

**BEFORE THE LAND USE HEARINGS OFFICER
OF CLACKAMAS COUNTY, OREGON**

Regarding an appeal by Bradlee Hersey of an administrative) **FINAL ORDER**
decision denying an application for a private dock in the)
Willamette River Greenway at 3144 Glenmorrie) **Z0418-23-R**
Drive in unincorporated Clackamas County, Oregon) **(Navarro Dock)**

A. SUMMARY

1. On October 23, 2023, Bradlee Hersey (the “applicant”) filed an application for approval of a 700 square foot (20- x 35-foot) private noncommercial dock in the Willamette River Greenway (the “WRG”) at 3144 Glenmorrie Drive; also known as tax lot 00500 Section 11CD, Township 2 South, Range 1 East of the Willamette Meridian (the “site”). The applicant filed the application on behalf of the property owner, Sylvia Navarro. (Exhibit 2).

2. The 0.74-acre upland portion of the site and abutting properties to the north, south and west are located within the City of Lake Oswego, on the west side of the Willamette River with frontages on Glenmorrie Drive and Old River Road. The upland is developed with a circa-1941 dwelling. The Lake Oswego city boundary stops slightly east of the ordinary low water line. The portion of the Willamette River where the dock is proposed, and upland properties on the east side of the River, are located in Clackamas County and zoned R-10. Correspondence from the City of Lake Oswego Community Development Director dated October 23, 2023 confirms that County land use approval is required for the dock, given the proposed dock location is outside the City boundary and Urban Service Boundary (USB). The Community Development Director also notes that City land use approval is required for the dock and potential upland disturbances.

3. On December 27, 2023, the planning director issued a written decision denying the application, because the proposed dock exceeds the maximum size allowed in the section of the Willamette River between the Oregon City Falls and the Multnomah County line. Section 705.04(G)(2)(a) of the Clackamas County Zoning and Development Ordinance (the “ZDO”) limits private noncommercial dock in this section of the Willamette River to a maximum 400 square feet. (Exhibit 1, the “director’s decision”).

4. The applicant filed a written appeal of the planning director’s decision on January 4, 2024, and submitted a revised plan for a smaller, 350 square foot (10- x 35-foot), dock in the same location. (Exhibits 6 and 7). However, Staff noted that the revised dock exceeds the 3:1 length to width ratio required by 705.04(G)(1)(c.). (Exhibit 8).

5. On February 1, 2024, the applicant submitted a second revised plan for an 11.5- x 34-foot), dock in the same location. (Exhibit 9). Staff determined that the second revised dock meets the length to width ratio in Subsection 705.04(G)(1)(b) and the maximum square footage limit of ZDO 705.04(G)(2)(a). (Exhibit 10).

6. County Hearings Officer Joe Turner (the "hearings officer") conducted a duly noticed online public hearing regarding the appeal. County staff recommended that the hearings officer grant the appeal and approve the application as modified, subject to conditions of approval. The applicant testified in support of the appeal. No one else testified orally or in writing.

7. Based on the findings adopted or incorporated in this final order, the hearings officer concludes that the applicant sustained the burden of proof that the second revised plan (Exhibit 9) complies with all applicable approval criteria for a private noncommercial dock in the section of the Willamette River between the Oregon City Falls and the Multnomah County line. Therefore the hearings officer grants the appeal and approves Z0418-23-R (Navarro), subject to the conditions of approval at the conclusion of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at a public hearing about this application on February 8, 2024. All exhibits and records of testimony are filed at the Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony offered at the public hearing.

2. County senior planner Ben Blessing summarized the director's decision, the applicable approval criteria, the revised proposal, and his PowerPoint presentation (Exhibit 12).

a. He noted that the applicant's original dock plan exceeded the maximum size limits of the Code. The first revised plan met the maximum area limit but did not comply with the length to width ratio requirement. The second revised plan (Exhibit 9) meets all applicable criteria and he recommended the hearings officer grant the appeal and approve the dock shown in second revised plan, subject to conditions of approval.

b. The proposed dock is located below the ordinary low water line, within the portion of the Willamette River located in unincorporated Clackamas County. The upland portion of the site is located in the City of Lake Oswego. The applicant will also be required to obtain City land use approval for the portions of the dock located in the City.

c. He requested the hearings officer hold the record open to allow the County to submit proposed conditions of approval.

3. The applicant, Bradley Hersey, agreed with Mr. Blessing's proposal to grant the appeal and approve the dock shown in second revised plan, subject to conditions of approval.

4. At the conclusion of the hearing the hearings officer held the record open until Monday February 12, 2024, to allow the County to submit proposed conditions of approval. The hearings officer held the record open until Wednesday February 14, 2024, to allow the applicant to review and respond to the recommended conditions. Mr. Blessing submitted proposed conditions of approval on February 9, 2024. (Exhibit 11). Mr. Hersey accepted the proposed conditions and requested the hearings officer close the record on February 13, 2024. (February 13, 2024, email from Mr. Blessing to the hearings officer).

C. FINDINGS

1. ZDO Table 1307-01 authorizes the hearings officer to hear appeals of planning director decisions. Pursuant to ORS 215.416(11)(a), an appeal of an administrative decision is reviewed as a *de novo* matter. The hearings officer is required to conduct an independent review of the record. He is not bound by the prior decision of the planning director and does not defer to that decision in any way. New evidence may be introduced in an appeal, and new issues may be raised. The applicant continues to bear the burden of proof that the application complies with all applicable approval criteria in light of all relevant substantial evidence in the whole record, including any new evidence.

2. The hearings officer finds that the applicant's second revised plan (Exhibit 10) complies with the maximum area requirement of ZDO 705.04(G)(2)(a) and the length to width ratio required by ZDO 705.04(G)(1)(c). The director's decision (Exhibit 1) determined that the proposed dock complies with all of the remaining approval criteria. The hearings officer adopts and incorporates the director's affirmative findings as his own, except to the extent they are inconsistent with the above findings and finds that the revised application complies with all of the applicable approval criteria and should be approved subject to conditions.

D. CONCLUSION

Based on the findings adopted or incorporated above, the hearings officer concludes that the applicant sustained the burden of proof that the portions of the proposed dock located in unincorporated Clackamas County do or can comply with the applicable approval criteria. Therefore the appeal should be granted and the application should be approved subject to the conditions of approval recommended by County staff.

E. DECISION

Based on the above findings and discussion, the hearings officer hereby grants the appeal, reverses the director's decision, and approves the revised plan (Exhibit 9) for File No. Z0418-23-R (Navarro Dock), subject to the following conditions of approval:

Conditions of Approval

1. General Conditions:

- A. Approval of this land use permit is based on the submitted written narrative and plan(s) received 10/23/2023, 1/4/2024, and 2/1/2024. No work shall occur under this permit other than that specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- B. The approval of this Willamette River Greenway (WRG) permit is valid for four (4) years from the date of the final written decision. If the County's final written decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.
 - i. "Implemented" means all major development permits shall be obtained and maintained, or if no major development permits are required to complete the development contemplated by the approved WRG permit, "implemented" means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A "major development permit" is:
 - a. A building or manufactured dwelling placement permit for a new primary structure that was part of the WRG permit approval; or
 - b. A permit issued by the County Engineering Division for parking lot or road improvements that were part of the WRG permit approval.
 - ii. If this approved WRG permit is not implemented within the initial approval period established by Subsection 705.07(B), a two-year time extension may be approved, pursuant to Section 1310.

2. Standards for Docks:

- A. General Standards: Pursuant to Subsection 705.04(E)(1), the following standards apply to the proposed private, noncommercial dock, including the boathouse (if proposed and allowed) and pilings:

- i. Colors: The colors of the proposed dock and boathouse (if a boathouse is proposed and allowed) shall be dark, natural, wood colors, or be painted dark earth tones (dark brown or green).
 - ii. Calculation of Square Footage: The total square footage of the proposed dock, calculated by measuring the length times the width of the outer edge of the structure, shall be 391 square feet.
 - iii. Length-to-Width Ratio: The length-to-width ratio, not to exceed 3:1, of the proposed dock shall be 11.5- by 34-feet.
 - iv. Limitations:
 1. The proposed dock shall be located on a riverfront Lot of Record, and shall be the only dock allowed on the subject lot.
 2. The total square footage of the proposed dock shall not exceed 400 square feet.
 3. A boathouse in conjunction with the proposed dock is not allowed.
- B. **Advisory**: A Building Permit and additional land use approval is required by the City of Lake Oswego. Please contact the City to continue permitting the dock project.

3. **Other Agency Standards:**

- A. Pursuant to Subsection 705.04(E)(4), the proposed dock, if located on State-owned submerged and/or submersible land, shall be leased or registered with the Oregon Division of State Lands.
- B. Pursuant to ZDO Subsection 703.07, submit a copy of the approved floodplain management permit issued by the City of Lake Oswego. Contact bblessing@clackamas.us or zoninginfo@clackamas.us to submit the copy.

DATED this 15th day of February 2024.



Joe Turner, Esq., AICP
Clackamas County Land Use Hearings Officer

APPEAL RIGHTS

ZDO 1307.14(D)(6) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such an appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision will be "final" for purposes of a LUBA appeal as of the date of mailing (which date appears on the last page herein).