

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
October 10, 2007**

A. ROLL CALL
Henry Lindsey
John Hughes
David Gussman

ABSENT
William Apperson
Larry Waltrip

OTHERS PRESENT
County Staff

B. MINUTES

The Sept 12, 2007 Work Session minutes were approved as presented.
The Sept 12, 2007 Board Meeting minutes were approved with the exception on a typographical error.

C. PUBLIC HEARINGS

1. CBE-07-089 - Dominick Mullori – 3324 Sawyer Way

Pat Menichino presented the following case:

Project Summary and Description

Dominick Mullori, 3324 Sawyer, Toano, VA, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with an existing 23 linear foot, interlocking decorative block retaining wall totaling 60 sqft of impervious area. The lot is 0.670 acres in size and the RPA buffer encompasses approximately 55% of the lot or 0.368 acres.

An RPA Mitigation Plan has been provided along with the exception request for your review. The RPA Mitigation Plan proposes to mitigate for the 60 sqft of impervious area by planting, (3) Wax Myrtle shrubs in a planting bed to filter runoff from the impervious areas. This plan meets the standard mitigation requirements of the County.

The exception request is for an existing retaining wall (accessory structure) within the RPA buffer. Staff has not administratively approved the installation of accessory structures within the RPA in the past. However, the Board has in the past granted exceptions for similar accessory structures within the RPA buffer.

Staff offers the following information as guidance to the Board concerning this application.

1. A stormwater pond (BMP) is located downstream immediately adjacent to this property
2. The RPA Mitigation Plan meets the County's requirements.
3. Staff believes that any adverse impacts caused by this wall are negligible and removing the wall may cause significant environmental impacts within the RPA.
4. The Board can impose additional mitigation requirements to offset potential water quality impacts.

Brief History

The lot was recorded in 2003 after the adoption of the Ordinance. 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 field evaluation was conducted for this lot prior to the issuance of a building permit in 2006. A perennial stream at the rear of the lot was identified requiring that a 100-foot RPA buffer be established on the lot around the stream. This 100-foot RPA buffer encompasses about 55% of the lot.

According to provisions of Section 23-7 (c) 2 (b); when application of the buffer would result in the loss of a

buildable area on a lot or parcel recorded between August 6, 1990, and January 1, 2004, encroachments into the buffer may be allowed through an administrative process.

In this case, the exception request is for an accessory structure encroachment within the 100-foot buffer and therefore must be processed by the Chesapeake Bay Board after a public hearing.

Water Quality Impact Assessment

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, (3) native shrubs, and creating a mulched landscape bed in the RPA on the lot to help filter nonpoint source pollution.

The issue before the Board is the 60 sqft of impervious cover in the RPA associated with the existing 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 criteria outlined in Section 23-14(c) of the Chesapeake Bay Ordinance.

Recommendations

The Ordinance does not authorize staff to give administrative approval for the placement of accessory structures within the 100-foot buffer. To be consistent with the ordinance requirements Staff cannot support the approval of this exception request for the retaining wall.

If the Board votes to approve the exception request, then staff recommends that the following conditions be incorporated into the approval:

1. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements must be completed prior to the issuance of the final certificate of occupancy.
2. The size of the shrubs shall be 3-5 gallon size. All vegetation shall be native species approved by the Environmental Division.
3. Surety for the implementation of the RPA Mitigation Plan shall be provided in a form satisfactory to the County Attorney, pursuant to sections 23-10(3)(d) and 23-17(c) of the James City County Code.
4. This exception shall become null and void, if the RPA Mitigation Plan and any additional Board mitigation requirements are not completed within 30 days following Board action.

All recommendations adopted by the Board must be incorporated into the site plans for the project, which then must be approved by the Environmental Division before construction can begin. If the Board grants the exception, the proposed RPA Mitigation Plan is in accordance with the standard mitigation requirements for impervious surfaces.

Mr. Lindsey stated the wall was needed to prevent erosion but was installed without a permit and felt the Board should increase the number of mitigation plantings to 6 shrubs. He was also concerned with the condition of the BMP pond on the adjacent property and asked if the Board could do anything to control the amount of fertilizer used by contractors.

Mr. Lindsey opened the public hearing.

A. Stuart Usher, Landscape Solutions, contractor for the project, stated he had been issued a building permit by James City County Code Compliance Office. He also stated that neither he nor the homeowner had added fertilizer to the yard.

Mr. Menichino stated the plan for the retaining wall had not been reviewed or approved by the Environmental Division. He further stated the Board had the authority to control what was done within the RPA buffer but he did not know if the Board could regulate the commercial application of fertilizers.

Mr. Gussman stated any over application of fertilizer should be reported to the appropriate state agencies because this was regulated by DCR (Dept of Conservation and Recreation) or DEQ (Dept of Environmental

Quality).

Mr. Hughes asked staff to include full site plans in the Board packages with both the 50 and 100 ft RPA lines depicted so the Board could determine how close the encroachment was to the resource.

Mr. Menichino displayed the full sight plan (~~copy attached~~) for the Board to see both the 50 and 100 ft RPA.
copy in case file

Mr. Lindsay closed the public hearing as no one else wished to speak.

Mr. Hughes asked if the Board had the authority to increase the mitigation for after-the-fact permits.

Jennifer Lytle, Assistant County Attorney, stated the Board could increase the amount of mitigation if they deemed it was necessary to offset the impacts of the encroachment into the RPA.

Mr. Gussman stated and Mr. Hughes agreed that at this time they did not want to require additional plantings as a punitive measure for an after-the-fact permit.

Mr. Hughes made a motion to adopt the resolution for case CBE-07-089 granting an exception on tax parcel 0520700005.

The motion was approved by a 3-0 vote.

On November 14, 2007 the protest letter (~~copy attached~~) from adjacent property owners Clarence and Nancy Brown, was acknowledged by the Board members, but did not alter the motion or adoption of the resolution.
in case file.

2. CBE-07-093 – Performance Contracting/Bryan Tagge – 3653 Bridgewater Dr

Pat Menichino presented the following case:

Project Summary and Description

Performance Contracting on behalf of Bryan Tagge, owner, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with approximately 900 sqft of additional clearing and grading and the construction of an attached deck, within the channelward 50' RPA buffer. The proposed single-family principal structure is located within the landward 100' RPA buffer. The total amount of proposed impervious area within the channelward 50' RPA buffer is 180 sq ft for the deck. The lot is 14,500 sqft or 0.33 acres in size.

Staff does not have the authority to grant an administrative approval for encroachments within the channelward 50' RPA buffer for principal structures or accessory structures located any where within RPA components. However, the Board has in the past, approved encroachments for principal structures with attached decks within the channelward 50' RPA buffer.

Staff would not be opposed to the Board granting the applicant's exception requests for the deck, and clearing for the following reasons:

1. The lot existed prior to the adoption of the Ordinance.
2. 80% of the lot is located within the RPA buffer.
3. The applicant has submitted an RPA Mitigation Plan that meets the typical mitigation requirements and adequately addresses the impervious RPA impacts proposed in this case.
4. Staff believes the clearing, in combination with the proposed deck, within the channelward 50' RPA is the minimum necessary to afford relief. Staff and the Board have in the past, approved similar clearing within the channelward 50' RPA buffer.

Brief History

The lot was recorded prior to the adoption of the Ordinance therefore; there was no RPA present on the lot at the time of recordation. 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 field evaluation was conducted for a stream adjacent to the lot and it was determined that the stream is a water body with perennial flow requiring that a 100 ft RPA buffer be established around it and wetlands located on the lot. This 100 ft RPA buffer encompasses approximately 80% of lot.

An administrative approval has been granted for construction of the principal structure in the landward 50' RPA Buffer. The applicant was informed at that time that encroachment into the seaward 50' RPA Buffer for additional clearing, a deck or any accessory structures would require review and approval from the Chesapeake Bay Board at a public hearing.

Water Quality Impact Assessment

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 a WQIA for this project and proposes to mitigate for the impacts to the RPA by planting (2) native canopy trees and (7) native shrubs to the rear of the house to help filter nonpoint source pollution. This RPA Mitigation Plan meets the typical mitigation requirements for similar impervious cover.

Board Action

The issue for the Chesapeake Bay Board's consideration is the impact associated with the approximately 900 sqft of additional clearing within the channelward 50' RPA buffer along with the construction of an attached deck within the buffer. The Board is to determine whether or not the proposed development 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:

Recommendations

Staff is not opposed to the Board granting the applicant's exception request for the additional clearing and the attached deck.

After reviewing this case, if the Board considers approval of this exception, staff recommends that the following conditions be included within the Board action:

1. Full implementation of the RPA Mitigation Plan submitted with the WQIA must be completed prior to the issuance of the final certificate of occupancy.
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 3-5 gallon size. All vegetation shall be native species approved by the Environmental Division.
3. A 3 to 4 inch deep mulch bed will be installed around any individual or group RPA mitigation plantings as shown on the RPA Mitigation Plan.
4. 6 inches of stone placed on filter fabric shall be installed under the proposed deck.
5. Surety for the implementation of the RPA Mitigation Plan shall be provided in a form satisfactory to the County Attorney, pursuant to sections 23-10(3)(d) and 23-17(c) of the James City County Code.
6. The RPA Mitigation Plan shall be revised and resubmitted with all Board approved modifications, and conditions included.
7. This exception shall become null and void if construction has not begun by October 10, 2008. For purposes of this exception, construction shall mean the commencement of installing the requested items of application CBE-07-093

Mr. Lindsey opened the public hearing and as no one wished to speak, Mr. Lindsey closed the public hearing.

Mr. Lindsey asked if the two large deciduous trees shown in the middle of the photograph provided with the Board package (~~copy in case file~~) were outside the indicated limits of clearing.

Mr. Menichino displayed an additional site plan (copy ~~in case file~~) that showed these trees and others outside of the limits of clearing. He stated the Board could stipulate that these trees be protected during clearing.

Mr. Hughes made a motion to adopt the resolution for case CBE-07-093 granting an exception on tax parcel 384176009 with the additional condition that the trees shown on the site plan submitted with the WQIA and depicted in the Board package photograph not be adversely affected during clearing.

The motion was approved by a 3-0 vote.

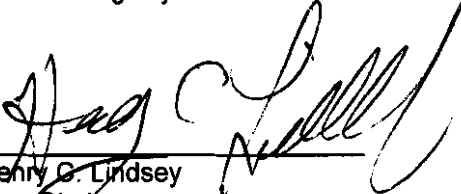
D. BOARD CONSIDERATIONS


E. MATTERS OF SPECIAL PRIVILEGE

Staff reminded the Board that election of officers and approval of the 2008 Board Meeting calendar would be conducted at the Board Meeting on November 14, 2007.

F. ADJOURNMENT

The meeting adjourned at 7:40 PM.


Henry C. Lindsey
Vice Chairman


Scott J. Thomas
Secretary