

Wetlands Board

Dec. 12, 2012, 7 p.m.

A. Roll Call

B. Minutes

November 14, 2012 - Board Meeting

C. Public Hearings

1. W 20-12/VMRC12-0271–Parsons/Dock Masters–217 Sherwood Forest
(Public Hearing continued from 4/11 and 9/12/12)
2. W-04-13/VMRC12-1213–Minichiello/Mid-Atlantic/Jordan Marine–133
Branscome

D. Board Considerations

1. Change date for January 2013 meeting

E. Matters of Special Privilege

1. Staff presentation

F. Adjournment

MEMORANDUM

DATE: December 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 an additional four months, to the April 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.

It should be noted that this application was originally heard at the May 9, 2012 Wetlands Board meeting. It has been deferred three times already. First time to the July 12, 2012 meeting, second time to the September 12, 2012 meeting, and the third time to this meeting (December 12, 2012). This will be the last time staff recommends deferring this case.

Wetland Board Case W-04-13/VMRC 12-1213: 133 Branscome Blvd.

Staff report for the December 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: Vittorio Minichiello

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

Location: 133 Branscome Boulevard

Parcel Identification: 4731000018

Watershed: Powhatan Creek (HUC Code JL34)

Proposed Activity: Construct a 5 ft by 245 ft non-commercial, open-pile pier with a 20 ft by 20 ft platform, 18 ft by 27 ft roof with boat lift, and two 27 ft catwalks. No clearing or grading required. The site is to be accessed from the upland.

Project Discussion

Ms. Karla Havens, on behalf of Mr. Vittorio Minichiello, has applied for a Wetlands Permit to construct a 5 ft wide by 245 ft long non-commercial, open pile pier at 133 Branscome Boulevard within the Powhatan Shores subdivision. The project is located on Powhatan Creek and the property is further identified as JCC Parcel Number 4731000018. Mr. Wilbur Jordan has submitted construction means and methods, see attached.

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. A similar project located within the Conservancy (W-02-13) was heard before this Board at the September 12, 2012 meeting.

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).

The issue before the board is not the pier, as it is a non-commercial 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 approximately 210 feet through the vegetated tidal wetlands. Potential impacts that may occur are approximately 2,100 sq ft and may be permanent or temporary.

Due to the unknown quantity of wetland impacts that may or may not occur, staff suggests a surety in the amount of \$2,000.00 shall be required to guarantee the 'no net-loss' wetland policy as outlined in 4VAC20-390-10 et seq. (see below) and shall be in a form acceptable to the James City County Attorney's office. Similar to case W-02-13 (6405 Conservancy, Sweaney), considered by this Board last month, the surety shall be set aside for one year after construction and that the wetland impact issue be revisited by staff and other interested parties to determine the extent of permanent vegetated wetland impacts. At that point in time, mitigation could be required or the escrow returned to the property owner if there are no permanent impacts.

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. The contractor (Jordan Marine) believes that his method of construction will have no permanent wetland impacts.

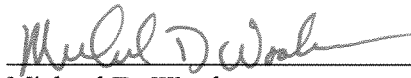
Staff Recommendations

Staff recommends **approval** of the application. Should the Board wish to approve the application, staff

suggests the following conditions be incorporated into the approval:

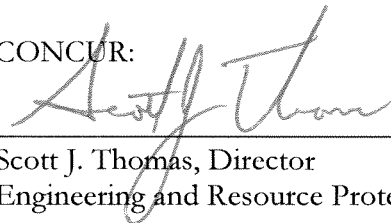
1. The applicant must obtain all other necessary local, state, and/or federal permits required for the project.
2. Prior to construction, a pre-construction meeting will be held on-site.
3. The Engineering and Resource Protection Division Director reserves the right to require additional erosion and sediment control measures, including a turbidity curtain, for this project if field conditions warrant their use.
4. A surety in the amount of \$2,000.00 shall guarantee the 'no net-loss' wetland policy as outlined in 4VAC20-390-10 et seq. The surety shall be in a form acceptable to the James City County Attorney's office.
5. 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.
6. The wetlands permit for this project shall expire on December 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
Construction Methods