

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
May 14, 2008**

A. ROLL CALL

William Apperson
David Gussman
Henry Lindsey
John Hughes
Larry Waltrip

ABSENT

OTHERS PRESENT

County Staff

B. MINUTES

The minutes from the April 1, 2008 Special Meeting were approved as presented.
The minutes from the April 9, 2008 Board Meeting were approved as presented.

Mr. Menichino advised the Board and audience that tonight's session was being video taped.

C. PUBLIC HEARINGS

1. CBE-08-014 – Wayne Warren – 4107 S Riverside Drive

Pat Menichino presented the following case:

Project Summary and Description

Wayne S. Warren, 112 Discovery Lane, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with an existing 76 linear foot, concrete block and brick, retaining wall. Only 48 linear feet of this wall, approximately 63 sqft of impervious area, is within the RPA buffer.

This exception request was for an accessory structure within the 100-foot buffer. Staff could not administratively approve the installation of accessory structures within the RPA and therefore this exception request must be processed by the Chesapeake Bay Board (Board) after a public hearing.

The Board has granted exceptions for similar accessory structures within the RPA buffer.

Brief History

The lot was recorded prior to the 1990 adoption of the Ordinance. The lot is 0.89 acres in size and the RPA buffer encompasses approximately 60% of the lot or 0.53 acres.

Water Quality Impact Assessment (WQIA)

Under Section 23-14 of the amended Ordinance, a WQIA must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPA.

The applicant submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines* but had not proposed mitigation for the impacts to the RPA from the 63 sqft of impervious area.

Recommendations

Staff was not opposed to a Board action that would allow the retaining wall to remain in place and offered the following information as guidance to the Board concerning the exception request:

1. Staff believed any adverse impacts caused by the wall were negligible and removing the wall might cause significant environmental impacts within the RPA.
2. To offset the 63 sqft of impervious area, staff recommended mitigation of (3) native shrubs, within the RPA buffer, to help filter nonpoint source pollution.
3. The Board could impose additional mitigation requirements to offset potential water quality impacts.

The issue before the Board was the 63 sqft of impervious cover in the RPA associated with the existing retaining wall. The Board was to determine if it was 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. If the Board voted to approve the exception request, then staff recommended the following conditions be incorporated into the approval:

1. The applicant must submit a RPA Mitigation Plan showing the locations of (3) native shrubs to be installed within the buffer.
2. The size of the shrubs shall be 3-5 gallon size. All vegetation shall be native species approved by the Environmental Division.
3. This exception shall become null and void, if the required RPA Mitigation Plan is not submitted to the Environmental Division, and if the (3) required shrubs are not installed within 60 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. If the Board granted the exception, the recommended RPA Mitigation Plan was in accordance with the standard mitigation requirements for impervious surfaces.

Mr. Hughes asked how the wall was discovered.

Mr. Menichino stated it was during a routine inspection of the single-family dwelling under construction on the lot.

Mr. Lindsey referred to the submitted waiver request and asked if existing vegetation could be considered mitigation.

Mr. Menichino stated it could not.

Mr. Apperson opened the public hearing.

A. Wayne Warren, property owner, stated the purpose of the wall was to hold the additional fill needed to raise the elevation of the house he was rebuilding. He stated he was not aware he needed a permit for the retaining wall and when the inspector advised him a permit was needed, he immediately applied.

Mr. Hughes asked Mr. Warren if he was aware of the mitigation requirement.

A. Mr. Warren stated a mitigation plan had already been submitted for the house.

Mr. Lindsey asked Mr. Warren if he understood additional mitigation was required.

A. Mr. Warren stated he would reach an agreement with the Environmental staff.

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

Mr. Lindsey made a motion to adopt the resolution granting the exception for case CBE-08-014.

The motion was approved by a 5-0 vote.

2. CBE-08-025 – Loran Ambs – 1666 John Tyler Highway

Pat Menichino presented the following case:

Project Summary and Description

Loran D. Ambs, 5103 Firethorne Court, Fairfax, VA, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the installation of a 5' wide gravel trail, 130 linear feet of segmented block retaining wall and a 30' long timber bridge to allow access to an existing pier. The proposed trail, retaining wall, and timber bridge would create approximately 1200 sqft of impervious area within the buffer.

Part of this exception request was for accessory structures within the 100-foot buffer. Staff could administratively approved the installation of accessory structures within the RPA and therefore this exception request must be processed by the Chesapeake Bay Board (Board) after a public hearing.

The Board has granted exceptions for similar accessory structures within the RPA buffer.

Brief History

The lot was recorded after the 1990 adoption of the Ordinance. The lot is 3.9 acres in size and the RPA buffer encompasses approximately 15% of the lot or 0.50 acres.

Water Quality Impact Assessment (WQIA)

Under Section 23-14 of the amended Ordinance, a WQIA must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPAs.

The applicant submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. An RPA Mitigation Plan that proposes to mitigate for the impacts to the RPA by planting (4) native canopy trees, (8) native understory trees and (12) native shrubs within the RPA on the lot, to help filter nonpoint source pollution was also submitted. This plan meets the standard mitigation requirements of the County.

The issue before the Board is the addition of 1200 sqft of impervious cover in the RPA associated with the trail, retaining wall, and timber bridge.

Recommendations

Staff was not opposed to a Board action allowing the proposed trail, retaining wall, and timber bridge and offered the following information as guidance:

1. Staff believes any adverse impacts caused by the trail, retaining wall, and timber bridge would be negligible because the site was previously disturbed during a permitted shoreline stabilization project.
2. The existing slope is very steep and therefore the pier is not easily accessed.

If the Board voted to approve the exception request, staff recommended 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.
2. The size of the trees shall be 1 -1 ½ "caliper and the shrubs shall be 3-5 gallon container size. All vegetation shall be native species approved by the Environmental Division.
3. Surety for the implementation of the RPA Mitigation Plan if required, 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 request approval shall become null and void if construction has not begun by May 14, 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. If the Board granted the exception, the proposed RPA Mitigation Plan was in accordance with the standard mitigation requirements for impervious surfaces.

Mr. Apperson opened the public hearing.

Mr. Lindsey asked what the main purpose was for the proposed project. He also asked if the plantings recently installed were part of the proposed mitigation.

A. Daniel Winall, Waterfront Construction, contractor, and agent for the applicant, stated the purpose was for mobility and the recent plantings were mitigation for the shoreline stabilization project.

B. Loran D. Ambs, owner, confirmed the purpose for the project.

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

Mr. Hughes made a motion to adopt the resolution granting the exception for case CBE-08-025.

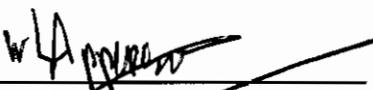
The motion was approved by a 5-0 vote.

D. BOARD CONSIDERATIONS - none

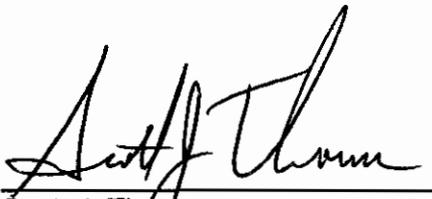
E. MATTERS OF SPECIAL PRIVILEGE - none

F. ADJOURNMENT

The meeting adjourned at 7:18 PM.



William Apperson
Chairman



Scott J. Thomas
Secretary