

WETLANDS BOARD

BUILDING F - 7 P.M.

SEPT. 12, 2012

A. Roll Call

B. Minutes

July 12, 2012 Board Meeting

C. Public Hearings

1. W 20-12/VMRC 12-0271–Parsons/Dock Masters–217 Sherwood Forest - Public Hearing
continued from 4/11, 5/9 and 7/12/2012
2. W-02-13/VMRC 12-1071–Sweany/Mid-Atlantic–6405 Conservancy
3. W-03-13/VMRC 12-1136–Forsyth/Boyd Nursery–1784 Cypress Isle

D. Board Considerations - None

E. Matters of Special Privilege

F. Adjournment

MEMORANDUM

DATE: September 12, 2012
TO: The Wetlands Board
FROM: Michael Woolson, Senior Watershed Planner *MW*
SUBJECT: Case No. W-20-12/VMRC 12-0271; 217 Sherwood Forest; Low-profile groin

Mr. Kenneth Parsons, 217 Sherwood Forest, has requested that his application be deferred for up to six months (March 2013 Board meeting). He is in the process of modifying his application that incorporates some of the suggestions made previously. Staff concurs with his request.

Wetland Board Case W-02-13/VMRC 12-1071: 6405 Conservancy

Staff report for the September 12, 2012 Wetland Board Public Hearing

This staff report is prepared by James City County Engineering and Resource Protection to provide information to the Wetland Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

Existing Site Data & Information

Applicant: Robert Sweaney

Agent: Mid-Atlantic Resource Consulting, Ms. Karla Havens

Location: 6405 Conservancy

Parcel Identification: 4930300002

Watershed: College Creek (HUC Code JL34)

Proposed Activity: Construct a 5 ft by 608 ft non-commercial, open-pile pier with a 16 ft by 16 ft platform, 20 ft by 30 ft open-sided boathouse with boat lift and catwalk. No clearing or grading required. The site is to be accessed from the upland and the water.

Project Discussion

Ms. Karla Havens, on behalf of Mr. Robert Sweaney, has applied for a Wetlands Permit to construct a 608 foot non-commercial, open pile pier at 6405 Conservancy within the Vineyards at Jockeys Neck subdivision. The project is located on College Creek and the property is further identified as JCC Parcel Number 4930300002.

On April 7, 2009 a special committee session of the wetlands board was assembled to address staff concerns of wetland impacts on **certain** open pile structures. Staff concerns were based on observations from several projects, one of which was in the Conservancy.

The special committee met and unanimously adopted the following recommendation to the Wetlands Board. *The Special Committee of the James City County Wetlands Board unanimously recommends to the full Wetlands Board that a Wetlands Permit be required for the construction of open pile structures proposed in vegetated tidal wetlands of the County, in those cases where staff has valid reasons to anticipate that the construction of such a structure may result in the alteration of the natural wetland contours or the unreasonable obstruction of tidal flow.*

The Wetland Board considered this matter at their regular meeting on May 13, 2009 and adopted the recommendation from the special committee by a 4-1 vote (AYE: Apperson, Hughes, Elkins,

Waltrip; NAY: Roadley). Attached are the Wetland Board meeting minutes from May 13, 2009 and a copy of staff's presentation to the special committee on April 7, 2009.

The issue before the board is not the pier, as it is an open pile structure exempt from needing a wetlands permit, but the manner of constructing the pier and any wetland impacts that may occur from the construction. The pier will extend over 500 feet through the vegetated tidal wetlands. Potential impacts that may occur are approximately 5,000 sq ft and may be permanent or temporary.

Due to the unknown quantity of wetland impacts that may or may not occur, staff suggests an escrow amount be set aside for one year after construction and that the issue is revisited by staff, no more than two Board members (unless a public meeting has been advertised), VMRC, and/or VIMS along with the property owner, and/or agent/contractor to determine what the extent of permanent vegetated wetland impacts are, if any. At that point in time, mitigation could be required or the escrow returned to the property owner if there are no permanent impacts. The escrow amount should be determined by the Board.

Mitigation Discussion

As published in the Virginia Register on July 11, 2005, the revised Wetland Mitigation Compensation Policy and Supplemental Guidelines, Regulation 4VAC 20-390-10 et seq., Virginia, as a Chesapeake Bay Program partner, is committed to "achieve a no-net loss of existing wetlands acreage and function in the signatories' regulatory programs." In order for a proposed project to be authorized to impact wetlands and compensate for the wetland loss in some prescribed manner, the following three criteria must be met:

1. All reasonable mitigative efforts, including alternative siting, which would eliminate or minimize wetland loss or disturbance must be incorporated in the proposal; and
2. The proposal must clearly be water dependant in nature; and
3. The proposal must demonstrate clearly its need to be in the wetlands and its overwhelming public and private benefits.

If the proposed project cannot meet one or more of the above criteria, the project must be denied or must occur in areas outside of wetlands. Should it satisfy all three criteria, however, compensation for the wetland loss is required. The sequence of acceptable mitigation options should be as follows: on-site, off-site within the same watershed, mitigation bank(s) in the same watershed, or a payment of an in-lieu fee. If compensation is required, it should be a condition of the permit.

This project meets the three criteria outlined above and the structure itself is exempt from needing a wetlands permit. However, due to the unknown impacts that may occur during construction, staff believes that conditional compensation should be made a condition of the permit.

Staff Recommendations

Staff recommends **approval** of the application. Should the Board wish to approve the application, staff suggests the following conditions be incorporated into the approval:

1. The applicant must obtain all other necessary local, state, and/or federal permits required for the project.
2. Prior to construction, a pre-construction meeting will be held on-site.

3. The pathway through the RPA upland needs to be clearly marked prior to the pre-construction meeting. Removal of mature canopy trees should be avoided to the greatest extent practicable. And no trees shall be removed as part of this project unless approved by the Engineering and Resource Protection Division.
4. The Engineering and Resource Protection Division Director reserves the right to require additional erosion and sediment control measures, including a turbidity curtain, for this project if field conditions warrant their use.
5. An escrow shall be set up prior to the issuance of the building permit. The escrow amount is to be determined by the Board at the September 12, 2012 meeting. The escrow shall only be used to guarantee the mitigation for vegetated wetland impacts that occur during the construction of the pier.
6. A meeting shall take place no later than one year after pier construction is completed to determine the extent of wetland impacts. Staff shall invite representatives of the regulatory agencies dealing with tidal wetlands, VIMS, applicant, agent, contractor, and Wetlands Board members to this meeting. It will be determined at this meeting what the extent of wetlands impacts are, if any. Staff will make a presentation at the next scheduled Wetland Board meeting regarding the extent of any impacts and make a recommendation to the Board regarding mitigation.
7. The wetlands permit for this project shall expire on September 12, 2013. If an extension of the permit is needed, a written request shall be submitted to the Engineering and Resource Protection Division no later than two weeks prior to the expiration date.

Staff Report prepared by:



Michael D. Woolson
Senior Watershed Planner

CONCUR:



Scott J. Thomas, Director
Engineering and Resource Protection

Attachments: Joint Permit Application
Wetland Board meeting minutes from May 13, 2009
Staff presentation to the special committee on April 7, 2009

Wetland Board Case W-03-13/VMRC 12-1136: 1784 Cypress Isle

Staff report for the September 12, 2012 Wetland Board Public Hearing

This staff report is prepared by James City County Engineering and Resource Protection to provide information to the Wetland Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

Existing Site Data & Information

Applicant: Judy Forsyth
Agent: Boyd Nurseries, Inc., Mr. Wesley Boyd
Location: 1784 Cypress Isle
Parcel Identification: 4321400003
Watershed: James River (HUC Code JL30)
Proposed Activity: Beach nourishment

Project Discussion

Mr. Wesley Boyd, on behalf of Ms. Judy Forsyth, has applied for a Wetlands Permit to provide approximately 5,220 sq ft of beach nourishment at 1784 Cypress Isle within the Governors Land at Two Rivers subdivision. The project is located on the James River and the property is further identified as JCC Parcel Number 4321400003.

The existing breakwater system was permitted under VMRC 98-1727. In the intervening years, there has been no active use of the created beach system which has allowed this entire area to become vegetated. The homeowner proposes to add beach nourishment to the system, recreating a beach system while reestablishing the more desirable tidal wetland plantings (spartina patens and spartina alterniflora per the original permit application) in the appropriate areas.

The applicant also proposes work in the RPA, which will be acted up on by the Chesapeake Bay Board. The RPA work consists of permeable paver walkways, landing and steps down to the beach area. The applicant also proposes significant replanting of the RPA understory.

The property, and specifically the proposed work area, is situated in a southerly facing direction and lies along the James River in southwestern James City County. The existing shoreline consists of a narrow sandy beach bordered by a series of breakwaters to the east and stone revetment/spur and natural shoreline. Mean low water is consistent because of the existing breakwater system and mean high water falls entirely along the shoreline. The upland area immediately adjacent to the beach consists of various grasses, high-tide bush, and several small bald cypresses. The area transitions to

the RPA with a small scarp of several feet high, which the applicant proposes to have step access down to the beach. All bald cypress and high-tide bush that are within the proposed beach area will be relocated to behind the existing breakwaters.

Mitigation Discussion

As published in the Virginia Register on July 11, 2005, the revised Wetland Mitigation Compensation Policy and Supplemental Guidelines, Regulation 4VAC 20-390-10 et seq., Virginia, as a Chesapeake Bay Program partner, is committed to “achieve a no-net loss of existing wetlands acreage and function in the signatories’ regulatory programs.” In order for a proposed project to be authorized to impact wetlands and compensate for the wetland loss in some prescribed manner, the following three criteria must be met:

1. All reasonable mitigative efforts, including alternative siting, which would eliminate or minimize wetland loss or disturbance must be incorporated in the proposal; and
2. The proposal must clearly be water dependant in nature; and
3. The proposal must demonstrate clearly its need to be in the wetlands and its overwhelming public and private benefits.

If the proposed project cannot meet one or more of the above criteria, the project must be denied or must occur in areas outside of wetlands. Should it satisfy all three criteria, however, compensation for the wetland loss is required. The sequence of acceptable mitigation options should be as follows: on-site, off-site within the same watershed, mitigation bank(s) in the same watershed, or a payment of an in-lieu fee. If compensation is required, it should be a condition of the permit.

This project meets the three criteria outlined above through the re-creation of several different types of wetland communities. These communities are: Type I saltmarsh cordgrass (*Spartina alterniflora*); Type II saltmeadow hay (*Spartina patens*); Type IV saltbush; and Type XIII intertidal beach communities.


Staff Recommendations

The issue before the Board is the filling of vegetated wetlands to facilitate a beach nourishment project and subsequent vegetation relocation / replanting. Staff has fully reviewed the application and permit request and has determined that the conditions outlined in Section 22-4 (b) have been met.

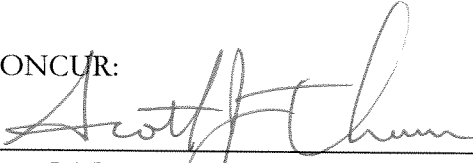
1. Prior to any land disturbing activities, a preconstruction meeting will be held on-site.
2. All other federal, state, and local permits required for this project shall be obtained prior to commencing work. Evidence of the securing of these permits must be provided prior to the pre-construction meeting.
3. The limits of work shall be flagged in the field prior to the pre-construction meeting.
4. No woody vegetation shall be removed as part of this project unless approved by the Engineering and Resource Protection Division.
5. Construction access through the uplands will avoid the existing large, mature trees.

6. The Engineering and Resource Protection Division Director reserves the right to require additional erosion and sediment control measures, including a turbidity curtain, for this project if field conditions warrant their use.
7. A surety amount of \$5000.00 shall guarantee the survival of the wetland plantings for two years after planting. The surety shall be in a form acceptable to the County Attorney's office.
8. The wetlands permit for this project shall expire on September 12, 2013. If an extension of the permit is needed, a written request shall be submitted to the Engineering and Resource Protection Division no later than two weeks prior to the expiration date.

Staff Report prepared by:



Michael D. Woolson
Senior Watershed Planner

CONCUR:


Scott J. Thomas, Director
Engineering and Resource Protection

Attachments: Joint Permit Application