



September 20, 2019

Frank Taormina
MassDEP Waterways Regulation Program
One Winter Street - 5th Floor
Boston, MA 02108

By Email: frank.taormina@mass.gov

Re: Waterways License Application No. W19-5592-N

Dear Mr. Taormina:

I am writing to you on behalf of the Mystic River Watershed Association (MyRWA) regarding the above-referenced Chapter 91 Waterways License Application submitted by The Traggorth Companies LLC and The Neighborhood Developers, Inc. (the "Applicants"). MyRWA previously commented on the Environmental Notification Form for this project (EEA #15908).

MyRWA is a nonprofit organization dedicated to the preservation and enhancement of the Mystic River, its tributaries and watershed lands for the benefit of present and future generations. We seek to protect and restore clean water and the natural environment and to promote responsible stewardship of our natural resources. In addition, we work to improve public access to water bodies and shorelines throughout the watershed, and especially for environmental justice populations whose recreational opportunities have been limited by the concentration of industrial and commercial development along the edges of the river.

The Applicants seek an extended-term Waterways License for a proposed residential development on a vacant site that includes filled tidelands near Mill Creek. The project would help to address a critical need for affordable housing in the City of Chelsea and Greater Boston. Because of site constraints and current zoning requirements, the project necessarily would require the construction of a certain amount of surface parking, for use by residential tenants, on public trust land within 100 feet of the project shoreline. For this reason, the Applicants seek a variance from the regulatory prohibition on such facilities in 310 CMR 9.51(3)(b). Site constraints also limit the degree to which the project can support the public use of tidelands contained within the project site and adjacent properties along Mill Creek. However, provision has been made for a longitudinal pedestrian pathway and pocket park, for public use, and other public amenities.

It is one of the Commonwealth's stated purposes, as steward of public trust lands under Chapter 91, to "support public and private efforts to revitalize unproductive property along urban waterfronts, in a manner that promotes public use and enjoyment of the water...." 310 CMR 9.01(2)(d). We believe that the Applicants' proposal is fully consistent with this policy objective. The project has been thoughtfully designed to comply with specific performance standards under 310 CMR 9.00 and satisfies the requirements for the requested variance.

The Applicants have engaged with and modified their project design to accommodate the interests of local government and community stakeholders, with appropriate attention to the exercise of public rights under Chapter 91. This proposal to activate a small, neglected urban parcel in service of an important public interest (affordable housing) will undoubtedly bring people into closer contact with the urban waterfront and enhance public use and enjoyment of underappreciated natural resources within Chapter

91 jurisdiction. For these reasons, MyRWA enthusiastically supports the issuance of Waterways License for the project, based on the requested variance and inclusion of appropriate license conditions.

The Waterways Regulations require nonwater-dependent use projects to conserve the capacity of tidelands to accommodate water-dependent uses. 310 CMR 9.51. Accordingly, most buildings and all parking facilities at or above grade are excluded from a water-dependent use zone, which, in this case, extends 25 feet from the present high water mark, i.e., the current mean high tide line on the abutting parcel along Mill Creek. 310 CMR 9.51(3)(c); *see also* 310 CMR 9.02 (defining "High Water Mark"). We note that none of the proposed structures encroach on the water-dependent use zone defined for the project.

Furthermore, these regulatory provisions ordinarily preclude the placement of any facilities of private tenancy "at the ground level of any filled tidelands within 100 feet of a project shoreline." 310 CMR 9.51(3)(b). The project shoreline, in this case, is the high water mark noted above. *See* 310 CMR 9.2 (defining "Project Shoreline"). Thirty-one of the parking spaces for the development would be located (at least partly) on filled tidelands within 100 feet of the project shoreline. Of these 31 spaces, 2 would be dedicated to public use, but 29 would be reserved for the exclusive use of residential tenants for a portion of each day and are thus facilities of private tenancy. *See* 310 CMR 9.2 (defining "Facility of Private Tenancy"). The Applicants request a variance to accommodate these 29 parking spaces.

The Commissioner may grant the variance if he finds that (a) there are no reasonable conditions or alternatives that would allow the project to proceed in compliance with the rule; (b) adequate mitigation and compensation measures are included; and (c) the variance is necessary "to accommodate an overriding municipal, regional, state or federal interest . . ." 310 CMR 9.21(a). The variance process is reserved for "rare and unusual circumstances where a proposed project satisfies a public interest which overrides the public interest in waterways but cannot be implemented in a manner which is fully consistent with the provisions of 310 CMR 9.00" (and other limited situations). 310 CMR 9.21(c). We believe that the government's manifest interest in increasing the supply of affordable housing can, in appropriate cases, constitute an overriding public interest on which a Chapter 91 variance may be based and that, in the narrow circumstances of this project, a variance is warranted. We note that the project has been modified to include *only* affordable rental units. Therefore, it is unnecessary for the Department to consider whether a perceived need for additional housing, in general, or expanded home ownership opportunities may ever override a regulatory provision designed to protect the public's water-dependent rights in tidelands.

We think the public access improvements included in the project, notably the longitudinal pedestrian path, two dedicated parking spaces, and daytime access to 29 additional parking spaces (subject to availability), sufficiently mitigate the potential adverse impact on future water-dependent use that results from granting special parking privileges to tenants at this location; and that the provision of a landscaped pocket park (a portion of which is not on filled tidelands), community space within the building, stormwater management, and other project elements provide public benefits that adequately compensate for any remaining detriment to such water-related interests. The potential for interference with water-related public rights is further reduced by the Applicants' commitment to apply for a reduction in parking spaces and to convert any excess exterior parking spaces to public open space, should the City's zoning ordinance be changed to require fewer spaces within the term of the license.

The Department should consider the minor extent to which the limited privatization of this area will impinge on water-dependent activity at this and neighboring sites, given the long history of non-use by the



public. Any future detriment will only arise by virtue of the reactivation of the site for public use brought about by the development itself.

Finally, having watched this project evolve through the local zoning process and community outreach, we are persuaded by the Applicants' argument that there are no reasonable alternatives to placing limited tenant parking facilities on filled tidelands within 100-feet of the high water mark.

MyRWA does have some concerns about possible future risks to water-related public rights that may result from climate change, including sea-level rise, increased storm frequency and severity, flooding, coastal bank erosion, or other environmental changes and effects. These concerns are magnified by the 50-year term of the requested license. See Conservation Law Foundation's report, "Climate Change & the Massachusetts Public Waterfront Act" (February 2019), https://www.clf.org/wp-content/uploads/2019/02/CLF_Ch91ClimateReport_Final2.pdf. We ask DEP to consider drafting guidelines for future Chapter 91 licenses that outline how developers should guard against the risk that the public will see its water-related rights undermined and eroded, with no recourse during extended-term licenses.

Conclusion

In closing, we wholeheartedly support this application for a Chapter 91 license at 1005 Broadway and are appreciative of the effort made by the Neighborhood Developers to ask for feedback and address our concerns. If you have any questions or require additional information please contact MyRWA at (781) 316-3438 or by emailing patrick@mysticriver.org.

Thank you for your consideration.

A handwritten signature in black ink that reads "Patrick M. Herron". The signature is written in a cursive, flowing style.

Patrick Herron
Executive Director
Mystic River Watershed Association

CC:

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