



## Legislation Text

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**File #:** 22-0183, **Version:** 1

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Use Permit Application by Westview Landing, LLC. for Construction of Multifamily Dwellings Within the Multifamily Residential (MD-3) District at 10 Doris Carlson Dr [LRSN: 5000040], 51 Battle Rd [LRSN: 5000041], 30 Singleton Dr [Portion of LRSN: 5000042], and 60 Battle Rd B [LRSN: 5001596]

### **Background Statement:**

#### **UPDATED INFORMATION FOR SEPTEMBER 14, 2022:**

Westview Landing, LLC proposes to construct approximately 368 residential apartment units on the property containing 10 Doris Carlson Dr [LRSN: 5000040], 51 Battle Rd [LRSN: 5000041], 30 Singleton Dr [LRSN: 5000042, portion], and 60 Battle Rd B [LRSN: 5001596]. This is the former site of Sarah Bonwell Hudgins Center. The revised proposed development would include two (2) two-story buildings, five (5) three-story buildings, and two (2) four-story buildings, including a number of amenities, some enclosed garages, and storage units.

The Hampton Community Plan (2006, as amended) recommends public/semipublic land use for this property. This land use designation is a reflection of the long-standing mission of the Sarah Bonwell Hudgins Center as a community service organization operating at this location. The surrounding area is recommended for low and rural density land use, along with public/semipublic land use designation for land owned by Hampton City Schools. This proposal is not consistent with the land use recommendations in the adopted Hampton Community Plan (2006 as amended).

The property also falls within the Air Installation Compatible Use Zone Overlay, which was developed through the Joint Land Use Study (Adopted in 2010 and update in 2018) and a subsequent memorandum of understanding between the City of Hampton and JBLE-Langley. The subject property is located within the 65 and 70dB noise contours as well as being adjacent to the Accident Potential Zone II. The applicant is not proposing development within the Accident Potential Zone. A letter from the Office of the Commander of JBLE-Langley dated March 8, 2022 indicates they view this proposal as being incompatible with the recommendations of the Joint Land Use study as well as potentially inhibiting future expansion of JBLE-Langley to accommodate new or expanded missions as well as the base's flexibility to adapt to threats from sea level rise.

Additionally, the application identifies a significant amount of wetlands on the site. Against staff's advice, the applicant requested moving forward to the March Planning Commission without knowing whether or not those wetlands are a Chesapeake Bay Preservation District (CBPD) feature. Based on prior wetland investigations of properties located to the north, staff suspected the wetlands on the subject site were connected by surface flow to those neighboring wetlands which previously had been confirmed as a feature; and thus, the CBPD buffer properties would apply. City environmental consultant, Whitman, Requardt & Associates, LLP (WRA) conducted a field visit and analysis of these wetlands, determined that a substantial portion of the wetlands on the subject site are connected by surface flow to the wetlands on the adjacent properties, and with that information, staff

determined that the wetlands are a Chesapeake Bay Preservation Act (CBPA) feature. As a regulated wetland feature, the 100-foot Resource Protection Area (RPA) buffer extending from the edge of the wetlands is required which impacts the current design and size of development on this site. As such, the previously proposed concept plan could not be implemented, as currently proffered in the rezoning application.

In order to respond to this new information, the applicant requested at the June 8, 2022 Council meeting that the application be deferred to the August 10, 2022 Council meeting. Since the June 8th meeting, the applicant's environmental consultant, Wetland Studies and Solutions, Inc. (WSSI) initially disputed WRA's conclusion about the connection of the CBPD wetlands, stating that the surface flow connection was disrupted because a pipe did not exist that would connect the flow from the southern side to the northern side of Commander Shephard Boulevard. Although WRA has agreed that the surface flow is disrupted at this point, based on the applicable Virginia Department of Conservation and Recreation (DCR) guidance, the presence of a pipe/culvert under Commander Shepard Blvd. would be immaterial to the surface flow connection discussion. That guidance states that connected non-tidal wetlands shall continue to be an RPA feature even when the wetlands are interrupted by permitted man-made obstructions (such as roads, utility lines and crossings, etc.) occurring after October 1, 1989. In other words, the RPA should be determined based on the condition of the RPA feature that existed prior to the permitted construction of Commander Shepard Blvd., and the development activity cannot be used to remove or diminish the RPA. For that reason, the entire wetland should be treated as an RPA feature and subject to the 100-foot RPA buffer as WRA concluded. This segment of Commander Shepard Blvd. was constructed/completed in 2012/2014, well after the 1989 date.

At the August 10, 2022 Council meeting, the applicant indicated they are accepting the City's CBPD determination in order to advance the rezoning and use permit application. As such, they have modified the concept plan, proffers, and narrative statement to reflect the CBPD buffer. In order to give staff adequate time to review the new materials, the applicant requested a deferral to the September 14, 2022 Council meeting.

The revised use permit materials include a concept plan and narrative statement that now reflect all proposed development outside of the CBPD buffer. The proposed revision reduces the proposed overall total apartment unit count from 484 units to 368 units. The revised building type distribution includes two (2) buildings of 2 stories each and five (5) buildings of 3 stories each in lieu of 10 three (3) story buildings, and two (2) buildings of 4 stories each. The overall parking is reduced from 809 spaces to 623 parking spaces. The number of enclosed garages is reduced from 38 to 21 garages and the number of storage units is reduced from 94 to 50 units. Six (6) RV/Boat storage spaces have been added.

This use permit application is being brought forward in conjunction with Rezoning Application No.21-00012. An approved use permit is required for multifamily within the MD-3 District.

#### **UPDATED INFORMATION FOR AUGUST 10, 2022:**

This is a use permit request by Westview Landing, LLC, which proposes to construct approximately 484 residential apartment units on the property containing 10 Doris Carlson Dr [LRSN: 5000040], 51 Battle Rd [LRSN: 5000041], 30 Singleton Dr [LRSN: 5000042, portion], and 60 Battle Rd B [LRSN: 5001596]. This is the former site of Sarah Bonwell Hudgins Center. The proposed development

would include two (2) four-story residential buildings and ten (10) three-story buildings, including a number of amenities, some garages, and storage units. This application is being brought forward in conjunction with Item 22-0181, a request to rezone to the MD-3 District. The MD-3 District requires a use permit for new multi-family uses.

The Hampton Community Plan (2006, as amended) recommends public/semipublic land use for this property. This land use designation is a reflection of the long-standing mission of the Sarah Bonwell Hudgins Center as a community service organization operating at this location. The surrounding area is recommended for low and rural density land use, along with public/semipublic land use designation for land owned by Hampton City Schools. This proposal is not consistent with the land use recommendations in the adopted Hampton Community Plan (2006 as amended)

The property also falls within the Air Installation Compatible Use Zone Overlay, which was developed through the Joint Land Use Study (Adopted in 2010 and update in 2018) and a subsequent memorandum of understanding between the City of Hampton and JBLE-Langley. The subject property is located within the 65 and 70dB noise contours as well as being adjacent to the Accident Potential Zone II. A letter from the Office of the Commander of JBLE-Langley dated March 8, 2022 indicates they view this proposal as being incompatible with the recommendations of the Joint Land Use study as well as potentially inhibiting future expansion of JBLE-Langley to accommodate new or expanded missions as well as the base's flexibility to adapt to threats from sea level rise.

Additionally, the applicant has identified a significant amount of wetlands on the site. Against staff's advice, the applicant requested moving forward to the March Planning Commission without knowing whether or not those wetlands are a Chesapeake Bay Preservation District (CBPD) feature. Based on prior wetland investigations of properties located to the north, staff suspected the wetlands on the subject site were connected by surface flow to those neighboring wetlands which previously had been confirmed as a feature; and thus, the CBPD buffer properties would apply. City environmental consultant, Whitman, Requardt & Associates, LLP (WRA) conducted a field visit and analysis of these wetlands, determined that a substantial portion of the wetlands on the subject site are connected by surface flow to the wetlands on the adjacent properties, and with that information staff determined that the wetlands are a Chesapeake Bay Preservation Act (CBPA) feature. As a regulated wetland feature, the 100-foot Resource Protection Area (RPA) buffer extending from the edge of the wetlands is required which impacts the current design and size of development on this site. As such, the proposed concept plan could not be implemented, as currently proffered.

In order to respond to this new information, the applicant requested at the June 8, 2022 Council meeting that the application be deferred to the August 10, 2022 Council meeting. Since the June 8<sup>th</sup> meeting, the applicant's environmental consultant, Wetland Studies and Solutions, Inc. (WSSI) has disputed WRA's conclusion about the connection of the CBPD wetlands, stating that the surface flow connection was disrupted because a pipe did not exist that would connect the flow from the southern side to the northern side of Commander Shephard Boulevard. WRA has since confirmed that the subject pipe does exist and is further studying whether or not the flow is disrupted at this point. However, based on the applicable Virginia Department of Conservation and Recreation (DCR) guidance, the presence of a pipe/culvert under Commander Shepard Blvd. would be immaterial to the surface flow connection discussion. That guidance states that connected non-tidal wetlands shall continue to be an RPA feature even when the wetlands are interrupted by permitted man-made obstructions (such as roads, utility lines and crossings, etc.) occurring after October 1, 1989. In other words, the RPA should be determined based on the condition of the RPA feature that existed prior to

the permitted construction of Commander Shepard Blvd., and the development activity cannot be used to remove or diminish the RPA. For that reason, the entire wetland should be treated as an RPA feature and subject to the 100-foot RPA buffer as WRA concluded. This segment of Commander Shepard Blvd. was constructed/completed in 2012/2014, well after the 1989 date.

Should the applicant continue to contest the presence of the CBPD features or seek an encroachment into the buffer to maximize the development, the Board of Zoning Appeals (BZA) would be the governing body to consider either request. This matter should be clarified prior to the City accepting the proffered plan, given that the applicant is proposing development within the protected area in question. If the applicant chooses to appeal the Zoning Administrator's determination that the wetlands are a Chesapeake Bay Preservation District feature, the appeal should be brought forward and decided prior to amending the concept plan. As such, this appeal to the BZA would need to occur prior to amending the proffers at a future City Council meeting.

Alternatively, should the applicant either agree with the Zoning Administrator's determination or the BZA upholds the determination, and the applicant continues to propose development within the area restricted by the Chesapeake Bay Preservation District, the request for an exception to the district should come after the rezoning process. The proffer statement should include two conceptual plans with the applicant's preferred concept being contingent upon not only City Council's acceptance of it as a proffer but also the Board of Zoning Appeals approving the necessary exception to the Chesapeake Bay Preservation District. The second conceptual plan would depict the development while respecting the required Chesapeake Bay Preservation District buffer. The exception request needs to come after the rezoning decision because one of the criteria for review of the exception is whether the exception is necessary, and the exception cannot be necessary for a use and development type which is not permitted. In other words, someone cannot get an exception for something that is not otherwise permitted. If City Council denies the rezoning application, then there would be no need for the applicant to proceed with the exception request. Other criteria for an exception to be granted is that it is the minimum necessary for relief and that the conditions are not self-created.

## **INFORMATION FROM JUNE:**

### Deferral Request:

This use permit application and accompanying rezoning application was heard by the Planning Commission on March 17, 2022. Subsequently, the applicant requested deferral of the applications. Section 14-26 of the Zoning Ordinance requires the Planning Commission to report to the City Council within 100 days of the first meeting of the planning commission on an application. To remain within the 100-day period, the items must appear on the June 8, 2022 City Council agenda. The applicant has stated that they are making changes to their proposed concept plan and other submittals, and thus, have requested deferral until July 13, 2022. City Council may grant the deferral request to July or later at its June 8th meeting.

### Background:

Westview Landing, LLC proposes to construct approximately 484 residential apartment units on the property containing 10 Doris Carlson Dr [LRSN: 5000040], 51 Battle Rd [LRSN: 5000041], 30 Singleton Dr [LRSN: 5000042, portion], and 60 Battle Rd B [LRSN: 5001596]. This is the former site of Sarah Bonwell Hudgins Center. The proposed development would include two (2) four-story residential buildings and ten (10) three-story buildings, including a number of amenities, some

garages, and storage units.

The Hampton Community Plan (2006, as amended) recommends public/semipublic land use for this property. This land use designation is a reflection of the long standing mission of the Sarah Bonwell Hudgins Center as a community service organization operating at this location. The surrounding area is recommended for low and rural density land use, along with public/semipublic land use designation for land owned by Hampton City Schools. This proposal is not consistent with the land use recommendations in the adopted Hampton Community Plan (2006 as amended)

The property also falls within the Air Installation Compatible Use Zone Overlay, which was developed through the Joint Land Use Study (adopted in 2010 and update in 2018)) and a subsequent memorandum of understanding between the City of Hampton and JBLE-Langley. The subject property is located within the 65 and 70db noise contours as well as being adjacent to the Accident Potential Zone II. A letter from the Office of the Commander of JBLE-Langley dated March 8, 2022 indicates they view this proposal as being incompatible with the recommendations of the Joint Land Use study as well as potentially inhibiting future expansion of JBLE-Langley to accommodate new or expanded missions as well as the base's flexibility to adapt to threats from sea level rise.

Additionally, the applicant has identified a significant amount of wetlands on the site. What is unknown at this time is whether those wetlands are a Chesapeake Bay Preservation District feature. If the wetlands on the subject site prove to be a feature, then the Chesapeake Bay Preservation District, and its buffers, would apply to the subject site. Such a conclusion may impact the proposed development plan and necessitate revisions to what is proposed.

Staff has received a number of communications from the public that express their concerns with the proposal, which are attached to this package.

This use permit application is being brought forward in conjunction with Rezoning Application No .21-00012.

**Recommendations:**

Staff Recommendation:

Denial

Planning Commission Recommendation:

Denial