

A G E N D A
JAMES CITY COUNTY WETLANDS BOARD
REGULAR MEETING
County Government Center, Building F
101 Mounts Bay Road, Williamsburg, Virginia 23185
July 14, 2021
5:00 PM

A. CALL TO ORDER

B. ROLL CALL

C. MINUTES

1. Minutes from June 9, 2021 Regular Meeting

D. PUBLIC HEARINGS

1. Case No. WJPA-21-0027 / VMRC No. 21-1060 : 10016 & 10020 Sycamore Landing Road

E. BOARD CONSIDERATIONS

1. Open Pile Pier Policy

F. MATTERS OF SPECIAL PRIVILEGE

G. ADJOURNMENT

ITEM SUMMARY

DATE: 6/30/2021
TO: Wetlands Board
FROM: Trevor Long, Watershed Planner
SUBJECT: Minutes from June 9, 2021 Regular Meeting

ATTACHMENTS:

	Description	Type
☐	Minutes	Minutes

REVIEWERS:

Department	Reviewer	Action	Date
Wetlands Group	Woolson, Michael	Approved	7/6/2021 - 10:45 PM
Wetlands Group	Small, Toni	Approved	7/7/2021 - 7:53 AM
Publication Management	Daniel, Martha	Approved	7/7/2021 - 8:58 AM
Wetlands Group	Secretary, Wetland	Approved	7/7/2021 - 4:01 PM

MINUTES
JAMES CITY COUNTY WETLANDS BOARD
REGULAR MEETING
County Government Center, Building F
101 Mounts Bay Road, Williamsburg, Virginia 23185
June 9, 2021
5:00 PM

A. CALL TO ORDER

The Wetlands Board meeting for June 9, 2021, was called to order.

The responsibility of this Board is to carry out locally the Commonwealth policy to preserve the wetlands and to accommodate economic activity so as to prevent its despoliation.

B. ROLL CALL

Board Members Present:

William Apperson, Chairman
David Gussman
Larry Waltrip
Michael O'Brien

Board Members Absent:

Halle Dunn
Charles Roadley

Other Staff Present:

Toni Small, Director, Stormwater and Resource Protection
Liz Parman, Assistant County Attorney
Michael Woolson, Resource Protection Section Chief, Stormwater and Resource Protection
Trevor Long, Watershed Planner, Stormwater and Resource Protection
Robin Benedict, Watershed Planner, Stormwater and Resource Protection
Janice Petty, Stormwater Assistant, Stormwater and Resource Protection

C. MINUTES

1. Minutes from April 14, 2021, Regular Meeting

A motion to Approve the minutes was made by Mr. Apperson. The minutes were approved on a voice vote.

D. PUBLIC HEARINGS

1. Case No. WJPA 21-0019 / VMRC 21-0915 : 1497 John Tyler Highway

Mr. Michael Woolson, Resource Protection Section Chief, presented the permit request submitted by Ms. Karla Havens, Mid-Atlantic Resource Consulting on behalf of Mr. Christopher Cook, who has applied for a wetlands permit for the method of construction of a pier and two lifts located at 1497 John Tyler Highway in the Barrett's Ferry Landing Subdivision and the Gordon Creek watershed. The property is further identified as James City

County Parcel No. 3430300006. The presentation described the current site conditions, proposed construction, and mitigation with conditions.

The Board deliberated the pros and cons of this permit.

Mr. Gussman inquired if the Resource Protection Area (RPA) would be impacted and would there be a path built to access the pier.

Mr. Woolson replied that there would be a path that would be allowed administratively to the pier from the house, which is standard operating procedure to allow access through the RPA. They would work through and around existing vegetation and no mature trees would be cut down for the placement of the path.

Mr. Gussman inquired if this would cover any cypress knees or impact existing trees.

Mr. Woolson stated that the goal is to not impact any cypress knees. He deferred to Mr. Wilbur Jordan for an answer to address those concerns about how he would deal with the cypress knees in the pathway.

Discussion ensued concerning the height of the pier and the vegetation.

Mr. Gussman stated any wetlands impacts would be known after construction. Staff, at that time would make a determination whether wetlands have been impacted. He also inquired of the mitigation.

Mr. Woolson replied, as a first option, that mitigation would be based on a per square foot basis and they would have to replant on-site. If they could not do that, then they would have to buy credits on a per square foot basis from an approved tidal wetlands bank.

Mr. Gussman asked if there were some tidal banks in that area.

Mr. Woolson affirmatively replied. There is one tidal wetlands bank that covers James City County on the James River.

Mr. Apperson voiced his concern about invasive species being established. He asked if the Board would add to the permit if invasive species could also be considered degradation of wetlands and must be removed or accounted for, depending on results of staff's inspection.

Mr. Woolson inquired if it was to be considered as a condition.

Mr. Apperson stated that it would be up to the Board.

Mr. Apperson opened the Public Hearing.

A. Ms. Karla Havens, Mid-Atlantic Resource Consulting, was available to answer questions from the Board. She described the wetlands substrate and access to the site. The Corps of Engineers are requiring restrictions for wildlife protection and the time of year when work would be allowed.

Mr. Gussman inquired about the review by the Corps of Engineers and its concern.

A. Ms. Havens explained the Corps of Engineers regional and general permits, the protected wildlife, and other involved agencies.

B. Mr. Wilbur Jordan, Jordan Marine Construction, Inc., was available to answer questions

from the Board. He explained how work would be performed constructing the pier.

Mr. Waltrip commented how contractors and new technologies allow wetlands to be protected.

Mr. Apperson closed the Public Hearing.

Ms. Liz Parman, Assistant County Attorney, advised the Board concerning delays, deferrals, and also advised the Board that it does not have jurisdiction over the pier, the location of the pier, the length of the pier, or the boathouse. She advised them to be careful when discussing these projects, as a pier is a permitted use. She advised the Board to take that into consideration and base its decision solely on the impacts to the wetlands in its jurisdiction.

Mr. Apperson made a motion to adopt the Resolution to grant the permit for Wetlands Board Case No. WJPA 21 -0019/VMRC 21- 0915 at 1497 John Tyler Highway with the added condition that the property owner remove any invasive species established there caused by the construction.

The motion to Approve with Conditions was made by Mr. Apperson, the motion result:

AYES: 3 NAYS: 1 ABSTAIN: 0 ABSENT: 2

Ayes: Apperson, Waltrip, O'Brien

Nays: Gussman

Absent: Dunn, Roadley

Mr. Apperson stated that this affirmative vote has nothing whatsoever as an indication of lack of judgment by Mr. Gussman's vote. He has total respect for Mr. Gussman's opinion.

2. Case No. WJPA 21-0024 / VMRC 19-1938 : 10010 Sycamore Landing Road

The application was extended during Pandemic Emergency with a retroactive extension date of January 1, 2022.

3. Case No. WJPA 21-0025 / VMRC 19-2163 : 10006 Sycamore Landing Road

The application was extended during Pandemic Emergency with a retroactive extension date of January 1, 2022.

E. BOARD CONSIDERATIONS

None.

F. MATTERS OF SPECIAL PRIVILEGE

1. WJPA 20-0032 : 6413 Conservancy

Mr. Daniel Winall, Waters Edge Construction, had received a wetlands permit on September 9, 2020 on behalf of Mr. Mark and Ms. Maria Valleca to remove and replace a pier and construct a floating dock, a finger pier, an open sided boathouse, and a covered deck on property located at 6413 Conservancy within the James River watershed. The property is further identified as James City County Tax Map Parcel No. 493030004.

Post construction inspection of June 2021 determined the extent of wetlands impacts that may have occurred from the construction. Staff's opinion was that there were no permanent wetland impacts and authorized that the surety be released and returned.

Introduction of Ms. Robin Benedict, Watershed Planner and Mr. Ben Nettleton, Virginia

Marine Resource Commission Engineer.

G. ADJOURNMENT

A motion to Adjourn was made by Mr. Apperson and approved on a voice vote.

The meeting adjourned at 6:07 p.m.

ITEM SUMMARY

DATE: 7/14/2021

TO: Wetlands Board

FROM: Trevor Long, Watershed Planner

SUBJECT: Case No. WJPA-21-0027 / VMRC No. 21-1060 : 10016 & 10020 Sycamore Landing Road

WJPA 21-0027/VMRC-2021-0915: Mid-Atlantic Resource Consulting, on behalf of Mr. J. Barry Davidson, Jr and Mrs. Laura Davidson, and Mr. Richard Costello and Mrs. Nina Costello, has applied for a wetlands permit for the construction of an offshore sill with beach nourishment and the repair of a rip rap revetment at 10016 & 10020 Sycamore Landing Road, JCC Parcel ID No. 0720400002 and 0720400004.

ATTACHMENTS:

	Description	Type
☐	Staff Report	Staff Report
☐	Resolution	Resolution
☐	Adjacent Property Owner Letter	Backup Material
☐	Adjacent Property Owner List	Backup Material
☐	Public Advertisement	Backup Material

REVIEWERS:

Department	Reviewer	Action	Date
Wetlands Group	Woolson, Michael	Approved	7/6/2021 - 10:46 PM
Wetlands Group	Small, Toni	Approved	7/7/2021 - 7:52 AM
Publication Management	Daniel, Martha	Approved	7/7/2021 - 8:56 AM
Wetlands Group	Secretary, Wetland	Approved	7/7/2021 - 4:01 PM

WETLANDS BOARD CASE No. WJPA 21-0027/VMRC 21-1060. 10016 and 10020 Sycamore Landing

Staff Report for the July 14, 2021, Wetlands Board Public Hearing

This staff report is prepared by James City County Stormwater and Resource Protection to provide information to the Wetlands 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 AND INFORMATION

Applicants: Mr. Richard Costello and Mrs. Nina Costello
Mr. John Davidson, Jr. and Mrs. Laura Davidson

Owner/Agent: Mr. Daniel Winall, Waters Edge Construction

Location: 10016 Sycamore Landing Road
10020 Sycamore Landing Road

Parcels: Parcel B Stephens
Sycamore Landing

Parcel Identification
Nos.: 0720400002
0720400004

Watershed: York River (HUC YO63)

Floodplain: Zone VE - Base flood elevation is determined to be 17 feet mean sea level

Proposed Activity: Install an offshore sill with beach nourishment and revetment repair

Wetland Impacts: No vegetated wetland impacts

Staff Contact: Michael D. Woolson, Section Chief, Resource Protection Phone: 253-6823

PROJECT DISCUSSION

Mr. Daniel Winall, Waters Edge Construction, has applied for a wetlands permit on behalf of Mr. Richard Costello and Mrs. Nina Costello, and Mr. John Davidson Jr. and Mrs. Laura Davidson to install an offshore sill with beach nourishment and repair a riprap revetment on properties located at 10016 Sycamore Landing Road and 10020 Sycamore Landing Road within the York River Watershed. The properties are further identified as James City County Tax Map Parcel Nos. 0720400004 and 0720400002 respectively.

The applicants are proposing to repair an existing 140-linear-foot riprap revetment at the toe of the existing slope to gain structural integrity to the bank using Class III riprap. Additionally, the applicants are proposing to install a 100-linear-foot offshore sill including beach nourishment to the two properties. Areas within this beach nourishment will be planted with *Spartina alterniflora* and *Spartina patens*. This project is being done in conjunction with shoreline stabilization projects at 10006 Sycamore Landing Road and 10010 Sycamore Landing Road. Both of these projects were approved by the James City County Wetlands Board.

The applicants have expressed that timber mats will be used in all access areas to avoid impacting existing vegetated wetlands. There are no vegetated wetland impacts proposed with this project; however, approximately 1,500 square feet of nonvegetated wetlands impacts are anticipated.

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 dependent 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.

Staff has reviewed this application and finds that this project meets the three criteria outlined above. There are no anticipated vegetated wetland impacts associated with the proposed project.

STAFF RECOMMENDATIONS

Staff has reviewed the above application and recommends approval of the application as presented. Should the Board wish to approve the application, staff suggests the following conditions be incorporated into the approval:

1. The applicants must obtain all other necessary local, state, and/or federal permits required for the project; and
2. All development activities located in the special flood hazard area shall comply with Article VI, Division 3, Floodplain Area Regulations of the James City County Zoning Ordinance and receive all required approval and permits prior to commencement of such activities; and
3. A surety of \$1,000 be paid and in place prior to commencement of work in a form acceptable to the James City County Attorney’s Office to guarantee the no-net wetland loss policy of Virginia; and
4. The Wetlands Permit for this project shall expire on July 14, 2024, if construction has not begun; and
5. If an extension of the permit is needed, a written request shall be submitted to the Stormwater and Resource Protection Division no later than June 2, 2024, six weeks prior to the expiration date.

MDW/md
WJPA21-27VMRC21-1060_16.20SycLdg

Attachment:
1. Resolution

RESOLUTION

CASE NO. WJPA 21-0019/VMRC 21-1060. 10016 AND 10020 SYCAMORE LANDING ROAD

JAMES CITY COUNTY WETLANDS PERMIT

WHEREAS, Mr. Richard Costello (the “Applicant”), has applied to the Wetlands Board of James City County (the “Board”) to request a permit to use and develop in areas designated as wetlands on property identified as James City County Real Estate Tax Parcel Numbers 0720400004 and 0720400002 and further identified as 10016 and 10020 (the “Property”) as set forth in the application WJPA 21-0019/VMRC 21-01060; and

WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record.

NOW, THEREFORE, BE IT RESOLVED that the Wetlands Board of James City County, Virginia, following a public hearing, by a majority vote of its members FINDS that:

1. The anticipated public and private benefit of the proposed activity in the wetlands exceeds its anticipated public and private detriment.
2. The proposed development conforms to the standards prescribed in Section 28.2-1308 of the Code of Virginia, and the guidelines promulgated pursuant to Section 28.2-1301 of the Code of Virginia.
3. The proposed activity does not violate the purpose and intent of Chapter 22 of the James City County Code or Sections 28.2-1300 et. seq. of the Code of Virginia.
4. In granting this Wetlands Permit, the following conditions are hereby imposed:
 - a. The applicant must obtain all other necessary local, state, and/or federal permits required for the project; and
 - b. All development activities located in the special flood hazard area shall comply with Article VI, Division 3, Floodplain Area Regulations of the James City County Zoning Ordinance and receive all required approval and permits prior to commencement of such activities; and
 - c. A surety of \$1,000 be paid and in place prior to commencement of work in a form acceptable to the James City County Attorney’s Office to guarantee the no-net wetland loss policy of Virginia; and
 - d. The Wetlands Permit for this project shall expire on July 14, 2024, if construction has not begun; and

- e. If an extension of the permit is needed, a written request shall be submitted to the Stormwater and Resource Protection Division no later than June 2, 2024, six weeks prior to the expiration date.

William Apperson
Chairman, Wetlands Board

Michael Woolson
Secretary to the Board

Adopted by the Wetlands Board of James City County, Virginia, this 14th day of July, 2021.

THE FORGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS ____ DAY OF _____, 2021 IN THE COMMONWEALTH OF VIRGINIA, IN THE COUNTY OF JAMES CITY.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

WJPA21-27VMRC21-1016_16.20SycLdgRd-res



General Services
107 Tewning Road
Williamsburg, VA 23188
P: 757-259-4080
General.Services@jamescitycountyva.gov
jamescitycountyva.gov

Capital Projects
107 Tewning Road
Williamsburg, VA 23188
757-259-4080

Fleet
103 Tewning Road
Williamsburg, VA 23188
757-259-4122

**Stormwater and
Resource Protection**
101-E Mounts Bay Road
Williamsburg, VA 23185
757-253-6670

Facilities & Grounds
113 Tewning Road
Williamsburg, VA 23188
757-259-4080

Solid Waste
1204 Jolly Pond Road
Williamsburg, VA 23188
757-565-0971

June 23, 2021

RE: WJPA 21-0027
10016 and 10020 Sycamore Landing Road
Construction of an offshore sill with beach nourishment
and the repair of a rip rap revetment

Dear Adjacent Property Owner:

In accordance with State and County Codes, this letter is to notify you that a request has been filed with the James City County Wetlands Board by Mr. Daniel Winall, Waters Edge Construction on behalf of Mr. J. Barry Davidson, Jr. and Mrs. Laura Davidson, and Mr. Richard Costello and Mrs. Nina Costello for encroachment into the tidal wetlands associated with the construction of an offshore sill with beach nourishment and the repair of a rip rap revetment. The project is located at 10016 and 10020 Sycamore Landing Road and further identified as JCC Parcel Numbers 0720400002 and 0720400004.

A complete description, plan and other information are on file in the Stormwater and Resource Protection Division and are available for inspection during normal business hours, should anyone desire to review them.

The Wetlands Board will hold an advertised public hearing on **July 14, 2021 at 5:00 p.m.**, in the Board Room of Building F, 101 Mounts Bay Road, James City County, Virginia, at which time you may request to speak on the above referenced project.

Sincerely,

Michael D. Woolson

Michael D. Woolson
Wetlands Board Secretary
757-253-6823
michael.woolson@jamescitycountyva.gov

cc: Waters Edge Construction
Attn: Mr. Daniel Winall

MDW: jep

Mailing List for: WJPA-21-0027 – 10016 & 10020 Sycamore Landing Road– Riprap Sill
Repair & Installation and Installation of Beach Nourishment

Owner: 0720400002

Davidson, J Barry, Jr, Trustee & Laura J,
Trustee
10016 Sycamore Landing Road
Williamsburg, VA 23188-1254

Contractor:

Waters Edge Construction
Attn: Mr. Daniel R. Winall
P.O. Box 352
Toano, VA 23168-0352

Owner: 0720400004

Costello, Richard A, Trustee & Nina S,
Trustee
10020 Sycamore Landing Road
Williamsburg, VA 23188-1254

0720400001 – 10010 Sycamore Landing
Road

Amason, Deric C & Andrea V
6322 South Springs Circle
Clifton, VA 20124-2461

0720400004A

Rinaldi, Mark G & Claudia Moran
10022 Sycamore Landing Road
Williamsburg, VA 23188-1254

0720400007

0720400013 – 10015 Sycamore Landing
Road

Miller, Jeffrey N & Anne P
10025 Sycamore Landing Road
Williamsburg, VA 23188-1255

0720400008 – 10021 Sycamore Landing
Road

Cody, Phyllis J, Trustee
4613 Ware Creek Road
Williamsburg, VA 23188-1127

0720400010

Smith, Darlene W
10009 Sycamore Landing Road
Williamsburg, VA 23188-1255

Virginia Marine Resource Center
Attn: Mr. Ben Nettleton
380 Fenwick Road, Building 96
Fort Monroe, VA 23651-1064

Department of Game and Inland Fisheries
P.O Box 90778
Henrico, VA 23228-0778

VIMS Wetlands Program

Attn: Dawn Fleming
P.O. Box 1346
Gloucester Point, VA 23062-1346

State Water Control Board

c/o Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218-1105

VDOT

4451 Ironbound Road
Williamsburg, VA 23188-2621

Regulatory Branch Army Corps of Engineers

803 Front Street
Norfolk, VA 23510-1011



PUBLIC HEARING NOTICE

THE WETLANDS BOARD AND THE CHESAPEAKE BAY BOARD OF JAMES CITY COUNTY, VIRGINIA, WILL HOLD PUBLIC HEARINGS ON **WEDNESDAY, JULY 14, 2021 AT 5 P.M.** IN THE COUNTY GOVERNMENT CENTER BOARD ROOM OF BUILDING F, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

THE WETLANDS BOARD WILL CONSIDER THE FOLLOWING CASE:

WJPA 21-0027/VMRC-2021-1060: Water's Edge Construction, on behalf of Mr. J. Barry Davidson, Jr. and Mrs. Laura Davidson, and Mr. Richard Costello and Mrs. Nina Costello, has applied for a wetlands permit for the construction of an offshore sill with beach nourishment and the repair of a rip rap revetment at 10016 and 10020 Sycamore Landing Road, JCC Parcel ID No. 0720400002 and JCC Parcel ID No. 0720400004.

THE CHESAPEAKE BAY BOARD WILL CONSIDER THE FOLLOWING CASES:

CBPA 21-0075: Water's Edge Construction, on behalf of Mr. David and Mrs. Kim Lambey have filed an exception request for encroachments into the RPA buffer for bank grading at 10006 Sycamore Landing Road, JCC Parcel ID No. 0720100002.

CBPA 21-0083: Acelution, Inc., on behalf of Mr. Stephen and Mrs. Jessica Smith, has filed an exception request for encroachments into the RPA buffer for the construction of a landing at 114 Constance Avenue, JCC Parcel ID No. 4730500026.

CBPA 21-0087: Mr. Harold Breeden has filed an exception request for encroachments into the RPA buffer for the addition of fill material at 10007 Sycamore Landing Road, JCC Parcel ID No. 0720400011.

Appeals from decisions under the Chesapeake Bay Preservation Ordinance may also be heard.

The applications and plans are on file and may be viewed during normal office hours in the Stormwater and Resource Protection Division, 101-E Mounts Bay Road, James City County, Virginia.

NOT FOR PUBLICATION

DISPLAY: WEDNESDAY – JULY 7, 2021 and JUNE 30, 2021.
ACCOUNT NO. CU00015112
VIRGINIA GAZETTE
1/8 PAGE, VERTICAL, B/W
CARD # x9941

COPIES: PLANNING
ASSISTANT COUNTY ATTORNEY
WETLANDS/CHESAPEAKE BAY BOARD MEMBERS

ITEM SUMMARY

DATE: 7/14/2021
TO: Wetlands Board
FROM: Elizabeth Parman, Assistant County Attorney
SUBJECT: Open Pile Pier Policy

ATTACHMENTS:

	Description	Type
☐	Staff Memo	Staff Report
☐	Resolution	Resolution

REVIEWERS:

Department	Reviewer	Action	Date
Wetlands Group	Woolson, Michael	Approved	6/29/2021 - 10:29 AM
Wetlands Group	Small, Toni	Approved	7/7/2021 - 7:53 AM
Publication Management	Daniel, Martha	Approved	7/7/2021 - 9:01 AM
Wetlands Group	Secretary, Wetland	Approved	7/7/2021 - 4:01 PM

MEMORANDUM

DATE: July 14, 2021

TO: The Wetlands Board

FROM: Elizabeth Parman, Assistant County Attorney
Michael D. Woolson, Section Chief, Resource Protection

SUBJECT: Policy on Open Pile Structures

BACKGROUND

The James City County Wetlands Board (the “Board”) adopted a policy in 2009 that requires applicants wanting to construct a noncommercial open-pile pier or structure to come before the Wetlands Board to ask for a permit. The permit, if issued, is for the construction method and not for the pier or structure itself.

The Board has heard a number of cases for the construction of noncommercial open-pile piers and applicants have repeatedly commented that James City County is the only locality that requires a Wetlands Board permit for the construction of noncommercial open pile piers. The County Attorney’s Office has researched this issue further to ensure that the current Board policy conforms to state law.

ANALYSIS

Virginia Code § 28.2-1302 sets forth a “Wetlands Zoning Ordinance” that may be adopted by localities and which “shall serve as the only wetlands zoning ordinance under which any wetlands board is authorized to operate.” The County’s “Wetlands Zoning Ordinance” is contained in Chapter 22 of the County Code. County Code Section 22-3 sets forth a series of uses that are permitted on wetlands, including the construction of private noncommercial piers “provided, that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands.”¹

In 1985, the Virginia Attorney General (the “Attorney General”) was asked a series of questions regarding the right to regulate private, noncommercial piers. Part of the Attorney General’s analysis involved Virginia Code Section 62.1-13.5, which was the predecessor statute to Virginia Code 28.2-1302.² The Attorney General considered the exemption of construction of private piers from the permit requirements of the Virginia Marine Resources Commission (the “VMRC”) and stated that:

The exemption of private piers from the permit requirements of VMRC and the permit process under a local Wetlands Zoning Ordinance is based on the legislative determination that piers and other structures built on pilings permit the continued flow of the tide and preserve the contour of the wetlands.

...

1 County Code Section 22-3. The following uses of and activities in wetlands are authorized if otherwise permitted by law:

1. The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures; provided, that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;...

2 For purposes of this analysis, there are no relevant differences between the statutes.

Under a Wetlands Zoning Ordinance adopted by a locality, a private pier is a use of right and, therefore, is exempt from the application and permit procedure of that particular ordinance.

1985-1986 Op. Atty Gen. Va. 108, 110-111.

Thus, it is the Attorney General's opinion that piers and other structures built on pilings per se "permit the continued flow of the tide and preserve the contour of the wetlands," and are, therefore, permitted as a matter of right.

CONCLUSION

Based on the language of Virginia Code § 28.2-1302 and the Attorney General's opinion, the County Attorney's Office recommends that the Wetlands Board rescind its policy on open pile structures to no longer require a permit from the Wetlands Board for the construction of noncommercial open pile structures.

A resolution accomplishing this recommendation is attached for your consideration.

EP/MDW/md
OpenPilePolicy-mem

Attachment

RESOLUTION

JAMES CITY COUNTY WETLANDS BOARD RESCINDS POLICY REQUIRING

PERMITS FOR NONCOMMERCIAL OPEN PILE STRUCTURES

WHEREAS, the Wetlands Board adopted a policy on May 13, 2009, that requires persons wanting to construct a noncommercial open pile pier or structure to come before the Wetlands Board to ask for a permit (the “Current Policy”); and

WHEREAS, County Code Section 22-3 permits the construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duckblinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures; provided, that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands; and

WHEREAS, the Attorney General has opined that piers and other structures built on pilings per se “permit the continued flow of the tide and preserve the contour of the wetlands,” and are, therefore, permitted as a matter of right; and

WHEREAS, the Wetlands Board desires to rescind its Current Policy to align with the Attorney General’s opinion.

NOW, THEREFORE, BE IT RESOLVED that the Wetlands Board of James City County, Virginia, does hereby rescind its policy requiring a Wetlands Board Permit for the construction of noncommercial open pile structures in the wetlands and instructs staff to revise its policies and procedures accordingly.

William Apperson
Chairman, Wetlands Board

Michael D. Woolson
Secretary to the Board

Adopted by the Wetlands Board of James City County, Virginia, this 14th day of July, 2021.

OpenPilePolicy-res