



COASTAL RESOURCES DIVISION

ONE CONSERVATION WAY · BRUNSWICK, GA 31520 · 912-264-7218

WALTER RABON
COMMISSIONER

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DIRECTOR

**SHORE PROTECTION ACT
STAFF'S FINDINGS & RECOMMENDATIONS**

April 5, 2024

TO: Shore Protection Committee:
Commissioner Walter Rabon, Chairman
Mr. Chad Barrow
Mr. Brad Brookshire
Mr. Davis Poole
Dr. Valerie Hepburn

FROM: Department Staff to the Committee

APPLICANT: Michael Kirven
205 East Charlton Street
Savannah, GA 31401

AGENT: Mark Boswell
Boswell Design Services
103 Nassau Drive
Savannah, GA 31410

LOCATION: 1923 Chatham Avenue, Tybee Island, Atlantic Ocean, Chatham County, Georgia.

PROPOSED PROJECT: The applicant proposes the construction and maintenance of a residential pool, fence, drainage improvements and landscaping at an existing single-family residence within the State's Shore Protection Act (SPA) Jurisdiction.

APPLICABLE LAW: Official Code of Georgia Annotated (O.C.G.A.) § 12-5-230 *et seq.* Shore Protection Act.

SUMMARY OF PUBLIC COMMENTS: The Public Notice of the Shore Protection Committee ran from February 29, 2024 through March 30, 2024. No comments were received during the Public Notice period.

FINDINGS: Department Staff to the Committee make the following findings regarding this application:

Project Scope and Justification: O.C.G.A. § 12-5-238:

1. On September 4, 2004, the SPC authorized the recombination and subdivision of 4 existing parcels into three newly platted parcels: Lot 1, Lot 2, and Lot 3, along with building footprints for a residential structure, a shared driveway, and associated landscaping for each parcel. In 2006, acting under SPA Permit #342, the existing 1930's raised cottage was relocated to the permitted building footprint associated with Lot 1, landward of an existing garage located seaward of the landward toe of the dune. No improvements were authorized for the existing garage.
2. The applicant's property is approximately 12,167sq.ft. (0.28 acre), of which 6,393.7sq.ft. (0.15 acre) is located within SPA jurisdiction. The area within SPA jurisdiction consists of outdoor living space (1,810.7sq.ft.; 0.04 acre), a 23.7ft. x 21.7ft. garage (502.4sq.ft.; 0.01 acre), and vegetated sand dunes (4,080.6sq.ft.; 0.09 acre).
3. The applicant proposes to improve the existing outdoor living space immediately seaward of the residence by constructing and maintaining a 17.5ft. x 26ft. swimming pool, of which approximately 353.4sq.ft. (0.008acre) will be in SPA jurisdiction, an associated fence (207sq.ft.; 0.005acre) and installing drainage infrastructure (661.3sq.ft.; 0.015acre). Impacts to SPA jurisdiction for the proposed hardscape components of the project total approximately 1221.7sq.ft. (0.028acre).
4. The remainder of the outdoor living area (589sq.ft.) and new drainage improvements (661.3sq.ft.) in SPA jurisdiction will be landscaped using native coastal vegetation (1,250.3sq.ft.; 0.029acre).
5. Temporary impacts associated with site preparation and construction include the use of heavy equipment to clear, grade, and install drainage infrastructure, as well as to construct the swimming pool. Where appropriate, existing vegetation will be removed from the area, soil will be amended, and native coastal vegetation will be installed landward of the toe of the dune. An existing, at-grade, shared beach access foot path associated with the property will remain. A private dune crosswalk is not proposed. The Chatham Avenue public access dune crosswalk is located adjacent to the property driveway.
6. Approximately 4080.6sq.ft. (64%) of the SPA jurisdictional area will be retained or improved to a more natural vegetated and topographic state.
7. As proposed, total impacts to the SPA jurisdiction area (including existing impacts from the garage) will total approximately 2313.1sq.ft. (36%).

Application Form, Applicant Name and Address, Project Site Plan, Plat, Deed or other instrument, Written permission to carry out project by owner of land, O.C.G.A. § 12-5-238 (1-5,8):

8. Applicant has submitted the application form, name and address, project site plan, plats, and deed.

Adjoining Landowners, Non-refundable application fee, O.C.G.A. § 12-5-238 (6,7):

9. Applicant has submitted the names and addresses of adjoining property owners as well as the non-refundable application fee required.

Hurricane Resistant Standards, O.C.G.A. § 12-5-238(9):

10. Mark Boswell, (Georgia Registration No. 28372), has submitted a certification that the project meets all applicable hurricane standards.

Local Government Zoning, O.C.G.A. § 12-5-238(11):

11. Applicant has provided a statement from the City of Tybee Island Community Development Department that the project does not violate any zoning law.

Landfill, Hazardous Waste Inquiry, O.C.G.A. § 12-5-239(12):

12. Applicant has made an inquiry to the appropriate authorities that the proposed project is not over a landfill or hazardous waste site and that the site is otherwise suitable for the proposed project.

Notification of Proposed Project, O.C.G.A. § 12-5-239(b):

13. Adjacent property owners and interested parties who have requested to be placed on the mailing list were notified in writing of the proposed project. The Public Notice of the Shore Protection Committee ran from February 29, 2024, through March 30, 2024. No comments were received during the Public Notice period.

Requirement and Restriction Regarding the Issuance of a Permit, O.C.G.A. § 12-5-239(c):

14. No permit shall be issued except in accordance with the following provisions:
 - (1) **A permit for a structure or land alteration, including, but not limited to, private residences, motels, hotels, condominiums, and other commercial structures, in the dynamic dune field may be issued only when:**
 - A. **The proposed project shall occupy the landward area of the subject parcel and, if feasible, the area landward of the sand dunes;** The dynamic dune field in these areas consists of a vegetated dune as well as a constructed dune that extend seaward approximately 320ft. from the project location. The proposed residential pool, fence, drainage improvements and landscaping will occupy the landward area of the dynamic dune field landward of the landward toe of the most landward sand dune.
 - B. **At least a reasonable percentage, not less than one-third, of the subject parcel shall be retained in its naturally vegetated and topographical condition;** As proposed, approximately 4080.6sq.ft. (64%) of the SPA jurisdictional area will be retained or restored to a natural vegetated and topographic state.
 - C. **The proposed project is designed according to applicable hurricane resistant standards** Mark Boswell, (Georgia Registration No. 28372), has signed the SPA plan. The project meets all applicable hurricane standards.
 - D. **The activities associated with the construction of the proposed project are kept to a minimum, are temporary in nature, and, upon project completion, restore the natural topography and vegetation to at least its former condition, using the best available technology;** All proposed activities associated with the project are located within previously landscaped areas. Approximately 4080.6sq.ft. (64%) of the SPA jurisdictional area will be maintained in a natural vegetative and topographic condition. Impacts associated with and incidental to construction of the proposed project will be restored to at least their former condition.
 - E. **The proposed project will maintain the normal functions of the sand-sharing mechanisms in minimizing storm-wave damage and erosion, both to the unaltered section of the subject parcel and at other shoreline locations;** Historical monitoring of coastal dunes have shown that the frontal

or most seaward dune, which is closest to the beach, is an ephemeral and unstable feature. Sand dunes typically accrete or expand under the force of onshore winds and an ample supply of sand, but they can erode quickly under severe wave energy at times of high tide or elevated sea level. Dunes, whether modern, manmade, or Pleistocene, can be expected to retreat quickly under rising sea levels and larger waves. Beach erosion is monitored quarterly on Tybee Island. The monitoring includes erosion rates and volumes. The proposed project consists of a residential pool, fence, drainage improvements and landscaping that are located within existing maintained areas of the applicant's yard and are landward of the vegetated toe of the most landward dune.

Public Interest Considerations, O.C.G.A. § 12-5-239(i):

15. **In passing upon application for a permit, the Committee shall consider the public interest:**
 - A. **The project will not result in unreasonably harmful, increased alteration of the dynamic dune field or submerged lands, or function of the sand-sharing system;** The proposed portion of residential pool, fence, drainage improvements and landscaping are located within previously impacted areas within the SPA jurisdictional area. The applicant has stated all construction activities associated with the proposed project will be kept to a minimum and are temporary in nature.
 - B. **The project will not unreasonably interfere with the conservation of marine life, wildlife, or other resources;** Sea turtles nesting and shore bird roosting occurs on the beach seaward of the property. The proposed project is located landward of sensitive sea turtle nesting and roosting areas. Any lighting installed and operated will be in accordance with DNR Wildlife Resources Division's Sea turtle nesting guidelines as well as City of Tybee Island lighting regulations. Any work conducted within SPA jurisdiction during sea turtle nesting season will be performed in coordination with DNR staff to determine if the activities could potentially impact nesting sea turtles.
 - C. **The project will not unreasonably interfere with reasonable access by and recreational use and enjoyment of public properties;** The proposed project will be conducted on private property and will not interfere with access to or use and enjoyment of public properties. There is an existing beach access path seaward of the property which serves the neighborhood and their guests. Additionally, there is a City of Tybee Island dune crosswalk located within the Chatham Avenue Right-Of-Way.

RECOMMENDATIONS: Should the Committee determine the proposed project to be in the public interest, Department Staff to the Committee recommends the following standard and special conditions:

SHORE PROTECTION ACT O.C.G.A. § 12-5-230
STANDARD PERMIT CONDITIONS

1. The project must comply, as applicable, for areas permitted herein, with all other Federal, State, and local statutes, ordinances, and regulations, and the applicant must obtain all licenses and permits prior to commencement of construction.
2. This permit does not resolve actual or potential disputes regarding ownership of or rights in or over the property upon which the subject project is proposed and shall not be construed as recognizing or denying any such rights or interests.
3. All plans, documents, and materials contained in this permit application, required by the Shore Protection Act O.C.G.A. 12-5-230 *et. seq.* are a part of this permit and conformance to such plans, documents, and materials are a condition of this permit. No change or deviation from these plans, documents, and materials shall be permitted without prior notification and approval by the Department or Committee.
4. No further encroachment or construction shall take place within State jurisdiction, except as permitted by the Shore Protection Committee. Any modification of the plans or structure in the jurisdictional area must be reviewed and approved by the Department prior to construction.
5. A construction placard will be required to be obtained from the Department up to 30 days prior to the start of project construction and must be posted at the site. This placard will include certain steps in the construction of the permitted project that must be approved by the Department prior to construction.
6. The exact location and configuration of this project must be reviewed onsite and approved by Department staff immediately prior to beginning construction. Minor changes to the location may be allowed or required in areas that have eroded or accreted subsequent to the original jurisdictional determination.
7. No construction materials may be disposed of in the jurisdictional area of the Shore Protection Act.
8. Any incidental impacts associated with the construction of this project must be rectified by restoring areas to their pre-construction topographic and vegetative states.
9. The public shall maintain rights of ingress and egress on the foreshore beach area seaward of the ordinary high water mark.
10. If the permitted improvements are damaged, fall into disrepair, become dilapidated, are not meeting their expected usefulness, or are not maintained at a serviceable level, then it is the responsibility of the owner to remove the improvements. A new permit will be required to retain and repair the structure, improvement or asset if it loses its structural integrity and is no longer serviceable.
11. The Shore Protection Committee is not bound in the future to protect any asset or improvements authorized by the permit.
12. The permit must be posted onsite within twenty-four (24) hours of beginning construction.
13. A copy of the above conditions must be supplied to the person in charge of construction.

SPECIAL CONDITIONS

1. Construction activities must occur landward of the landward toe of the dune as flagged in the field by the Department.
2. In order to minimize the disruption of nesting activity from artificial lighting from the subject parcel, the Permittee must comply with the Department of Natural Resources' Wildlife Resources Division's Sea turtle nesting guidelines as well as the City of Tybee Island lighting ordinance.
3. A final landscape plan depicting native coastal vegetation must be provided to the Department for approval prior to installation.
4. This permit does not authorize trimming or removal of natural dune vegetation seaward of the landward toe of the most landward dune.
5. Permittee may be required to provide a post-construction survey that locates the proposed structure as indicated in the application materials. Such survey shall comply with the Georgia Plat Act, O.C.G.A. § 15-6-67 et seq.