

Chesapeake Bay Board Building F - 7 p.m.

September 14, 2011

A. Roll Call

B. Minutes

From August 10, 2011– Board Meeting

C. Public Hearings

1. CBV-12-001 APPEAL: Swann–3833 Fox Run - driveway

D. Board Considerations

E. Matters of Special Privilege

F. Adjournment

MEMORANDUM

DATE: September 14, 2011
TO: The Chesapeake Bay Board
FROM: Michael D. Woolson, Senior Watershed Planner
SUBJECT: CBV-12-001 – Mr. Edward Swann; 3833 Fox Run; Fox Ridge Subdivision

Mr. Edward Swann of 3833 Fox Run located within the Fox Ridge Subdivision has filed an appeal of the Chesapeake Bay Preservation Ordinance Notice of Violation requirements, dated August 9, 2011. The Notice of Violation required the execution of a Chesapeake Bay Restoration Agreement, the restoration of the RPA with native plantings, and removal of a garage structure and a concrete driveway from the RPA.

On or about July 27, 2011, staff became aware of the unauthorized, partially completed, detached garage and driveway following a routine inspection at the residence. Staff initiated an investigation and as a result has documented a violation of the County’s Chesapeake Bay Preservation Ordinance.

Background Information

On or about July 14, 2011 an Application for Building Permit was submitted for the building of an attached garage to the existing structure. This lot (PIN 3110800042) has a RPA encroaching approximately 5,200 square feet on to the lot from the adoption of the 2004 Chesapeake Bay Preservation Ordinance amendments. The garage/driveway encroaches into the RPA approximately 80 square feet. At the time of the Building Permit application (July 14, 2011), a Sensitive Area Activity Application form was not submitted for the addition of the attached sunroom and garage until after the Notice of Violation was issued. Due to the discovery during an inspection on July 27, 2011 that work had begun within the RPA Buffer, a Notice of Violation was issued to the landowner. In further communication with the landowner, he advised Staff that he was not previously notified that a Resource Protection Area existed on the property or that he needed prior County approval before constructing any of the improvements. Mr. Swann has also stated that he is willing to remove the garage and attach it to the house but would like to retain the driveway.

Additional Information

In his appeal letter, Mr. Swann states he will remove the garage from the current location. He has submitted another building permit application with the garage attached to the house. This new application will be handled administratively. In his appeal letter, Mr. Swann also states that he would like to keep the driveway in place to use as a vehicular turn around for his attached garage.

Staff Guidance and Recommendations

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

1. 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.
2. 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 (RPA) **is shared** by other properties immediately adjacent to the appellant's property as well as numerous other properties within the Fox Ridge subdivision that have RPA components located on them.
2. The granting of the appeal in this case **will not** adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity, **if** appropriate mitigation measures are employed.
3. The hardship **is self-inflicted**, although the homeowner was not aware of the RPA on his property, nor of any other County requirements for building.

Should the Board find in favor of the appellant, staff recommends to the Board that this application come back before them for the driveway and/or garage impacts at the next regularly scheduled Chesapeake Bay Board meeting for review and discussion.

Attachments

1. Notice of Violation, dated August 1, 2011
2. Appeal letter, dated August 9, 2011
3. Building Permit application, dated July 13, 2011