

CBE-09-009 – 5108 Essex Court.

Staff report for the October 8, 2008, 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 Patricia T. Venable
Land Owner Jonathan & Patricia Venable
Location 5108 Essex Court, Williamsburg, Virginia
Parcel Identification 3221200186
Staff Contact Patrick Menichino Phone: 259-1443

Project Summary and Description

Patricia T. Venable, 5108 Essex Court, Williamsburg, Virginia, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer, for the construction of an additional wood deck totaling approximately 530 square feet. The proposed additional wood deck would be constructed at ground level, adjacent to the building foundation. The lot is located in Scott’s Pond and was recorded after the 1990 adoption of the Ordinance. Prior to the recordation of the lot, a wetlands system adjacent to the rear of the property was determined as perennial thereby requiring a 100’ landward RPA buffer. The lot is 0.269 acres in size and the RPA buffer encompass approximately 65% of the lot or 0.148 acres. The proposed deck will encroach into the landward 50’ RPA buffer.

An RPA mitigation planting plan has been provided along with the exception request for your review. The plan proposes to mitigate for the RPA impacts by planting (1) native canopy tree (2) native understory trees and (6) native shrubs in the RPA buffer to help filter runoff. The amount of plantings proposed meets the standard mitigation planting requirements of the County.

Staff evaluated the request for the additional deck, and has determined it to be an accessory structure. Staff also believes the request exceeds the “minimum necessary to afford relief”, and as such cannot be granted an administrative exception. To be consistent with the Ordinance, Staff has not administratively approved the installation of multiple deck additions within the RPA in the past. However, 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 applicants have applied for an exception to allow for the construction of an additional deck within the RPA buffer. The deck will be attached to the rear of the principle residence on the lot. Almost the entire residence is located within the RPA buffer.
2. The applicants have submitted an RPA mitigation planting plan that meets the standard mitigation planting requirements of the County. In addition, filter cloth and gravel will be installed under the deck to filter runoff and prevent erosion.
3. Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal.

Brief History

The lot was recorded after the adoption of the Chesapeake Bay Ordinance in 1990. Prior to the recordation of the lot, a wetlands system adjacent to the rear of the property was determined as perennial thereby requiring a 100' landward RPA buffer. The lot is 0.269 acres in size and the RPA buffer encompass approximately 65% of the lot or 0.148 acres.

According to provisions of Section 23-7 (c) (2); the Manager may grant administrative approval for the construction of a principal structure on a lot or parcel recorded between, August 6, 1990 and January 1, 2004. In this case, the exception request is for an additional deck, and the Manager has determined that the case does not qualify for an administrative waiver because the request is for an accessory structure and it exceeds the "minimum necessary" to afford relief. Therefore in accordance with section 23-14 of the Ordinance, an exception 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 the RPA.

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) native canopy tree, (2) native understory trees, and (6) native shrubs, in the RPA, on the lot to help filter nonpoint source pollution.

The issue before the Board is the addition of the 530 square feet of impervious area created by the installation of two decks within the RPA buffer. 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

Staff has evaluated the request and has determined it to be for an accessory structure, as defined in Section 23-7 (c) (2), and that it exceeds the "minimum necessary" as defined in 23-14 of the Ordinance and as such cannot be granted by administrative wavier. To be consistent with the Ordinance requirements staff can not support the approval of this exception request for the deck.

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

1. The applicant must obtain all other permits required from agencies that may have regulatory authority over the proposed activities, including a James City County building permit.
2. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements must be completed prior to the final building inspection conducted by the Division of Code Compliance.
3. Implementation 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 form of surety satisfactory to the County Attorney.

4. The size of the mitigation trees shall be 1"- 1 ½" caliper, and the shrubs shall be 3-5 gallon container size and 18" tall. All trees and shrubs shall be native species approved by the Environmental Division.
5. This exception request approval shall become null and void if construction has not begun by October 8, 2009.

Staff Report prepared by: _____

Patrick T. Menichino
Compliance Specialist

CONCUR:

Scott J. Thomas,
Secretary to the Board

Attachments:

CBE-09-023 – 105 Pine Valley

Staff report for the October 8, 2008, 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	Michael Carroll - Hallmark Builders
Land Owner	Michael & Helena Mock
Location	105 Pine Valley, Fords Colony, Williamsburg
Parcel Identification	3720400116
Staff Contact	Patrick Menichino Phone: 259-1443

Project Summary and Description

Mr. Michael Carroll on behalf of Michael and Helma Mock, 105 Pine Valley, Williamsburg, VA, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with an existing wood deck extension (13.5' x 11') and approximately 40 LF of segmental block retaining wall. The installation of a wood deck and retaining wall has resulted in 206 square feet of impervious area. The lot is located adjacent to perennial features that require a 100-foot RPA buffer. The lot is 0.443 acres in size and the RPA buffer encompasses approximately 80% of the lot of 0.333 acres.

A detailed mitigation plan has been provided along with the exception request for your review. The proposed mitigation plan proposes to mitigate for the 206 square feet of impervious area by planting (1) native canopy tree, (1) native understory trees and (3) native shrubs in planting beds to filter runoff from the impervious areas. The mitigation plan exceeds the standard mitigation requirements of the County.

Staff offers the following recommendations and guidance to the Board:

1. The applicant has applied for an after the fact exception for a extension to a wood deck and a retaining wall that were recently constructed along with a single family residence located on the lot. Previously, the single family residence, with a wood deck and a screened porch on the lot received a Chesapeake Bay Exception from the Board on January 9, 2008.
2. In this case the wood deck extension is attached to the residence and therefore can be considered part of the principal structure.
3. The installation of the retaining wall has reduced the amount of filling required for the driveway installation. Staff and the Ordinance consider retaining walls as accessory structures. To be consistent with the Ordinance staff has not administratively approved accessory structures within the RPA components.

4. The applicant has submitted an RPA mitigation plan that exceeds the County's typical planting requirements.
5. Staff evaluated the adverse impacts to the RPA buffer caused by the retaining wall and wood deck extension and has determined them to be minimal.

Full Report

The lot was recorded prior to the 1990 adoption of the Chesapeake Bay Preservation Ordinance. Following the adoption of the Ordinance a one hundred foot RPA buffer was required to be established on the lot adjacent to the resource. This 100 foot RPA buffer encompasses approximately 80% of the lot.

The applicant has applied for an after the fact exception for a 13.5' x 11' extension to a wood deck and a retaining wall that were recently constructed along with a single family residence located on the lot. The amount of impervious area created by the deck and wall, total 206 square feet within the seaward 50 foot RPA buffer .

According to provisions of the Ordinance, when application of the buffer would result in the loss of a buildable area on a lot or parcel recorded prior to August 6, 1990, encroachments into the buffer may be allowed through an administrative process in accordance with the following criteria:

1. Encroachments into the buffer shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.
2. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel;
3. The encroachment may not extend into the seaward 50 feet of the buffer area.

The deck extension is considered to be part of the principal structure, and the retaining wall is considered to be an accessory structure applicants are requesting an exception for this encroachment from the Board. The attached deck extension and the retaining wall are within the seaward 50 foot buffer therefore they cannot be approved administratively.

The issue for the Board's consideration is the 206 square feet of additional impervious area created by the deck and retaining wall within the 50 foot RPA buffers.

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 RPA. The applicant has submitted a WQIA for this project. The mitigation plan contained within the WQIA offsets the proposed impervious cover impacts by planting (1) native tree, (1) native understory tree, and 3 shrubs within the RPA buffer to help filter runoff. This vegetation will be located to the rear of the proposed residence.

The owners have submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. 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:

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

The Ordinance does not authorize staff to give administrative approval for the placement of these structures within the RPA buffer. To be consistent with the ordinance requirements Staff can not support the approval of this exception request.

Staff has determined that the installation of the retaining wall has reduced the amount of fill required for the driveway.

Staff has evaluated the adverse impacts associated with the deck extension and retaining wall and has determined them to be minimal.

The Board has in the past granted similar exception requests.

Should the Board vote to approve the exception, Staff recommends the following conditions be applied:

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. The deck extension shall have 3 inches of gravel on filter fabric installed underneath.
4. 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.

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 Menichino

CONCUR: _____
Scott J. Thomas

Attachments:

CBE-09-031 – 177 Southport

Staff report for the October 8, 2008, 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 and Kari Tomberg	
Land Owner	(same)	
Location	177 Southport, Fords Colony, Williamsburg	
Parcel Identification	3811300036	
Staff Contact	Patrick Menichino	Phone: 259-1443

Project Summary and Description

Bruce and Kari Tomberg, of 45 Starboard Drive, 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 a single family residence, deck, screened porch, and concrete surfaces, totaling approximately 5020 square feet of impervious area. The lot is located adjacent to perennial features that require a 100-foot RPA buffer. The lot is 1.435 acres in size and the RPAs buffer encompasses approximately 1.156 acres or 86% of the lot.

A detailed mitigation plan has been provided along with the exception request for your review. The proposed mitigation plan proposes to mitigate for the 5020 square feet of impervious area by planting (13) native canopy trees, (26) native understory trees and (39) native shrubs in planting beds to filter runoff from the impervious areas. The mitigation plan is in accordance with the standard mitigation requirements of the County

Staff offers the following guidance and recommendations to the Board:

1. Staff recommends the Board approve the RPA buffer encroachment for the proposed residence, deck, screened porch and concrete surfaces, because the encroachments into the RPA buffer are unavoidable on this lot.
2. The RPA mitigation plan submitted with the application meets the County's requirements to offset the proposed impervious impacts within the buffer.
3. Staff has evaluated the proposed adverse impacts to the RPA buffer caused by the construction of the single family residence, deck and screened porch and determined them to be moderate.
4. This approval shall become null and void if construction has not begun by October 8, 2009. An extension can be requested in writing at least 2 weeks prior to the expiration date.

Full Report

The lot was recorded after the adoption of the Chesapeake Bay Preservation Ordinance but prior to 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. As a result a perennial water body along with an adjacent wetlands located on this lot was determined, requiring that a 100-foot RPA buffer be established around those features. This 100 foot RPA buffer encompasses approximately 86% of the lot.

The owners have submitted a plan which proposes encroachments into the 100 foot and 50 foot RPA buffers through the construction of a single family residence, deck, screened porch, and concrete surfaces totaling 5020 square feet of impervious area.

According to provisions of the Ordinance, 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 accordance with the following criteria:

1. Encroachments into the buffer shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.
2. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel;
3. The encroachment may not extend into the seaward 50 feet of the buffer area.
4. The lot or parcel was created as a result of a legal process in conformity with the county's subdivision regulations.

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."

In this case, the residence, deck, and screened porch are proposed within the seaward 50 foot buffer and cannot be approved administratively. The applicants have chosen to request an exception for these structures from the Board.

The issue for the Board's consideration is the installation of 5020 square feet of impervious area proposed within the seaward 50 foot and 100-foot RPA buffer.

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 RPA. The applicant has submitted a WQIA for this project. The mitigation plan contained within the WQIA offsets the proposed 5020 square feet of impervious cover impacts.

The WQIA proposes to mitigate for the impacts to the RPA by planting (13) native trees, (26) native understory trees, and (39) native shrubs in the RPA. This vegetation will be located around and to the rear of the proposed residence. The mitigation plan meets the typical mitigation requirements of the County.

The owners have submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. 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:

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

The Ordinance does not authorize staff to give administrative approval for the placement of principal structures within the seaward 50-foot RPA buffer or accessory structures within the 100-foot buffer.

Staff recommends approval of the exception request for the proposed residence, deck, screened porch and concrete surfaces, as the lot was created prior to the establishment of the RPA requirement and the residence cannot be relocated on the lot to further minimize the encroachment in the buffer. This portion of the proposal does not confer any special privileges to the applicant, and the exception is not based on self-imposed conditions.

Staff recommends approval of the proposed residence and deck with the following conditions:

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- 1-1/2 inch caliper (six to eight feet tall) and the shrubs shall be 3 gallon size, minimum 18 inches tall.
3. The deck shall have 3 inches of gravel on filter fabric installed underneath.
4. 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.
5. This exception request approval shall become null and void if construction has not begun by October 8, 2009.

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

CONCUR: _____
Scott J. Thomas
Secretary to the Board

Attachments: