

Chesapeake Bay Board

7:00 p.m. - Building F

December 8, 2010

A. Roll Call

B. Minutes

From November 10, 2010 – Board Meeting

C. Public Hearings

1. CBE-11-052 – Hilstrom – 105 Godspeed - Patio
2. CBE-11-050 – 6616 Cranston’s Mill Pond – Dam Rehabilitation

D. Board Considerations

E. Matters of Special Privilege

1. Memorandum from Scott J. Thomas

F. Adjournment

Chesapeake Bay Exception CBE-11-052: 105 Godspeed Lane

Staff report for the December 8, 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: Charles H. Hilstrom, Sr.
Land Owner: Charles & Sharyn Hilstrom
Location: 105 Godspeed Lane
Parcel: Lot 29, Section 1, Powhatan Shores
Parcel Identification: 4730500029
Lot Size: 0.452 acres
RPA Area on Lot: 0.221 acres or 48.9% of the lot
Watershed: Powhatan Creek, Tidal Mainstem (HUC Code JL31)
Proposed Activity: Installation of a patio

Proposed Impacts

Impervious Area: 225 square feet
RPA Encroachment: Landward 50 foot RPA Buffer

Brief Summary and Description of Activities

Mr. Charles H. Hilstrom, Sr. of 105 Godspeed Lane in Section 1 of Powhatan Shores has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer for the construction of a patio approximately 225 square feet in size. The proposed patio is approximately 15 ft. x 15 ft. and is situated just behind an existing wooden deck on the back (south) portion of the existing home. The entire proposed patio is situated within the landward 50 ft. 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 one (1) native canopy tree and three (3) native shrubs in the vicinity of the proposed patio. The amount of plantings proposed meets the standard mitigation planting requirements of the County for impervious cover impacts.

The application provided no specific details about surface materials or construction methods proposed for the patio; however, in subsequent discussions with the applicant, the intent is to use gray-colored textured concrete. The patio is considered as impervious cover by staff.

Staff Recommendations

The issue before the Board is the addition of 225 square feet of impervious area within the landward RPA buffer for construction of a patio. 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. There are five (5) review criteria within this section of the ordinance.

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be minimal and are adequately offset with implementation of the mitigation plan. If the Board favors the resolution to grant approval, staff recommends the incorporation of the following conditions into the approval:

1. The applicant must obtain all other necessary local permits as required for the project.
2. All proposed mitigation plantings shall meet James City County standards of 1" caliper for the canopy and understory trees and proposed shrubs shall be minimum three gallon size.
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) which is providing 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 December 8, 2011 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.

Background

Based on staff review of County records, the lot was recorded prior to the adoption of the Chesapeake Bay Preservation Ordinance and the house was built around 1984. In 1990, the Ordinance was adopted and established a 100 foot RPA buffer on the lot. As the proposed patio is considered accessory in nature, it cannot be administratively reviewed and therefore in accordance with section 23-14 of the Ordinance, an exception request must be considered by the Chesapeake Bay Board following public hearing under the formal exception process. The exception request before the board, and decision to approve or deny by resolution, is for encroachment into the RPA buffer for the construction of a patio approximately 225 square feet in size.

For the Board's information, an administrative waiver was granted for reconstruction of the existing deck situated near the proposed patio. The administrative waiver was granted on November 3rd 2010 under Chesapeake Bay Exception case CBE-11-053. As the original house and deck was constructed prior to 1990, they are considered non-complying structures subject to the provisions of Section 23-12 of the Ordinance. Waivers for non-complying structures can be reviewed and approved through an administrative process which permits the continued use, alteration or the expansion of any structure in existence prior to 1990. Deck reconstruction honored the previous historical footprint and was not expanded.

Water Quality Impact Assessment (WQIA)

Under Sections 23-11 and 23-14 of the County’s Chesapeake Bay Preservation 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 *County Sensitive Area Activity Application* and a required mitigation plan, both of which are included in the case report packet. The WQIA map shows features of the proposal along with a mitigation plan for native plantings.

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-11-052 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-11-052 are included for the Board’s use and decision.

Staff Report prepared by:

Scott J. Thomas
Secretary to the Board

Attachments: Sensitive Area Activity Application
Mitigation Plan
Plat map exhibit (for information only)

Chesapeake Bay Exception CBE-11-050: Cranston's Mill Pond
Staff report for the December 8, 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: Paul F. Hinson, PE
Koontz-Bryant, PC
1703 North Parham Road, Suite 100
Richmond, Virginia 23229

Land Owner: Toano Hunt and Fish Club

Location: 6616 Cranston's Mill Pond Road

Parcel Identification: 2230100044 (partial)

Lot Size: 153.48 ac (entire parcel)
59.33 ac (proposed parcel)

RPA Area on Lot: 56 ac +/- or 96% of the proposed parcel

Watershed: Yarmouth Creek, Non-Tidal Mainstem (HUC Code JL28)

Proposed Activity: Rehabilitation of Cranston's Mill Pond

Proposed Impacts

Impervious Area: 16,500 square feet (spillway and access/maintenance road)

RPA Encroachment: Landward and Seaward 50 foot RPA Buffer

Brief Summary and Description of Activities

Mr. Paul F. Hinson, PE of Koontz-Bryant on behalf of Mr. Brent Fults, Cranston's Mill Pond, LLC has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer for the rehabilitation of Cranston's Mill Pond. The proposed work will disturb approximately 3.56 acres within the RPA and have a proposed impervious cover of approximately 16,500 sq ft.

There is no RPA replanting plan, outside of stabilizing the disturbed area, because the Virginia Department of Conservation and Recreation Dam Safety requires the embankment, a 25-foot zone downstream of the embankment, and the emergency spillway be kept free and clear of woody vegetation. The remainder of the site, outside of the actual pond and wetland fringe of the pond, is heavily wooded

with no opportunity for replanting. The applicant has proposed to install Class II riprap below each spillway, the use of erosion control type 2 matting, and turbidity curtains to help avoid and minimize sedimentation from the construction activities.

Staff Recommendations

The issue before the Board is the rehabilitation of the dam structure. Due to the nature and extent of events that have happened since 2006, the dam is no longer considered a non-complying structure, but a new structure. Therefore, the new dam structure and rehabilitation must be heard and approved by this Board.

Staff has fully reviewed the application and exception request and has determined impacts associated with the proposal to be minimal. If the Board favors the resolution to grant approval, staff recommends the incorporation of the following conditions into the approval:

1. The applicant must obtain all other necessary federal, state, and local permits as required for the project.
2. The recordation of a Natural Open Space (NOS) easement over the entire proposed parcel.
3. The NOS easement shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) (d) and 23-17(c), which is providing a form of surety satisfactory to the County Attorney. The surety for the NOS easement shall be \$5,000.
4. This exception request approval shall become null and void if construction has not begun by December 8, 2011 or all improvements including the required easement 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.

Background

The original Cranston's Mill Pond was built over 70 years ago and clearly predated the Chesapeake Bay Preservation Ordinance. Therefore, operation and maintenance of this structure was grandfathered by Section 23-12 until such time as the structure lost its noncomplying status. In 2006, tropical storm Ernesto damaged the structure. According to Section 24-634 of the Zoning Ordinance, the property owners has 12 months to start repairs and 24 months to complete the repairs of this structure before the structure lost its noncomplying status. Due to the lapse of time involved, the structure lost its noncomplying status and any repairs now have to go through the standard County process.

The applicant has recently received a Special Use Permit to allow for the rehabilitation of the dam from both the Planning Commission and Board of Supervisors. The applicant is going through a site plan approval process to gain County approvals for rehabilitating the dam. They are also undergoing a subdivision process to split the dam and pond area from the remaining property. The applicant either has, or will receive, approval from the Virginia Department of Conservation and Recreation, Dam Safety; The United States Corps of Engineers; and the Virginia Department of Environmental Quality for this project.

According to Section 23-7, Development Criteria for Resource Protection Areas, development within the RPA may be allowed if it is water dependent, and flood control and stormwater management facilities that drain multiple development projects or a significant portion of a watershed may be allowed in RPAs provided that they are consistent with a stormwater management program that has been approved by the Department of Conservation and Recreation, Chesapeake Bay Local Assistance as a Phase 1 modification

to the County's program. As there is no Phase 1 modification to the county program, this request cannot be processed administratively.

Water Quality Impact Assessment (WQIA)

Under Sections 23-11 and 23-14 of the County's Chesapeake Bay Preservation 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 site plan shows features of the proposal.

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-11-050 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-11-050 are included for the Board's use and decision.

Staff Report prepared by:

Michael D. Woolson
Senior Watershed Planner

Attachments: Request letter from Koontz-Bryant, dated October 14, 2010
Major Water Quality Impact Assessment, dated October 14, 2010
Staff letter to Koontz-Bryant, dated November 8, 2010
Site Plan