

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
November 13, 2008 – 7:00PM**

A. ROLL CALL

ABSENT

William Apperson - Chairman
David Gussman
John Hughes
Terence Elkins
Charles Roadley

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 October 8, 2008 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBE-08-040 – Craig Peck – 28 Hampton Key continued from 8/13/08

Pat Menichino presented the following case:

On August 13, 2008 Mr. George Craig Peck, owner, 28 Hampton Key appeared before the Chesapeake Bay Board requesting an after the fact approval for 72 linear feet of retaining wall located behind his residence in the Kingsmill subdivision. Staff determined that the RPA mitigation plan submitted with the application did not meet the County requirements and recommended the case be deferred until November, to allow the applicant an opportunity to revise his RPA mitigation plan. The applicant requested a deferral and agreed to install (12) additional native plants within the RPA buffer. The Board granted the applicant's request for a deferral.

Following notification by the owner, an RPA planting inspection was performed by Staff on October 30, 2008. That inspection revealed that the (12) additional native plantings requested by Staff had been installed within the appropriate area of the buffer.

Based on the additional RPA mitigation plantings installed, Staff now recommends the Board approve the owners request for the after the fact exception request.

Mr. Elkins stated he was concerned with the after-the-fact approvals becoming routine and stated applicants should be on notice that they may be cited with violations. However, based on Staff recommendations, he would approve this exception request.

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 #5021100033, case #CBE 08-040.

The motion was approved by a 5-0 vote.

2. CBE-09-040 – Harold Cherry – 107 Little Aston

Pat Menichino presented the following case:

Project Summary and Description

Harold & Nancy Cherry, 4273 Teakwood Drive, Williamsburg, applied for an after the fact exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with 45 linear feet of an existing stacked stone landscape retaining wall. The installation of the retaining wall occurred during the construction of a single-family principal structure approved by the Board on case CBE-07-081. The impervious area created by the addition of the retaining wall is estimated to be 45 sqft. The retaining wall was constructed in the landward 50-foot RPA buffer. The lot is 20,271 sqft or .466 acres in size. The 100-foot RPA buffer encompasses approximately 100% of lot.

Brief History

The lot was recorded prior to the adoption of the Ordinance. 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 the stream is a water body with perennial flow requiring that a 100-foot RPA buffer be established around it and a wetlands located on the lot. This 100-foot RPA buffer encompasses approximately 100% of lot.

On September 12, 2007, the Board granted an exception for case CBE-07-081, which approved the installation of approximately 3596 sqft of impervious area encroachment within RPA components to allow for the construction of a single-family residence, attached deck, brick paver patio, and Koi pond.

The issue for the Board's consideration is the additional impacts associated with the installation of 45 linear feet of retaining wall, resulting in 45 square feet of impervious area within the 100-foot RPA buffer.

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 has submitted a WQIA for this project. The mitigation plan contained within the WQIA offsets the proposed impervious cover impacts by planting (1) native understory tree, and (3) native shrubs within the RPA buffer to help filter runoff. This vegetation will be located adjacent to and below the retaining wall.

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 Ordinance:

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 a degradation of water quality

Recommendations

The Ordinance considers retaining walls to be accessory structures. Staff does not have the authority to grant an administrative for accessory structures and to be consistent with the ordinance cannot support the installation of accessory structures in RPA. In the past, the Board has approved encroachments for accessory structures within the RPA buffer.

Staff would not be opposed to the Board granting the applicant's exception requests for the retaining wall for the following reasons:

1. The lot existed prior to the adoption of the Ordinance.
2. The entire lot is located within the RPA buffer.
3. The installation of the wall occurred within the original limits of clearing approved by the Board and it has eliminated the potential for erosion caused a steep slopes and unstable fill.
4. The applicant has submitted an RPA mitigation-planting plan that meets the typical County mitigation requirements for impervious area impacts.

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

1. Full implementation of the RPA mitigation-planting 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. A 3 to 4 inch deep mulch bed will be installed around any individual or group RPA mitigation plantings proposed.
4. Implementation of the RPA mitigation planting 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.

Mr. Hughes asked how the retaining wall was built without prior approval.

Mr. Menichino stated that during construction of the dwelling, because of the grading on this part of the lot, the owner installed the wall to prevent erosion and give greater access to the side door of the house.

Mr. Apperson opened the public hearing.

Mr. Hughes referred to a letter from an adjacent property stating they approved of the wall.

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

Mr. Hughes stated the wall would have been approved had it been included in the initial application for the property. He also felt the wall was helpful to the environment by preventing erosion.

Mr. Apperson and Mr. Gussman agreed.

Mr. Roadley stated he was concerned with the amount of stone at the toe of the wall but believed this also prevented erosion and filtered runoff from the impervious areas.

Mr. Elkins stated he agreed with staff recommendations.

Mr. Gussman made a motion to adopt the resolution granting the exception on tax parcel #3720300261, case #CBE 09-040.

The motion was approved by a 5-0 vote.

3. CBE-09-041 – George & Jill Pongonis – 7272 Osprey Drive

Pat Menichino presented the following case:

Project Summary and Description

George and Jill Pongonis applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of an attached deck on the rear of their dwelling on the above lot in Chickahominy Haven. The deck will create approximately 612 sqft of impervious cover in the seaward 50-foot RPA buffer.

No mature vegetation will be removed from the lot to allow for the placement of the proposed deck. A detailed RPA mitigation-planting plan (plan) has been provided with the exception request that proposes to mitigate for the 612 square feet of impervious area by planting (2) native canopy tree, (4) native understory trees and (6) native shrubs in planting beds to filter runoff from the impervious areas. This plan exceeds the standard mitigation requirements of the County.

Staff offers the following recommendations and guidance to the Board:

1. The proposed wood deck is attached to the residence and therefore can be considered part of the principal structure.
2. Staff considers the size of the proposed deck to be more than the minimum necessary to afford relief and the deck will be constructed within the seaward 50' buffer. For these two reasons, this proposal could not be approved through an administrative process.
3. The applicant has submitted an RPA mitigation-planting plan that exceeds the County's typical planting requirements.
4. Staff evaluated the adverse impacts caused by the additional 612 square feet of impervious area to be moderate.
5. Staff recommends a reduction in the proposed impervious area or a reduction in existing turf areas as a method to reduce adverse water quality impacts.

Background

The lot was recorded prior to the adoption of the Ordinance. Therefore, there was no RPA present on the lot at recordation. However, on August 6, 1990, the Ordinance went into effect establishing 100-foot RPA buffers around all water bodies with perennial flow. The Chickahominy River and the adjacent, man made canal behind this property were then identified as a perennial water body and an RPA buffer was placed on the lot. This 100-foot RPA buffer encompasses about 60% of the lot. The lot is 20,000 sqft or .462 acres in size. The existing residence on the lot encroaches into the 100-foot RPA buffer.

The issue for the Board's consideration is the 612 sqft of additional impervious area created by the deck within the 50-foot RPA buffer.

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 has submitted a WQIA for this project. The mitigation plan contained within the WQIA offsets the proposed impervious cover impacts by planting (2) native tree, (4) native understory tree, and (6) shrubs within the RPA buffer to help filter runoff. This vegetation will be located to the rear of the proposed residence.

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:

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 a degradation of water quality

Recommendations

The proposed deck is considered part of the principal structure, but its size and location within the 50-foot seaward buffer preclude it from being approved administratively.

Staff has evaluated the adverse impacts associated with the proposed deck and has determined them to be moderate.

In the past, the Board has granted similar exception requests and should the Board vote to approve the exception, Staff recommended the following conditions be applied:

1. Full implementation of the RPA mitigation-planting 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. Staff recommends a reduction in the proposed impervious area or a reduction in existing lawn/turf areas as a method to reduce adverse water quality impacts.
5. This exception shall become null and void if construction of the deck and all required mitigation planting is not completed within 12 months from the date the exception or waiver is granted by the Board.

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

Mr. Gussman asked if a Wetlands permit or Chesapeake Bay Exception had been granted on this property in the past.

Mr. Menichino stated there might have been an administrative exception granted for the construction of the house but he was not aware of a previous case before this Board.

Mr. Hughes asked how this deck compared to the decks on other properties in the area.

Mr. Menichino stated there were larger decks in the RPA in the Chickahominy Haven subdivision and agreed most were installed prior to adoption of the Ordinance.

Mr. Elkins stated he felt this proposed deck was larger than it needed to be but, with staff's recommendations for gravel and fabric underneath the deck and an additional reduction in the turf area, he would be in favor of this exception request.

Mr. Roadley asked if the staff recommendation for a reduction in existing turf included more than what would be removed for the proposed deck.

Mr. Menichino stated staff's recommendation was to reduce the size of the deck or reduce additional turf area with the mitigation-planting plan.

Mr. Hughes asked if the proposed plantings adjacent to the deck and along the shoreline would be in continuous mulch beds.

Mr. Menichino stated the Board could make that recommendation.

Mr. Apperson opened the public hearing.

A. George Pongonis, owner, stated he was willing to minimize the impact to the environment and presented the Board with a proposal that would reduce the deck to 498 sqft and still install the mitigation proposed for the larger deck.

Mr. Hughes asked Staff if the application could be considered with the smaller deck.

Mr. Menichino stated the Board could consider lesser impacts to the RPA.

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

Mr. Roadley suggested and the other Board members agreed the applicant should receive guidance from Staff on the implementation of the mitigation-planting plan.

Mr. Menichino stated the applicant had agreed to install the plantings in continuous mulch beds.

Mr. Elkins made a motion to adopt the resolution granting the exception on tax parcel #1910800007, case #CBE 09-041 with the proposed 498-sqft deck.

The motion was approved by a 5-0 vote.

D. BOARD CONSIDERATIONS

1. Calendar Year 2009 Meeting Schedule

All Board members agreed to adopt the 2009 Wetlands Board meeting schedule:
Provided there are cases to be considered the meetings will be at 7:00 PM on the 2nd Wednesday of each month except in November the meeting will be on Thursday, 11/12/09.

E. ELECTION OF OFFICERS FOR 2009

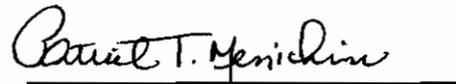
Mr. Gussman moved that Billy Apperson be reappointed as Chairman. All members were in favor
Mr. Hughes moved that David Gussman be reappointed as Vice-Chairman. All members were in favor.

F. MATTERS OF SPECIAL PRIVILEGE - none

G. ADJOURNMENT

The meeting adjourned at 7:55 PM.


David Gussman
Vice-Chairman


Patrick T. Menichino
Compliance Specialist