

**WETLANDS BOARD
MINUTES**

MAY 10, 2000 - 7:00PM

A. ROLL CALL

ABSENT

Henry Lindsey
John Hughes
David Gussman
Philip Duffy

Larry Waltrip

OTHERS PRESENT

Darryl E. Cook, Secretary to the Board
Tracy West, VMRC
Environmental Staff

B. MINUTES

Approval of the April 12, 2000 minutes were approved with one revision to page 4 to correct the name from Mr. Duffy to Mr. Hughes on the motion made on case W-08-00.

C. OLD BUSINESS - NONE

D. PUBLIC HEARINGS

1. W-07-00: Robert Beck – 6425 Conservancy

Mr. Gerry Lewis presented the case stating that Water's Edge Construction, on behalf of the owner Mr. Robert Beck, had applied for a wetlands permit to install 220 linear feet of riprap revetment at 6425 The Conservancy. The property is further identified as parcel (3-7) and found on James City County Real Estate Tax Map (49-3).

The property in question is along the College Creek. Environmental Division inspectors Gerald Lewis and Pat Menichino visited the site along with other state agency personnel on April 21 , 2000. It is estimated that approximately 1560 square feet of Vegetated Wetlands type; XI Freshwater Mixed Community will be impacted by this application request.

As the wetlands impact exceeds 1000 square feet for this noncommercial application, the proposal needs to be considered under the Board's Wetlands Mitigation Policy. Factors to consider are that the project is for the purpose of shoreline stabilization, contains no feasible onsite mitigation site, is a riprap

structure, and the encroachment into the wetlands will be minimized in conjunction with Environmental Division staff as described in condition #2. From an environmental perspective, riprap revetments are generally preferred over bulkheads due to their ability to absorb and dissipate wave energy. Also their sloped surface provides greater surface area within the intertidal zone than vertical structures and open spaces in the armor stone may provide suitable habitat for marine organisms. Finally, a revetment is a permanent solution to the erosion problem and may have the least wetlands impact over time. Therefore, no additional mitigation or compensation is proposed for this project.

It is the staff's recommendation that this application be approved with the following conditions:

1. Prior to any work activities, a preconstruction meeting will be held on-site.
2. The revetment installation location shown on the drawings submitted may require adjustments in order to minimize the impacts to the Wetlands. The proposed location of the revetment will be reviewed, verified and adjusted by the contractor at the direction of Environmental Division staff during the preconstruction meeting.
3. The Environmental Division shall inspect filter fabric installation, prior to placement of the Riprap.
4. The Environmental Division requires the riprap to be Class1 for use in the revetment.
5. Any upslope disturbed areas shall be stabilized with grass.
6. The permit shall expire May 10, 2001.
7. If an extension of this permit is needed, a written request shall be submitted to the Environmental Division no later than two weeks prior to the permit expiration date.

Mr. Duffy noted that there was a discrepancy between the Joint Permit Application and the James City County tax record.

Mr. Hughes inquired what the wetlands loss would be if a bulkhead were to be installed instead of riprap.

Mr. Lewis responded that there would be less impact on wetlands, however it would still be over 1,000 square feet and riprap was the best long term solution.

Mr. Lindsey asked why the application indicated 1,250 square feet, non-vegetated wetlands and staff's report indicated 1,560 square feet vegetated wetlands.

Mr. Lewis responded that the applicant averaged the area, whereas staff did an actual size of the area.

Ms. West explained to the Board that because cypress trees were present, it automatically becomes vegetated wetlands, which normally does not fall under the normal definition which lists grasses. She stated that she did not feel the applicant was wrong in his assessment, but just not aware cypress trees were considered vegetated wetlands.

Mr. Lindsey opened the public hearing.

A. Mr. Daniel Winall, Water's Edge Construction, described his proposal as was indicated on the plan he submitted in the Joint Permit Application. He then informed the Board that he was available to answer any questions.

Mr. Hughes asked Mr. Winall if he knew there was a discrepancy in ownership of the property?

Mr. Winall stated he did not, but stated the owner would respond to the problem.

Mr. Lindsey noted that this was the first case presented which involved mitigation since the Board had revised and adopted the James City County Wetlands Mitigation/Compensation Policy. He also noted that the Board had agreed to make their decision to either waive or enforce mitigation on a case by case basis.

Mr. Lindsey asked Mr. Winall to present his argument against not submitting a mitigation/compensation plan for this project as it exceeds the 1,000 square feet limitation as set in the James City County Wetlands Mitigation/Compensation Policy.

Mr. Winall responded that in his professional opinion installing riprap is a better solution than constructing bulkheads. He stated that most riprap projects will be over 1,000 square feet. He cautioned the Board that if the process to obtain a permit to install riprap became too difficult or costly due to mitigation/compensation requirements, the owner may choose to construct a bulkhead. He encouraged the Board to waive the requirement for mitigation/compensation in riprap cases, but not to change the policy.

Mr. Winall stated that in this particular case the fallen trees are signs of damage to the bank. He stated that the bluff would not be disturbed and the riprap would provide alternate habitat to wildlife.

B. Ms. Boots Johnson, 210 Red Oak Landing Road, Williamsburg, addressed the Board. She informed the Board that she opposed this case and encouraged the Board to stand behind the adopted policy and not review mitigation on a case by case basis. She requested the Board to defer this case until James City County had established a financial fund for mitigation projects. She then asked the Board to approve a resolution to be submitted to the Board of Supervisors requesting their support in lowering the speed limit along Powhatan Creek.

As no one else wished to speak, Mr. Lindsey closed the public hearing.

Mr. Lindsey inquired how other localities handled mitigation/compensation cases.

Mr. Cook responded that Norfolk and Chesapeake have active programs. However, they have not required mitigation/compensation in cases such as this one. He then went on to say that the County does not have a fund set up for mitigation/compensation, but funds could be collected and deposited in the Virginia Wetlands Restoration Trust Fund. The County would not have a say on how these funds would be spent.

The Board held a general discussion on the case. It was noted that if Mr. Winall had submitted a proposal to construct a bulkhead the Board would probably have approved it, even though riprap is preferred as it is more environmentally oriented. The Board agreed that prior to making a decision on this case they wanted to see a mitigation/compensation plan that addressed the wetlands loss caused by this project and also have the property owner issue resolved.

Mr. Duffy made a motion to defer case W-07-00 to the June 14, 2000 meeting.

The motion was approved by a 4-0 vote.

2. W-10-00: Michelle Jacobs – 172 & 174 The Maine

Mr. Pat Menichino presented the case stating that Mr. Charles Roadley of Williamsburg Environmental Group, on behalf of the owner Ms. Michelle R. Jacobs, had applied for a wetlands permit to install 250 linear feet of riprap revetment at 172 & 174 The Maine, in the First Colony subdivision. The property is further identified as parcels (2-59 & 2-60) found on the James City County Real Estate Tax Map (45-4).

The property in question is along the James River. Environmental Division Senior Inspector Pat Menichino visited the site along with other representatives from VMRC and VIMS on March 29, 2000. It is estimated that approximately 160 square feet of tidal area (Type XIII, Intertidal Beach) will be permanently impacted by this application request. In addition there will be approximately 1600 square feet of temporary impacts which are proposed with the beach nourishment but will be mitigated by the creation of a new Intertidal Beach Community along with the planting of approximately 325 square feet of *Spartina patens*.

It is the staff's recommendation that this application be approved with the following conditions:

1. Prior to any land disturbing activities, a preconstruction meeting will be held on-site.
2. The proposed toe of the 15 foot riprap installed over the top of the existing riprap shall not encroach channelward of the existing present location.
3. The proposed 110 foot riprap used as toe armor along the existing bulkhead shall not exceed the proposed 6 foot of channelward encroachment.
4. All riprap used shall be a minimum of Class II Stone.

5. Any filter fabric used shall be inspected by the Environmental Division prior to placement of riprap.
6. The exact placement location for the proposed 42 foot breakwater may be adjusted based on the recommendations of the Environmental Division at the preconstruction meeting.
7. The two proposed 12 inch drainage outfall pipes may be installed as shown on this plan but the completion of the entire drainage system and its operation shall be subject to review and approval by the Environmental Division prior to its installation.
8. A JCC Land Disturbance permit will be required and must be obtained by the land owner for all of the proposed landward grading and earth moving operations. This permit shall be obtained prior to the preconstruction meeting.
9. Those Landward areas of the Resource Protection Area (RPA) buffer disturbed, will require mitigation replanting with native vegetation consisting of trees, shrubs and ground cover. A RPA replanting plan shall be submitted and approved by the Environmental Division prior to the preconstruction meeting.
10. All vegetation requiring removal for this project shall be approved by the Environmental Division prior to any disturbance.
11. The permit shall expire April 12, 2001.
12. If an extension of this permit is needed, a written request shall be submitted to the Environmental Division no later than two weeks prior to the permit expiration date.

Mr. Duffy stated that he would not support the proposal as he felt it was not addressing the real problem, which was the stabilization of the cliff.

Mr. Lindsey opened the public hearing.

- A. Mr. Marc Bennett, AES Consulting Engineers, spoke on behalf of the owner. He informed the Board that Hurricane Floyd did significant damage to these two lots. He stated the existing bulkhead is failing and the slope is shifting. He requested the Board approve the proposal.

Mr. Hughes noted that a permit was not required to make repairs to an existing bulkhead.

Mr. Lindsey inquired why the breakwater was positioned as shown on the proposal.

Ms. Tracy West responded that it was oriented to prevailing winds in that area to dissipate wave energy.

- B. Mr. Richard Jones, 170 The Maine and adjacent property owner, stated he was in favor of the installation of riprap as it will help stabilize the banks. He then stated that he opposed the alignment of the breakwater as he was concerned that it would hold sand and that would

impact vegetation on his property. Mr. Jones stated he wanted a qualified source to tell him that the breakwater would not adversely affect his property. (Letter from Mr. Jones addressed to Williamsburg Environmental Group, Inc. is attached.)

As no one else wished to speak, Mr. Lindsey closed the public hearing.

The Board agreed that they had several unanswered questions relating to this project. One of the major concerns was the alignment of the breakwater and the possibility of it having an adverse affect on the adjacent shoreline and existing vegetation. Another concern was that the scope of the project was excessive and did not adequately address the stability of the slope.

Mr. Hughes made a motion to defer case W-10-00 until the June 14, 2000 meeting, at which time they requested the owner's representatives be present to answer questions.

The motion was approved by a 4-0 vote.

Ms. West informed the Board that she had been in contact with Mr. Jones and she was researching the alignment as well. She said she would share her information with staff.

E. BOARD CONSIDERATIONS

1. Maureen Sallade - 3088 North Riverside Drive

Mr. Darryl Cook presented the case stating that Mr. Robert Ripley with Bob Ripley Construction, had requested a waiver from the Chesapeake Bay Preservation Ordinance provision regarding the 100-foot Resource Protection Area buffer. The request was to allow a 67 foot reduction in the width of the buffer to allow the construction of an addition to the existing house and a deck. The house was constructed in 1966 and is located entirely within the 100 foot buffer, which was established with the adoption of the Ordinance in 1990. The request, the response to the request and the appropriate plans are attached to this memo.

The request was partially granted allowing the construction of the house addition but not allowing the deck. The basis for the decision was an application of the Ordinance provisions in Section 23-9(c)(2) that establish the parameters for buffer modifications for lots platted prior to October 1, 1989. Item (a) states that *the modifications shall be the minimum necessary to achieve a reasonable building area for a principal structure.* Item (c) states that *in no case shall the reduced portion of the buffer area be less than 50 feet in width.* The house addition was approved because it left more than 50 feet of buffer but the deck was disallowed because it is closer than 50 feet to the river.

Mr. Ripley is appealing the decision on behalf of the owner based on Section 23-17 of the Ordinance, which designates the Wetlands Board as the appellate body. The written appeal dated April 17, 2000, is attached to this memo. The appeal requests permission to construct the deck as shown on the plans. In making its decision, Section 23-17(b) contains the following three conditions to be considered by the Board when making its decision:

1. *The hardship is not generally shared by other properties in the vicinity;*
2. *The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and*
3. *The appellant acquired the property in good faith and the hardship is not self-inflicted.*

Mr. Cook stated that staff was available to answer questions relating to this appeal.

Mr. Hughes inquired if the new construction had changed the drainage flow on the lot.

Mr. Cook responded that it had not and that a landscape plan was required to offset the encroachment of the addition into the buffer.

Mr. Lindsey inquired if anyone present wanted to speak on the case.

- A. Mr. Richard B. Holt, 3090 North Riverside Drive and adjacent property owner, spoke in favor of the appeal. He noted that the shoreline on this parcel dipped in considerably more than surrounding properties and as property owners pay taxes to the mean low water mark they should be able to enjoy and improve their property.
- B. Mr. Robert Ripley, Bob Ripley Construction and general contractor, spoke in favor of the appeal. He informed the Board that other properties in Chickahominy Haven have decks next to the water. He stated that he had been a member of the James City County Board of Zoning Appeals for ten years, and Chickahominy Haven was a difficult subdivision to work with as it had been built years prior to James City County adopting building regulations. There were many properties that did not meet present day regulations and it was difficult to tell owners that they could not have the same amenities as others living there because of existing regulations.
- C. Mr. Richard Sallade, owner, encouraged the Board to grant his appeal. He stated that it would be beneficial to join the decks together as well as enhance his property value.
- D. Ms. Boots Johnson, 210 Red Oak Landing Road, spoke in opposition of the appeal. She encouraged the Board to stand behind the policy and not permit any encroachment anywhere in the County into the RPA buffer. (Letter of opposition attached.)

Mr. Hughes inquired if the Board were to deny the appeal, what the next step would be for the applicant.

Mr. Cook responded that it would go to the Circuit Court for their consideration.

All Board members agreed that the appeal did not meet the criteria to reverse staff's decision to deny construction of the deck.

Mr. Duffy made a motion to deny the appeal for 3088 North Riverside Drive.

The motion was approved by a 4-0 vote.

F. MATTERS OF SPECIAL PRIVILEGE

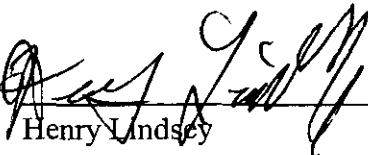
The Board held a short discussion about James City County and York County holding their Wetlands Board meetings on the same day of the month. This creates a conflict for VMRC, Traycie West, as she needs to alternate months between the two counties to attend the meetings. The Board requested staff to check into any potential conflicts that would prohibit the Board from moving their Board meetings to the fourth Wednesday of the month. It was also agreed that York County would be contacted to discuss the possibility of them moving their board meeting.

Ms. West informed the Board that VMRC was in the process of hiring another Environmental Engineer, which meant that there was a good possibility that jurisdictions could be reassigned.

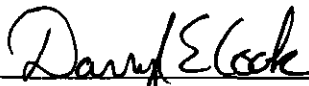
G. ADJOURNMENT

Mr. Duffy made a motion to adjourn. The motion was approved by a 4-0 vote.

The meeting was adjourned at 9:12 PM.



Henry Lindsey
Chairman



Darryl E. Cook
Secretary

May 10, 2000

To: Wetlands Board

From: Boots Johnson

Re: Appeal - deck construction in the R.P. A. at 3088 Riverside Drive.

My understanding of this appeal is as follows: the owner of the house would like to add a deck to the house built in this location prior to the R.P.A. concept and the regulation of land use within the R.P.A. Other houses in the area have a deck and the present owner desires to also have a deck.

While I may empathize with the enjoyment of an outdoor sitting area that a deck might provide, I encourage you to support the decision to deny a permit for the deck construction and any other extension within the R.P.A.

Present day policy would deny this new use-construction within the R.P.A. for any new dwelling located adjacent to the Resource Protection Area. To permit this new construction in this location would be to deny the validity of the policy and contribute to setting precedent for the approval of further degradation within the R.P.A.

Boots Johnson

210 Red Oak Landing Road

Williamsburg, Virginia 23185