

Chesapeake Bay Board

February 11, 2009

A. Roll Call

B. Minutes

December 10, 2008 – Board Meeting and January 28, 2009 – Work Session

C. Public Hearings

1. CBE-09-058 – O’Connor – 106 Falling Creek Circle
2. CBV-09-006 – APPEAL- Drummond – 165 Indian Circle (continued from 12/10/08)

D. Board Considerations

1. CBE-07-112 McFarlin Park Driveway – Permit Extension

E. Matters of Special Privilege

F. Adjournment

WQIA for CBE-09-058 – 106 Falling Creek Circle.

Staff report for the February 11, 2009, 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 Christal O’Conner

Land Owner Daniel and Christal O’Conner

Location 106 Falling Creek Circle, Williamsburg, Virginia

Parcel Identification 4520200229

Staff Contact Patrick Menichino Phone: 253-6675

Project Summary and Description

Ms. Christal O’Conner of 106 Falling Creek Circle, 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 a 10’ x 14’ wood frame storage shed totaling approximately 140 square feet. The lot is located in First Colony and was recorded prior to the 1990 adoption of the Ordinance. Following the Ordinance revisions in 2004, a perennial water body and wetlands adjacent to the rear of the property was identified thereby requiring a 100’ landward RPA buffer. The lot is 0.87 acres in size and the RPA buffer encompass approximately 42% of the lot or 0.36 acres. The wood frame storage shed will encroach in 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 and (3) native shrubs to filter runoff. The amount of plantings proposed meets the standard mitigation planting requirements of the County.

Staff evaluated the request for the wood frame storage shed, and considers it to be an accessory structure, and as such cannot be granted an administrative exception. Staff has not administratively approved the installation of accessory structures 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 a 10’ x 14’ wood frame storage shed within the RPA buffer, creating 140 square feet of impervious area.

2. The applicants have submitted an RPA mitigation planting plan that meets the standard mitigation planting requirements of the County.
3. Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal.

Brief History

The lot was recorded before the adoption of the Ordinance, and no RPA existed 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. This 100 foot RPA buffer encompasses about 42% of the lot.

According to provisions of Section 23-7; the Manager may grant administrative approval for encroachments into the buffer, on a lot or parcel recorded prior to August 6, 1990. In this case, the exception request is for a wood frame storage shed within the 100 foot buffer and the Manager has determined that this case does not qualify for an administrative waiver because the request is for an accessory structure. 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 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) native canopy tree, and (3) native shrubs, in the RPA on the lot to help filter nonpoint source pollution.

The issue before the Board is the addition of the 140 square feet of impervious area created by the installation of the wood frame storage shed 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 for the wood frame storage shed and has determined it to be an accessory structure and therefore according to the Ordinance it cannot be granted by administrative exception. To be consistent with the ordinance requirements Staff can not support the approval of this exception request for an accessory structure.

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 if required.
2. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements must be completed within 90 days following Board approval.
3. Implementation may be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c), and through a form of surety satisfactory to the County Attorney.
4. The size of the mitigation trees shall be 1” caliper 6’-7’ tall, and the shrubs shall be 3-5 gallon size 15”-18” tall. All trees and shrubs shall be native species approved by the Environmental Division.

Staff Report prepared by: _____

Patrick T. Menichino
Compliance Specialist

CONCUR:

Scott J. Thomas,
Secretary to the Board

Attachments:

MEMORANDUM

Date: February 11, 2009
To: Chesapeake Bay Board
From: Michael Woolson
Subject: McFarlin Park BLE, CBE-07-112, Extension Request

Mr. Gregory R. Davis of Kaufmann & Canoles has requested an extension for the McFarlin Park Boundary Line Extinguishment for a Minor Subdivision project. Staff supports this extension request. As there was no Chesapeake Bay Board meeting in January, a temporary extension was granted by the administrator to ensure the expiration date did not lapse. Please see the attached letter request and temporary extension. The new expiration date shall be February 11, 2010.

KAUFMAN & CANOLES

— | A Professional Corporation | —
Attorneys and Counselors at Law

Gregory R. Davis
 757 / 259-3800
 grdavis@kaufcan.com

757 / 259-3800
 fax: 757 / 259-3838

Mailing Address:
 P.O. Box 6000
 Williamsburg, VA 23188

4801 Courthouse Street
 Suite 300
 Williamsburg, VA 23188

December 31, 2008

Scott J. Thomas, P.E.
 James City County
 Director – Environmental Division
 101-F Mounts Bay Road
 Williamsburg, VA 23185

Via Telecopier (757) 259-4032

RE: MY CLIENT: LYMAN R. HALL, JR., OWNER
 CBE-07-112
 MCFARLIN PARK BLE/MINOR SUBDIVISION

Dear Scott:

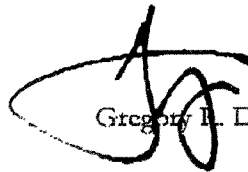
I represent Lyman Hall, the owner of James City County Real Estate Tax Parcels Nos. 4740100011 and 4740100013 located at 205 Neck O'Land Road. Mr. Hall is working with Henry Stephens at Associated Developers, Inc. on approval of the McFarlin Park development and associated boundary line adjustments. Part of the process involved an exception from the Chesapeake Bay Board in the above-referenced case. The Chesapeake Bay Board resolution provides for expiration of its exception if construction is not begun by January 9, 2009.

After the exception was granted, work between Associated Developers, Inc. and the County to achieve final plan approval proved more time consuming than originally anticipated. Now the owner and developer are poised to begin construction, but obtaining land-disturbing permits, posting bonds and other steps required by County ordinance in order to begin work cannot be accomplished prior to January 9, 2009.

Accordingly, I write to request an extension of the January 9, 2009 date for sunset of exception for a period of not less than 90 days.

Thank you for your kind consideration of this matter; you may feel free to discuss the case with Henry Stephens or myself.

Very truly yours,



Gregory R. Davis

GRD:fmy

cc: Mr. Lyman Hall
 Mr. Henry Stephens

\\ODMA\PCDOCS\DOCSWMB\622275\1

Chesapeake

Hampton

Newport News

Norfolk

Richmond

Virginia Beach



DEVELOPMENT MANAGEMENT

101-A MOUNTS BAY ROAD, P.O. BOX 8784, WILLIAMSBURG, VIRGINIA 23187-8784
(757) 253-6671

E-MAIL: devtman@james-city.va.us
FAX: (757) 253-6822

ENVIRONMENTAL DIVISION
(757) 253-6670
environ@james-city.va.us

PLANNING
(757) 253-6685
planning@james-city.va.us

COUNTY ENGINEER
(757) 253-6678

MOSQUITO CONTROL
(757) 259-4116

January 2, 2009

Mr. Gregory R. Davis
Kaufmann & Canoles
P.O. Box 6000
Williamsburg, VA 23188

Re: Request for Extension to CBE-07-112
Lyman R. Hall, Jr./Associated Developers
McFarlin Park BLE & Minor Subdivision
205 Neck O' Land Road; S-60-07

Dear Mr. Davis:

The Environmental Division has received your request dated December 31, 2008 to extend the above related Chesapeake Bay Exception (CBE) which expires on January 9, 2009. The normal process for cases approved by the Chesapeake Bay Board is that time extension requests also need to go to the Board, under "Board Considerations", unless it is determined that special circumstances exist.

As there are no agenda items for the January 14, 2009 Chesapeake Bay Board meeting and we are only holding a educational work session, we will not be able to schedule this particular CBE extension request until the February 11, 2009 Chesapeake Bay Board meeting. In lieu of this, the Director will administratively grant a temporary extension of the CBE for a period of forty-five days (45 days) to ensure that there is no lapse in expiration of the previously approved CBE between January 9th and February 11th.

Thank you for informing us of this expiration date and for providing us information to indicate your intentions for this project and reasons for delay. Other than this notification, no further action is required on your part and no additional fees are required. Staff will present the extension request to the Board at the February 11th meeting.

Thank you for your efforts to protect the Chesapeake Bay and its tributaries from the effects of non-point source pollution associated with land use activities. Please contact me at 253-6639 or Mike Woolson, Watershed Planner at 253-6823 if you have any additional questions or comments.

Sincerely,

Scott J. Thomas, P.E.
Director
Environmental Division

SJT/sjt

cc: Mike Woolson

CBE07112/McFarlinPark/Temporary_Extension