

Chesapeake Bay Board

December 12, 2007

A. Roll Call

B. Minutes - from November 14, 2007

C. Public Hearings

1. CBE-07-080 – Chris and Julie Rouzie – 144 Holdsworth Rd
2. CBE-07-095 – Bruce West – 6313 Adam’s Hunt Dr
3. CBE-07-105 – Ann and Garland Gray – 202 The Maine
4. CBE-07-113 – Salvador deLeon - 2823 King Rook Court

D. Board Considerations

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WQIA for CBE-07-080 – 144 Holdsworth.

Staff report for the December 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	Christopher & Julie Rouzie	
Land Owner	Christopher & Julie Rouzie	
Location	144 Holdsworth Road, Williamsburg, Virginia	
Parcel Identification	5010300088	
Staff Contact	Patrick Menichino	Phone: 253-6675

Project Summary and Description

Christopher & Julie Rouzie, 144 Holdsworth Road, Williamsburg, Virginia, have applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the Resource Protection Area (RPA) buffer, for the construction of a wood deck of approximately 1079 square feet. The applicants are also requesting approval for 296 square feet of RPA impacts associated with the construction of a redesigned driveway entrance and enlarged parking area. The applicant's exception request identifies only the 296 square feet of RPA impacts. The lot is located on Kingsmill Pond and was recorded prior to the 1990 adoption of the Ordinance. Following the Ordinance revisions in 2004, Kings Mill Pond was evaluated as perennial thereby requiring a 100' RPA buffer. The lot is 0.651 acres in size and the RPA buffer encompass approximately 85% of the lot or 0.553 acres. The proposed wood deck encroachment is in the seaward 50' RPA buffer as is a portion of the proposed driveway improvements. The remainder of the proposed driveway improvements is within the landward 50' RPA buffer.

The RPA Mitigation Plan provided along with the exception request proposes to mitigate for the RPA impacts by planting (19) native canopy trees, (10) native understory trees and (15) native shrubs in planting beds to filter runoff. The amount of proposed plantings exceeds the standard mitigation planting requirements of the County. In addition the applicant proposes a "french drain" infiltration area to receive runoff from the driveway.

Staff has evaluated the requests, has determined them to be accessory in nature.

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

1. The applicant applied for and received administrative approval on August 6, 2007 for impacts associated with 982 square feet of RPA encroachment to allow for the construction of an addition to the principal dwelling and for the expansion of an existing second floor wood deck attached to the rear of the dwelling. The applicant also received administrative approval for a new attached wood deck located on the south side of the dwelling. The site plan submitted to the Environmental Division as part of the August 6, 2007, administrative approval showed only one deck on the rear of the dwelling. The applicant also requested and received approval for the removal of 14 canopy trees within the PA buffer to allow for the proposed construction.

2. The current exception request before the Board is for a third wood deck to be constructed and attached to the rear of the dwelling at the first floor level. This deck would be situated underneath the second floor deck. Although staff does not add the impervious area of the lower deck when calculating the total impervious area of a project, the installation of a lower deck is still considered an impact and encroachment into the RPA buffer.
3. Staff considers the installation of multiple decks on a dwelling to be accessory in nature and exceeding the “minimum necessary to afford relief”.
4. The applicant and staff have worked together on the proposed redesigned driveway and the plan submitted with this application generally reflects this effort to minimize RPA impacts. However, the plan as submitted lacks details necessary for the approval of this application. The plan does not show the type of material the proposed driveway will be constructed of. The plan indicates proposed retaining walls but no information was submitted about them. The application also proposes that a “french drain” will be constructed, but no specific information on the drain was submitted and the plan does not show the location of the drain.
5. The proposed mitigation planting plan is adequate in plant quantities but is inadequate in the selection of planting locations.

Brief History

The lot was recorded before the adoption of the Ordinance, and no RPA was identified on the lot at that time. 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 perennial water body at the rear of the lot was identified requiring that a 100 foot RPA buffer be established on the lot around the stream. This 100 foot RPA buffer encompasses about 85% of the lot.

In this case, the exception request is for encroachments by accessory structures within the 50 foot buffer and therefore 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 applicant has 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 and proposes to mitigate for the impacts to the RPA by planting, (19) native canopy trees, (10) native understory trees, and (15) native shrubs, in the RPA on the lot to help filter nonpoint source pollution.

The issue before the Board is the addition of the 1079 square foot lower deck encroaching into the 50 foot RPA buffer and the proposed 296 square feet of driveway improvements. The Board is to determine whether or not this proposal is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14(c) of the Ordinance.

Recommendations

The Ordinance does not authorize staff to give administrative approval for the placement of accessory structures within the buffer. To be consistent with the ordinance requirements staff can not support the approval of this exception request. Staff contends that this proposal for a third deck request does not meet the intent of the Ordinance. Staff is not opposed to the proposed driveway improvements, but the application and plan lack information and are not adequate to receive staff support. Therefore Staff does not support the granting of this exception request.

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

1. A revised plan must be submitted to the Environmental Division (Division) with all required information and will be subject to Division review and approval. The applicant must obtain all other permits required from agencies that have regulatory authority over the proposed activities.
2. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements must be completed prior to the issuance of the final certificate of occupancy or final inspection conducted by the Division of Code Compliance.
3. The size of the mitigation trees shall be 1 ½ caliper, and the shrubs shall be 3-5 gallon size. All trees and shrubs shall be native species approved by the Division.
4. Surety for the implementation of the RPA Mitigation Plan shall be provided in a form satisfactory to the County Attorney, pursuant to sections 23-10(3)(d) and 23-17(c) of the James City County Code.
5. This exception request approval shall become null and void if construction has not begun by December 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 Division before construction can begin. If the Board grants the exception, the proposed RPA 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,
Secretary to the Board

Attachments:

QIA for CBE-07-095 – 6313 Adams Hunt Drive.

Staff report for the December 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	Bruce West
Land Owner	Bruce West
Location	6313 Adams Hunt Drive, Williamsburg, Virginia
Parcel Identification	3120400029
Staff Contact	Patrick Menichino Phone: 253-6675

Project Summary and Description

Mr. Bruce West, of 6313 Adams Hunt Drive, Williamsburg, VA, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with an existing 20' x 12' elevated wood deck and proposed brick paver driveway expansion, brick paver patio, a trellis and 75 linear feet of 30" high retaining wall. The applicant is requesting that the Board grant an after the fact approval for deck with 240 square feet of impervious area. The applicant is also requesting Board approval for the installation of 1160 square feet of sand set brick pavers. The total increase of impervious area requested by the applicant is 1,400 square feet. The lot was recorded after adoption of the Ordinance, but no RPA existed on the lot at the time of recordation. The lot is 0.434 acres in size and the RPA buffer encompass approximately 99% of the lot or 0.429 acres. The existing deck encroachment is in the seaward 50' RPA buffer and the proposed driveway, patio, trellis and retaining wall would be in the landward 50' RPA buffer.

The RPA Mitigation Plan provided with the exception request proposes to mitigate for the 1,400 square feet of impervious impacts in the RPA by planting four (4) native canopy trees, eight (8) native understory trees and twelve (12) native shrubs in planting beds to filter runoff from the proposed impervious areas. This plan meets the standard mitigation planting requirements of the County. In addition the applicant proposes a gravel infiltration pit, 18" dia. x 24" deep to receive runoff from the existing 20' x 12' deck.

Staff has evaluated the requests, and has determined them to be accessory in nature. Staff has not administratively approved the installation of accessory structures within the RPA. The Board has in the past granted exceptions for accessory structures within the RPA buffer.

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

1. The construction of the existing elevated 20' x 12' deck did not receive authorization from the County. The applicant was aware of the existence of an RPA buffer on his property prior to the construction of this deck. The applicant filed for an after the fact building permit with the Codes Compliance Division on 9/19/07 and as result of that application the Environmental staff was notified and required the applicant to file for a Chesapeake Bay Board exception. There is also second elevated deck attached to this residence at the opposite end of the structure.

2. Staff considers the installation of multiple decks to be accessory in nature and exceeding the “minimum necessary to afford relief”.
3. The proposed 24’ x 40’ driveway expansion is requested to allow for a turnaround area and possible off street parking. The applicant has proposed to construct this expansion using sand set brick pavers as a method to decrease impervious runoff. The 10 x 20’ sand set brick paver patio is adjacent and attached to the driveway.
4. The proposed 75 linear feet of timber retaining wall is required to create a level area to construct the sand set brick paver driveway and patio.
5. The proposed trellis structures if approved with this exception will have no adverse affect on water quality.
6. The RPA Mitigation Plan meets the County’s requirements.
7. Staff believes that the adverse water quality impacts caused by the installation of these accessory structures can be offset through mitigation.
8. The Ordinance provides that the Board can impose additional mitigation requirements to offset potential water quality impacts.

Brief History

The lot was recorded after adoption of the Ordinance, but before 2004 when 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 perennial stream at the rear of the lot was identified requiring that a 100 foot RPA buffer be established on the lot around the stream. This 100 foot RPA buffer encompasses about 95% 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 exception request is for encroachments by accessory structures within the 100 foot buffer and therefore 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 applicant has 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 and proposes to mitigate for the impacts to the RPA by planting four (4) native canopy trees, eight (8) native understory trees and twelve (12) native shrubs in planting beds in the RPA on the lot to help filter nonpoint source pollution.

The issue before the Board is the addition of 1,400 square feet of impervious cover in the RPA associated with the deck, sand set brick paver driveway and patio, retaining wall and trellis. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria 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. If the Board votes to approve the exception request, then staff recommends the following conditions be incorporated into the approval:

1. The applicant must obtain all permits required from other agencies that have regulatory authority over the proposed activities.
2. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements must be completed prior to the issuance of the final certificate of occupancy or final inspection conducted by the Division of Code Compliance.
3. The size of the mitigation trees shall be 1 ½ caliper, and the shrubs shall be 3-5 gallon size. All trees and shrubs shall be native species approved by the Environmental Division.
4. Surety for the implementation of the RPA Mitigation Plan shall be provided in a form satisfactory to the County Attorney, pursuant to sections 23-10(3)(d) and 23-17(c) of the James City County Code.
5. This exception request approval shall become null and void if construction has not begun by December 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 RPA 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,
Secretary to the Board

Attachments:

WQIA for CBE-07-105 – 202 The Maine

Staff report for the December 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	Ann and Garland Gray II	
Land Owner	Ann and Garland Gray II	
Location	202 the Maine, Williamsburg, Virginia	
Parcel Identification	4540200074	
Staff Contact	Patrick Menichino	Phone: 253-6675

Project Summary and Description

Ann and Garland Gray II , 202 The Maine, have applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the installation of a new wood staircase to be attached to an existing wood deck and a 5'x3' brick paver landing pad. The proposed staircase will provide access to the ground from the existing elevated deck. The lot is .766 acres in size and the RPA buffer encompass approximately 30% of the lot or 0.22 acres. The proposed encroachment is in the landward 50' RPA buffer.

An RPA Mitigation Plan provided with the exception request proposes to mitigate for the 78 square feet of new staircase and brick paver pad by planting (3) three native shrubs in a planting bed to filter runoff from the proposed impervious areas. This plan meets the standard mitigation requirements of the County.

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

1. A proposed staircase and brick paver pad have been reviewed and evaluated by staff as accessory in nature, but may be evaluated by the Board as a safety feature.
2. The RPA Mitigation Plan meets the County's requirements.
3. Staff believes that the adverse impacts caused by the installation of these accessory structures are minor in nature with minimal impact.
4. The Ordinance provides that the Board can impose additional mitigation requirements to offset potential water quality impacts.

Brief History

The lot was recorded prior to the adoption of the Ordinance and therefore there was no RPA present on the lot at the time of recordation. On August 6, 1990 the Ordinance went into effect establishing 100-foot RPA buffers around all water bodies with perennial flow. The James River

is located at the rear of this property therefore; there is a 100-foot RPA buffer landward of the river that encompasses about 30% of the lot.

According to provisions of Section 23-12; The Manager through an administrative process may permit the continued use, alteration, or expansion of any structure in existence on August 6, 1990. However, this exception request is for the installation of a wood staircase and brick paver pad that staff has determined it to be accessory in nature.

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 applicant has 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 and proposes to mitigate for the impacts to the RPA by planting, (3) three native shrubs, within a mulched bed in the RPA on the lot to help filter nonpoint source pollution.

The issue before the Board is the addition of 78 square feet of impervious cover in the RPA associated with the staircase and brick paver pad. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14(c) of the 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. However, the staircase could be considered as a safety feature to allow for emergency access from the existing elevated deck down to the ground.

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

1. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements must be completed prior to the issuance of the final certificate of occupancy.
2. The size of the shrubs shall be 3-5 gallon container size. All vegetation shall be native species approved by the Environmental Division.
3. Surety for the implementation of the RPA Mitigation Plan if required, shall be provided in a form satisfactory to the County Attorney, pursuant to sections 23-10(3)(d) and 23-17(c) of the James City County Code.
4. This exception request approval shall become null and void if construction has not begun by December 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 RPA 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,
Secretary to the Board

Attachments:

WQIA for CBE-07-113 – 2823 King Rook Court.

Staff report for the December 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	Salvador deLeon
Land Owner	Salvador deLeon
Location	2823 King Rook Court, Williamsburg, Virginia
Parcel Identification	4830900107
Staff Contact	Patrick Menichino Phone: 253-6675

Project Summary and Description

Salvador deLeon, 2823 King Rook Court, Williamsburg, Virginia, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the installation of a new wood staircase to be attached to an existing wood deck. The proposed staircase will provide access to the ground from the existing elevated deck. The lot 0.174 acres in size and the RPA buffer encompass approximately 45% of the lot or 0.078 acres. The proposed encroachment is in the landward 50' RPA buffer.

The RPA Mitigation Plan provided with the exception request proposes to mitigate for the 60 square feet of new staircase by planting (1) one native tree in a planting bed to filter runoff from the proposed impervious areas. This plan meets the standard mitigation requirements of the County.

Staff has evaluated the request, and determined it to be accessory in nature.

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

1. Staff has evaluated the proposed staircase as an accessory structure but it may be evaluated by the Board as a safety feature.
2. The RPA Mitigation Plan meets the County's requirements.
3. Staff believes that the adverse impacts caused by the installation of this accessory structure are minor in nature with minimal impact.
4. The Ordinance provides that the Board can impose additional mitigation requirements to offset potential water quality impacts.

Brief History

The lot was recorded after January 1, 2004 when 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 perennial stream has been identifying at 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 45% of the lot.

This exception request is for an accessory structure encroachment in the RPA buffer and therefore 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 applicant has 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 and proposes to mitigate for the impacts to the RPA by planting, (1) one native tree, within a mulched bed in the RPA on the lot to help filter nonpoint source pollution.

The issue before the Board is the addition of 60 square feet of impervious cover in the RPA associated with the staircase. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14(c) of the 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 staircase. However, the staircase could be considered as a safety feature to allow for emergency access from the existing elevated deck down to the ground.

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

1. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements must be completed prior to the issuance of the final certificate of occupancy.
2. The size of the tree shall be 1 ½" caliper size or 6' - 8' tall. All vegetation shall be native species approved by the Environmental Division.
3. Surety for the implementation of the RPA Mitigation Plan if required, shall be provided in a form satisfactory to the County Attorney, pursuant to sections 23-10(3)(d) and 23-17(c) of the James City County Code.
4. This exception request approval shall become null and void if construction has not begun by December 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 RPA 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,
Secretary to the Board

Attachments: