitted on behalf of the property owner, Jim Wear, Jr.

The current structure does not have a permit from the Orange County Division of Building and Safety.

The dock was constructed with a terminal platform size of 960 square feet, which is 190 square feet larger than what is allowed by code (Section 15-342(b)). The dock was also built too close to the eastern projected property line. The eastern side setback of the dock is 18.6', which is 6.4' short of the required 25-foot minimum side setback for a property greater than 75-feet-wide (Section 15-343(b)). Therefore, a waiver to Section 15-342(b) and Section 15-343(b) is required.

Finally, the applicant constructed stairs located in the conservation easement located onsite. The applicant has agreed to remove the stairs and some ornamental shrubs that were planted near the stairs.

Terminal Platform Size - Waiver

Section 15-342(b) states that 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 feet of shoreline and five times the linear shoreline frontage for each foot in excess of seventy-five feet, not to exceed a maximum of one thousand square feet. The shoreline of 79.4 feet for the applicant's property allows a 770 square foot terminal platform. The as-built survey for the dock depicts the dock with a terminal platform size of 960 square feet.

Section 15-350(a)(2) states that applications for waivers from Section 15-342(b) shall be made to the Environmental Protection Officer (EPO) and must describe: 1) how the waiver would not negatively impact the environment; and 2) the effect of the waiver on abutting shoreline owners.

To address the environmental impacts from the larger dock footprint, the Applicant has agreed to pay \$1080.00 to the Conservation Trust Fund (CTF) to mitigate for the additional shading impacts to the surface water. Based on the Uniform Mitigation Assessment Methodology (UMAM), the contribution is equivalent to the mitigation required for the impacts.

Side Setback - Waiver

Section 15-343(b) states that 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.

According to Section 15-343(b)...waiver requests to the side setback requirement may be granted by the EPO if a notarized Letter of No Objection (LONO) is received from the shoreline owner abutting the

applicant's property line affected by the waiver. Neither a LONO nor any objection has been received from the noticed affected neighbor.

As required by code, notification of the waiver requests were sent by certified mail to the property owners located within 300 feet of the shoreline on January 29, 2014. However, after discovering an error on a measurement on the survey for the side setbacks, the affected adjacent property owner was re-noticed on March 13, 2015.

Objections

On February 13, 2015, EPD received an e-mail from the Vizcaya Master Homeowner Association (HOA) objecting to the requests for waivers. The Association states that the Wear's property is within the HOA and further "*the HOA wants docks built within its subdivision to meet and not exceed, O.C. code when it comes to platform size and all setbacks.*"

On March 13, 2015, EPD received an email from the Vizcaya Multi-Condominium Association objecting to the requests for waivers. The objections are the same as stated by the master HOA. It should be noted that this objection was received 4 days past the cutoff date for comments.

On April 28, 2015 EPD received a letter from Vizcaya Master HOA withdrawing its objection to the waiver requests.

Enforcement Action

There currently is enforcement action for this property. In addition to the unpermitted dock, a wetland conservation area (protected by a recorded Conservation Easement), was cleared, sodded, and landscaped as an extension of the yard. In addition, a sand beach area was constructed across the shoreline.

To address the unpermitted wetland violation, the Applicant has provided a restoration plan (that has been approved by EPD) for wetland restoration within the Conservation Easement, pending implementation when lake levels recede. Currently, lake levels in Big Sand Lake are approximately two to three feet higher than normal.

Approval of the request for an after-the-fact dock permit and the two waivers will resolve the unpermitted dock construction violation. A penalty of \$2,500.00 has been assessed for the unpermitted activities and the harm to the environment.

Staff Recommendation

Since the Vizcaya Master Homeowner Association has withdrawn their objection, and the other objection was not timely, the EPO recommended approval of the after-the-fact waiver requests, with the condition the Applicant pay \$1,080.00 to the CTF as mitigation for the larger than allowed terminal platform size and payment of \$2,500.00 to the CTF as a penalty for unpermitted dock construction.

RECOMMENDATION: Approval with conditions. Based upon the evidence and testimony presented at the April 29, 2015 public hearing, pursuant to Orange County Code, Chapter 15, Article IX, Section 15-350(b), the EPC made a recommendation to approve the request for waivers to Orange Code, Chapter 15, Article IX, 15-342(b) and 15-343(b) for the Wear Boat Dock Permit, BD-14-11-143 with a requirement that \$1,080.00 be paid to the CTF to offset shading impact from the oversized terminal platform; \$2,500.00 be paid to the CTF as a penalty for construction of a dock and impacts to a conservation easement without permits; and that the Applicant complete the EPD approved restoration plan for the conservation easement within 30 days of BCC approval.

Signature of EPC Chairman: _____

DATE EPC RECOMMENDATION RENDERED: 5/14/2015