



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**
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OFFICE OF THE
SECRETARY

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Secretary's Order No: 2024-W-0045

RE: Application of James and Meredith Bruner for a Subaqueous Lands Lease Permit

Date of Approving: October 28, 2024

Effective Date: October 28, 2024

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department," "DNREC") pursuant to *Delaware's Subaqueous Lands Act* (7 Del.C. Ch. 72) and the Department's *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504) and all other relevant statutory authority, the Department issues this Order, approving the application submitted by James and Meredith Bruner ("Applicant," "Bruner") for a Subaqueous Lands Lease Permit to construct and utilize a residential pier, dock, and boatlift in the Little Assawoman Bay at 1306 N. Schulz Road, Fenwick Island, Sussex County, DE ("Application"). The following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced Subaqueous Lands Lease Permit Application proceeding and support the approval of the Application described herein.

Background, Procedural History and Findings of Fact

The Department's Division of Water, Wetlands, and Waterways Section ("WWS") received an application on March 20, 2020, from Mr. and Mrs. Bruner to build an L-shaped convenience structure to provide access for boat mooring and recreational activities in Little Assawoman Bay, at the property described above.

The Applicant's waterfront property line extends 141.63 feet and is situated at the tip of a peninsula, bordered by water to the west and an adjacent property to the east, which has a convenience structure on the east side of the peninsula. To the south of the Applicant's property is another adjacent property that has a convenience structure to the west side of the peninsula. The Applicant plans to build their structure on the northern side of their property, situated 15 feet from the adjacent property to the east. The initial proposed structure included a pier extending seaward, measuring 4 feet wide by 28 feet long, as well as a dock extending westward from the pier, measuring 6 feet wide by 35 feet long. Additionally, the proposal included a boatlift that abuts to the dock, measuring 11 feet by 11 feet, supported by four pilings, and extending seaward toward the mean high water ("MHW") line.

The Department began a technical review of the Application and advertised the above-described Application in both the *Delaware State News* and *The News Journal* on April 29, 2020, for a 20-day public notice period. During that time, the Department's WWS received six (6) written comments in opposition to the proposed project. The objectors raised concerns that it was excessively large and could potentially obstruct public navigation of the waterway.

As part of the review process, the Department conducted on-site evaluations of the proposed project. On May 27, 2020, representatives from the Department met with the contractor/consultant for the proposed project, officials from the Town of Fenwick Island, and Council Members to discuss the Department's regulatory authority, review the proposed structure's configurations, and propose feasible alternatives, including potential reconfigurations. Subsequently, on June 1 and June 3, 2020, the Department assessed water depths, collected data for accurate channel marker mapping, measured setbacks, and evaluated ways to reduce the structure's encroachment into the channel. Using survey-grade GPS equipment, staff marked channel markers and measured water depths at mean low water (MLW). Based on these findings, the Department concluded that sufficient water depths could be maintained by reducing the size of the proposed structure while still providing the necessary 18 inches of depth at MLW for safe boat mooring.

The Department recommended reconfiguring the project by reducing the length of the pier by starting it at the retaining wall and extending up to the toe of the riprap, which measures approximately 13 feet. This minimization would align the pier's channelward distance with that of adjacent neighbors' bulkheads and reduce encroachment into the navigation channel, thereby minimizing potential impacts.

On June 9, 2020, the Department received a revised Application from the Applicant, aiming to minimize encroachment into the navigation channel by reducing the length of the pier. The Applicant also modified the dock length to accommodate their vessels and added an elevator lift to the boat lift area. Specifically, the revised Application proposed to construct and utilize a 4-foot-wide by 13-foot-long pier (with only a 4-foot by 10-foot section extending channelward of the MHW line), a 6-foot-wide by 45-foot-long dock located west of the pier, and the installation of two boat lifts, one with four (4) associated pilings and the other with two (2) associated pilings, abutting the dock, parallel to the shoreline. The revisions reduced the structure's encroachment into the navigation channel by 13 feet channelward of the MHW line. Additionally, the structure was realigned eastward, to accommodate the dock's increased length, while remaining compliant with the Regulations as the proposed pier is 10 feet from the adjacent property line.

Although the Applicant reduced the channelward encroachment, additional modifications were made; therefore, the Department placed the revised Application on public notice in the *Delaware State News* and *The News Journal* for a 20-day period. To that, the Department received ten (10) comments in opposition to the revised Application, and a public hearing was requested. The Department then issued a public notice of the hearing in the *Delaware State News* and *The News Journal*.

On November 5, 2020, a virtual public hearing was held by the Department. The Department's WWS, primarily responsible for reviewing this Application, developed the hearing record ("Record") with the relevant documents in the Department's files. There were six (6) verbal comments received at the virtual hearing. The hearing record remained open until November 20, 2020, during which time the Department received five (5) written comments. All comments received were incorporated into the hearing record and proper notice of the hearing was provided as required by law.

Following the close of record, and at the request of Hearing Officer Theresa Smith, the technical experts in WSS provided a Technical Response Memorandum ("TRM"). The Department's TRM addressed the concerns raised by providing an evaluation of the proposed project in accordance with Delaware's *Subaqueous Lands Act* (7 Del.C. Ch.72) and the Regulation. The Department's TRM, dated August 30, 2024, and received by Hearing Officer Smith on September 4, 2024, is discussed in greater detail below.

Hearing Officer Smith prepared a Hearing Officer's Report dated October 15, 2024 ("Report"). Mrs. Smith's Report set forth the procedural history, summarized and established the Record relied on in the Report, and provided findings of fact, reasons, and conclusions that recommend the Department approve this revised Application, subject to the conditions set forth in the draft permit. The Report concluded that the draft Subaqueous Lands Lease is protective of human health and the environment while being consistent with applicable state laws and regulations. The Report, along with its Appendices, is incorporated herein by reference.

Reasons and Conclusions

Currently pending before the Department is the proposed revised Application for a Subaqueous Lands Lease to construct and utilize a 4-foot-wide by 13-foot-long pier, a 6-foot-wide by 45-foot-long dock located west of the pier, and the installation of two (2) boat lifts, one with four (4) associated pilings and the other with two (2) associated pilings, abutting the dock parallel to the shoreline, in the Little Assawoman Bay at 1306 N. Schulz Road, Fenwick Island, Sussex County, DE.

I find that the Applicant is required to obtain a Subaqueous Lands Lease for the proposed project described above, along with the reasons thereof. As such, I further find that the above-described proposed project is subject to various state and federal regulatory requirements, including, but not limited to, the requirements of Delaware's *Subaqueous Lands Act* (7 Del.C. Ch. 72) and the *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), and as provided for under 7 Del.C. Ch. 60.

I also find that the Department's TRM provides a thorough review of the proposed project in light of the applicable statutes and regulations associated with the Application and the concerns voiced in the public comments received in this matter. More specifically the Department received concerns that the docking facility seemed too large, which would potentially obstruct navigation, create unsafe conditions for both motorized and non-motorized water activities, affect the area's structure orientation and complicate the maintenance of unmarked navigation channels. Comments also raised concerns about land reclamation and the potential loss of habitat for marine and bay life. In addition to the concerns raised, there were also suggestions that the structure be moved to the west of the peninsula, rather than north of the property

In accordance with Section 4.6 of the Regulation, and as a response to the concerns raised regarding the size of the proposed revised structure and the potential for obstructing navigation, the Applicant minimized the scope of the initial proposed structure within subaqueous lands. The Department determined that the channelward encroachment was decreased from 45 feet to 28 feet, thus mitigating the public's navigational concerns. Given the available space for navigation, it is the responsibility of vessel operators to adhere to safe boating practices in accordance with the regulations, including Delaware Boating Laws, which mandate that wakes should not be generated within 100 feet of a structure. The Department concluded that the revised structure meets regulatory requirements, as it does not exceed 250 linear feet in length, occupies less than 20% of the waterbody's width, and is at least 10 feet from adjacent property lines. Additionally, in accordance with Section 4.9 of the Regulation, the Applicant has the right to construct a docking facility and access the water from any point along their riparian property boundary, which extends 141.63 feet.

The Department also evaluated the site of the proposed project in relation to neighboring structures. The closest neighboring parcels are located 100 feet southwest and 174 feet east of the proposed docking facility. The Department determined that potential navigation issues adjacent to the proposed structure are minimal, as the nearest docking facility is over 100 feet away. The Department also compared the structures in the area and found that they range from 25 feet long to 100 feet long. The use of the docks varies from berthing motorized vessels and launching non-motorized vessels for residential use. The existing structures within the area are of similar linear footage and obtain similar mean low water depths, or greater, than the applicant is proposing. A professional bathymetric survey was conducted in the area and the results indicated that water depths at the site range from approximately -2.0 to -5.0 feet, with the deepest water located channelward of the proposed structure. Water depths gradually decrease to -3.0 feet on the opposite shoreline. The Department concluded that the proposed structure's length would obtain adequate water depth at MLW, for the draft of the proposed vessel to be berthed, avoiding the need for dredging.

Concerns were also raised that the placement of the Applicant's proposed structure could limit public use of the deeper water in the channel, given that the surrounding area has shallower depths. The Department confirmed that this area was recently approved for dredging to a depth of -4.0 MLW under Permit #SP-253/23. Therefore, the project will not negatively affect boat navigation or the existing navigable channel.

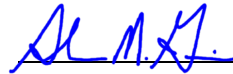
Lastly, in response to the concerns of the environment and impacts to the habitat for marine and bay life, the Department determined that there were no records of rare, endangered or threatened species as defined by both state and federal listings for plants, animals or natural communities at the project site. It should be noted that a time of the year restriction for in-water work has been included in the draft lease for the protection of Summer Flounder during the season of March 15th through September 30th. Moreover, the proposed structure will be located in a body of water that is used by the general public for water access along with a multitude of private docks. The Department concluded that the addition of a residential docking facility should not have a significant adverse impact on the environment or marine and bay life.

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, and under the authority of 7 *Del.C* Ch. 72, I find that the Record developed in this matter indicates that the Applicant has adequately demonstrated their compliance consistent with Delaware's *Subaqueous Lands Act* (7 *Del.C.* Ch 72) and the Department's *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504). I find and conclude that the Record supports approval of the revised proposed Application as submitted to the Department's Division of Water, WWS, in this matter and the recommendations of the Hearing Officer are hereby adopted. Accordingly, I direct that the Application for a Subaqueous Lands Lease be issued, with the appropriate conditions as set forth in the draft permit, to James and Meredith Bruner to construct and utilize a 4-foot-wide by 13-foot-long pier, a 6-foot-wide by 45-foot-long dock west of the pier, and two (2) boatlifts, one with four (4) associated pilings and the other with two (2) associated pilings abutting the dock, in Little Assawoman Bay at 1306 N. Schulz Road, Fenwick Island, Sussex County, DE.

I further direct that the following reasons and conclusions are entered:

1. The Department has jurisdiction under Delaware's *Subaqueous Lands Act* (7 *Del.C.* Ch. 72) and the *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504) and all other relevant statutory authority, to make a final determination of the Application after holding a public hearing, considering the public comments, and reviewing all information contained in the Record generated in this matter;
2. The Department provided proper public notice of the Application submitted by James and Meredith Bruner and of the public hearing held on November 5, 2020. Further, the Department held said hearing to consider all public comment that may be offered on the Application, in a manner required by the law and regulations;

3. The Department has carefully considered the factors required to be weighed in issuing the Subaqueous Lands Lease required by this Application, and finds that the Record supports the approving of the Application, and the issuance of the Subaqueous Lands Lease associated with the same;
4. The Department shall issue the Subaqueous Lands Lease to the Applicant, James and Meredith Bruner to construct and utilize a 4-foot-wide by 13-foot-long pier, a 6-foot-wide by 45-foot-long dock west of the pier, and two (2) boatlifts, one with four (4) associated pilings and the other with two (2) associated pilings abutting the dock, in Little Assawoman Bay at 1306 N. Schulz Road, Fenwick Island, Sussex County, DE, consistent with the Record developed in this matter. Furthermore, said permit shall include all conditions as set forth in the Department's draft permit, to ensure that Delaware's environment and public health will be protected from harm;
5. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
6. The Department shall serve and publish its Order on its internet site.



Shawn M. Garvin
Secretary