

Ginsberg, Jeremy

From: John Hilts <mrhilts@erols.com>
Sent: Thursday, May 21, 2020 10:01 PM
To: Ginsberg, Jeremy
Subject: Fwd: 14 Raymond Street, Darien (Stephens)

Hello Jeremy,

The initial email bounced back.

Best,

John Hilts

Begin forwarded message:

From: John Hilts <mrhilts@erols.com>
Subject: Re: 14 Raymond Street, Darien (Stephens)
Date: May 21, 2020 at 9:57:36 PM EDT
To: jginsburg@darienct.gov
Cc: "Doneit, Fred" <fdoneit@darienct.gov>, "Jacobson, Susan" <Susan.Jacobson@ct.gov>, kevin.r.kotelly@usace.army.mil, Wilder Gleason <wilder.gleason@gleasonllc.com>, Matthew Marion <mmarion@marionlawllc.com>, lawrence Stephens <lastephens@yahoo.com>, Laura Stephens <lm.stephens@icloud.com>

Dear Mr. Ginsberg,

I write to respond to the Five Mile River Commission's supplemental response.

The Commission's continues to object to the proposed dock in the location authorized by the Department of Energy and Environmental Protection ("DEEP") and Army Corps of Engineers ("Corps"). The following are responses to the items noted in their letter:

1. The Commission claims "the proposed dock, as configured and sited, will directly impede and possibly prevent recreational usage of the river near the site during *most* stages of the tide" (italics added).

In response to their initial letter of objection, the Commission was provided with a bathymetric survey of the waters in front of the applicant's property and several photographs. The survey shows the waters shoal in front of the Pereira property. An overlay of the proposed dock on the survey shows adequate clearance at low tides for passage of a small craft such as a kayak or canoe past the proposed dock to the waterway in front of the Pereira property. The photographs show the waterway is not passable beyond the southernmost portion of the Pereira waterfront, with rocks exposed in the stream that leads upstream. In addition, the photographs show the boulder dam to the south of the applicant's property. This dam precludes passage during most stages of the tide. As a result, the only property owners that can access the waterway above the dam are the applicant, Dr. Pereira, and Matthew Hessian on the opposite shore. Again, the overlay of the proposed dock on the survey shows a 14.1' natural channel in front of the Pereira property. This is less than the 16.8' clear fairway denoted on the overlay. It follows that anyone accessing the waterway from the Pereira property at lower tides will have an adequate fairway to proceed downstream from the site, unimpeded by the applicant's dock. At higher tides, when boaters are able to pass over the dam, the water depths in the area will allow unimpeded passage past the applicant's dock to the waters in front of the Pereira property.

2. The Commission writes "(o)n 2/26, the applicant confirmed that after receiving additional survey information related to navigation adjacent to the dock, he would "explore[e] the possibility of relocating the proposed

dock.” Nonetheless, he later rejected that option, stating: “[m]oving the dock to the middle of the property will put it on top of the sand bar. This will have no beneficial impacts on navigation, and will greatly diminish the tidal access afforded by the proposed dock.” (April 29th email from John Hilts to multiple recipients). Thus, by his own admission, the applicant has rejected relocating the proposed dock and using the dock/boat lift configuration that other property owners in the area use. Accordingly, the issue in dispute remains whether the proposed dock will improperly impact the applicant’s neighbors’ use of the adjacent sections of the Five Mile River.”

In my April 29th email, I noted "any structure in the suggested location may adversely impact the future propagation of intertidal wetland vegetation." State and Federal application reviews consider not only navigation, but other impacts as well, including potential adverse environmental impacts.

The “dock/boat lift configuration” are utilized by the downstream neighboring property owners. Consultation with DEEP staff indicate these docks are, in fact, unauthorized. As a result of the consultation, the DEEP has initiated enforcement actions against these property owners. In any case, the applicant’s dock is authorized by both DEEP and Army permits.

3. The Commission writes “(a)s a threshold issue, we note the applicant’s neighbor, Dr. Pereira, argues that the proposed location of the dock violates the DEEP’s 25/50/25 standard limiting the distance of a proposed dock in relation to the near shore at MHW.”

The overlay of the proposed dock on the survey shows the applicant’s dock extending 19.1’ beyond the Mean High Water line. It also shows a distance of 65.5’ to the nearest point on the opposite shore. $19.1' + 65.5' = 84.6'$. $84.6' + 4 = 21.15'$. $19.1' < 21.15'$, The 25/50/25 standard is obeyed.

4. The Commission writes "the DEEP acknowledges the dock’s impact on navigation, but minimizes it by suggesting the float “would restrict navigation no more than the width of the natural channel in front of Dr. Pereira’s property.” The Commission respectfully disagrees with this assessment, as it disregards the dock’s disruptive impact jutting out from the contours of the river into a navigable area (under certain tidal conditions).”

As demonstrated above, under most tidal conditions only three property owners can access the waterway in the vicinity of the applicant’s dock. The photographs show the Pereira property extending farther into the waterway as it runs upstream, to a point where the waterway becomes obstructed by rocks. The bathymetric survey shows this as well. The applicant’s dock does not “jut” out any farther than the boulders along the Pereira property. Rather, the photographs and survey show the dock in a recessed area along the shoreline. Furthermore, the bathymetric survey clearly shows greater water depths in the middle of the waterway. Any boat transiting the area would steer towards the east of the applicant’s dock to avoid the sandbar to the south. The applicant’s property extends farther into the waterway as it runs downstream to the intersection with the boulder dam. The overlay of the proposed dock on the survey shows the dock’s waterward face to be roughly parallel with both the sandbar and western terminus of the boulder dam.

5. The Commission concludes its objection stating "the dock, as configured and sited, will directly impede recreational usage of the river to the detriment of other Darien property owners.”

Only three properties can access this portion of the river at most tides. Two of these properties are in Darien. One is the applicant’s. As demonstrated above, anyone accessing the waterway from the Pereira property at lower tides will have an adequate fairway to proceed downstream from the site, unimpeded by the applicant’s dock. At higher tides, when boaters are able to pass over the dam, the water depths in the area will allow unimpeded passage past the applicant’s dock to the waters in front of the Pereira property.

Thank you for your consideration of the above.

Best,

John Hilts

On May 18, 2020, at 10:12 AM, Matthew Marion <mmarion@marionlawllc.com> wrote:

Dear Mr. Ginsburg,

We attach the Five Mile River Commission's supplemental response regarding this pending matter.

Please do not hesitate to contact us if you or the Planning and Zoning Commission have any questions.

Thank you.

Regards,

Matt Marion

Chairman, Five Mile River Commission

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<Darien P-Z letter-5-18-20-Stephens.pdf>