

Chesapeake Bay Board

November 13, 2008

A. Roll Call

B. Minutes

1. October 8, 2008 – Board Meeting

C. Public Hearings

1. CBE-08-040 – Craig Peck – 28 Hampton Key Continued from 8/13/08
2. CBE-09-040 – Harold Cherry – 107 Little Aston
3. CBE-09-041 – George & Jill Pongonis – 7272 Osprey Drive

D. Board Considerations

1. Calendar Year 2009- Meeting Schedule

E. Election of Officers for 2009

F. Matters of Special Privilege

G. Adjournment

MEMORANDUM

DATE: November 13, 2008
TO: JCC Chesapeake Bay Board
FROM: Patrick T. Menichino, Compliance Specialist
SUBJECT: CBE-08-040 – 28 Hampton Key

On August 13, 2008 Mr. George Craig Peck owner of 28 Hampton Key appeared before the Board requesting an after the fact approval for 72 linear feet of retaining wall located behind his residence in the Kingsmill subdivision. Staff determined that the RPA mitigation plan submitted with the application did not meet the County requirements. Therefore Staff recommended that the case be deferred until November 12, 2008 to allow the applicant an opportunity to revise his RPA mitigation plan so that it meets County requirements. The applicant requested a deferral and agreed to install (12) additional native plants within the RPA buffer. The Board granted the applicant's request for a deferral.

Following notification by the owner, an RPA planting inspection was performed by Staff on October 30, 2008. That inspection revealed that the (12) additional native plantings requested by Staff had been installed within the appropriate area of the buffer.

Based on the additional RPA mitigation plantings installed, Staff now recommends that the Board approve the owners request for the after the fact exception request.

WQIA for CBE-09-040 – 107 Little Aston

Staff report for the November 13, 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	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 after the fact exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with 45 linear feet of existing stacked stone landscape retaining wall.

The installation of the retaining wall occurred during the construction of a single family principal structure on the lot previously approved by the board within CBE-07-081. The total amount of impervious area created by the addition of the retaining wall is estimated at 45 square feet of impervious area. The retaining wall was constructed in the landward 50ft RPA buffer. The lot is 20,271 square feet or 0.466 acres in size. The 100 ft RPA buffer encompasses approximately 100% of lot.

The Ordinance considers retaining walls to be accessory structures. Staff does not have the authority to grant an administrative approval for encroachments of accessory structures. To be consistent with the Ordinance, staff can not support the installation of accessory structures in RPA components. However, the Board has in the past approved encroachments for accessory structures within the RPA buffer

Staff would not be opposed to the Board granting the applicant's exception requests for the retaining wall 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 installation of the wall occurred within the original limits of clearing approved by the Board and it has eliminated the potential for erosion caused by a steep slope and unstable fill.
4. The applicant has submitted an RPA mitigation plan that meets the typical County mitigation requirements for impervious area impacts.

Full Report

The lot was recorded prior to the adoption of the Ordinance. Therefore, there was no Resource Protection Area (RPA) present on the lot at the time of recordation. 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.

On September 12, 2007 the Board granted CBE-07-081, which approve the installation of approximately 3596 square feet of impervious area encroachments within RPA components to allow for the construction of a single family residence, attached deck, brick paver patio and Koi pond.

The issue for the Board's consideration is the additional impacts associated with the installation of 45 linear feet of retaining wall (accessory structure), resulting in 45 square feet of impervious area within the 100 ft 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 impervious cover impacts by planting (1) native understory tree, and (3) native shrubs within the RPA buffer to help filter runoff. This vegetation will be located adjacent to and below the retaining wall.

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 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 considers retaining walls to be accessory structures. Staff does not have the authority to grant an administrative approval for encroachments within the RPA buffer for accessory structures. To be consistent with the ordinance Staff can not support the installation of accessory structures in RPA components. However, the Board has in the past approved encroachments for accessory structures within the RPA buffer

Staff would not be opposed to the Board granting the applicant's exception requests for the retaining wall 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 installation of the wall occurred within the original limits of clearing approved by the Board and it has eliminated the potential for erosion caused a steep slopes and unstable fill.
4. The applicant has submitted an RPA mitigation plan that meets the typical County mitigation requirements for impervious area impacts.

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 RPA mitigation planting 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. Implementation of the RPA mitigation planting 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.

Staff Report Prepared by:

Patrick T. Menichino
Compliance Specialist

CONCUR:

Scott J. Thomas
Secretary to the Board

Attachments:

CBE-09-041- 7272 Osprey Drive

Staff report for the November 13, 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	George and Jill Pongonis
Land Owner	same
Location	7272 Osprey Drive, Lot 5, Section 7, Chickahominy Haven.
Parcel ID	1910800007
Staff Contact	Patrick Menichino Phone: 253-6675

Project Summary and Description

George and Jill Pongonis have applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of an attached deck on the rear of their dwelling at the above referenced lot in Chickahominy Haven. The deck will create approximately 612 square feet of impervious cover in the RPA.

The lot is 20,000 square feet or 0.462 acres in size. It is located adjacent to a man-made canal that is connected to the Chickahominy River. The RPA buffer located on the lot encompasses 0.274 acres or approximately 60% of the lot. There is an existing residence on the lot that encroaches into the 100-foot RPA buffer. No mature vegetation will be removed from the lot to allow for the placement of the proposed deck.

A detailed RPA mitigation planting plan (plan) has been provided with the exception request that proposes to mitigate for the 612 square feet of impervious area by planting (2) native canopy tree, (4) native understory trees and (6) native shrubs in planting beds to filter runoff from the impervious areas. This plan exceeds the standard mitigation requirements of the County.

Staff offers the following recommendations and guidance to the Board:

1. The proposed wood deck is attached to the residence and therefore can be considered part of the principal structure.
2. Staff considers the size of the proposed deck to be more than the minimum necessary to afford relief and the deck will be constructed within the seaward 50' buffer. For these two reasons, this proposal could not be approved through an administrative process.

3. The applicant has submitted an RPA mitigation planting plan that exceeds the County's typical planting requirements.
4. Staff evaluated the adverse impacts caused by the additional 612 square feet of impervious area to be moderate.
5. Staff recommends a reduction in the proposed impervious area or a reduction in existing turf areas as a method to reduce adverse water quality impacts.

Background

The lot was recorded prior to the adoption of the Ordinance. Therefore, there was no RPA present on the lot at recordation. However, on August 6, 1990, the Ordinance went into effect establishing 100-foot RPA buffers around all water bodies with perennial flow. The Chickahominy River and the adjacent, connected, man-made canal behind this property were then identified as a perennial water body on the quad map and an RPA buffer was placed on the lot. This 100 foot RPA buffer encompasses about 60% of the lot.

The applicant has applied for a wood deck totaling 612 square feet to be constructed on a single family residence located on the lot. The proposed 612 square feet of impervious area created by the deck is 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 is considered to be part of the principal structure, but its size and location within the 50' seaward buffer preclude it from being approved administratively.

The issue for the Board's consideration is the 612 square feet of additional impervious area created by the deck within the 50 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 impervious cover impacts by planting (2) native tree, (4) native understory tree, and (6)

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 this deck within the 50' RPA buffer.

Staff has evaluated the adverse impacts associated with the proposed deck and has determined them to be moderate.

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 RPA mitigation planting 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 shall have 3 inches of gravel on filter fabric installed underneath.
4. Staff recommends a reduction in the proposed impervious area or a reduction in existing lawn/turf areas as a method to reduce adverse water quality impacts.
5. This exception shall become null and void if construction of the deck and all required mitigation planting is not completed within 12 months from the date the exception or waiver is granted by the Board

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
Compliance Specialist

CONCUR: _____
Scott J. Thomas
Secretary to the Board

Attachments: