

DOCKET NO. D-2007-30-2

DELAWARE RIVER BASIN COMMISSION

**Venice Island Developer
The Locks Development
Flood Plain Encroachment
City of Philadelphia, Pennsylvania**

PROCEEDINGS

This docket was originally issued in response to an Application submitted to the Delaware River Basin Commission (DRBC or Commission) by Stephen Varenhorst Architects on behalf of Neducsin Properties on August 24, 2007 (Application), for review of the residential real estate development project known as “Venice One.”

The Application was reviewed for approval under Article 6 of the *Delaware River Basin Compact* and conformance with the Commission’s Administrative Manual Part III - Flood Plain Regulations (FPR). On September 25, 2018, Neducsin transferred its Venice One project to Venice Island Developer (“VID” or “project sponsor”), and on October 1, 2018 VID began to construct an alternative development called “The Locks,” which is now substantially complete. The docket as hereby modified reflects the change in project scope and transfer of ownership from Neducsin to VID. A draft of this modified docket was the subject of a duly noticed public hearing on May 12, 2021.

A. DESCRIPTION

1. Purpose. The purpose of this modified docket is to transfer ownership from Neducsin to VID and to reflect the change in project scope from the Venice One project, which was to consist of four six-story buildings comprising 200 one-bedroom and 80 two-bedroom condominiums and associated parking facilities on Venice Island to The Locks project, which consists of 60 townhomes and associated parking on the same site.

2. Location. The Locks project is located on Venice Island, on Leverington Avenue in the Manayunk section of Philadelphia, Pennsylvania. Portions of the development area are located in the flood fringe portion of the flood hazard area, adjacent to the Schuylkill River, a Warm Water/Migrating Fishery (WWF/MF) stream that flows to the Delaware River, though all habitable structures are located outside of the flood plain.

Specific location information has been withheld for security reasons.

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3. **Project Area.** The Locks will provide 60 dwelling units for residents of the Manayunk region of Philadelphia, PA. Public water and sanitary sewer will be provided by the Philadelphia Water Department (PWD). The project facilities are located on Venice Island, which is located in the flood fringe portion of a flood hazard area; however, all habitable structures are located outside of the flood plain. A flood hazard area is defined by DRBC Flood Plain Regulations as the area inundated by the regulatory flood, which in turn is defined as “the flood which has a one percent chance of occurring in any one year (the 100-year flood)”. FPR § 6.1.2 B.J. The Locks project is a Class II Project as defined in the Commission’s Flood Plain Regulations.

4. **Physical features.**

a. **Design criteria.** The Locks will consist of 60 townhomes with associated parking on Venice Island.

b. **Facilities.** The Locks will consist of 60 townhomes. The first floor of each townhome has been constructed to be above the Flood Protection Elevation (i.e. 1’ above 100-yr. flood). The project also includes a parking lot for residents and guests. Portions of the parking lot are located in the flood fringe.

c. **Water withdrawals.** The potable water supply in the project service area is supplied by PWD’s Queen Lane Water Filtration Plant. On July 25, 1962, the Commission adopted Resolution No. 62-14, amending the Comprehensive Plan by the addition of a new Section VII – Pre-Existing Projects. PWD’s Baxter (formerly Torresdale), Queen Lane and Belmont Water Filtration Plants were among those listed in Resolution No. 62-14.

d. **Wastewater Discharges.** The WWTP accepting sanitary sewer flows from The Locks is PWD’s Southwest WWTP, which was approved by Docket No. D-70-53 CP on December 12, 1972.

e. **Cost.** The approximate overall cost of this project is \$40,070,000.

B. BACKGROUND

The Commission in 2008 issued Docket D-2007-30-1 to Neducsin for the residential real estate development project then known as Venice One. On September 24, 2018, VID purchased the project from Neducsin and on October 1, 2018, VID began to construct its project “The Locks” consisting of 60 townhomes and associated parking on the property. By letter dated January 27, 2020, the Commission’s Executive Director advised VID that the Commission had not received a request for transfer of the Docket from Neducsin to VID pursuant to condition “t” of Docket D-2007-30-1. The letter also informed VID that the Commission had not received a request for review of changes to the project in accordance with condition “h” of Docket D-2007-30-1 and/or a notice of the start of construction in accordance with condition “f” of Docket D-2007-30-1. VID intends to accept transfer of Docket D-2007-30-1 as here modified to reflect the change of ownership from Neducsin to VID and the change in project scope from the Venice One development to The Locks development.

C. FINDINGS

The project sponsor has demonstrated that the first-floor elevation of all residential structures of The Locks is above the Flood Protection Elevation, as required by Section 6.3.3 B.2 of the FPR. The ground-level parking areas of the Locks development are a permitted use in the flood fringe.

Although all The Locks buildings are designed with first floors above the regulatory flood height, portions of the parking lot at the project site remain subject to flooding during the regulatory flood. The Commission is concerned about the potential for flood damage to vehicles parked in the parking areas and for flood-prone vehicles to cause damage to structures, downstream facilities, and the environment. The Commission has included condition “n” in the DECISION section of this docket to help ensure that residents are aware of these risks and take adequate precautions in advance of and during a flood. While the Commission believes that these docket conditions add a degree of protection, these conditions cannot be considered fully protective.

Section 6.1.3 B. of the FPR lists a set of “principles and goals” for protecting the public interest. Among these are the following: “Flood plain use shall not result in nuisance to other properties” (sec. 6.1.3 B.3.); “Future land uses in private flood plains shall not result in public expenses to protect the property and associated public services from flood damage” (sec. 6.1.3 B.5.); and “All future public and private flood plain users shall bear the full direct and indirect costs attributable to their use and actions” (sec. 6.1.3 B.6.).

The FPR provide that “When fill is used, the finished fill elevation shall be no lower than the Flood Protection Elevation for the particular area and shall extend at least 15 feet beyond the limits of any structure or building erected thereon.” FPR § 6.3.3 B.2. The finished basement and/or first floor elevation(s) also must be above the Flood Protection Elevation. *Id.* The FPR similarly provide that “Commercial structures shall be elevated so that no first floor or basement floor is below the Flood Protection Elevation, or such structures may be flood proofed to the Flood Protection Elevation.” FPR § 6.3.4 B.2. In connection with commercial structures, “Accessory land uses, such as yards, railroads and parking lots may be at lower elevations. However, a permit for such facilities to be used by the general public shall not be granted in the absence of a flood warning system, if the area is inundated to a depth greater than two feet or subject to flood velocities greater than four feet per second upon the occurrence of the Regulatory Flood.” Because portions of The Locks’ parking lot are below the 100-year flood elevation, a flood warning system is warranted.

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Condition “n.” of the DECISION section of this docket requires that within 6 months of modification of the docket, the docket holder will implement a flood warning plan for The Locks’ parking lot consisting of warning signs and notices to be submitted and approved by the DRBC. The flood warning signs are required to be posted in The Locks parking lot, and the notices are to be posted permanently on a virtual or actual community bulletin board. The flood warning signs and notices will identify the parking areas that are situated below the Flood Protection Elevation and advise users of the potential for flooding and to remove their vehicles from the portions of the parking lot that are below the 100-year flood elevation whenever flood warnings are issued by a government agency.

Changes in project ownership require a transfer of the docket and all its conditions to the transferee(s), except that the docket need not be transferred to individual owners of the townhomes in The Locks development. Not later than one year after completion of construction of The Locks development, VID will transfer this modified docket to [The Locks Homeowners Association]. Condition “o” in the DECISION section provides that the Executive Director will not unreasonably withhold approval of a docket transfer upon demonstration by the transferor that legal responsibility for all docket obligations after the transfer are assumed by the transferee(s). In the event of transfer of only a portion of the project to one or more new owners, a docket modification is required to ensure that all docket obligations are legally assigned.

Condition “q” of the DECISION section provides that compliance with the conditions of this docket does not assure protection against flood damage.

D. DECISION

I. Effective on the approval date for Docket No. D-2007-30-2 below, the project and appurtenant facilities as described in the Section A “Physical features” of this docket are approved pursuant to Article 6 of the *Compact*, subject to the following conditions:

a. Docket approval is subject to all conditions, requirements, and limitations imposed by the PADEP.

b. The facility and operational records regarding compliance with this Docket shall be available at all times for inspection by the DRBC.

c. The facility shall be operated at all times to comply with DRBC’s Flood Plain Regulations, with the exception of the provision in Section 6.3.3 B.2 requiring the finished fill elevation to extend 15 feet beyond the limit of any building or structure.

d. Nothing herein shall be construed to exempt the docket holder from obtaining all necessary permits and/or approvals from other State, Federal or local government agencies having jurisdiction over this project.

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e. Sound practices of excavation, backfill and reseeded shall be followed to minimize erosion and deposition of sediment in streams as set forth in the appropriate permits issued by government agencies.

f. Within 30 days after completion of construction of The Locks development, VID shall submit to the attention of the Project Review Section of DRBC a Construction Completion Statement (“Statement”) signed by the docket holder’s professional engineer or other responsible agent. In accordance with a contemporaneous Settlement Agreement, VID will remit the balance of the project review fee owed the Commission plus the transfer fee.

g. The project facilities are limited to those described in Section A.3 “Project Area” and Section A.4 “Facilities,” above. Any change to the project or project area beyond this area or as described in this docket is subject to review in accordance with Article 6 of the *Compact*.

h. No sewer service connections shall be made to newly constructed premises with plumbing fixtures and fittings that do not comply with water conservation performance standards contained in DRBC Resolution No. 88-2 (Revision 2).

i. The issuance of this docket approval shall not create any private or proprietary rights in the waters of the Basin, and the Commission reserves the right to amend, suspend or rescind the docket for cause, in order to ensure proper control, use and management of the water resources of the Basin.

j. Flood plain use shall not result in nuisance to other properties.

k. Land uses in private flood plains shall not result in public expenses to protect the property and associated public services from flood damage.

l. During construction when fill is used, the finish fill elevation shall be no lower than the Flood Protection Elevation for the particular area. The basement and/or first floor elevation(s) also shall be above the Flood Protection Elevation.

m. Commercial structures shall be elevated so that no first floor or basement floor is below the Flood Protection Elevation, or such structures may be flood proofed to the Flood Protection Elevation.

n. Within 6 months of the issuance of this modified docket, the docket holder shall implement a flood warning plan for The Locks’ parking lot consisting of warning signs and notices to be submitted to and approved by the DRBC. The flood warning signs are to be posted in The Locks’ parking lot, and the notices are to be posted permanently on a virtual or actual community bulletin board. The flood warning signs and notices are to identify the parking areas that are situated below the Flood Protection Elevation and advise users of the potential for flooding and to remove their vehicles from the portions of the parking lot that are below the Flood Protection Elevation whenever flood warnings are issued by a government agency.

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o. A transfer of ownership of the project must be accompanied by a transfer of the docket obligations, except that the docket need not be transferred to individual owners of the townhomes in The Locks development. Not later than one year after completion of construction of The Locks development, VID will transfer this modified docket to [The Locks Homeowners Association]. The Executive Director shall not unreasonably withhold approval for such transfer upon evidence that all obligations of this docket are assumed by the transferee(s). In the event of transfer of only a portion of the project to one or more new owners, a docket modification is required to ensure that all docket obligations are legally assigned.

p. The Executive Director may modify or suspend this approval or any condition thereof, or require mitigating measures pending additional review, if in the Executive Director's judgment such modification or suspension is required to protect the water resources of the Basin.

q. Compliance with the conditions of this docket does not assure protection against flood damage.

r. The docket holder and any other person aggrieved by a reviewable action or decision taken by the Executive Director or Commission pursuant to this docket may seek an administrative hearing pursuant to Articles 5 and 6 of the Commission's *Rules of Practice and Procedure*, and after exhausting all administrative remedies may seek judicial review pursuant to Article 6, section 2.6.10 of the *Rules of Practice and Procedure* and section 15.1(p) of the Commission's Compact.

BY THE COMMISSION

DATE APPROVED: June 9, 2021