

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
August 12, 2009 – 7:00PM**

A. ROLL CALL

William Apperson – Chair
David Gussman
Richard Mason-Alternate
John Hughes
Terence Elkins

ABSENT

Larry Waltrip

OTHERS PRESENT

County Staff (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 July 8, 2009 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBV-09-001 – Appeal - Hutchens – 516 Sir George Percy continued from 6/10/09

Mr. Menichino presented the following case:

Mr. Thomas Hutchens, owner, 516 Sir George Percy, Kingsmill, filed an appeal to James City County's Chesapeake Bay Board on March 23, 2009 for a Notice of Violation and administrative order issued by the County on October 21, 2008. 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.

On September 8, 2008 Staff became aware of the unauthorized encroachments following Mr. Hutchens submission of a buffer modification request to the Environmental Division. Staff estimated the RPA impacts as 50 sqft of decorative concrete block retaining wall, and 500 sqft of turf lawn.

Staff met with Mr. Hutchens several times to discuss resolving the RPA and CE issues. The existence of a CE on the property required that the CE be vacated and exchanged for a sized CE elsewhere in Kingsmill.

On May 13, 2009 Mr. Hutchens was granted a deferral until June 10, 2009 to provide additional time for completion of the CE exchange. On June 10, 2009, Mr. Hutchens appeared before the Board and was granted an additional deferral until August 12, 2009. Staff has now been informed that the required CE exchange has been completed.

Staff has reviewed the appeal and violation documents and offers 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 RPA and CE boundaries were identified on the site development plan when the residence was constructed in 2005.
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' seaward, of the 100' RPA buffer line, within the landward 50' buffer.
3. Mr. Hutchens has 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 surface for the retaining wall and determined them to be minimal. Staff also noted that a significant amount of turf grass (approx. 500 sqft) has been established within the RPA.
5. In his appeal letter, Mr. Hutchens indicated a willingness to provide native mitigation plantings in an area below the wall and submitted a revised RPA Mitigation Planting Plan that exceeds the County's mitigation requirements.
6. The issue of the Conservation Easement (CE) exchange has now been resolved.
7. The Ordinance considers retaining walls to be accessory structures. To be consistent with the intent of the Ordinance, Staff cannot support the installation of accessory structures within the RPA.

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. Removal of the existing turf from within the RPA buffer should be considered as a condition of approval. This area should then be stabilized with native grasses and not subjected to routine mowing.
3. A revised plan entitled "Mitigation & Restoration Plan, for 516 Sir George Percy", incorporating any Board recommendations and requirements, must be submitted to the Division for approval.
4. To guarantee full implementation of the "Mitigation & Restoration Plan for 516 Sir George Percy" a Chesapeake Bay Restoration Agreement must be executed and submitted to the County along with surety in the amount of \$1,000.00, in a form acceptable to the County Attorney.

Mr. Elkins asked if the replacement conservation easement was comparable to the original and if the applicant had agreed to the removal of the turf grass.

Mr. Gussman asked if the new conservation easement had been recorded.

Mr. Menichino stated the County Senior Watershed Planner had informed him the exchange was acceptable and has been recorded. Staff recommended the turf removal as a condition for the Board to consider if they vote to approve the appeal.

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

Mr. Gussman stated that in addition to the conditions suggested by Staff, the applicant should be required to complete the restoration by a specific date.

Mr. Menichino stated the Board could require a restoration completion date with their approval and suggested November 30, 2009.

Mr. Gussman made a motion to adopt the resolution granting the appeal of Chesapeake Bay case number CBV-09-001 on tax parcel #5031300003 with all Staff recommendations and Board recommendation that the mitigation plantings and removal of turf be completed by November 30, 2009.

The motion was approved by a 5-0 vote.

2. CBE-10-001 – Rehm – 2939 Leatherleaf

Mr. Menichino presented the following case:

Project Summary and Description

Mr. Samuel Rehm, owner, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachment into the seaward 50' RPA buffer on his lot in the Stonehouse subdivision, for the construction of two (2) segmental block retaining walls totaling 160 LF in length and for eight (8) 8" x 48" riser steps on the NW slope of the property.

This exception request is for accessory structures which do not qualify for an administrative waiver. In accordance with section 23-14 of the Ordinance, the exception must be processed by the Chesapeake Bay Board after a public hearing.

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. The lot is 0.81 acres in size and the 100 foot RPA buffer encompasses approximately 95% of the lot or 0.76 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*, a WQIA, and an RPA Mitigation Planting Plan that proposes to mitigate for the creation of 142 sqft of impervious area in the RPA, by planting (2) native canopy trees within the buffer, to help filter runoff. The proposed plantings meet the standard mitigation planting requirements of the County.

Recommendations

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

1. The applicant has applied for an exception to allow 142 sqft of impervious area within the within the seaward 50' RPA buffer for the construction of 2 segmental block retaining walls and 8 riser steps. The fill required for backfill will be obtained from the retaining wall excavation.
2. The applicant submitted an RPA Mitigation Planting Plan that 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 and mitigated appropriately.

The Board is to determine whether or not this exception 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.

If the Board votes to approve the exception request, Staff recommends 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. The proposed mitigation trees shall be a minimum of 1 1/2" in caliper and 6'-7' tall.
3. 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.
4. This exception request approval shall become null and void if construction has not begun by August 12, 2010.

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

Mr. Hughes asked why the proposed stairs were necessary.

Mr. Mason asked how much fill would be used behind the wall.

A. Tim Schmidt, Schmidt Landscaping, contractor for the project, stated the purpose of the steps was for access to the area at the bottom of the steep slope. He explained how the wall was going into the slope and the soil removed for this placement would be used as fill behind the wall.

Mr. Hughes made a motion to adopt the resolution granting the Chesapeake Bay Exception for case number CBE-10-001 on tax parcel # 0510200014.

The motion was approved by a 5-0 vote.

3. CBE-10-006 – Eshelman – 2409 Sarah Spence

Mr. Menichino presented the following case:

Project Summary and Description

Mrs. Carolyn Eshelman applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachment into the seaward 50' RPA buffer on her lot in The Vineyards subdivision, for the construction of a segmental block retaining wall totaling 58 LF in length.

This exception request is for an accessory structure which does not qualify for an administrative waiver. In accordance with section 23-14 of the Ordinance, the exception must be processed by the Chesapeake Bay Board after a public hearing.

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. The lot is 0.75 acres in size and the 100 foot RPA buffer encompasses approximately 55% of the lot or 0.40 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*, a WQIA, and an RPA Mitigation Planting Plan that 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 runoff. The proposed plantings meet the standard mitigation planting requirements of the County.

Recommendations

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

1. The applicant applied for an exception to allow for the creation of 58 sqft of impervious area within the seaward 50' RPA buffer for the construction of a segmental block retaining wall. The fill and topsoil required for backfill will be imported from offsite.
2. The applicant submitted an RPA Mitigation Planting Plan that 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 and mitigated appropriately.

The Board is to determine whether or not this exception 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.

If the Board votes to approve the exception request, then staff recommends 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. The proposed mitigation trees shall be a minimum of 1 1/2" in caliper and 6'-7' tall and the shrubs shall be a minimum 3-5 gallon container size and 18" tall.
3. 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.
4. This exception request approval shall become null and void if construction has not begun by August 12, 2010.

Mr. Menichino advised the Board that the applicant was out of town and the contractor was unable to attend this meeting.

Mr. Elkins asked why the retaining wall was needed.

Mr. Menichino stated there was a slope that drained runoff from the house. The proposed retaining wall is a minor structure and the intent is to stabilize the area and prevent runoff into the pond below.

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

Mr. Apperson made a motion to adopt the resolution granting the Chesapeake Bay Exception for case number CBE-10-006 on tax parcel # 4840200016.

The motion was approved by a 5-0 vote.

4. CBE-10-004 – Scrafik – 121 Stowe

Mr. Menichino presented the following case:

Project Summary and Description

Mr. Warren Barnes, Evan Sawyer Builder, on behalf of Robert E. & Mary L. Schafrik, owners, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachment into the landward 50' RPA buffer, on their property in the Ford's Colony subdivision, for the construction of an 11' diameter, wood frame gazebo totaling approximately 121 sqft.

This exception request is for an accessory structure which does not qualify for an administrative waiver. In accordance with section 23-14 of the Ordinance, the exception must be processed by the Chesapeake Bay Board after a public hearing.

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. The lot is 0.542 acres in size and the RPA buffer encompass approximately 84% of the lot or 0.457 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 has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*, a WQIA, and an RPA Mitigation Planting Plan that proposes mitigation for the 121 sqft of impervious area in the RPA by planting (30) native shrubs in the RPA on the lot to help filter runoff. The proposed plantings exceed the standard mitigation planting requirements of the County.

Recommendations

To be consistent with the ordinance requirements Staff cannot support the approval of this exception request for an accessory structure and offers the following information as guidance to the Board concerning this application:

1. The applicants applied for an exception to allow for an 11' diameter wood frame gazebo to be constructed within the 50' landward RPA buffer, creating 121 sqft of impervious area. The proposed gazebo is to be constructed with a concrete foundation permanently attached to the ground.
2. The applicant submitted an RPA Mitigation Planting Plan that exceeds the standard mitigation planting requirements of the County.
3. Staff observed that a perennial stream immediately adjacent to the proposed gazebo, has been filled in and modified in a way that impacts the natural flow.
4. Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal.

The Board is to determine whether or not this exception 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.

If the Board votes to approve the exception request, staff recommends 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 shrubs shall be a minimum 3-5 gallon size and 15"-18" tall. All shrubs shall be native species approved by the Environmental Division.
4. The perennial stream located adjacent to the proposed gazebo shall be restored and stabilized to an adequate open channel that meets the requirements set forth by the County.
5. This exception approval shall become null and void if construction has not begun by August 12, 2010. An extension can be requested in writing at least 2 weeks prior to the expiration date.

Mr. Hughes and Mr. Mason asked for further information regarding the method of stream restoration.

Mr. Mason asked specifically what impact the restored stream would have on the proposed gazebo.

Mr. Menichino stated the builder will be required to excavate the fill that was placed in the stream so they could pour the footings. The stream can be restored to an open channel or to a pipe adequate to handle the flow. He stated there was significant runoff from other properties through this lot and suggested the builder answer Mr. Mason's question regarding the resulting impact to the proposed gazebo.

Mr. Elkins asked if anything in this proposal could create stormwater control and/or flooding problems on adjacent properties.

Mr. Menichino stated it might obstruct surface flows but in his opinion would not cause a backup or flooding on adjacent properties.

Mr. Apperson opened the public hearing.

A. John Spinnager, adjacent property owner at 112 Stowe, stated he had no objection to the construction of the gazebo and was not concerned with impacts to his own property. However, he has lived in the neighborhood since 2000 and on more than one occasion, has observed extensive flooding on the lot in this exception. In his opinion, the current conduit is extremely inadequate and even if the stream is restored there is a potential for flooding in that area because the lot is at the end of the cul-de-sac and all of the runoff is directed through this lot to the pond behind it.

B. Warren Barnes, Evan Sawyer Master Builder, stated the drainage on this property was engineered using retaining walls and contours to direct the runoff away from the principal structure and the proposed gazebo to the detention pond behind the property. He confirmed that the pipe was only a temporary measure to pour the foundation and the stream would be restored upon completion of the project.

Mr. Elkins asked if the gazebo could be moved further away from the natural flow of the stream.

B. Mr. Barnes stated he did not want to remove any more trees and he was confident the gazebo in the current location, would not be impacted by runoff.

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

Mr. Hughes and Mr. Elkins both stated they were satisfied since the stream would be restored and there would be no impact to the adjacent properties.

Mr. Mason was still concerned about the erosion on the property.

Mr. Apperson requested that the applicant respond to Mr. Mason's concern.

B. Mr. Barnes stated that what appeared to be erosion was actually fill brought in for the driveway. He also stated the required erosion control measures would remain in place until the area was stabilized.

Mr. Apperson stated he believed the County would monitor the stream restoration for adequate drainage through the lot.

Mr. Hughes made a motion to adopt the resolution granting the Chesapeake Bay Exception for case number CBE-10-004 on tax parcel #3720600043.

The motion was approved by a 5-0 vote.

D. BOARD CONSIDERATIONS

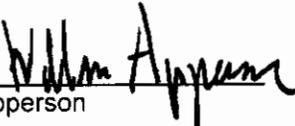
1. Change September board meeting date from Wed 9/9/09 to Thu 9/10/09

All Board members were agreeable to this change.

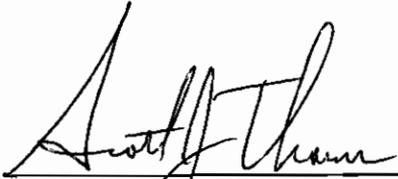
E. MATTERS OF SPECIAL PRIVILEGE

F. ADJOURNMENT

The meeting adjourned at 8:05 PM.



William Apperson
Chairman



Scott J. Thomas
Secretary to the Board