

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
October 8, 2008**

A. ROLL CALL

William Apperson
Larry Waltrip
John Hughes
Terence Elkins
Richard Mason

ABSENT

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 September 10, 2008 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBE-09-009 – Venable – 5108 Essex Court

Pat Menichino presented the following case:

Project Summary and Description

Patricia T. Venable, 5108 Essex Court, Williamsburg, Virginia, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachment into the RPA buffer, for the construction of an additional wood deck totaling approximately 530 sqft. The deck would be constructed at ground level, adjacent to the building foundation. The lot is located in the Scott's Pond subdivision.

Brief History

The lot was recorded after the 1990 adoption of the Ordinance. Prior to the recordation of the lot, a wetlands system adjacent to the rear of the property was determined as perennial thereby requiring a 100' RPA buffer. The lot is 0.269 acres in size and the RPA buffer encompass approximately 65% of the lot or 0.148 acres. The proposed deck will encroach into the landward 50' of the RPA buffer

The exception request is for an additional deck, and the Manager has determined that the case does not qualify for an administrative waiver because the request is for an accessory structure and it exceeds the "minimum necessary" to afford relief. Therefore, in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

In the past, the Board has granted exceptions for accessory structures within the RPA buffer.

Water Quality Impact Assessment

The applicant submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant also submitted a mitigation-planting plan that proposes to mitigate for the RPA impacts by planting (1) native canopy tree (2) native understory trees and (6) native shrubs in the RPA buffer to help filter runoff. The amount of plantings proposed meets the standard mitigation planting requirements of the County.

Recommendations

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

1. The applicants applied for an exception to allow for the construction of an additional deck within the RPA buffer. The deck will be attached to the rear of the principle residence on the lot. Almost the entire residence is located within the RPA buffer.
2. The applicants submitted an RPA mitigation-planting plan that meets the standard mitigation planting requirements of the County. In addition, filter cloth and gravel will be installed under the deck to filter runoff and prevent erosion.
3. Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal.

The Board was to determine whether or not the additional deck 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, staff recommended 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.
2. Full implementation of the RPA Mitigation Planting Plan submitted with the WQIA and any additional Board mitigation requirements must be completed prior to the final building inspection conducted by the Division of Code Compliance.
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"- 1 ½" caliper, and the shrubs shall be 3-5 gallon container size and 18" tall. All trees and shrubs shall be native species approved by the Environmental Division.
5. This exception request approval shall become null and void if construction has not begun by October 8, 2009.

Mr. Hughes asked if the square footage of encroachment included the area under the deck.

Mr. Menichino stated it did however, a deck upon a deck did not create additional impervious surface.

Mr. Apperson opened the public hearing.

A. Mr. Venable, owner, stated he would answer any questions from the Board.

Mr. Hughes asked if the mitigation requirements were acceptable.

A. Mr. Venable stated they were.

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 on tax parcel #3221200186, case #CBE 09-009.

The motion was approved by a 5-0 vote.

2. CBE-09-023 – Mock – 105 Pine Valley

Pat Menichino presented the following case:

Project Summary and Description

Mr. Michael Carroll on behalf of the owners, Michael and Helma Mock, 105 Pine Valley, Williamsburg, VA, applied for an after the fact exception for a 13.5' x 11' extension to a wood deck and approximately 40 LF of retaining wall, recently constructed along with a single family residence on the lot. The amount of impervious area created by the deck and wall totals 206 sqft within the seaward 50-foot RPA buffer.

Brief History

The lot was recorded prior to the 1990 adoption of the Ordinance and is located adjacent to perennial features that required a 100-foot RPA buffer.

The single-family residence, with a wood deck and a screened porch received a Chesapeake Bay Exception from the Board on January 9, 2008.

Water Quality Impact Assessment

The owners submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines* and a detailed mitigation-planting plan that proposes to mitigate for the 206 sqft of impervious area by planting (1) native canopy tree, (1) native understory trees and (3) native shrubs in planting beds to filter runoff from the impervious areas. The mitigation plan exceeds the standard mitigation requirements of the County.

Recommendations

The Ordinance does not authorize staff to give administrative approval for the placement of accessory structures within the 50-foot RPA buffer. To be consistent with the ordinance requirements, Staff could not support the approval of this exception request.

Staff evaluated the adverse impacts associated with the deck extension and retaining wall and determined them to be minimal. Staff also determined that the installation of the retaining wall reduced the amount of fill required for the driveway

The Board was to determine whether or not the proposed development was consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria, as outlined in Section 23-14(c) of the Ordinance:

Should the Board vote to approve the exception, Staff recommended the following conditions be applied:

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 extension 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.

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 could begin

Mr. Hughes asked how the additional encroachments were determined.

Mr. Menichino stated it was during a routine inspection of the house under construction.

Mr. Mason asked if the retaining wall was installed by the owner or the builder.

Mr. Menichino stated it was installed by a sub-contractor.

Mr. Apperson opened the public hearing.

A. Mike Carroll, Hallmark Builders, stated the retaining wall was installed by the landscaper in order to save the placement of 8 to 10 loads of fill in the RPA.

Mr. Hughes asked Mr. Carroll if he now understood that he needed to obtain the necessary permits before constructing accessory items in the RPA.

A. Mr. Carroll stated he did.

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

Mr. Hughes stated he was always concerned with after-the-fact permits but in this case, the wall actually relieved some of the encroachment into the RPA and he would have approved these encroachments had they been part of the original exception.

Mr. Mason stated he agreed with Mr. Hughes comments but he believed contractors should be aware of the rules and regulations of the County.

Mr. Waltrip stated that an advantage of the taping and broadcasting of the Wetlands and Chesapeake Bay Board meeting would aid in the education of the citizens and contractors working in the County.

Mr. Elkins stated justification for granting the exception was the reduction of disturbance in the RPA. However, he was concerned with establishing a precedent and leaving citizens with an impression that regulations are easily overturned and after-the-fact permits are acceptable.

Mr. Apperson made a motion to adopt the resolution granting the exception on tax parcel #3720400116, case #CBE 09-023.

The motion was approved by a 5-0 vote.

3. CBE-09-031 – Tomberg – 177 Southport

Pat Menichino presented the following case:

Project Summary and Description

Bruce and Kari Tomberg, 45 Starboard 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 a single-family residence, deck, screened porch, and concrete surfaces, totaling approximately 5020 sqft of impervious area.

Brief History

The lot was recorded after the 1990 adoption of the Ordinance but prior to 2004 when 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 along with an adjacent wetlands located on this lot required a 100-foot RPA buffer around those features that encompasses approximately 86% of the lot.

The residence, deck, and screened porch are proposed within the seaward 50-foot buffer and could not be approved administratively.

Water Quality Impact Assessment

The applicant submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines* and a mitigation planting-plan that proposes to mitigate for the impacts to the RPA by planting (13) native trees, (26) native understory trees, and (39) native shrubs in the RPA. This vegetation will be located around and to the rear of the proposed residence and meets the typical mitigation requirements of the County.

The issue for the Board's consideration was the installation of 5020 sqft of impervious area proposed within the seaward 50-foot and 100-foot RPA buffer. The Board was to determine whether or not the proposed development was consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria, as outlined in Section 23-14(c) of the Ordinance:

Recommendations

Staff recommended approval of the exception request for the proposed residence, deck, screened porch and concrete surfaces, as the lot was created prior to the establishment of the RPA requirement and the residence could not be located on the lot to minimize the encroachment in the buffer. This portion of the proposal did not confer any special privileges to the applicant, and the exception was not based on self-imposed conditions.

Staff recommended approval of the proposed residence and deck 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- 1-1/2 inch caliper (six to eight feet tall) and the shrubs shall be 3-gallon size, minimum 18 inches tall.
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 October 8, 2009.

Mr. Hughes stated this was a good example of how the County did not prohibit people from building on their property as long as they applied for the proper permits and exceptions.

Mr. Apperson opened the public hearing and as no one wished to comment, closed the public hearing.

Mr. Mason made a motion to adopt the resolution granting the exception on tax parcel #3811300036, case #CBE 09-031.

The motion was approved by a 5-0 vote.

D. BOARD CONSIDERATIONS

1. Amendment to bylaws

Angela King, Assistant County Attorney, recommended that the board adopt a resolution amending Article II "Membership" of the Chesapeake Bay Board bylaws clarifying the procedure to be used in notifying the Chairman or Chairman's designee, that a board member will be unable to attend a meeting. The amendment also lays out the general procedure of appointing alternates to serve in place of the absent board member.

Mr. Hughes made a motion to adopt the amendment.

The motion was approved by a 5-0 vote.

2. Change date for November Board Meeting

Mr. Menichino stated that due to a scheduling conflict and availability of boardrooms staff was requesting a change in the November meeting date from Wednesday, November 12 to Thursday, November 13.

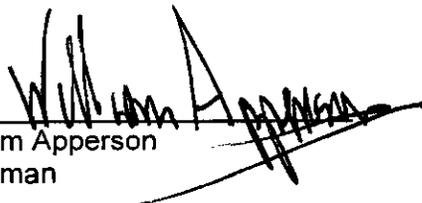
Mr. Mason made a motion to change the November Board meeting date to Thursday, November 13, 2008.

The motion was approved by a 5-0 vote.

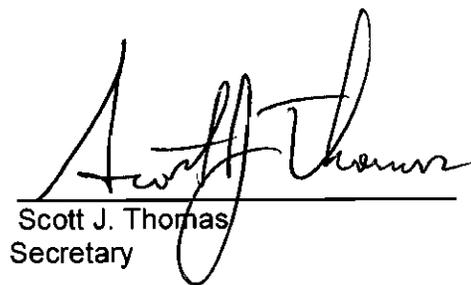
E. MATTERS OF SPECIAL PRIVILEGE

F. ADJOURNMENT

The meeting adjourned at 7:52 PM.



William Apperson
Chairman



Scott J. Thomas
Secretary