

**COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX**

MINUTES OF THE WETLANDS BOARD

DATE: Tuesday, May 16, 2023

TIME: 7:00 PM – 9:00 PM

Gerry Hyland Government Center,
Room 220 – Gum Springs
8350 Richmond Hwy, Alexandria, VA 22309

Wetlands Board Member Attendance

Name	Present (P)/ Absent (A)	Name	Present (P)/ Absent (A)
Bryan Campbell	P	Aurali Dade	A
John Collins	P	Kim Larkin	P
R. Dean Costello*	P	Steve Shappell	P
Bert Cramer*	P	Clyde Wilber	P

In Attendance

Katie Hermann	Dept of Planning and Development, Fairfax County
Mark Eversole	Virginia Marine Resources Commission
Marc Gori*	Office of the County Attorney, Fairfax County

**Participated virtually*

The meeting was called to order at approximately 7:00 PM.

1. Call to order and roll call

Clyde Wilber, Chair, called the meeting to order. Everyone introduced themselves and informally the roll was called. A quorum was present.

2. Welcome new Board Member, Steve Shappell

**3. Public Hearing: Wetlands Board Permit: 4517 Carlby Lane, Alexandria
Virginia Marine Resources Commission #: 22-2162
Tax Map Number: 110-3 ((1)) 0009A**

The subject property, located on Tax Map 110-3 ((1)) Parcel 9A, is in eastern Fairfax County on Dogue Creek in the Dogue Creek Watershed and the Mount Vernon Magisterial District. The subject property is located within 1,300 feet of the marina entrance to the Mt. Vernon Yacht Club, Inc.

The proposed JPA project will prevent ongoing erosion by replacing the failing bank armoring with a living shoreline that provides ecological and water quality benefits. The approximately 100-foot sill will be constructed to an elevation of 3 feet above Mean Low Water (MLW) (slightly less than 1 foot above Mean High Water (MHW)), and its protective toe on the riverside will be constructed flush with the existing grade. Rock from the existing armoring will be reused in the proposed sill as much as possible, and additional material (stone that meets VDOT Class II specifications) will be brought in as needed. The sill will be open on both ends (openings greater than or equal to 10 feet wide) to allow tidal exchange landward of the sill and prevent trapping of aquatic species. Clean sand fill, meeting the requirements of the nationwide permit 54, will be placed behind the sill and planted with native marsh plants. Fill is needed to create a stable shoreline slope between the upland and water and to provide the proper substrate and elevations for marsh and bank vegetation establishment.

In the County staff memo, there were the following important points that were noted related to the project:

- A possible alternative to the proposed project would be to re-arm the existing riprap; however, this alternative would not provide ecological and water quality benefits and would not be consistent with state and county codes that require living shorelines be installed in areas that are suitable for this shoreline management approach.
- While the application acknowledges a temporary disturbance in the Wetlands Board's jurisdiction, the proposed JPA incorporates significant areas of new vegetated wetlands that will be preserved for decades through the proposed design.
- No impacts to navigable waters will occur as a result of this proposed project. Though the shoreline will be altered, this would be a temporary status. Within a year or two, expanded vegetated wetlands will provide significant benefit to the ecosystem at this location on Dogue Creek. By re-grading the shoreline and adding more vegetation at the shoreline and landward of the shoreline, previous erosion issues are expected to be resolved.
- The applicant has adequately designed the sill structure so that it will buffer the shoreline from strong wave action that may result from the Potomac River. The sill will also be open on both sides, which will allow for tidal flushing from the sides as well. The placement and height of the sill will allow for tidal elevations to flow overtop of the sill and will be constructed with the appropriate stone size and arrangement to reduce impacts of wave action on the sill structure.
- The Wetlands Board has the authority to collect a wetlands mitigation fee for impacts to wetlands within their jurisdiction.
 - The fee is calculated in the following manner: The applicant provided the MLW to 1.5 mean tide and to be a total of 1,727 sq ft of impact x \$28 per square foot = \$48,356.
 - However, the applicant is proposing to replace the entire 1,727 sq ft of wetlands impact with native vegetated wetlands plants. Therefore, staff does not support the collection of a wetlands mitigation fee for this proposed project.

Mr. Wilber asked if VMRC had any additional comments to provide, in which Mark Eversole declined and explained he had no additional comments, but explained the next steps for VMRC if the Wetlands Board approved the permit tonight.

A Wetlands Board member asked about tree loss as a result of this project. Ellyse Marques, with Wetland Studies and Solutions, Inc., who is the agent for this application answered this question and explained that 2-3 trees will be removed as part of the project but that they are located landward of the Wetlands Board jurisdiction and are located in the Resources Protection Area (RPA).

Another Wetlands Board member asked for the approximate fetch distance and Mark Eversole mentioned that the fetch is several miles.

Another Wetlands Board member asked about the timeline and schedule of the removal of old pier. Mark Eversole explained that while the exact timing is unknown, the old pier would likely be removed right before the new pier is constructed.

Chair Clyde Wilber asked Board members to remember the possible options for decisions at this hearing tonight while members listen to testimonies:

- Option 1 – Grant the permit as requested.
- Option 2 – Grant a modified permit.
- Option 3 – Grant a modified permit with a Bond that could be forfeited if the conditions of the permit are not met. This option would include a requirement that the property issue is addressed.
- Option 4 – Deny the permit.
- Option 5 – Deny the permit without prejudice, allowing resubmittal.
- Option 6 – Leave the Hearing Open for up to 30 days with direction the applicant to provide more information prior to final action.

Formal Testimonies were given by Ellyse Marques and Ingrid Bauer – the applicant’s agent. Ms. Larkin asked several questions/comments about indicator plantings and certain species that were included in the plan set, to which the agent agreed to re-examine these proposed plants. Mr. Wilber asked that the applicant take before and after photos documenting all aspects of the project shall be obtained and included in the project completion certification required below.

Ms. Hermann read a letter of support that the County received for this project. It was submitted by Joesph P. George and the letter explained this neighbor’s support for this project through his long-standing residency in the neighborhood, good environmental stewardship, and overall benefits to the health of the Potomac River.

Other citizen testimonies included:

- Glenda Booth – in support
- No other testimonies of support or opposition were offered.

Mr. Wilber asked the Board if members want to leave the public comment portion of this hearing open, and there was no support for this from Board members.

Mr. Wilber reminded the Board to consider the social, economic, physical and environmental impacts based on the oral and written testimony and the anticipated public and private benefit or detriment resulting from the project. Then Mr. Wilber called for a motion for “Option 1 – Grant the permit as requested” in which Ms. Larkin and Mr. Campbell both provided motion support. However, then a motion was offered for the “Option 2 – Grant a modified permit” in order to amend based on future revised plantings. This was proposed by Mr. Wilber, supported by Ms. Larkin and seconded by Mr. Campbell.

Modified permit with the following conditions was proposed by Ms. Larkin through a motion:

Based on oral and written testimony presented at this hearing, the anticipated public and private benefit resulting from this project will exceed the public and private detriment; therefore, I move that Wetlands Board approve this application Wetlands Board Permit #WETLD-2023-MV-00001 and Virginia Marine Resources Commission #: 22-2162 subject to the following conditions:

1. That the applicant shall meet the permitting requirements of all county, state and federal laws and regulations, including, but not limited to, the County’s Chesapeake Bay Preservation Ordinance (CBPO), the Erosion and Sedimentation Control Ordinance and the Floodplain Regulations of the Fairfax County Zoning Ordinance;
2. The applicant is not required to pay a mitigation fee.
3. The applicant or their contractor is encouraged to review and modify the proposed wetland planting plan as appropriate to achieve native tidal freshwater wetland vegetation and provide a copy of any changes to the Wetland Board.
4. A pre-construction conference with the permittee, the engineer (PE) of record, the contractor, and a member of Fairfax County staff will be held on site within seven days prior to the commencement of the work and will include a discussion of the terms and conditions of the permit. Notice will be provided to staff for the days when construction is planned to facilitate inspection.
5. Before and after photos documenting all aspects of the project shall be obtained and included in the project completion certification required below.
6. At the completion of construction, the applicant shall provide a certification by the Professional Engineer of Record that the project has been completed in accordance with this permit.
7. The duration of the permit is for a period of 2 years. The Wetlands Board may grant additional time if a written request for additional time is filed with Fairfax County staff prior to the date of permit expiration with a suitable explanation for the need for delay.
8. Two years after certification that the project has been completed in accordance with the permit the applicant shall provide a certification by a Professional Engineer, Landscape Architect or Professional Wetland Scientists (PWS) that the wetlands plants have been properly maintained. If it determined that less than 50% of the native tidal marsh plants or volunteers are surviving, then the applicant will undergo a replanting program to

rehabilitate the area to the originally proposed planting density, and appropriate native plant species for the hydrologic conditions.

Ms. Larkin made the motion to approve the motion. Mr. Campbell seconded the motion. A final discussion regarding the plantings occurred in which the language in #8 condition (*which is reflected in the final permit conditions shown above*).

All Wetlands Board members voted to approve. The motion to approve the application was approved unanimously. There were no abstentions. Mr. Wilber proposed a motion to close the hearing, Mr. Campbell seconded the motion. The motion was approved unanimously.

4. **Other JPA Updates for upcoming Public Hearing on June 13, 2023**

Staff reports will be sent to the Board members by May 30th. These updates tonight are informational, factual purposes only

- **6045 River Drive (JPA # 22-1551)** – items to understand and staff observations: long fetch, existing bulkhead showing signs of age and want to build a new bulkhead seaward of the existing bulkhead, concerns of bulkhead removal could be detrimental to other features on-site (other walls, pool, etc). Board members explained that additional information and clarification for possible location of vegetated wetlands and structural considerations.
- **10625 Greene Drive (new JPA # 23-0716)** – items to understand and staff observations: new proposed project design, including some planting areas and catwalks, with a recent site visit in March 2023. Board members asked questions about location of native wetlands plants, in which Ms. Larkin and Ms. Hermann shared their recollection of native plants in more than 4-5 locations landward of the bulkhead, including: smartweed, dock, and sweetflag. The applicant has also stated that *“During the period between the stop work order and today, erosion has continued landward of the wall, threatening the survival of an existing tree, and allowing tidal water to erode landward of the bulkhead. Additionally, some wetland vegetation has naturally established itself in the area that is now subject to tidal intrusion. The application indicates existing grades and elevations as of the date of the survey. The MHW and MLW lines indicated in the JPA are at the face of the wall based on evidence provided by the Owners from 2018.”*

Mr. Wilber had a few additional items to share regarding timelines, historical photos of the old bulkhead and overtopping, understanding of the jurisdictional boundaries of the tidal wetlands, proposed tree protection, and current status of property boundaries. Mr. Wilber also discussed the main features of a Restoration Order hearing to establish deadlines and potential for civil charges. Ms. Larkin explained that the applicant told her that the original permit from March 2023 and related safety concerns due to not including fill landward of the bulkhead. Mr. Collins mentioned that there was also a safety concern of exposed tie-backs. Questions of work done at the site between the date of the stop work order letter being mailed to the residence and any work done between the letter date and the

letter being received, Ms. Hermann stated there's no way to know. Mr. Collins asked a question regarding the occurrence of more recent native wetlands plants landward of the bulkhead after the bulkheads construction and if that means that the Board's jurisdiction changed, and Mr. Wilber asked that VMRC answer that, to which Mark Eversole stated "*it might change it from non-vegetated wetlands to vegetated wetlands, which would extend your jurisdiction to 1.5 x MHW if the proper plants were, if they were on the state list of what makes the area a tidal wetland.*" Ms. Hermann explained that in her March 2023 staff report, she had to make some assumptions about the square footage of the board's jurisdiction because the applicant did not provide all of the information requested for truly understanding the Board's jurisdiction. Mr. Wilber clarified that once vegetated wetlands are established, it does 2 things: 1) it extends the Board's jurisdiction to 1.5 x MHW and 2) therefore the area of mitigation may need to be extended through replanting or paying a fee of \$28 per sq ft. Mark Eversole said that Restoration Orders are rare in Virginia. Mark Eversole said the public hearing could stay open and allow for future resubmissions. Ms. Hermann clarified for Mr. Collins that a land disturbance permit is needed for any projects with fill and regrading a space greater than 2,500 sq ft.

5. Meeting Minute Review and Approval

Katie sent draft meeting minutes for the March 6, 2023 meeting. Mr. Wilber offered a motion to approve the March 6, 2023 meeting minutes, with Mr. Shappell abstaining. Mr. Wilber proposed to approve the meeting notes and Ms. Larkin seconded the motion. The motion was approved unanimously.

5. Adjournment

Mr. Wilber motioned to close the meeting, and Mr. Campbell seconded the motion. The vote was approved unanimously.

The meeting adjourned at 9:05pm.