

JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
May 13, 2009 – 7:00PM

A. ROLL CALL

William Apperson – Chair
Larry Waltrip
John Hughes
Terence Elkins
Charles Roadley

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 March 11, 2009 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBE-09-076 – Ford's Colony/Promark Custom Homes – 109 Mahogany Run

Pat Menichino presented the following case:

Project Summary and Description

Mark Buckley, Promark Custom Homes, on behalf of Ford's Colony First Choice Realty Inc., applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachment into the RPA buffer to construct a 10' x 14' wood frame storage. The lot is located in the Ford's Colony Subdivision in James City County (the County) and is 0.563 acres in size. The RPA buffer encompasses approximately 54% of the lot or 0.29 acres. The wood frame storage shed will encroach into the landward 50 feet of this RPA buffer.

The applicant also submitted an RPA Mitigation Planting Plan and proposes to mitigate for the impacts to the RPA by planting, (1) native canopy tree, and (3) native shrubs, in the RPA on the lot to help filter nonpoint source pollution.

Staff evaluated the request for the wood frame storage shed, and considers it to be an accessory structure. Therefore, in accordance with section 23-14 of the Ordinance, the exception must be processed by the Chesapeake Bay Board (Board) after a public hearing.

The issue before the Board is the addition of 140 sqft of impervious area created by the installation of the wood frame storage shed 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.

The Board has in the past reviewed and granted exceptions for accessory structures within the RPA buffer.

Brief History

The lot was recorded after the 1990 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 feature at the rear of the lot was identified requiring that a 100 foot RPA buffer be established on the lot.

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 has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*.

Recommendations

To be consistent with the ordinance requirements Staff cannot support the approval of this exception request for an accessory structure.

Staff offered the following information as guidance to the Board concerning the application:

1. The proposed 10' x 14' wood frame storage shed would create approximately 140 sqft of impervious area in within the RPA buffer.
2. The submitted RPA Mitigation Planting Plan meets the standard mitigation planting requirements of the County.
3. Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal.

If the Board votes 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 if required.
2. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c), a form of surety satisfactory to the County Attorney.
3. The size of the mitigation trees shall be 1" caliper 6'-7' tall, 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. Elkins asked if the proposed residence also encroached into the RPA buffer.

Mr. Menichino stated the encroachment by the proposed primary residence was considered and granted administratively as allowed by the Ordinance.

Mr. Hughes stated that the shed could also have been considered administratively if it was attached to the primary residence.

Mr. Roadley stated it should also be noted that at the time of recordation the lot was not identified as part of the Chesapeake Preservation Area.

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

Mr. Roadley stated he had not objections to the exception request.

Mr. Hughes stated the mitigation plan was acceptable and made a motion to adopt the resolution granting the Chesapeake Bay Exception for case number CBE-09-076 on tax parcel #3131000010.

The motion was approved by a 5-0 vote.

2. CBV-09-001 – APPEAL- Hutchens – 516 Sir George Percy

Pat Menichino presented the following memo to the Board:

Thomas Hutchens, owner, 516 Sir George Percy, Kingsmill, filed an appeal to James City County's Chesapeake Bay Board (Board) on March 23, 2009. Mr. Hutchens is appealing a Notice of Violation and administrative order issued by the County on February 24, 2009. The Notice of Violation ordered the removal of an unauthorized retaining wall from within the Resource Protection Area (RPA) buffer and Conservation Easement (CE) located on his property. Staff reviewed the unauthorized encroachment and estimates the RPA impacts as 50 sqft of decorative concrete block retaining wall, and 500 sqft of turf lawn.

On September 8, 2008 Staff became aware of the unauthorized encroachments following the submission of a buffer modification request to the Environmental Division by the owner. Staff has met with the owner several times to discuss resolving the RPA and CE issues on the property. The existence of a CE on the property requires that the CE be vacated and exchanged for a similar sized CE elsewhere in Kingsmill. The owner and representatives of Kingsmill have been working towards achieving that exchange, but as of this date the process has not been completed.

Staff reviewed the appeal and violation documents and offered the following information for the Board's consideration.

1. Mr. Hutchens is the original owner of the property. The lot was recorded after the 1990 adoption of the Ordinance. The residence was constructed in 2005 and both the RPA and CE boundaries were identified on the residence's site development plan.
2. Mr. Hutchens contracted to have a 50' long x 5' high decorative concrete block retaining wall installed on his property. The wall is situated approximately 20' channel ward, of the 100' RPA buffer line.
3. Mr. Hutchens recently applied for an after the fact building permit for the wall.
4. Staff evaluated the adverse impacts associated with the 50 sqft of impervious retaining wall and determined them to be minimal. Staff also noted a significant amount of turf grass (approx. 500 sqft) has been established within the RPA.
5. The owner in his appeal letter indicates a willingness to provide native mitigation plantings in an area below the wall. However, the plan submitted along with the appeal does not show any proposed mitigation plantings.
6. The issue of the CE exchange has not yet been resolved. Staffs recommend the Board not act upon this appeal until the CE issue is finalized.
7. The retaining wall is considered to be an accessory structure.
8. To be consistent with the intent of the Ordinance, Staff does not support the granting of this appeal.

Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance.

The Board shall not decide in favor to the appellant unless it finds:

1. The hardship is not generally shared by other properties in the vicinity;
2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
3. The appellant acquired the property in good faith and the hardship is not self-inflicted.

Should the Board vote to grant the appeal, staff offers the following recommendations and guidance for consideration.

1. The owner shall mitigate for the retaining wall by installing (2) canopy trees, (4) understory trees and (6) shrubs in the area below the existing retaining wall. All plant material shall be native species and should meet the following size requirements: shrubs 3-5 gallon container size and trees 6-7 feet in height and 1"-1 ½" in caliper.
2. The removal of the existing turf from within the RPA buffer should be considered as a condition of approval.
3. A revised plan titled "Mitigation & Restoration Plan, for 516 Sir George Percy", incorporating any Board recommendations must be submitted to the Environmental Division for approval.

4. A Chesapeake Bay Restoration Agreement must be executed and submitted to the County with \$1,000.00 surety in a form acceptable to the County Attorney to guarantee the full implementation of the "Mitigation & Restoration Plan for 516 Sir George Percy".

Mr. Elkins asked why there was a conservation easement on the property.

Mike Woolson, James City County Senior Watershed Planner, stated it was a proffer from the developer, Busch Properties-Kingsmill, which was obtained for stormwater regulation purposes when the subdivision was recorded. He stated the County was currently working on an exchange of conservation easement areas with the developer.

Mr. Menichino stated staff was recommending deferral of a Board decision on the appeal until after the conservation easement exchange is completed.

Mr. Apperson opened the public hearing.

Mr. Hughes asked when the exchange would be completed.

A. Kevin Kolda, Busch Properties – Kingsmill, stated their attorney was working on the deed of exchange and it should be completed within the next month.

B. Tom Hutchens, property owner, requested a 30-day continuance from the Board.

Mr. Hughes made a motion to defer the Board decision and continue the public hearing on the appeal for case CBV-09-001 to the next Board meeting on June 10, 2009.

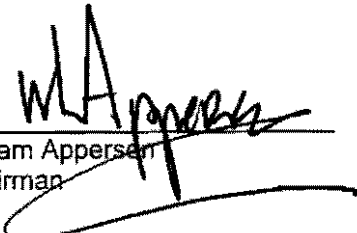
The motion was approved by a 5-0 vote.

D. BOARD CONSIDERATIONS – none.

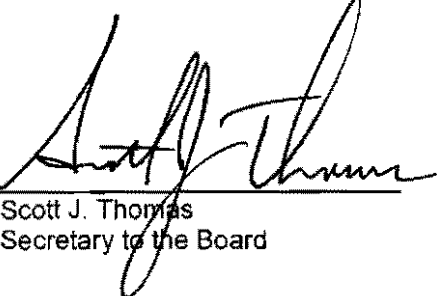
E. MATTERS OF SPECIAL PRIVILEGE – none.

F. ADJOURNMENT

The meeting adjourned at 8:20 PM.



William Apperson
Chairman



Scott J. Thomas
Secretary to the Board