

Chesapeake Bay Board

July 11, 2007

A. Roll Call

B. Minutes - June 13, 2007

C. Public Hearings

1. CBE-07-019 – Gary Little – 7578 Vincent Drive - Continued from 6/13/07
2. CBE-07-031 - Kenneth Brooks - 101 Brady Drive

D. Board Considerations

1. Amendments to the Bylaws
2. Introduction of Scott Thomas, Environmental Director

E. Matters of Special Privilege

F. Adjournment

Memo

To: James City County's Chesapeake Bay Board

From: Patrick T. Menichino, Environmental Compliance Specialist

Date: June 13, 2007

Re: CBE-07-005 7578 Vincent Drive.

The above referenced case was presented to the Board at the May 9, 2007 meeting. The Board granted a request to defer this case to the June 13, 2007, to allow the applicant time to address the Boards concerns with staff and with Code Compliance. The Boards concerns are as follows:

1. Is the location of the retaining wall and amount of encroachment within the RPA buffer necessary.
2. The retaining wall did not appear to be constructed to building code standards and may constitute an environmental problem if it structurally fails.

Following the May 9, 2007 Board meeting, the applicant met with staff on June 3, 2007 to discuss the application. The applicant provided staff with revised construction cross section drawings of the new proposed wall and indicated that these revisions had not been reviewed by a design professional or by the Division of Code Compliance. The applicant also told staff that the new proposed wall would be installed at the same location as the existing unapproved wall.

Staff cannot support the approval of this application because the new retaining wall is proposed in the same location as the existing unapproved wall without any attempt by the applicant to minimize the RPA encroachment and impacts. Staff also believes that the request for a retaining wall is based on the applicant's desire to have a level yard and not to resolve a significant erosion problem on the property.

WQIA for 101 Brady Drive

Staff report for the July 11, 2007 Chesapeake Bay Board public hearing.

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay 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.

Summary Facts

Applicant	Kenneth K. & Billie D. Brooks
Land Owner	Kenneth K. & Billie D. Brooks
Location	101 Brady Drive, Brooks Duplex, Williamsburg
Tax Map	3620100022
Staff Contact	Patrick Menichino - Phone: 253-6675

Project Summary and Description

Kenneth K. & Billie D. Brooks have applied, for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with an existing accessory storage building on the above referenced property. The property is 235,000 square feet or 5.413 acres in size.

In 2004, the accessory storage building was constructed on the property within a Resource Protection Area (RPA) Buffer, without the required County permits and approvals. The building is approximately 3840 square feet in size and there is approximately 7,500 square feet of gravel drive, totaling approximately 11,340 square feet of impervious cover in the RPA. Total disturbance within the RPA is approximately 26,000 square feet. The size of this accessory storage building is approximately 10 times larger than any accessory structure previously approved by the Board.

Staff believes that this exception request is inconsistent with the spirit and intent of the Ordinance. For that reason, Staff does not support the granting of this exception.

Full Report

The lot was recorded prior to adoption of the Chesapeake Bay Preservation Ordinance and there was no RPA present on the lot at recordation. However, in 2004, the Ordinance requirements related to the determination of perennial flow were changed requiring that perennial water bodies be identified based on a field evaluation. A field evaluation conducted on this property in April 2007 verified the existence of a perennial stream requiring that a 100 foot RPA buffer be established on the property around the stream. This 100 foot RPA buffer and wetlands encompass 30% of the lot.

The owners constructed a 3,840 square foot storage building on their property, without first obtaining the required approvals from the County. Unfortunately this storage building is within the 100' RPA buffer located on the property.

The issue for the Chesapeake Bay Board's consideration is the placement of a 3,840 square foot accessory storage building and gravel drive within the RPA. The *Resource Protection Area: Buffer Area Encroachments* guidance document adopted by the state Division of Chesapeake Bay Local Assistance on September 16, 2002, states on page 5 that "items not considered part of a principal structure include pools, gazebos, patios, free-standing decks, garages, or storage sheds, etc." Therefore, this accessory storage building cannot be approved administratively by the Manager and must be submitted as an exception request to the Board.

Water Quality Impact Assessment

Under Section 23-14 of the amended Ordinance, a water quality impact assessment (WQIA) must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPAs. The owners have submitted a WQIA for this project. The issue before the Chesapeake Bay Board is the 3,840 square foot accessory storage building, and 7,500 square feet of gravel drive already constructed with the RPA buffer.

The WQIA submitted does not propose any new mitigation to offset the impacts to the RPA. Mitigation planting with native trees, and shrubs was accomplished by the owners prior to this exception request to the Board. The amount of mitigation plantings already installed by the owners is far less than the standard County's mitigation requirements. County mitigation requirements for the 11,340 square feet of impervious area would be Twenty Eight (28) trees, Fifty Six (56) understory trees, and Eighty Four (84) shrubs.

The Board is to determine whether or not the existing development is consistent with the spirit and intent of the Ordinance and make a finding based upon the following criteria, as outlined in Section 23-14(c) of the Chesapeake Bay Ordinance:

1. The exception request is the minimum necessary to afford relief;
2. Granting the exception will not confer upon the applicant any special privileges denied by this chapter to other property owners similarly situated in the vicinity;
3. The exception request will be in harmony with the purpose and intent of this chapter, and is not of substantial detriment to water quality;
4. The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels; and
5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.

Recommendations

This exception request is for an after the fact approval of an existing accessory storage building and gravel drive within the RPA buffer. Staff has not allowed the creation of accessory structures in the RPA in the past. Both the Ordinance and staff considers storage buildings as accessory structures and as an impervious surface. Therefore, staff can not support this proposed after the fact exception request.

Following the hearing, should the Board vote to grant this exception request, staff would recommend the following conditions be applied:

1. The owners shall submit to the Division an RPA mitigation plan that is consistent with the County's standard mitigation requirements for impervious area. This mitigation plan may require the installation of a BMP in addition to native plantings. The required native plantings shall be at a minimum, 1-1/2 inch caliper trees (six to eight feet tall) and native shrubs that shall be 3 gallon container size. All vegetation shall be native species approved by the Environmental Division.
2. Implementation of the mitigation plan shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3)d. and 23-17(c) where installation of the plant material is required prior to the certificate of occupancy or through a surety instrument satisfactory to the county attorney.
3. The owners shall execute a Chesapeake Bay Civil Charge Agreement with the County and provide for a one time civil charge payment of \$7,500.00.
4. The owners must obtain any and all approvals and/or permits required by other agencies with regulatory authority over the existing or proposed work.
5. The exception request approval shall become null and void if all conditions imposed by the Board have not been met by July 11, 2008.

All recommendations adopted by the Board must be incorporated into the site plans for the project, which then must be approved by the Environmental Division before construction can begin.

Staff Report Prepared by: _____
Patrick T. Menichino

CONCUR: _____
Darryl E. Cook

- Exception Approved with Staff Recommendations
- Exception Denied
- Exception Deferred

William Apperson
Chairman
Chesapeake Bay Board

Attachment: