

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
JANUARY 9, 2008**

A. ROLL CALL

ABSENT

Henry Lindsey
John Hughes
David Gussman
William Apperson
Larry Waltrip

OTHERS PRESENT

County Staff

B. MINUTES

The December 12, 2007 Board Meeting minutes were approved as presented.

C. PUBLIC HEARINGS

1. CBE-07-107 – Vanasse Hangen Brustlin, Inc/Busch Properties – Spencer’s Grant continued from 11/14/07

The applicant requested a second continuance of the public hearing to 2/13/2008. Staff recommended the Board approve this request.

Mr. Lindsey made a motion to approve this request.

The motion to continue the public hearing for case CBE-07-107 to February 13, 2008 was approved by a 5-0 vote.

2. CBE-07-080 – Chris and Julie Rouzie – 144 Holdsworth Rd continued from 12/12/07

The applicant requested a second continuance of the public hearing to 2/13/2008. Staff recommended the Board approve this request.

Mr. Lindsey made a motion to approve this request.

The motion to continue the public hearing for case CBE-07-80 to February 13, 2008 was approved by a 5-0 vote.

3. CBE-07-120 – Hallmark Builders/Michael Mock - 105 Pine Valley

Pat Menichino presented the following case:

Project Description

Michael and Helma Mock, 108 Bluffs Circle, Williamsburg, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of a single-family residence, deck, and screened porch, totaling approximately 3000 sqft of impervious area. The lot was recorded prior to the 1990 adoption of the

Ordinance. Following adoption of the Ordinance a required 100-foot RPA buffer was established on the lot, adjacent to the resource. This 100-foot RPA buffer encompasses approximately 80% of the lot.

According to provisions of the Ordinance, when application of the buffer results in the loss of a buildable area on a lot or parcel recorded prior to August 6, 1990, encroachments into the buffer may be allowed through an administrative process in accordance with the following criteria:

1. Encroachments into the buffer shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.
2. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel;
3. The encroachment may not extend into the seaward 50 feet of the buffer area.

The proposed attached deck and screened porch are within the seaward 50-foot buffer therefore cannot be approved administratively. These structures are considered part of the principal structure, and the applicants are requesting an exception for this encroachment from the Board.

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 RPA. The applicant has submitted a WQIA for this project and a landscape plan that proposes to mitigate for the impacts to the RPA by planting 8 native trees, 16 native understory trees, and 24 native shrubs in the RPA. This vegetation will be located to the rear of the proposed residence. The mitigation plan meets the typical mitigation requirements by planting 1 tree, 2 understory trees, and 3 shrubs for each 400 sqft of impervious cover established.

The owners have submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. 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 Chesapeake Bay Ordinance:

Recommendations

Staff recommends approval of the exception request for the proposed residence, deck, and screened porch, as the lot was created prior to the establishment of the RPA requirement. The residence cannot be repositioned on the lot to minimize the encroachment in the buffer.

Staff recommends approval with the following conditions:

1. Full implementation of the mitigation landscape plan submitted with the WQIA.
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-gallon size. All vegetation shall be native species approved by the Environmental Division.
3. The deck shall have 3 inches of gravel on filter fabric installed underneath.
4. Implementation of the mitigation plan would be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3)d and 23-17(c) where installation of the plant material is required prior to the certificate of occupancy or through a surety instrument satisfactory to the county attorney.
5. This exception request approval shall become null and void if construction has not begun by January 9, 2009.

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.

Mr. Apperson opened the public hearing.

Mr. Lindsey commented that Hallmark Builders had done an exceptional job of flagging the site for inspection.

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

Mr. Hughes made a motion to adopt the resolution for case CBE-07-120 granting an exception on tax parcel #3720400116.

The motion was approved by a 5-0 vote.

4. CBE-07-112 – Associated Developers - McFarlin Park

Mike Woolson presented the following case:

Project Description

Mr. Vernon Geddy, on behalf of Mr. Lyman Hall, applied for an exception to Section 23-7 (a) (3) of the Chesapeake Bay Preservation Ordinance (Ordinance) for impacts associated with the building of a driveway to access a portion of Mr. Hall's property (S-060-07). The plan of development will upgrade an abandoned logging/access road on the property in order to access Mr. Hall's proposed single family residence. The project is situated within the tidal mainstem of Powhatan Creek, and is bordered to the north by T. K. Oriental and vacant property, to the south and west by Powhatan Creek and to the east by Jamestown Road.

Brief History

Vanasse Hangen Brustlin, Inc. (VHB) has been contracted for the environmental permitting of this driveway crossing and AES Consulting Engineers for engineering and plan development for the driveway. VHB has provided a report titled *Alternatives Analysis: Access to Lot 1 – McFarlin Park* outlining the various alternatives proposed for access along with a water quality impact analysis.

The alternatives analysis presented three different options for accessing the proposed lot. Alternative 1 is the applicant's preferred alternative and utilizes the existing, abandoned logging road. Alternative 2 is the alternative that staff could approve administratively, in accordance with Section 23-7 (a) (3) of the Chesapeake Bay Preservation Ordinance, because it has the least amount of RPA impacts (it crosses perpendicular to the RPA). Alternative 3 is least preferred due to the overall length and other impact types.

The applicant has secured a Corps of Engineers permit to upgrade the abandoned road crossing for alternative 1. Alternatives 2 and 3 would require more extensive Corps permits, which may or may not be granted by the Corps. Alternative 1 impacts the least amount of steep slopes, while alternative 2 impacts the most. Regarding the construction of each alternative, alternative 1 and 2 could be built by bridging or with a culvert crossing while alternative 3 would have to be bridged to eliminate the flooding liability that would occur with a crossing so near the property lines. From a cost analysis, culverts are easier and less expensive to construct than a bridge system.

The following table summarizes the various impacts to resources that the three alternatives have. Staff only has the ability to take into account the direct RPA impacts. Wetland and steep slope impacts, while having a direct connection to water quality, can not be taken into account by staff administratively.

	Alternative 1	Alternative 2	Alternative 3
Steep slope impacts	Least (1)	Most (3)	Moderate (2)
Wetland impacts	Moderate (2)	Most (3)	Least (1)
RPA impacts	Most (3)	Least (1)	Moderate (2)
Construction Cost	Least (1)	Moderate (2)	Most (3)

Assuming each environmental factor (wetlands, steep slopes, RPA) is weighted equally and scoring the degree of impact for alternative successfully higher as the degree of impact increases, it becomes apparent that alternative 3 should be the preferred alternative as it scores a "5", while alternative 1 scores a "6" and alternative 2 scores a "7". If construction costs are included in the analysis, then alternative 1 then becomes the lowest ranked alternative (total rank of 7) over alternative 2 (total rank of 9) and alternative 3 (total rank of 8).

Water Quality Impact Assessment

Section 23-11 of the Chesapeake Bay Ordinance states that a Water Quality Impact Assessment (WQIA) shall be required for any proposed land disturbance in the RPA resulting from development or redevelopment activities. The attached WQIA and alternatives analysis present the impacts to the RPA buffer and other resources resulting from the plan of development. To mitigate for the proposed impacts, the following will be implemented into the associated plan of development:

- Use of a coastal plains seed mix within the disturbed area of the driveway for areas outside of all wetland areas; and
- Use of a wetland seed mix within the disturbed area of the driveway within the wetland areas; and
- Placement of orange safety fence around the limits of disturbance within the RPA and wetland systems.

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 following criteria, as outlined in Section 23-14(c):

1. The exception request is the minimum necessary to afford relief;
2. Granting the exception will not confer upon the applicant any special privileges denied by this chapter to other property owners similarly situated in the vicinity;
3. The exception request will be in harmony with the purpose and intent of this chapter, and is not of substantial detriment to water quality;
4. The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels; and
5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing degradation of water quality.

Recommendations

While this request can not be processed administratively because the preferred alternative does not minimize the RPA impacts consistent with Section 23-7 (a) (3) of the Chesapeake Bay Preservation Ordinance, the preferred alternative (#1) minimizes impacts to all the environmental resources, minimizes impacts to water quality, and therefore the project is consistent with the spirit and intent of the Ordinance and the criteria as outlined in section 23-14 (c) of the James City County Code.

Staff therefore recommends to the Chesapeake Bay Board that they approve this exception request for driveway alternative 1 for the project known as McFarlin Park BLE and Minor Subdivision. Furthermore, all recommendations listed in the staff report are to be incorporated into the plan of development (S-060-07) for the project, which must then receive final approval by the Environmental Division.

This exception does not confer any property rights, nor does it confer any type of plan approval. Any offsite easements and/or additional permits that may be required for this development must be obtained and evidence of such presented to the Environmental Division prior to issuance of a land disturbing permit and/or final plan approval. This exception request approval shall become null and void if construction has not begun by January 9, 2009. Any changes to the plan of development that would cause any deviation from the items listed in the WQIA, either in the form of increased impacts to components of the RPA or omission of mitigation requirements from the submitted plan of development must be reviewed and approved by the Board.

Mr. Hughes asked staff to clarify the location and street address of the proposed single-family lot and driveway. He also asked why there was no proposed mitigation-planting plan included with the waiver request.

Mr. Woolson displayed a map of the area that depicted the proposed single-family lot and driveway. He stated the address of the parent lot was on Neck-O-Land Road however, the proposed lot and driveway would be on Jamestown Road. He stated the proposal before the Board was to use an existing, old logging road and therefore no large trees or excessive amounts of vegetation would be removed. He also stated there were no areas available in the RPA, on the lot for planting.

Mr. Lindsey commented that the area was not very well marked in the field and asked if mitigation planting could be done off-site.

Mr. Woolson stated the Board could make off-site mitigation planting a condition in the permit.

Mr. Apperson opened the public hearing.

A. Vernon Geddy, representing the applicant, Lyman Hall, stated the proposal before the Board contained the least environmental impact of the three alternatives for access to the property and Mr. Hall was trying to do what was best for the land by protecting as much green space as possible. He stated the applicant would not object to mitigation for the removal of vegetation.

Staff stated the mitigation would be required for impervious surface in the RPA.

B. Ann Hewitt, 147 Raleigh, representing The Friends of Powhatan Creek, asked the Board to impose a restriction to reduce the impact for utilities.

C. Brad Ketterling, VHB, stated the plan proposed 9700 square feet of impervious surface in the RPA. He stated the proposed driveway was 14 feet wide within a 25-foot easement and the utilities would be under the road.

D. Kensett Teller, owner of adjacent property, T. K. Oriental, 1646 Jamestown Road, stated she was not opposed to the application but was concerned that a clear-cut road on her property was being mistaken for the referenced logging road.

Staff referred to a map of the properties and identified both roads for the Board and Ms Teller.

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

Mr. Gussman stated and all Board members agreed a driveway would be needed for the proposed residence and the application before the Board would cause the least impact to the environment.

Mr. Hughes made a motion to grant an exception on tax parcels 4740100011 and 474010001 adopting the resolution for case CBE-07-112 amended to include a condition that the driveway be 14 feet wide within a 25-foot easement and utility connections within the RPA be under the road.

Mr. Lindsey made a motion to further amend the resolution to include a condition requiring off site plantings or a fee in lieu of plant mitigation for the 9700 sqft of impervious surface in the RPA.

Both motions were approved by a 5-0 vote.

D. BOARD CONSIDERATIONS - none

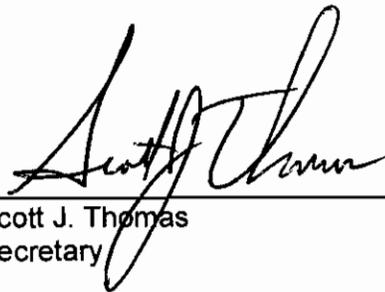
E. MATTERS OF SPECIAL PRIVILEGE - none

F. ADJOURNMENT

The meeting adjourned at 8:15 PM.



Bill Appelson
Chairman



Scott J. Thomas
Secretary