

Chesapeake Bay Board

August 11, 2010

A. Roll Call

B. Minutes

From July 14, 2010 – Board Meeting

C. Public Hearings

1. CBE- 10-038 – Cooke’s Gardens – continued from 11/18/09, 2/10/10, & 6/9/10
2. CBE-11-001 – Hallmark/Hart. 104 Braemore
3. CBE-11-002 – Chin – 108 Godspeed Lane
4. CBV-10-009 - APPEAL. Casto – 142 Riverview Plantation Drive

D. Board Considerations

1. CBE-08-016 – Anton. 7511/7513 Oak Cove Road - Change in RPA mitigation requirements

E. Matters of Special Privilege

F. Adjournment

MEMORANDUM

DATE: August 11, 2010
TO: JCC Chesapeake Bay Board
FROM: Michael D. Woolson, Senior Watershed Planner
SUBJECT: CBE 10-038 – Cooke's Garden Center

On November 12, 2009 the Chesapeake Bay Board was presented with an exception request for Cooke's Garden Center. The exception (CBE-10-038) requested Board approval for the continued use of the RPA for display and storage of nursery container stock. The applicant proposed the reduction of impervious cover from the RPA, while still allowing a portion of the RPA to be used for the commercial sale of plant material.

Following the Board's discussion, the applicants requested a deferral to provide additional time to respond to specific issues and concerns raised by the Board. A motion for a deferral of this case was voted on and approved by the Board.

The Board requested that a site plan (SP-057-10) and a nutrient management plan (pollution prevention plan) be submitted for review to the County. This was done on July 9, 2010. One additional area for the Board's consideration is the enlarging of an existing on-site pond for stormwater management purposes. This pond captures and treats stormwater from the existing site (3 parcels) plus a portion of off-site area currently not treated.

Staff believes that the submitted plans before the Board addresses concerns outlined in the November 12, 2009 public hearing and that this project significantly reduces the proposed RPA buffer impacts, increases the area of undisturbed RPA buffer, provides RPA mitigation, and addresses water quality issues.

This revised proposal before you this evening:

1. Eliminates 8,364 square feet of impacts caused by the existing gravel within the RPA area.
2. Provides stormwater treatment, to current guidelines, for the entire 3 parcels plus an adjacent off-site parcel.
3. Provides a pollution prevention plan.
4. Provides a 3,942 sf green roof over the garden center.
5. Provides an underground rainwater harvesting tank (cistern) for the capture and reuse of rainwater for irrigation purposes.

The issue before the Chesapeake Bay Board is a revised application, requesting Board approval for 6,273 square feet of RPA buffer impacts for walkways and a portion of a stormwater management facility for this retail plant and garden supply sales operation. This will bring the entire site into compliance for current stormwater regulations, along with a green roof and cistern to promote reuse and recycling of rainwater.

Staff Recommendations

Staff recommends approval of CBE-10-038, as revised, with the proposed mitigation measures as outlined in the WQIA and site plan. Furthermore, this approval should 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 8,364 sf of RPA buffer impacts caused by the existing gravel.
3. This exception request shall be null and void if construction has not begun by August 11, 2011.
4. 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:

1. Original staff report, dated November 12, 2009
2. Sheet C-3A, Environmental Inventory – Proposed (from SP-057-10)
3. Nutrient Management Plan (Pollution Prevention Plan)

Chesapeake Bay Exception CBE-11-001: 104 Braemore; Ford's Colony

Staff report for the August 11, 2010 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. Michael Carroll, Hallmark Builders Inc.

Land Owner(s): Paul and Jane Hart
44 Mohawk Trail
Bridgewater, NH 03222

Location: 104 Braemore Williamsburg, VA 23188
Pin: 3720500032: Paul and Jamie Hart, owners

Parcel Size/Zoning: 0.51 +/- acres, PUD Residential
Percent of Parcel in RPA: 52% (0.25 +/- acres)

Watershed: Powhatan Creek; Non-Tidal Mainstem (HUC Code JL31)

Proposed Impacts

Impervious Area: 2,684 square feet (0.06 acres)

RPA Encroachment Landward and Seaward 50 foot RPA Buffers

Brief Summary and Description of Activities

Mr. Michael Carroll of Hallmark Builders, Inc. on behalf of Paul and Jane Hart has applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for construction of a single family dwelling at 104 Braemore in the Ford's Colony Subdivision.

The proposed dwelling will create approximately 627 square feet of impervious cover in the 50' seaward buffer and 2,057 square feet of impervious cover in the landward 50' buffer. The applicant also proposes to remove nine trees which equates to roughly a 20% reduction in overall tree canopy on the lot.

Additionally, due to a 30' building setback line enforced by Ford's Colony that is in place on the north side of the lot, the proposed dwelling cannot be moved forward out of the seaward 50' RPA buffer.

Background

The lot was recorded following the adoption of the Ordinance in 1990, and no RPA existed on the lot at the time of plat recordation. The Chesapeake Bay Preservation Ordinance was revised in 2004 and it was determined that the adjacent pond was perennially fed and subsequently a RPA has been located on this lot. In this case, the exception request is for the construction of a single family dwelling which will encroach into both the 100' and 50' RPA buffers. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

Staff Evaluation

Staff has evaluated the application and exception request for all work as described above. The proposal is for the construction of a single family residence in the Ford's Colony Subdivision. Staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

Water Quality Impact Assessment (WQIA)

In accordance with Bay Act requirements and the Ordinance all land disturbance, development or redevelopment within the 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.

A WQIA was provided on June 30, 2010. Based on staff review, the WQIA proposes to mitigate for RPA impacts by:

- Replanting the RPA with 7 canopy trees (Red Maple), 7 understory trees (American Holly), 21 shrubs (Wax myrtle), and 160 square feet of mulch.

The amount of plantings proposed does not meet the standard mitigation planting requirements of the County for impervious impacts. The mitigation plan will need to be revised to meet the proper mitigation rates prior to implementation in the field.

Staff Recommendation

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be moderate for the proposed construction and that the proposed mitigation measures, once revised, may offset the impacts to the RPA. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

1. The applicant must obtain all other necessary local permits as required for the project.
2. The mitigation plan must be revised to meet County mitigation standards by including 14 understory trees prior to the plan's implementation in the field.
3. All proposed mitigation plantings shall meet James City County Standards with canopy and understory trees being of 1 ½ caliper or six feet to eight feet tall and shrubs being of three gallon size.

4. 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) by providing a form of surety satisfactory to the County Attorney.
5. This exception request approval shall become null and void if construction has not begun by August 11, 2011, or all improvements including the required mitigation plantings are not completed by that expiration date.
6. 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-11-001 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-11-001 are included for the Board's use and decision.

Staff Report prepared by:

Michael P. Majdeski
Senior Environmental Inspector

CONCUR:

Scott J. Thomas
Secretary to the Board

Attachments:

Chesapeake Bay Exception CBE-11-002: 108 Godspeed Lane; Powhatan Shores

Staff report for the August 11, 2010, 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. David R. Chin
108 Godspeed Lane
Williamsburg, VA 23185

Land Owner(s): Mr. David R. Chin

Location: 108 Godspeed Lane
Williamsburg, VA 23185
Property PIN: 4730500050

Parcel Size/Zoning: 0.48 +/- acres, PUD Residential

Percent of Parcels in RPA: 57% (0.27 +/- acres)

Watershed: Powhatan Creek; Non-Tidal Mainstem (HUC Code JL31)

Proposed Impacts

Impervious Area: 160 square feet (<0.01 acres)

RPA Encroachment: Seaward 50 foot RPA Buffer

Brief Summary and Description of Activities

Mr. David Chin of 108 Godspeed Lane has applied for an exception to the Chesapeake Bay Ordinance for the placement of an accessory structure (storage shed) in the seaward 50' buffer of the RPA. The entire area behind the existing dwelling is located within the Resource Protection Area. An existing shed is located on the southern side of the property in the seaward 50' buffer.

The applicant proposes to install a 10'x16' storage shed on the northern side of the property adjacent to the canal. According to the applicant, the storage barn will be utilized to store boating, camping, and related equipment along with providing closer access to the existing dock and canal.

Background

The lot was recorded prior to the adoption of the Ordinance, and no RPA existed on the lot at that time. Following the 1990 adoption of the Ordinance, the adjacent canal leading into Powhatan Creek was identified as a resource thereby requiring that a 100 foot RPA buffer be established on the lot.

In this case, the exception request is for the installation of a storage shed in the seaward 50' buffer. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

Staff Evaluation

Staff has evaluated the application and exception request for all work as described above. The proposal is for a new accessory structure in the seaward 50' buffer of the RPA. Staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

Water Quality Impact Assessment (WQIA)

In accordance with Bay Act requirements and the Ordinance all land disturbance, development or redevelopment within the 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 on July 6, 2010. Based on staff review, the WQIA proposes to mitigate for RPA impacts by:

- Planting of one understory tree and three shrubs directly adjacent to the proposed accessory structure. The proposed mitigation meets County Standards for mitigation rates for the proposed impervious cover.

Staff Recommendation

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be minimal for the proposed development and that the proposed mitigation measures are acceptable. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

1. The applicant must obtain all other necessary federal, state and local permits as required for the project.
2. The mitigation plan shall be revised to reflect the installation of appropriate native plantings prior to implementation in the field.
3. All proposed mitigation plantings shall meet James City County Standards with canopy and understory trees being of 1 ½ caliper or six feet to eight feet tall and shrubs being of three gallon size.

4. 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) by providing a form of surety satisfactory to the County Attorney.
5. This exception request approval shall become null and void if construction has not begun by August 11, 2011.
6. 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-10-032 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-10-032 are included for the Board's use and decision.

Staff Report prepared by:

Michael P. Majdeski
Senior Environmental Inspector

CONCUR:

Scott J. Thomas
Secretary to the Board

Attachments:

MEMORANDUM

DATE: August 11, 2010
TO: The Chesapeake Bay Board
FROM: Michael D. Woolson, Senior Watershed Planner
SUBJECT: CBV-10-009 – Mr. William G. Casto, 142 Riverview Plantation Drive

Mr. William G. Casto has filed an appeal of the Chesapeake Bay Preservation Ordinance Notice of Violation requirements, dated June 25, 2010. The Notice of Violation required the execution of a Chesapeake Bay Restoration Agreement, the restoration of the RPA with native plantings, and removal of two retaining walls.

On June 10, 2010, staff became aware of the unauthorized retaining walls following a mitigation inspection at the residence. Staff initiated an investigation and as a result has documented a violation of the County's Chesapeake Bay Preservation Ordinance. Staff has met with the Owner regarding this issue after issuing the Notice of Violation on June 25.

Historical Background Information

On or about May 26, 2009 an Application for Building Permit was submitted for the building of a new single family residence. This lot (PIN 1640600001) has an RPA encroaching upon it because of the 2004 Chesapeake Bay Preservation Ordinance amendments from the lake (Lake Norvel). At the time of the original Building Permit application, it was noted that the retaining walls shown on the plan were to receive approval from the Chesapeake Bay Board prior to building them. The exception request that was granted for the building of this residence expressly stated that the approval did not include the retaining walls.

On or about February 11, 2010, an additional Application for Building Permit was applied for, requesting the building of the two retaining walls shown on the original application. Staff noted the there was no erosion and sediment control required for these structures. No request was made at that time for a Chesapeake Bay Board exception and the walls were built.

Board members have communicated to staff their general resistance to processing after-the-fact permits.

Staff Guidance and Recommendations

Staff has reviewed the appeal and violation documents and offers the following information for the Board's consideration.

1. Mr. William Casto is the current property owner and he had prior knowledge that a Chesapeake Bay Preservation Area was designated on the property through his original building permit application.
2. The Chesapeake Bay Preservation Ordinance Sections 23-7 and 23-10 require that authorization and a plan of development be reviewed and approved by the County prior to activities within RPA's.
3. 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; and
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.

Staff's guidance to the Board on deciding this matter is as follows:

1. The hardship is shared by other properties immediately adjacent to the appellant's property as well as numerous other properties within Riverview Plantation that have RPA components located on them.
2. The granting of the appeal in this case may not adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity, once the proposed planting plan is implemented or possibly expanded upon.
3. The hardship is self-inflicted, as the owner was told, in writing, that he had to go through the Chesapeake Bay Board for approval of the retaining walls.

Should this Board find in favor of staff, the Board should deny the appeal and allow the administrative order to remain in place.

Should the Board find in favor of the appellant, the Board should require that the retaining wall application come before them at the next regularly scheduled Chesapeake Bay Board meeting for review and discussion.

Attachments

1. Notice of Violation, dated June 25, 2010
2. Appeal letter, dated July 2, 2010
3. CBPO Sensitive Area Application Form, dated May 21, 2009
4. Original SFD approval, dated May 26, 2009
5. Building Permit application, dated Feb 11, 2010
6. Photographs

MEMORANDUM

DATE: August 11, 2010
TO: JCC Chesapeake Bay Board
FROM: Michael D. Woolson, Senior Watershed Planner
SUBJECT: CBE 08-016 – Mr. John Anton

On April 9, 2008 the Chesapeake Bay approved a retaining wall with specific mitigation planting requirements. Mr. Anton is seeking relief from these requirements. The following information is given so that the Board may make a determination for this request:

1. The retaining wall (and associated bulkhead project) is completed and the disturbance for the project was approximately one half of what was anticipated (700 sf instead of 1410 sf).
2. He has in place the entire surety amount requested plus a fully executed Chesapeake Bay Restoration Agreement.

In reviewing this request, staff notes that standard mitigation ratios are 1 canopy tree, 2 understory trees, and 3 shrubs for every 400 sf of impact (mitigation unit). Using this standard, Mr. Anton's original mitigation rate should have been 4 mitigation units (1410/400) or 4 canopy trees, 8 understory, and 12 shrubs. In this case, the Board approved a mitigation rate that was double the standard rate (see condition 6).

Mr. Anton is seeking to have his mitigation rate be equal to the standard for the amount of disturbance he actually incurred. Based on an approximate 700 sf disturbance, the mitigation rate would be 2 units, and his mitigation requirement would be 2 canopy trees, 4 understory trees, and 6 shrubs.

Staff concurs with Mr. Anton's request to modify the approved Chesapeake Bay Resolution, dated April 9, 2008 with the above stated mitigation rate.