

Chesapeake Bay Board

March 11, 2009 – 7:00 p.m.

A. Roll Call

B. Minutes

February 11, 2009 – Board Meeting

C. Public Hearings

1. CBE-09-061. Kittelberger/Williamsburg Landscape – 1812 Cypress Isle
2. CBV-09-006. APPEAL- Drummond – 165 Indian Circle continued from 12/10/08 and 2/11/09

D. Board Considerations

E. Matters of Special Privilege

F. Adjournment

WQIA for CBE-09-061 1812 Cypress Isle

Staff report for the March 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	Colgate & Larry Kittelberger	
Land Owner	(same)	
Location	1812 Cypress Isle, Governor's Land, Williamsburg	
Parcel Identification	4321400010	
Staff Contact	Patrick Menichino	Phone: 259-1443

Project Summary and Description

Colgate & Larry Kittelberger, of 1812 Cypress Isle, Governor's Land, 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 two (2) brick paver walkways totaling approximately 195 linear feet. The brick pavers will be set in gravel and a permeable base resulting in 933 square feet of impervious area. The lot is located adjacent to the James River that requires a 100-foot RPA buffer. The lot is 1.82 acres in size and the RPA buffer encompasses approximately 55% of the lot or 1.00 acres.

A mitigation plan has been provided along with the exception request for your review. The mitigation plan proposes to mitigate for the 933 square feet of impervious area by planting (12) native understory trees and (9) native shrubs, within the RPA buffer to enhance the water quality function of the buffer. This mitigation plan exceeds the standard mitigation requirements of the County.

Staff offers the following guidance to the Board:

1. No additional clearing or removal of vegetation is required for the installation of the (2) brick paver walkways. Previously an administratively exception was granted to allow for sightline clearing in the two areas shown on the plan. Mitigation plantings show on the plan adjacent to the walkways was required to offset for the sight line clearing that previously occurred. The mitigation for the approximate 950 square feet of impervious walkways is shown on left and right sides of the plan noted.
2. Brick paver walkways are considered accessory structures and therefore are not eligible for administrative approval according to the Ordinance. Therefore this exception request for the construction of approximately 195 linear feet of walkways within the 100 RPA buffer must be reviewed by the Board.
3. Staff has evaluated the proposed adverse water quality impacts caused by the proposed walkways and has determined them to be minimal.

Brief History

The lot was recorded after the 1990 adoption of the Chesapeake Bay Preservation Ordinance. There is a 100 foot RPA buffer located on the lot adjacent to the resource. The lot is 1.82 acres in size and the RPA buffer encompasses approximately 55% of the lot or 1.00 acres.

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 WQIA proposes to mitigate for the impacts to the RPA by planting (12) native understory trees and (9) native shrubs within RPA buffer. The mitigation plan exceeds the typical RPA 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:

Recommendations

Staff recommends approval of the exception request for the proposed brick paver walkways the following conditions:

1. Full implementation of the mitigation plan shall 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.
2. The size of the native trees shall be 1"-1 ½" caliper, 6"-7' tall and shrubs planted shall be a minimum of 3-5 gallon container size (18" to 36" tall). All vegetation shall be native species approved by the Environmental Division.
3. The brick paver walkways shall not be installed upon the sand beach area or within the area identified on the plan as shoreline maintenance easement. The applicant shall obtain additional approvals of all other regulatory agencies that may have jurisdiction, including a James City County Building Permit.
4. This approval shall become null and void if construction has not begun by March 11, 2010. An extension can be requested in writing at least 2 weeks prior to the expiration date

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:

MEMORANDUM

DATE: March 11, 2009
TO: The Chesapeake Bay Board
FROM: Patrick T. Menichino, Environmental Compliance Specialist
SUBJECT: CBV 09-006- George F. Drummond, 165 Indian Circle

Mr. George F. Drummond of 165 Indian Circle filed an appeal to James City County's Chesapeake Bay Board on October 28, 2008. Mr. Drummond is appealing a Notice of Violation and administrative order issued by the County on October 21, 2008. That Notice of Violation ordered the removal of unauthorized fill, concrete driveway and retaining wall installed within the Resource Protection Area (RPA) buffer located on his property. Staff has reviewed the unauthorized encroachments and estimates the RPA impacts as: concrete driveway 500 square feet, fill 800 square feet and retaining wall 55 linear feet.

On February 11, 2009, the Board was presented case CBV 09-006, an appeal by Mr. George F. Drummond requesting relief from an administrative order issued by the County. Mr. Lambert B. Logan from Technical Services Group on behalf of Mr. Drummond requested a deferral of the case until March 11, 2009. The Board granted a deferral of the case until March 11, 2009.

Staff met with Mr. Drummond and his consultant onsite to review the existing conditions, and encroachments. Following that meeting a proposed mitigation plan was developed and submitted to the Division on February 27, 2009 for consideration by the Board on March 11, 2009.

Staff has reviewed the mitigation proposal and offers the following information for the Board's consideration.

1. The original administrative exception granted by the Division allowed for up to 400 square feet of new concrete driveway pad to be installed to service the new attached garage. The exception also required the removal of approximately 175 square feet of existing concrete drive.
2. The newly submitted mitigation plan offers to remove 250 square feet of existing concrete driveway now shown and identified as "Area 1 – Concrete Demo" which will occur in the same area as identified in #1 (175 square feet). The net result will be 75 square feet of additional concrete removed. Staff originally estimated that approximately 500 square feet of unauthorized concrete pad was installed, therefore there would still be a net increase of 425 square feet of unauthorized concrete remaining. A second area shown and identified on the new mitigation plan identified as "Area 2 – Concrete Demo 215 SF" is not presently proposed for removal. If "Area 2" were to be removed a further reduction in unauthorized impervious area would result in a minimal net increase of 210 square feet overall ($425 - 215 = 210$).
3. The original exception required the installation of a 100 square foot bio-retention/rain garden planted with native plants and the installation of (6) native canopy trees, (12) native understory trees and (18) native shrubs installed within the RPA buffer to offset for the water quality impacts generated by the authorized impervious areas.
4. The new mitigation plan proposes an increase of onsite bio-retention/rain gardens to offset any adverse water quality impact from additional impervious areas not previously treated. Approximately 930 square feet of bio-retention/rain gardens are now proposed vs. 100 square feet originally required, resulting in a net increase of 830 square feet.

5. The 55 linear feet of unauthorized retaining wall, is proposed to remain in place and be incorporated into a bio-retention facility shown and identified as "BIO AREA 2" on the new mitigation plan.
6. The approximate 800 square feet of unauthorized fill is proposed to remain in place.
7. The increase in bio-retention areas (830 square feet) if properly installed will have a beneficial effect on water quality on this property.

Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance.

The Board shall not decide in favor to the appellant unless it finds:

1. The hardship is not generally shared by other properties in the vicinity;
2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
3. The appellant acquired the property in good faith and the hardship is not self-inflicted.

Should the board vote to grant the appeal, staff offers the following recommendations and guidance for the Board's consideration.

1. The linear nature of bio-retention "Area 1" requires an increase in the number of native plantings for adequate vegetative absorption. The number of plants required for bio-retention areas should equal, 1 native plant for each 10-20 square feet of bio-retention area. The size of plant material should be: shrubs 3-5 gallon container size and trees 6-7 feet in height.
2. The removal of the concrete pad identified as "Area 2 – Concrete Demo- 215 SF" should be required as part of the proposed mitigation plan. A layer of gravel 4" deep may be installed in lieu of the concrete pad when removed.
3. A revised "Mitigation & Restoration Plan, for 165 Indian Circle", incorporating the above changes must be submitted to the Division for approval within 30 days of Board approval.
4. A Chesapeake Bay Restoration Agreement must be executed, along with surety in the amount of \$4,000.00 submitted to the County in a form acceptable to the County Attorney to guarantee the full implementation of the "Mitigation & Restoration Plan for 165 Indian Circle".