

Chesapeake Bay Board

Aug. 14, 2013

Building F - 7 p.m.

A. Roll Call

B. Minutes

From July 10, 2013 – Board Meeting

C. Public Hearings

1. CBE-14-004: Napoleon – 1 Ensigne Spence - exception request for retaining wall.

D. Board Considerations

2. CBV-13-010: Napoleon – 1 Ensigne Spence – Appeal for retaining wall.

E. Matters of Special Privilege

1. Scott J. Thomas, Director Engineering and Resource Protection

F. Adjournment

Chesapeake Bay Exception CBE-14-004: 1 Ensign Spence

Staff report for the August 14, 2013 Chesapeake Bay Board Public Hearing

This staff report is prepared by James City County Engineering and Resource Protection 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: Jay Napoleon
Land Owner: Jay Napoleon
Location: 1 Ensign Spence
Parcel: Lot 53, Kingsmill, Hampton Key, Section 1
Parcel Identification: 5021100053
Lot Size: 0.85 acres
RPA Area on Lot: 0.46 acres or 54% of the lot
Watershed: College Creek (HUC Code JL34)
Proposed Activity: Installation of a retaining wall

Proposed Impacts

Impervious Area: 130 square feet (approximate)
RPA Encroachment: 130 square feet to the landward 50 foot RPA Buffer

Description of Activities

Mr. Jay Napoleon, property owner, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer for installation of a retaining wall along the northern side of the property. The project is located at 1 Ensign Spence within the Hampton Key section of the Kingsmill subdivision. The lot was platted following the 1990 adoption of the Chesapeake Bay Preservation Ordinance but prior to the 2004 revisions to the Ordinance. At the time of record plat, there was no RPA on the lot. The proposed improvements are within the landward 50 foot RPA buffer. The exception is requested because of the fact that the existing lawn

is difficult and dangerous to maintain, as the steep slope near the side of the house can be difficult and dangerous to mow when even slightly wet. Mr. Napoleon proposes to remove the turf lawn (350 sq. ft.) below the retaining wall and replant with native shrubs. The County mitigation standards for this amount of impervious cover requested is 1 tree and 3 shrubs.

Background of Parcel

Based on staff review of County records, the lot was recorded following the adoption of the Chesapeake Bay Preservation Ordinance, but prior to the adoption of the revised Ordinance. As the proposed retaining wall is located within the RPA buffer and is considered an accessory structure, it cannot be administratively reviewed. Therefore in accordance with section 23-14 of the Ordinance an exception request must be considered by the 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 retaining wall.

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*.

Consideration by the Chesapeake Bay Board

The issue before the Board is the installation of a retaining wall that will create approximately 130 square feet of impervious area within the seaward RPA buffer. The impervious cover will be mitigated for by removing 350 sq. ft. of existing lawn and replanting of native shrubs in an area down slope of the retaining wall. 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 five (5) criteria outlined in Section 23-14 (c) of the Ordinance.

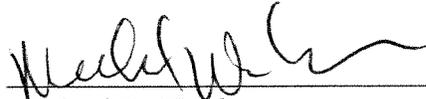
The board is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Board is to fully consider Chesapeake Bay Exception CBE-14-004 as outlined and presented above and review 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 denial of Chesapeake Bay Exception CBE-14-004 are included for the Board's use and decision.

Staff Recommendations

Staff recommends **approval** of the application with the incorporation of the following conditions into the approval:

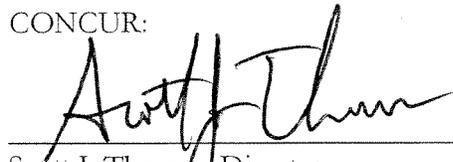
1. The applicant must obtain all other necessary local permits as required for the project.
2. Surety of \$250.00 will be required in a form acceptable to the County Attorney's office.
3. A mitigation plan showing the location and type of plant material to be installed must be submitted to the Engineering and Resource Protection Division for review and approval.
4. This exception request approval shall become null and void if construction has not begun by August 14, 2014.
5. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than six weeks prior to the expiration date.

Staff Report prepared by:



Michael D. Woolson
Senior Watershed Planner

CONCUR:



Scott J. Thomas, Director
Engineering and Resource Protection

Attachments: Sensitive Area Activity Application

MEMORANDUM

DATE: August 14, 2013

TO: The Chesapeake Bay Board

FROM: Michael D. Woolson, Senior Watershed Planner *MDW*

SUBJECT: CBV-13-010 – Mr. Jay Napoleon, 1 Ensign Spence

Mr. Jay Napoleon, residing at 1 Ensign Spence, in the Hampton Key section of the Kingsmill subdivision, has filed an appeal of the Chesapeake Bay Preservation Ordinance Notice of Violation requirements, dated June 12, 2013. The Notice of Violation required the removal of the retaining wall, as no records of approvals could be found in County records for the placement of this accessory structure within the resource protection area.

On or about May 20, 2013, staff became aware of the unauthorized retaining wall. Staff investigated and as a result documented a violation of the County's Chesapeake Bay Preservation Ordinance. Staff met with the Mr. Napoleon regarding this issue on June 19, 2013 to discuss the issue.

Historical Background Information

The house was built in 2003. At that time, there was no regulatory RPA on the property, therefore the house and all improvement at that time did not require any administrative or Chesapeake Bay Board approvals. This designation was changed after the revised Ordinance was adopted by the BOS (effective date of January 1, 2004). Notices were sent out to all property owners affected by the change in the Ordinance on January 4, 2007.

The Napoleon's had planned on building a retaining wall with the original home but it was not constructed at that time. Over time, lawn maintenance had become a problem due to the unstable nature of the slopes near the house.

Staff Guidance and Recommendations

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

1. Mr. Napoleon is the current property owner.
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. Mr. Napoleon is not challenging the following facts in this case:

- a. No plan of development or RPA buffer modification plan was submitted to the County for review and approval as is required by the Ordinance.
 - b. That a violation of the County's Chesapeake Bay Ordinance resulted from the above referenced activities that occurred on the property.
4. 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 (property owner) 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 Kingsmill subdivision 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, as a potential source of sediment (unstable steep slope) has been eliminated. Mr. Napoleon has plans to replant the area below the wall and existing tree line and allowing the area to return to a more natural state.
3. The appellant's contractor in fact caused the hardship through an unauthorized activity thereby the hardship is self imposed.

Should this Board find in favor of staff, the Board should deny the appeal and require that the retaining wall be removed and the area restored.

Should the Board find in favor of the appellant, the Board should require that a retaining wall application come before them for review and discussion.

Attachments: Notice of Violation, June 12, 2013
Site Photographs
Appeal request, June 23, 2013