

Chesapeake Bay Board

November 12, 2009 - 7:00 p.m.

A. Roll Call

B. Minutes

October 14, 2009 – Board Meeting

C. Public Hearings

1. CBE-10-034 - Deane – 109 Longboat
2. CBE-10-038 - Martino/Schell – Cooke's Gardens
3. CBE-10-041 - James City County – Ironbound Square BMP

D. Board Considerations

1. Calendar Year 2010 Meeting Schedule

E. Election of Officers for 2010

F. Matters of Special Privilege

G. Adjournment

Chesapeake Bay Exception CBE-10-034: 109 Longboat

Staff report for the November 12, 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.

Existing Site Data & Information

Applicant	Donald M. Deane
Land Owner	Donald M. Deane & Susanne M Curtis
Location	109 Longboat, Ford's Colony, Williamsburg, Virginia
Parcel Identification	3130900033
Lot Size:	.52 acres
RPA Area on Lot	.38 acres or 73 % of the lot.
Watershed	Powhatan Creek, Subwatershed 203
Proposed Activity:	Installation of a Segmental Block Retaining Wall

Proposed Impacts

Impervious Area	15 square feet
RPA Encroachment	Landward 50 foot RPA Buffer

Brief Description and Summary

Mr. Donald M. Deane, of 4400 Kings James, Williamsburg, Va. has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer, for the construction of segmental block retaining wall totaling 23 LF in length, with 15' LF extending into the landward 50 foot RPA buffer. The wall will create 15 square feet of impervious area within the RPA Buffer.

A detailed RPA Mitigation Planting Plan (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 trees and (3) native shrubs, in mulch planting beds to help filter runoff. The amount of plantings proposed meets the standard mitigation planting requirements of the County for impervious impacts. In addition the applicant has offered additional mitigation by reducing the amount of turf area onsite and replacing it with native plants. Therefore this proposal will reduce the current encroachment into the RPA.

Background

The lot was recorded after 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 feature at the rear of the lot was identified requiring that a 100 foot RPA buffer be established on the lot.

In this case, the exception request is for segmental block retaining wall, within the landward 50 foot buffer. This request does not qualify for an administrative waiver because it 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 (WQIA)

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.

Staff Recommendations

The issue before the Board is the addition of the 15 square feet of impervious area 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.

Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal.

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. 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. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c), a form of surety satisfactory to the County Attorney.

4. This exception request approval shall become null and void if construction has not begun by November 12, 2010, or all improvements including the required mitigation plantings are not completed by that expiration date.
5. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

Staff Report prepared by: _____

Patrick T. Menichino
Compliance Specialist

CONCUR:

Scott J. Thomas,
Secretary to the Board

Attachments:

Chesapeake Bay Exception CBE-10-038: Cooke's Garden Center

Staff report for the November 12, 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.

Existing Site Data & Information

Applicant: Mr. Charlie Martino, Operations Manager
Mr. Jeff Schell, Owner

Land Owner(s): Mr. Jeff Schell

Location: 259 Sandy Bay Road, 1820 & 1826 Jamestown Road

Parcel Identification: 4730100002, 4730100005, and 4730100003

Parcel Size/Zoning: Limited Business (LB) 2.8 acres – 259 Sandy Bay Road
Limited Business (LB) 0.5 acres – 1826 Jamestown Road
General Business (B1) 1.2 acres – 1820 Jamestown Road

Percent of Parcel in RPA: 50% (1.4 acres) of 259 Sandy Bay Road
0% of 1820 Jamestown Road
0% of 1826 Jamestown Road

Watershed: Powhatan Creek, tidal mainstem subarea

Other: Site plan for all future work, including building modification and up-to-date stormwater compliance has not yet been submitted.

Impacts

RPA Encroachments: 0.32 acres (13,900 square feet)
Impervious Cover Amount Existing within RPA: 0.32 acres
Disturbed Area Amount Proposed within RPA: 0.32 acres

Brief Summary and Description of Activities

Mr. Charlie Martino, operations manager, on behalf of Cooke's Garden Center has applied for an exception to the Bay Act Program and Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the Resource Protection Area (RPA) buffer for the continued use of the RPA for the display and storage of nursery container stock. Through the redevelopment of the entire Garden Center site, stormwater and impervious cover issues will be addressed. This portion of the project deals with impervious cover within the RPA and cannot be processed administratively. The applicant proposes to reduce the impervious cover within the RPA, while allowing for the continued use of a portion of the RPA for the commercial sale of plant material (containerized trees and/or shrubs). Over the course of

many years, the outdoor display area has grown in size and now encroaches into the RPA. The applicant recognizes that this has occurred and is requesting that a portion of the impact be allowed to remain (4,500 square feet) while removing the remaining impervious cover (9,400 square feet) and restoring and improving the soil. The Garden Center is on the south side of Jamestown Road, generally across the road from the parking lot for the County's Powhatan Creek Park and Blueway (small boat/canoe launch).

Staff Evaluation

Staff has evaluated the application and exception request for all work as described above. The proposal is the continued use of the outdoor display area within the RPA, as modified (see Sheet C-3A), by removing 68% of the existing impervious cover. The applicant also proposes to create a walking trail within the seaward 50 foot RPA to demonstrate how native plants control erosion and clean stormwater. There will be educational links between this display area and the new proposed green roof and rainwater harvesting system that are proposed to be installed in the future.

Water Quality Impact Assessment (WQIA)

In accordance with Bay Act requirements and the Ordinance all land disturbance, development or redevelopment within RPA requires a water quality impact assessment (WQIA). Water quality impact assessments shall identify impacts of proposed development on water quality and land in RPAs and recommended measures for mitigation of these impacts. Localities must review a WQIA prior to action on the exception request. James City County has established guidelines for submission of minor/major WQIAs.

A WQIA was submitted on October 8, 2009 and assigned Chesapeake Bay Exception CBE-10-038. Based on Environmental Division staff review, the WQIA proposes to mitigate for RPA impacts by:

- The removal of 9,600 square feet of existing gravel and pavers, replacing with topsoil and mulch, including removing all impervious cover within the seaward 50 feet of the RPA.

Other Important Review Information

The following is additional information provided to the Chesapeake Bay Board by Environmental Division staff. This additional information is deemed important relative to the review of this particular exception request.

- The parcel and portions of the project area are situated in Special Flood Hazard Area (SFHA), Zones AE and Zone X designations according to FEMA FIRM Panel 185, Map No. 51095C0185C, September 28, 2007)
- This is one portion of a project that will improve the overall site. The other features mentioned (green roof, rainwater harvesting, new/expanded BMP's, additional reduction of impervious cover) will be realized once the site plan comes in for review and the site work is accomplished.
- Because of the project's location in the Powhatan Creek watershed, the project will be subject to the County's Special Stormwater Criteria at the time of plan of development.

Staff Recommendation

County Environmental Division staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts now associated with the proposal to be minimal with the proposed mitigation measures. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception, CBE-10-038, with the proposed mitigation measures as outlined above as conditions. Furthermore, any approval should also be conditioned as follows:

1. The applicant must obtain all other necessary federal, state and local permits and approvals as required for the project.
2. The removal of 9,600 square feet of existing gravel and pavers, replacing with topsoil and mulch, including removing all impervious cover within the seaward 50 feet of the RPA.
3. The applicant shall prepare and submit a pollution prevention plan at the time of site plan submittal. It shall include all necessary means and methods of handling the nursery stock within the RPA component of the site including watering and fertilizing schedule and may include the entire site if desired. This plan may be included on the actual site plan or may be a stand-alone product. This plan does not need to be prepared by a licensed professional.
4. This exception request approval shall become null and void if construction has not begun by November 13, 2010.
5. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

Consideration by the Chesapeake Bay Board

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County’s Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-10-038 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County’s Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-10-038 are included for the Board’s use and decision.

Staff Report prepared by:

Michael D. Woolson
Senior Watershed Planner

CONCUR:

Scott J. Thomas
Secretary to the Board

Attachments:

Letter from Charlie Martino to the Chesapeake Bay Board, dated October 8, 2009
Minor Water Quality Impact Assessment, prepared by LandMark Design Group, Inc.
Environmental Inventory – Existing
Environmental Inventory - Proposed

Chesapeake Bay Exception CBE-10-041: Ironbound Road Regional BMP

Staff report for the November 12, 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.

Existing Site Data & Information

Applicant: Mr. Wayland Bass, Stormwater Division, James City County
Mr. Sanford Wanner, County Administrator, James City County

Land Owner(s): Chambrel

Location: 3800 Treyburn Drive, Williamsburg, Virginia, 23188

Parcel Identification: 3910900131

Parcel Size/Zoning: 54 acres, PUD Residential

Percent of Parcel in RPA: 20%

Watershed: College Creek

Other: Part of the Ironbound Square Redevelopment Project

Proposed Impacts

RPA Encroachments: 0.50 acres
Impervious Cover Amount Proposed within RPA: 0 sf impervious cover
Disturbed Area Amount Proposed within RPA: 0.50 acres

Brief Summary and Description of Activities

Mr. Wayland Bass on behalf of Mr. Sanford Wanner, County Administrator of James City County has applied for an exception to the Bay Act Program and Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the Resource Protection Area (RPA) buffer for the installation of a regional stormwater BMP for the Ironbound Square Redevelopment Project. This application was previously before the Board as Chesapeake Bay Exception CBE-07-03 which expired and is now identified as CBE 10-041. RPA is situated on the parcel and is present due to the 2004 Ordinance revisions which required RPA determinations based on a reliable site-specific evaluation to be conducted to determine whether water bodies on or adjacent to development sites have perennial flow. Total impervious cover and disturbance within the RPA is listed above in the "Proposed Impacts" section. The redevelopment project involves the construction of 56 single family dwelling units and 67 multifamily housing units as approved by the Board of Supervisors under rezoning Z-002-05 and Z-009-06. The project is generally bounded by Ironbound Road to the west, Magazine Road to the north and east, Chambrel to the east, and the City of Williamsburg to the south.

Staff Evaluation

Staff has evaluated the application and exception request for all work as described above. The proposal is a regional stormwater BMP that will receive stormwater from the Ironbound Road widening project, the Ironbound Square Redevelopment Project, Bay Aging, and a part of New Town and will provide treatment for previously untreated stormwater. Based on Bay Act requirements, the Ordinance and associated guidance materials as published by the Virginia Department of Conservation and Recreation (VA-DCR), stormwater management facilities may be processed administratively if certain conditions are met. Those conditions are listed in Section 23-7(a) (4) (a) through (f) and are listed below for clarification purposes:

- a. The location within the RPA is the optimum location, meaning that it is the best place to locate the facility from an engineering and functionality consideration regardless of the presence of the RPA;*
- b. The size of the facility is the minimum necessary to provide necessary flood control, stream channel protection, stormwater treatment, or all three;*
- c. The facility must be consistent with a stormwater management program that has been approved by CBLAB as a Phase 1 modification to the county's program;*
- d. All applicable permits for construction in state and federal waters must be obtained from the appropriate agencies;*
- e. Approval must be received from the county prior to construction;*
- f. Routine maintenance must be performed on the facility to assure that it continues to function as designed.*

This application fails the condition set forth in Section 23-7(a) (4) (c) because James City County does not have a Phase 1 modification to the stormwater management program in the College Creek watershed. Therefore, this proposal must go through the formal exception process through the County's Chesapeake Bay Board.

Water Quality Impact Assessment (WQIA)

In accordance with Bay Act requirements and the Ordinance all land disturbance, development or redevelopment within RPA requires a water quality impact assessment (WQIA). Water quality impact assessments shall identify impacts of proposed development on water quality and land in RPAs and recommended measures for mitigation of these impacts. Localities must review a WQIA prior to action on the exception request. James City County has established guidelines for submission of minor/major WQIAs.

A WQIA was provided with previous Chesapeake Bay Exception CBE-07-003. This CBE was approved by the Board on February 28, 2007 and a one year extension on February 12, 2008. Based on Environmental Division staff review, the WQIA proposes to mitigate for RPA impacts by:

- Installing erosion control blanket, (EC-2) on the downstream face of the BMP.
- Stabilization of the embankment faces with a conservation seed mix.
- Stabilization of a degraded stream channel within the Powhatan Creek watershed on the Warhill site. The ratio of restoration to impacts will be approximately 4:1, with a minimum of 280 linear feet of channel stabilization on the Warhill site.

- Preservation/enhancement of open space on the Warhill site. The ratio of preservation to impacts will be approximately 1.5 acres.
- A stilling basin at the outfall of the BMP to reduce turbulence and velocity.
- Treatment of approximately 20 acres of onsite and offsite stormwater runoff, the majority of which is currently uncontrolled stormwater runoff from previously developed areas.

Other Important Review Information

The following is additional information provided to the Chesapeake Bay Board by Environmental Division staff. This additional information is deemed important relative to the review of this particular exception request.

- This project is important to the overall stormwater masterplan for the Ironbound Square Redevelopment Project. This project has developed to the maximum extent possible with the other proposed stormwater features.

Staff Recommendation

County Environmental Division staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be minimal with the proposed mitigation measures. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception CBE-10-041 with the proposed mitigation measures as outlined above as conditions. Furthermore, any approval should also be conditioned as follows:

1. The applicant must obtain all other necessary federal, state and local permits as required for the project.
2. This exception request approval shall become null and void if construction has not begun by November 13, 2010.
3. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

Consideration by the Chesapeake Bay Board

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-10-041 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-10-041 are included for the Board's use and decision.

Staff Report prepared by:

Michael D. Woolson
Senior Watershed Planner

CONCUR:

Scott J. Thomas
Secretary to the Board

Attachments:

{List with Title}
{List with Title}
{List with Title}