

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
September 10, 2008 – 7:00 PM**

A. ROLL CALL

David Gussman
Larry Waltrip
John Hughes
Henry Lindsey

ABSENT

William Apperson

OTHERS PRESENT

County Staff

The responsibility of this Board is to carry out locally the Commonwealth policy to protect against and minimize pollution and deposition of sediment in wetlands, streams, and lakes in James City County, which are tributaries of the Chesapeake Bay.

B. MINUTES

The August 13, 2008 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBE-08-034 – Bhupinder Rekji – 119 Andrew Lindsey

Pat Menichino presented the following case:

Project Summary and Description

Bupindar and Guni Rekhi, of 2520 Sanctuary Drive, Williamsburg, VA, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of 160 linear feet of segmental block retaining wall resulting in 165 square feet of impervious area. The lot is located adjacent to perennial features that require a 100-foot RPA buffer. The lot is .89 acres in size and the RPA buffer encompasses approximately 30% of the lot or .26 acres.

A mitigation plan has been provided along with the exception request for your review. The mitigation plan proposes to mitigate for the 165 square feet of impervious area by planting (2) native canopy trees and (10) native shrubs, in an area below the retaining wall. This mitigation plan exceeds the standard mitigation requirements of the County.

Staff offers the following guidance to the Board:

1. A severe disturbed slope presently exists in the area proposed for the retaining wall. Staff supports approval of the RPA buffer encroachment for the proposed retaining wall to prevent future erosion and sedimentation into the buffer.
2. The single-family residence presently under construction received an administrative exception from the Manager. A mitigation-planting plan was approved for the single-family residence. Staff recommends that the (2) trees and (10) shrubs currently proposed for the wall be incorporated into the single-family residence mitigation plan. Therefore, staff recommends that a revised mitigation-planting plan incorporating all of the required plantings be submitted to the Division.

Brief History

The lot was recorded after the 1990 adoption of the Chesapeake Bay Preservation Ordinance. There is a 100-foot RPA buffer located on the lot adjacent to the resource. The lot is .89 acres in size and the RPA buffer encompasses approximately 30% of the lot or .26 acres.

Retaining walls are considered accessory structures and therefore are not eligible for administrative approval according to the Ordinance. Therefore, this exception request for the construction of approximately 160 linear feet of retaining wall within the 100 RPA buffer must be reviewed by 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. The WQIA proposes to mitigate for the impacts to the RPA by planting (2) native canopy trees and (10) native shrubs within RPA adjacent to the wall. The mitigation plan exceeds the typical RPA mitigation requirements of the county.

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 following criteria, as outlined in Section 23-14(c) of the Chesapeake Bay Ordinance:

Recommendations

Staff recommends approval of the exception request for the proposed retaining wall with the following conditions:

1. A revised RPA mitigation plan shall be submitted to the Division incorporating administrative and Board required RPA mitigation plantings. This plan shall be submitted to the Division for review and approval within 30 days, following Board approval.
2. Full implementation of the mitigation plan shall 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 form of surety satisfactory to the County Attorney.
3. The size of the native trees shall be 1"-1 ½" caliper, 6"-7' tall and shrubs planted shall be a minimum of 3-5 gallon container size (18" to 36" tall). All vegetation shall be native species approved by the Environmental Division.
4. The retaining wall design, specifications, and location must meet the approval of all other regulatory agencies that may have jurisdiction, including a James City County Building Permit.
5. This approval shall become null and void if construction has not begun by September 10, 2009. An extension can be requested in writing at least 2 weeks prior to the expiration date

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 mitigation plan is in accordance with the standard mitigation requirements for impervious surfaces.

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

Mr. Waltrip asked how the wall would be constructed.

A. Anthony Albanese with A-Plus Landscaping, contractor for the project, stated it would be built with concrete paver blocks.

Mr. Hughes made a motion to adopt the resolution granting the exception request for case CBE-08-034 with staff recommendations.

The motion was approved by a 4-0 vote.

2. CBE-09-017 – Frank Pavlica – 4 Fenn Court

Pat Menichino presented the following case:

Project Summary and Description

Mr. Frank Pavlica, 116 Swinley Forest, Williamsburg, Virginia, has applied for an after the fact exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer, for the construction of a sand set brick paver patio totaling approximately 300 square feet. The lot is located in Fords Colony and was recorded prior to the 1990 adoption of the Ordinance. Following the Ordinance revisions in 2004, a perennial water body and wetlands adjacent to the rear of the property was identified thereby requiring a 100' landward RPA buffer. The lot is 0.43 acres in size and the RPA buffer encompass approximately 70% of the lot or 0.33 acres. The proposed brick paver patio will encroach in the landward 50' RPA buffer.

An RPA mitigation-planting plan has been provided along with the exception request for your review. The plan proposes to mitigate for the RPA impacts by planting (2) native canopy trees and (3) native shrubs to filter runoff. The amount of plantings proposed exceeds the standard mitigation planting requirements of the County.

Staff evaluated the request for the brick paver patio, considers it an accessory structure that cannot be granted an administrative exception. Staff has not administratively approved the installation of brick paver patios within the RPA in the past. However, the Board has granted exceptions for accessory structures within the RPA buffer.

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

1. The applicants have applied for an exception to allow for the brick paver patio within the RPA buffer. The patio is adjacent to the rear of the principle residence and serves as a landing area for a staircase and two sliding doors. The residence received an administrative exception to the ordinance when it was constructed in 2007.
2. The applicants have submitted an RPA mitigation-planting plan that exceeds the standard mitigation planting requirements of the County.
3. Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal.

Brief History

The lot was recorded before the adoption of the Ordinance, and no RPA existed on the lot at that time. 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 perennial water body and wetlands at the rear of the lot were identified requiring that a 100-foot RPA buffer be established on the lot. This 100-foot RPA buffer encompasses about 70% of the lot.

According to provisions of Section 23-7, the Manager may grant administrative approval for encroachments into the buffer, on a lot or parcel recorded prior to August 6, 1990. In this case, the exception request is for a brick paver patio within the 100-foot buffer and the Manager has determined that this case does not qualify for an administrative waiver because the request is for an accessory structure. Therefore, in accordance with section 23-14 of the Ordinance, an exception 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, (2) native canopy trees, and (3) native shrubs, in the RPA on the lot to help filter nonpoint source pollution.

The issue before the Board is the addition of the 300 square feet of impervious area created by the installation of the patio within the RPA buffer. 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 Ordinance.

Recommendations

Staff has evaluated the request for the patio and has determined it to be an accessory structure and therefore according to the Ordinance it cannot be granted by administrative exception. To be consistent with the ordinance requirements Staff cannot support the approval of this exception request for an accessory structure.

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

1. The applicant must obtain all other permits required from agencies that may have regulatory authority over the proposed activities, including a James City County building permit if required.
2. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements must be completed within 30 days following Board approval.
3. Implementation 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 form of surety satisfactory to the County Attorney.
4. The size of the mitigation trees shall be 1 ½ caliper, and the shrubs shall be 3-5 gallon size 15"-18" tall. All trees and shrubs shall be native species approved by the Environmental Division.

Mr. Waltrip asked if a request for landings outside the two doors and at the bottom of the steps would have been approved administratively.

Mr. Menichino stated it would.

Mr. Gussman opened the public hearing.

Mr. Lindsey asked who installed the patio and why they did not apply for an exception before construction.

A. Frank Pavlica, property owner and builder, stated it was an oversight.

Mr. Waltrip asked if the patio was build with pervious concrete pavers.

Mr. Gussman asked Mr. Pavlica if he was agreeable with the mitigation requirements.

A. Mr. Pavlica stated the pavers were not pervious but were sand set to allow runoff and the mitigation requirements were acceptable.

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

Mr. Hughes stated that approximately one third of the impervious surface would have been approved administratively for the necessary landings.

Mr. Hughes made a motion to adopt the resolution granting the exception request for case CBE-09-017 with staff recommendations.

The motion was approved by a 4-0 vote.

D. BOARD CONSIDERATIONS - none

E. MATTERS OF SPECIAL PRIVILEGE

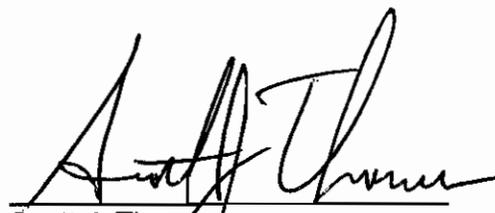
Mike Woolson, James City County Senior Watershed Planner, gave a presentation on the Powhatan Stream Restoration project currently in progress in James City County.

F. ADJOURNMENT

The meeting adjourned at 7:45 PM.



David Gussman
Vice Chairman



Scott J. Thomas
Secretary