

**COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX**

MINUTES OF THE WETLANDS BOARD

DATE: Tuesday, June 13, 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	P
John Collins	P	Kim Larkin	P
R. Dean Costello	P	Steve Shappell	A
Bert Cramer	P	Clyde Wilber	P

**Participated remotely*

In Attendance

Katie Hermann Dept of Planning and Development, Fairfax County
Marc Gori* Office of County Attorney, Fairfax County
Mike Johnson Virginia Marine Resources Commission

**Participated remotely*

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. Public Hearing for JPA 22-1551 for 6045 River Drive, Lorton

County staff provided an explanation of the application which discussed that this joint permit application (JPA) which requests approval to construct a new 179 ft long bulkhead seaward of a failing bulkhead on the Potomac River. The proposed project will use pilings, whalers, stringers and earth anchors to stabilize a new vinyl sheet pile bulkhead.

The subject property is in eastern portion of Fairfax County on the Potomac River in the Kane Branch Watershed and the Mount Vernon Magisterial District. The subject property resides in the Hallowing Point neighborhood and is located within 1,500 ft of the Hallowing Point Civic Association's tennis court and boat launch area, at 7821 Southdown Road, Alexandria, Virginia

(on Tax Map 102-2 ((18)) Parcel 0015). The new bulkhead will be connected to the existing bulkhead on the adjacent property to the west. The applicant has obtained approval from this adjacent property to the west to tie-in the bulkhead on their property, this approval statement is included as an appendix to this report. On the eastern side of the bulkhead, the new bulkhead will be connected to the existing bulkhead within the Sohn property.

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

- The JPA includes an explanation from the P.E. who has sealed the JPA as to why a living shoreline is not feasible:

“We evaluated a living shoreline during the design of this project and determined that one is not feasible due to the high energy environment at this location. There is a 13 mile reach to the south-west. As a part of the design process we also considered buttressing the existing wall with riprap rather than applying the sheet pile veneer. We chose not to pursue this because it would have significantly increased the encroachment into both the subaqueous bottom land and the intertidal zone.”
- In reference to the VIMS Coastal Management Decision Tool, for a shoreline with these natural storm occurrences and existing man-made features, the following considerations are provided:

“In a situation with high or undercut erosion of a non-forested shoreline, bank grading and vegetation planting is the preferred option. However, if upland improvements (e.g., house, well, septic system) would be in the grading zone, then moving the improvement, if possible, in order to allow for grading is recommended. In some cases, the improvement can be easily moved (e.g., a gazebo or small shed). In other cases, moving the improvement may be more difficult and require the services of experts. In some cases, moving the improvement may not be possible or feasible. In those cases, an alternative erosion protection approach may be necessary, also requiring the services of experts.”
- The existing property has a long fetch that has the potential to bring strong winds and waves to this shoreline. This type of naturally occurring energy has the potential for significant erosion, as also supported by VIMS’ research. Additionally, the stability of the interior brick/masonry wall landward of the existing bulkhead could be impacted by the removal of the existing bulkhead. This would cause instability further inland of the shoreline. It is generally understood that if significant grading were completed to implement components of a living shoreline, that the interior brick/masonry wall would likely need to be removed and stabilized, with the potential for negative impacts to the existing landward pool facility on-site. At its closest point, the interior brick/masonry wall is within 17ft of the existing bulkhead which is approximately 90ft in length.

A Board member asked for clarification on a USACE comment related to the applicant following up with the USFWS on any possible impacts to the bald eagle population in the area.

A formal testimony was given by Jim Beck, who is the agent on the project for the applicant. He provided a summary of why the application was designed with the new bulkhead being placed seaward of the existing bulkhead. Mr. Beck also explained that he as reached out to the USFWS

to inquire further about the bald eagle comment and will continue to look into this. Ms. Larkin asked about the existing buttresses and the applicant further clarified the intent to not remove them with this project. Ms. Hermann explained that no written correspondence for support or concerns of this project was not received.

Joe Francone who also represents the property owner explained a few historical items and expressed concerns with the permit process of tidal wetlands and timeframes.

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 called for a motion to close the public hearing, which was initiated by Ms. Dade and seconded by Mr. Campbell. The motion to approve the application was approved unanimously.

Chair Clyde Wilber asked Board members to ask Board members to consider the following actions related to this permit.

- 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.

Then the Board members discussed the pros and cons public and private benefit. Then Mr. Wilber requested the Board consider a decision, and Mr. Collins asked if the USFWS consideration is outstanding. Mr. Wilber suggested that if the Board wanted, this item could be added as a condition to the permit. The proposed motion was shown on the screen.

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-00003 and Virginia Marine Resources Commission #: 22-1551 subject to the following conditions:

- 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;
- That the applicant should pay a fee of \$3,080 for the loss of 110 square feet of tidal wetland area lost from this project at the approved rate of \$28 per square foot. The fee is compensatory mitigation for the loss of tidal wetland area in accordance with the Wetlands Board's Mitigation/Compensation Policy and the assessment of tidal wetland impacts and losses. The check for the mitigation fee should be made payable to the

Northern Virginia Regional Park Authority which is the entity that holds the Wetlands Board Mitigation Fund Money.

- 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.
- Before and after photos documenting all aspects of the project shall be obtained and included in the project completion certification required below.
- At the completion of construction, the applicant shall provide a certification by the engineer (PE) of record that the project has been completed in accordance with this permit.
- That the duration of the permit is for a period of 2 years.

Mr. Campbell made the motion to approve the motion. 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, Ms. Larkin seconded the motion. The motion was approved unanimously.

3. Public Hearing for JPA 2023-0716 for 10625 Greene Drive, Lorton, VA

Mr. Wilber asked for any disclosures or recusals, in which Mr. Collins expressed a disclosure to the Board that he is a resident of the Harbor View Rec Club (HVRC) and knows the property owners but intends to stay impartial at this hearing.

County staff provided an explanation of the application which discussed that this joint permit application (JPA) requests approval to complete the construction of a partially built 160 ft long bulkhead replacement, with new pilings and whalers, a covered boat slip with pilings and metal hip roof, and catwalks. The new bulkhead is currently located on Tax Map 113-4 ((1)) Parcel 31 and will be connected to an existing bulkhead on the adjacent property to the south of the subject property. The adjacent property to the north has no erosion control structure. Natural fill has filled in between the new bulkhead and disturbed ground caused by the construction of this bulkhead. The Property is located within 300 ft of the upstream entrance to the Harbor View Recreation Club marina, in which Massey Creek provides Recreation Club members waterway access from the marina to Belmont Bay, then the Potomac River. The shoreline at the Property is within 8-10 ft of the navigable waterway.

The information presented in this section was also included as part of a previous JPA #21-1648 submitted for this Property. The records for the previous JPA can be found at VMRC's website: [Application: 20211648](#). The information in the previous permit application is relevant to this current JPA #23-0716 because it documents the history of the violation, which is unresolved, and includes recommendations from various agencies on project design solutions.

During an April 10, 2023, site visit for this current JPA #23-0716, County and VMRC staff observed several tidal wetlands plants on all three sides of the boat house and on the northern and southern portions of the bulkhead, specifically Dock (*Rumex* sp.), Smartweed (*Polygonum* sp.), and Sweet Flag (*Acorus calamus*). The identification of these plants landward of the bulkhead in several locations along the bulkhead demonstrates that this site has vegetated wetland along the landward side of the bulkhead.

The applicant has incorporated some of the VIMS and SEAS recommendations to include living shoreline design components into the final JPA. VIMS and SEAS recommended the following components to be added to the application, which was supported by county and VMRC staff:

- adding low sills that would tie into the bulkhead,
- lowering the newly constructed bulkhead to just above the mean low water (MLW) elevation,
- limit the catwalk/boardwalks to only exist around the boat slip, in a “U” shaped design, and
- planting native, tidal wetlands plant species in designated landward planting areas to the north and south of the boat slip.

For each of the VIMS and SEAS recommended design features listed above, this application design shows the following:

- Sills – no sills are provided in the project design. The applicant has explained that installing sills out into the waterway would negatively impact boat access to the Harbor View Recreation Club’s marina.
- Lowering the bulkhead – the proposed design only includes lowering the bulkhead in two locations, on the northern side of the boat slip. Each section would be four feet wide. The two proposed lowered bulkhead sections are approximately 8 ft combined; the total length of the bulkhead is 160 ft with 80 ft of the bulkhead supporting the boat house. All reviewing agencies recommended the entire bulkhead be lowered, except for the “U” shaped area around the boat slip.
- Location and extent of the catwalk/boardwalks – the proposed design does not incorporate recommendations from the various reviewing agencies in that the application continues to show catwalk/boardwalks along the entirety of the bulkhead, which is 160 ft.
- Wetlands planting areas – the application only includes one proposed wetland planting area on the northern side of the boat slip, which is proposed to be 224 sq ft. The proposed design does not include a wetland planting area to the south of the boat slip. Instead, the applicant proposes to reestablish this area with fill and grass plant species.

In the County staff memo, there were the following important points that were noted related to bulkhead stability, the living shoreline components, and the proposed fee calculation.

- Existing tidal wetland disturbance: because significant disturbance to existing tidal wetlands will occur as a result of the proposed JPA design. The applicant’s proposed addition of new boardwalks/catwalks, the limited vegetated wetland planting areas, and the height of the bulkhead are the design components that would not sufficiently offset the total disturbance to the wetlands on the Property. Because Virginia Code “§ 28.2-1308 states that wetlands are not “unreasonably disturbed,” the County and several state

agencies recommended reasonable design components that would have limited disturbance and enhanced restoration of the wetlands. Those recommendations were not included in the final design to the extent requested.

- MLW & MHW Water lines: County staff does not support the applicant's discussion that the MLW and MHW elevation lines should be derived from observational information from 2018, shown as blue lines on the image on page 4. Instead, the MLW and MHW elevation lines should be derived from current conditions on-site and water elevation information from 2023.
- Bulkhead stability: County staff made the acknowledgement that there is a common interest in the neighborhood to ensure the marina access is maintained through the Massey Creek waterway. It is possible that the bulkhead could provide some stability to the waterway, though this concept was not studied by the applicant. Staff notes that the bulkhead could provide some stability to the Massey Creek waterway and that this perspective is relevant to the Wetland Board's consideration of the JPA.
- Living Shoreline elements: County staff continues to recommend that, except for the three sides around the boathouse, all catwalks be removed from the design and the bulkhead to be lowered to just above MLW. Also, additional tidal marsh plantings should be incorporated into the design where the catwalk does not exist to promote the growth of additional tidal wetland vegetation. Also, the County and VMRC requested in the April 20, 2023, comment response letter that the applicant provide a narrative explaining why previous Wetlands Board and VIMS recommendations for additional living shoreline components, such as the removal of the catwalks except for around the boathouse and the reduced elevation of the bulkhead on both sides of the boathouse, were not included in this application. The covered tidal wetlands are unlikely to have the adequate sunlight required for tidal wetland vegetation to thrive if the catwalks permitted. The applicant did not respond to this request for information and the design was not modified to remove any catwalks. However, the applicant has previously stated that the catwalks along the shoreline, a higher bulkhead, and fill landward of the bulkhead are needed to prevent the loss of one tree, provide safe access to the water, and cover the exposed portion of the tiebacks for safety. Therefore, in order for the project design to provide the maximum extent of living shoreline elements possible as directed by State and County code, County staff continues to recommend that, except for the three sides around the boathouse, all catwalks be removed from the design and the bulkhead to be lowered to just above MLW. Also, additional tidal marsh plantings should be incorporated into the design where the catwalk does not exist to promote the growth of additional tidal wetland vegetation.
- Outstanding comments & resolution requested: The county and VRMC sent comments to the applicant on April 20th, and the following information was requested: Show on the plan sheets, the location of the native wetlands plants, add 1.5 times the mean tide range on the plan sheet, cross sections and calculate square footage of these areas, square footage of vegetated tidal wetlands that will be impacted or lost as a result of the project. None of this requested information was provided by the applicant. Since this information was not provided, staff estimated 160 linear feet (shoreline), and multiplied that by 3 feet (channelward) due to the conditions & vegetation visible on-site, which comes out to 480 sq ft of impact. However, in the final calculation, staff subtracted the 224 sq ft of proposed planting areas included in this design as the green shaded area.

In conclusion:

Staff finds the property has limited space between the shoreline and Massey Creek waterway and sills are not a feasible shoreline stabilization solution. However, VMRC, VIMS and DCR's SEAS provided several other shoreline stabilization solutions that ensures the project meets state and county requirements. The application does not include the full extent of these solutions or provide reasonable alternatives to account for the disturbance to tidal wetlands by the applicants without an approved permit. Staff does not recommend approval of this application, because it fails to meet state and county code.

- Fee calc - The initial fee is calculated in the following manner: the proposed new planting area compared to the loss of tidal wetlands is equal to 256 sq ft (480 sq ft – 224 sq ft = 256 sq ft). This would result in a final fee of 256 sq ft of impact x \$28 per square foot = \$7,168.

Mr. Collins asked a question regarding the construction of catwalks and if this is allowed. Ms. Hermann explained that while state & county do not prohibit this, there were limited locations of catwalk at this site prior to the unpermitted construction of the project. So new/additional catwalks have been added to this site. Mr. Wilber asked if this question could be discussed by the Board after the applicant has the chance to testify.

Mr. Wilber asked if the applicant is 'complete', staff said that it's not 'complete' and there's missing information that was previously requested. VMRC also acknowledged this same understanding. The applicant requested that this version of the applicant would added to the meeting agenda, and that a public hearing be held. Ms. Hermann also explained that the applicant had told her that they were not going to be making any other changes to the application design.

Formal Testimonies were given by:

- Liviya Sands (Property owner): who provided a statement, which is summarized as a discussion including: historical information, safety concerns, need for catwalks for covering tie-backs, natural occurrence of new plants landward of the bulkhead, change in lower sections of bulkhead in certain areas, the desire to replace and maintain grass yard which was present before the bulkhead construction, re-fill gaps of eroded land – landward of the bulkhead, desire to save existing mature maple tree and included Arborist report needed for tree survival, adjacent property owner approves of the bulkhead tie-in with their bulkhead in order to help stabilize that adjacent bulkhead, and wanting to return property to it's previous state.

Mr. Collins had a question related to VMRC's recommendation to resubmit a new permit to address the backfill that wasn't included in original permit. Ms. Sands explained that after talking with VMRC, their family decided to drop the appeal of the March 2023 permit application and resubmit this permit for consideration.

Ms. Larkin asked about the location of proposed work across the property line, into the neighbor's property and if that property owner agrees to this proposed work.

Mr. Wilber presented information related to historical information, missing information from the application, the presence of wetlands on-site, HVRC property boundary resolution, and existing approved modified permit.

- Ms. Sands offered a few clarifying thoughts, that they were not made aware of the ability to further change their proposed design and they were told that if they didn't want to make changes to their design that it wasn't required. Mr. Beck acknowledged that several data elements were not provided because the information for the design was derived from 2018 data.

Mr. Wilber showed the failing state of the old bulkhead, starting in 2015 from historical county boundary. This same imagery also shows nature changes in the neighboring parcel with no man-made structure.

- Ms. Sands explains that historical photos were taken during high-tide. She also mentioned that the HVRC dredging project from 2018/2019 created a ledge of shoreline. A living shoreline can't be installed on the south side of the property because the tree needs to be protected with fill.
- Mr. Wilber and Ms. Sand had a discussion about what type of wetlands (vegetated or non-vegetated) was under and behind the old bulkhead based on several photos. Mr. Wilber said that even the muddy shoreline shown in several photos is wetlands, even non-vegetated wetlands. Mr. Collins asked a question where the location of MHW and MLW is related to these photos and Mr. Wilber explained that there's more photos that show that. MHW & MLW does not change based on a project like this, it's just that the amount of space impacted by these elevations is what changes. Ms. Sand contends that many of these photos are snapshot in-time right after construction and it was never intended to be constructed in this current state, and that this why the Sand family will not sign the last permit because it doesn't allow them to restore to property to it's previous state. Ms. Sands also stated that there are no vegetated wetland plants underneath of the proposed and installed catwalks. Mr. Wilber had a different thought that that new installation of catwalks likely killed any existing wetland plants that were on-site, as identified by VIMS after their site visit in July 2021.
- To date, the application has never included the MHW x 1.5, therefore it's accurately difficult to understand the Board's jurisdiction. The estimated 500 sq ft of Board jurisdiction is from MLW to MHW. Ms. Sand said that the designs are a snapshot in-time and isn't representative of accurate conditions. Mr. Beck said that the MLW to MHW provided as blue lines are from survey in October 2022. When Mr. Wilber asked Mr. Beck if there's was a way to know where the wetlands were prior to the unpermitted project, Mr. Beck replied "all we have is the evidence we provided and we don't have a detailed survey that would typically show this." Ms. Sands said that there's active erosion landward of the bulkhead.

As Board members listen to testimony, please consider the following options:

- 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.

- Option 4 – Deny the permit
- Option 5 – Deny the permit without prejudice, allowing resubmittal.
- Option 6 – Leave the Hearing Open with direction to the applicant to provide more information prior to final action
- Option 7 – Defer a decision for up to 30 days and hold a decision-only meeting within 30 days. If the Wetlands Board fails to take action within the 30 days, the permit application is automatically approved as submitted.

The Board could also schedule a Restoration Order hearing for actions related to Option #3 or Option #4.

Mr. Wilber explained that he sees 3 possible options for the Board tonight:

- During the public portion of this hearing, the Sand's may commit to signing the previously approved permit and withdraw the current application. This would result in no need to deny the current application.
- Under Option 3 Deny with prejudice – they cannot submit a new application. They could sign the previously approved permit to end the violation and the need to have a restoration order hearing.
- Under Option 4 – Deny without prejudice, the Sands could sign the previous permit ending the need for a restoration hearing. If the Sands indicate they will submit a new application, the restoration hearing would still be scheduled.

These options would allow the applicant to move beyond the current violation and have the Board move forward with additional action. A modified permit could be based on the previously approved permit, which did not consider the tree – so there are several conditions that could be included in conditions to a modified permit, such as remove all catwalks, regrade, modified bulkhead, limited fill, extend native wetland planting areas, and among other items. Ms. Sand is concerned that the adjacent property owner on the south side of bulkhead said that he wanted the Sand's bulkhead to stay as it is now so it can help tie-into his bulkhead.

Mr. Wilber asked Ms. Sands if she rejected the VIMS recommendation for best available science to install a living shoreline on the south side of property, and she agreed, yes. Ms. Sand also stated that she feels like this project has possible conditions because of the work has been done without a permit and she's being penalized. Mr. Wilber said that the permit shows approximately 500 sq ft of wetlands, and the Board should heavily consider VIMS recommendations and the appropriate mitigation measures should be included. VIMS recommended wetlands areas to be installed on the south side of the property, and that it is feasible to mitigate on-site.

Mr. Larkin mentioned that mitigation should be located on the Sand's property and not extend over to an adjacent property. Mr. Cramer asked if the applicant is still open to considering signing the original permit, Ms. Sand said no – not without a modification. Mr. Beck said that the original permit is feasible to be constructed, and Mr. Wilber reminded everyone that this permit was approved by the Board.

Statements from members of the public were provided by Brad Martin, Larry Zaragoza, Chris Sisson, and Joe Sena.

The Board considered keeping the Hearing open, there was no support for this. Mr. Collins proposed a motion to close the public hearing, which was seconded by Mr. Campbell.

Mr. Wilber called for a motion, and 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.

Board members had an open discussion regarding the following topics:

- New and replaced catwalks,
- VIMS recommendation,
- Square footage of the wetlands jurisdiction,
- A possibility of a new modified permit,
- Ways to address the tree: limit the proposed fill within 15 of the adjacent property line, or just fill the entire south side of the property,
- Different types of actions from this point: deny with prejudice, deny without prejudice, have the Sand's sign the original permit or leave the hearing open to let the Sand's resubmit a permit.

The following motion was proposed by Mr. Wilber, seconded by Ms. Larkin:

Based on oral and written testimony presented at this hearing, the anticipated public and private benefit resulting from this project will not exceed the public and private detriment; therefore, I move that Wetlands Board deny without prejudice this application Wetlands Board Permit Wetlands Board Permit: 10625 Greene Drive, Lorton Virginia Marine Resources Commission #: 23-0716 Tax Map Number: 113-4 ((1)) Parcel 31. In addition, I move that a restoration hearing be scheduled ~~as soon as possible~~.

Ms. Larkin asked if the applicant could re-apply, in which Mr. Wilber said that yes – the applicant could resubmit. The Restoration Order encourages a path to resolving the violation. Mr. Wilber said he focus is on resolving this violation and is not to punish the applicant. Through this proposed motion, county staff would be asked to move forward with scheduling the Restoration Order hearing with Board members and the applicant. Mr. Wilber clarified that a resubmission deadline is not required here. Then Mr. Wilber made a proposed edit to the information above to remove the “as soon as possible” at the end of the last sentence, Mr. Wilber proposed this change in the motion and Ms. Larkin seconded it. All Wetlands Board members voted to pass this motion.

Mr. Collins proposed a motion to propose the same action for the “deny without prejudice” but remove the mention of a Restoration Order hearing, which was not supported by any other members.

Mr. Wilber proposed a motion to close the hearing, Mr. Cramer seconded the motion. The motion was approved unanimously.

4. Adjournment

Ms. Larkin motioned to close the meeting, and Ms. Dade seconded the motion. The vote was approved unanimously.

The meeting adjourned at 10:42pm.