

Chesapeake Bay Board

September 12, 2007

A. Roll Call

B. Minutes - August 8, 2007

C. Public Hearings

1. CBE-07-079 - John Klesch - 115 Stone Path
2. CBE-07-081 – Harold Cherry – 107 Little Aston

D. Board Considerations

1. Amendments to the Bylaws

E. Matters of Special Privilege

F. Adjournment

WQIA for CBE-07-079 – 115 Stone Path

Staff report for the September 12, 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	John J. & Jeanne N. Klesch	
Land Owner	(same)	
Location	115 Stone Path, Settler's Mill, Williamsburg	
Parcel Identification	4711900026	
Staff Contact	Patrick Menichino	Phone: 253-6675

Project Summary and Description

John J. & Jeanne N. Klesch, of 115 Stone Path, Williamsburg, VA, have applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of 100 linear feet of interlocking decorative block retaining wall totaling 90 square feet of impervious area. The lot is 0.429 acres in size and the RPA buffer encompasses approximately 93% of the lot or 0.407 acres.

A mitigation planting plan has been provided along with the exception request for your review. The proposed mitigation planting plan proposes to mitigate for the 90 square feet of impervious area by planting, (3) understory trees and (6) shrubs in planting beds to filter runoff from the impervious areas. The mitigation plan also calls for the removal of 400 square feet of existing turf and replacing it with a mulched planting bed. The mitigation plan exceeds the standard mitigation requirements of the County.

This exception request is for the installation of an accessory structure within the RPA buffer. Staff has not administratively approved the installation of accessory structures within RPA components in the past. However, the Board has in the past granted exceptions for similar accessory structures within the RPA buffer.

Staff offers the following information as guidance to the Board concerning this application.

1. The retaining wall will create approximately 90 square feet of impervious area. The wall will be a maximum of 16 inches high. The area proposed for the installation of the wall is vacated conservation easement. In 2005 this vacated easement was approved by the County Engineer to be used by the owner as a rear yard.
2. No existing trees or shrubs are to be eliminated with this proposal.
3. 400 square feet of existing turf will be eliminated and a mulch bed created with ground cover.
4. A stormwater pond (BMP) is located downstream immediately adjacent to this property.
5. The RPA mitigation planting plan exceeds the County's requirements.
6. Staff believes that any adverse impacts caused by this wall would be negligible.

Full Report

The lot was recorded in 1999 after the adoption of the Chesapeake Bay Preservation Ordinance but 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 for this lot in 2005 identified a perennial stream and pond on the rear of the lot requiring that a 100 foot RPA buffer be established on the lot around the stream. This 100 foot RPA buffer encompasses about 93% of the lot.

According to provisions of Section 23-7 (c) 2 (b); when application of the buffer would result in the loss of a buildable area on a lot or parcel recorded between August 6, 1990, and January 1, 2004, encroachments into the buffer may be allowed through an administrative process.

In this case, the proposal is for an accessory structure encroachment within the seaward 50 feet of the buffer, and therefore, the exception request must be processed by the Chesapeake Bay Board after a public hearing.

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 applicants have submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant has submitted a WQIA for this project. The issue before the Chesapeake Bay Board is the 90 square feet of impervious cover in the RPA associated with the construction of the retaining wall. The WQIA proposes to mitigate for the impacts to the RPA by planting, (3) native understory trees, (6) native shrubs, and the removal of 400 square feet of turf and the creation of mulched landscape beds on the lot in the RPA on the lot to help filter nonpoint source pollution.

The Board is to determine whether or not the proposed 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.

Recommendations

The Ordinance does not authorize staff to give administrative approval for the placement of accessory structures within the 100-foot buffer. To be consistent with the ordinance requirements Staff can not support the approval of this exception request for the proposed retaining wall.

If the Board votes to approve the exception request, then staff recommends that the following conditions be incorporated into the approval:

1. Full implementation of the mitigation landscape plan submitted with the WQIA.
2. The size of the trees planted shall be a minimum of 1-1/2 inch caliper (six to eight feet tall) and the shrubs shall be 3 gallon size. All vegetation shall be native species approved by the Environmental Division.
3. Implementation of the mitigation plan would 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.

4. This exception request approval shall become null and void if construction has not begun by September 12, 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. If the Board grants the exception, the proposed mitigation plan is in accordance with the standard mitigation requirements for impervious surfaces.

Staff Report prepared by:

Patrick T. Menichino
Compliance Specialist

CONCUR:

Scott J. Thomas, Director

Attachments:

WQIA for CBE-07-081 – 107 Little Aston

Staff report for the September 12, 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	Harold & Nancy Cherry
Land Owner	(same)
Location	107 Little Aston, Fords Colony
Parcel ID #	3720300261
Staff Contact	Patrick T. Menichino Phone: 253-6675

Project Summary and Description

Harold & Nancy Cherry of 4273 Teakwood Dive, Williamsburg, have applied for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of a single family principal structure with deck, brick pavers patio, and a Koi pond (accessory structure). The proposed single family principal structure is located within the channel ward 50' RPA buffer. The total amount of impervious area is 3500 square feet for the house, deck and brick pavers patio, and 96 square feet for the Koi pond. The lot is 20,271 square feet or 0.466 acres in size.

Staff does not have the authority to grant an administrative approval for encroachments within the 50' RPA buffer for principal structures or accessory structures located any where within RPA components.

Staff would not be opposed to the Board granting the applicant's exception requests for the principal structure, deck, and brick pavers patio for the following reasons:

1. The lot existed prior to the adoption of the Ordinance.
2. The entire lot is located within the RPA buffer.
3. The applicant has submitted an RPA mitigation plan that meets the typical mitigation requirements and adequately addresses the RPA impacts proposed in this case.

The Ordinance does not authorize staff to give administrative approval for the placement of accessory structures within the 100-foot buffer. To be consistent with the ordinance requirements Staff can not support the approval of this exception request for the proposed Koi pond.

However, the Board has in the past approved encroachments for accessory structures within the RPA buffer. The Koi pond is proposed within an area that will be impacted by construction of the single family residence.

Full Report

The lot was recorded prior to the adoption of the Chesapeake Bay Preservation Ordinance. Therefore, there was no Resource Protection Area (RPA) present on the lot at the time of 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 was conducted for a stream adjacent to the lot and it was determined that the stream is a water body with perennial flow requiring that a 100 ft RPA buffer be established around it and a wetlands located on the lot. This 100 ft RPA buffer encompasses approximately 100% of lot.

The issue for the Chesapeake Bay Board's consideration is the impacts associated with the construction and placement of a single family principal structure with deck, brick pavers patio and a Koi pond (accessory structures) within the RPA buffer.

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, the proposed Koi pond and brick pavers patio cannot be approved administratively by the Manager and must be approved by 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 applicants have submitted a WQIA for this project.

The WQIA proposes to mitigate for the impacts to the RPA by planting 9 native canopy trees and 18 native understory trees and 27 native shrubs to the rear of the house to help filter nonpoint source pollution. This mitigation plan submitted with this application meets the typical mitigation requirements for similar impervious cover.

Board Action

The Board is to determine whether or not the proposed 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:

Recommendations

Staff is not opposed to the Board granting the applicant's exception request for the principal structure, deck, brick pavers patio. The brick pavers patio is proposed to be constructed underneath of the attached deck. The deck is already considered to be impervious, therefore no additional impervious area will result from the patio installation underneath.

Both the Ordinance and staff consider brick pavers patios and fish ponds as accessory structures. Unfortunately, staff cannot support approval of the Koi pond as it involves an impervious, accessory structures and use in the RPA. Staff has not in the past, and currently, cannot administratively approve the creation of accessory structures in the RPA. However, the Board has approved the construction of brick pavers patio and similar structures in the past.

After reviewing this case, if the Board considers approval of this exception, staff recommends that the following conditions be included within the Board action:

1. Full implementation of the mitigation landscape plan submitted with the WQIA.
2. The size of the trees planted shall be a minimum of 1-1/2 inch caliper (six to eight feet tall) and the shrubs shall be 3 gallon size. All vegetation shall be native species approved by the Environmental Division.
3. A 3 to 4 inch deep mulch bed will be installed around any individual or group RPA mitigation plantings proposed.
4. Staff recommends a 1' wide x 18" deep infiltration trench with washed gravel, be installed adjacent to the brick paver patios.
5. Implementation of the mitigation plan would 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.
6. The RPA mitigation plan shall be revised and resubmitted with all Board approved modifications, and conditions included.
7. This exception request approval shall become null and void if construction has not begun by September 12, 2008.

Staff Report Prepared by:

Patrick T. Menichino
Compliance Specialist

CONCUR:

Scott J. Thomas, Director

Attachments: