

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
April 14, 2010**

A. ROLL CALL

ABSENT

David Gussman –Chairman
William Apperson
Terence Elkins
John Hughes
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 March 10, 2010 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBE-10-032 Amendment – Kerr Environmental/Stonehouse Land Bay 3

Mike Woolson, Senior Watershed Planner, presented the following case:

Existing Site Data & Information

Applicant: Ms. Kristen Shacochis-Brown, Kerr Environmental Services Corp.
Land Owner(s): GS Stonehouse Green Land Sub, LLC
Location: 9235 Fieldstone Parkway, Toano, Virginia 23168
Pin: 0440100029: GS Stonehouse owner
9340 Fieldstone Parkway, Toano, Virginia 23168
Pin: 0440200002: 2J Investments LLC, owner
9315 Fieldstone Parkway, Toano, Virginia 23168
Pin: 0440100033: 2J Investments, LLC owner
9683 Mill Pond Run, Toano, Virginia 23168
Pin: 0530100017: The Association at Stonehouse, Inc owner
(Homeowners Association)
Parcel Size/Zoning: 41 +/- acres, PUD Residential and PUD Commercial
Percent of Parcels in RPA: 34% (14 +/- acres)
Watershed: Ware Creek

Proposed Impacts

Chesapeake Bay Board action (Board approval)
Sanitary Sewer RPA Encroachments:
 Permanent encroachment: 24,004 square feet (0.55 ac.)
 Temporary encroachment: 16,266 square feet (0.37 ac.)
 Total: **40,270 square feet (0.92 ac.)**
Chesapeake Bay Preservation Ordinance Administrator action (Administrative approval)
BMP RPA Encroachments: 10,463 square feet (0.24 ac.)

Brief Summary and Description of Activities

On December 9, 2009, the Chesapeake Bay Board approved an exception to the use of the resource protection area for impacts associated with the installation of a gravity sewer line and permanent maintenance easement. On or about February 25, 2010, it was discovered by the applicant that there was an error in the approved WQIA between what was shown on the plan sheet for mitigation area and what was transferred to a table (Table 3 – Table of Mitigation Offered). The plan sheet has 3,480 square feet of area to be replanted and the table says 5,480 square feet. The additional 2,000 square feet of mitigation planting cannot be accommodated at the mitigation site therefore the applicant has requested a change in the approved conditions.

Under approved condition #6, fourth bullet, revise to read "3,480 square feet" instead of "5,480 square feet". This modification will reflect the correct acreage of planting around BMP 3A as shown in Appendix F, figure LS-4 of the approved WQIA. There are no proposed revisions to the planting around this BMP.

Under approved condition #6, fifth bullet, revise to read "\$6,734.70" instead of "\$4,634.70" into the Chesapeake Bay Mitigation Fund. The applicant is requesting the CBB consider this additional payment into the Chesapeake Bay Mitigation Fund as adequate compensation for the 2,000 square foot planting shortfall from the approved exception.

Staff Recommendation

Staff has reviewed the exception request and has determined that the proposed mitigation measures are acceptable. Staff recommends the Chesapeake Bay Board reapprove the Chesapeake Bay Exception CBE-10-032 dated December 9, 2009 with the following changes:

1. Condition 6, fourth bullet, "Replant 3,480 sq ft of non-RPA adjacent to BMP 3A in Tract 12 of Stonehouse. This area shall be placed within a conservation easement and dedicated to James City County."
2. Condition 6, fifth bullet, "Payment of \$6,734.70 into the Chesapeake Bay Mitigation Fund."
3. This exception request approval shall become null and void if construction has not begun by April 14, 2011.

Consideration by the Chesapeake Bay Board

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-10-032 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-10-032 are included for the Board's use and decision.

Mr. Gussman opened the public hearing.

A. Kristen Shacochis-Brown, Kerr Environmental Services Corp, apologized for the error on the original application and asked if the Board had any questions.

Mr. Gussman closed the public hearing as there were no questions and no one else wished to speak.

Mr. Hughes made a motion to adopt the resolution granting the amended exception for Chesapeake Bay Board case number CBE-10-032 on tax parcel #s 0440100029, 0440200002, 0440100033, and 0530100017

The motion was approved by a 5-0 vote.

2. CBE-10-066 – Pulk – 1270 Two Rivers Point

Scott J Thomas, Environmental Director and County Chesapeake Bay Administrator, presented the following case:

Existing Site Data & Information

Applicant: Mr. David Pulk
Land Owner: David K. & Carol S. Pulk
Location: 1270 Two Rivers Point, Williamsburg, Virginia 23185
Parcel: Lot 8, Two River's Point, The Governor's Land at Two Rivers
Parcel Id: 4310500008
Lot Size: 0.62 acres
RPA Area on Lot: 0.25 acres or 41% of the lot
Watershed: James River (HUC Code JL29)
Proposed Activity: Installation of a walk-out raised terrace with support wall and in-ground swimming pool

Proposed Impacts

Impervious Area: 685 square feet
RPA Encroachment: Landward 50 foot RPA Buffer

Brief Description and Summary

Ms. Toni Small, Williamsburg Environmental Group on behalf of David and Carol Pulk, 208 Brentwood Drive Hudson, Ohio applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer, for the construction of a walkout raised terrace approximately 685 sqft in size. The terrace is inclusive with approximately 55 ft. length of support wall and an in-ground swimming pool approximately 20 ft. x 12 ft in size. Only a portion of the west part of the proposed swimming pool is situated within the landward RPA buffer. The terrace and inclusive structures will create 685 sqft of impervious area within the landward RPA buffer.

A detailed RPA Mitigation Planting Plan (Plan) has been provided along with the exception request for your review. The plan proposes to mitigate for the RPA impacts by planting six (6) native canopy trees, fifteen (15) native understory trees and twenty-seven (27) native shrubs. The proposed amount of plantings exceeds the standard mitigation planting requirements of the County for impervious impacts. In addition, the applicant has offered additional mitigation by installing a 25 ft. long infiltration area in the northeast corner of the parcel to help intercept and treat runoff from impervious areas along the east side of the proposed house and the entire terrace area.

Background

The lot was recorded after the adoption of the Ordinance in 1990. Bay Act requirements resulted in approval of the plat for the subdivision with a 100-foot RPA buffer around all water bodies with perennial flow. The James River was identified as a perennial water body feature and an RPA buffer was placed on the lot. There are some unique provisions to the approved plat which were explained during the staff presentation.

According to provisions of Section 23-7(c)(2) the County's Chesapeake Bay Preservation Ordinance, the manager may grant administrative approval for the construction of a principal structure on a lot or parcel recorded between August 6, 1990 and January 1, 2004. The administrative case, for construction of the principal structure and associated impact to RPA, was submitted concurrently (CBE-10-065) with this case before the board (CBE-10-066).

The exception request before the board, and decision to approve or deny by resolution, is for encroachment into the RPA buffer for the construction of a walkout raised terrace, associated support wall, and that portion of in-ground swimming pool within the RPA buffer. Impacts are on the landward side of the RPA buffer. This request does not qualify for an administrative waiver because it 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 (WQIA)

Under Sections 23-11 and 23-14 of the 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*. The WQIA for this project consists of a cover letter dated March 3rd 2010, the standard County *Sensitive Area Activity Application*, a supplemental narrative attachment, and a WQIA map. The WQIA map shows features of the proposal along with a mitigation plan for planting six (6) native canopy trees, fifteen (15) native understory trees and twenty-seven (27) native shrubs. The amount of plantings proposed exceeds the standard mitigation planting requirements of the County for impervious impacts. The mitigation plan includes plantings for both the board and administrative review cases (pending). In addition, the applicant has offered additional mitigation by installing a 25 ft. long infiltration area in the northeast corner of the parcel to help intercept and treat runoff from impervious areas along the east side of the proposed house and the entire terrace area.

The cover letter dated March 3rd 2010 gives very specific information about the applicant's request, environmental features of the site development, and reconfiguration of the house footprint to avoid and minimize impact to the RPA.

Staff Recommendations

The issue before the Board is the addition of 685 square feet of impervious area within the landward 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. There are five (5) review criteria within this section of the ordinance.

Staff evaluated the potential adverse impacts of this proposal and determined them to be moderate. Those impacts may be offset by the proposed mitigation plan.

If the Board favors the resolution to grant approval, then staff recommends the incorporation of the following conditions into the approval:

1. The applicant must obtain all other applicable federal, state and local permits required for the project, including a building permit from James City County Codes Compliance.
2. An acceptable detailed plan for proposed yard drains and the proposed infiltration area, as situated in the northeast corner of the lot, must be submitted to the County for review and approval prior to their construction.
3. 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.
4. 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), which is providing a form of surety satisfactory to the County Attorney.
5. This exception request approval shall become null and void if construction has not begun by April 14, 2011 or all improvements including the required mitigation plantings, including the infiltration area, are not completed by that expiration date.
6. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

Mr. Gussman asked how much RPA impact there would be for the proposed residence currently under administrative review.

Mr. Elkins asked for the total size of the proposed principal structure.

Mr. Thomas stated the footprint for the proposed residence and garage was 4,777 sqft and the impact to the RPA was 624 sqft. The accessory structures before the Board impacted 685 sqft for a total impact of 1309 sqft. He added that the proposed mitigation was for the entire 1309 sqft of impact.

Mr. Apperson asked if the proposed infiltration trench would handle all of the runoff from the proposed impacts.

Mr. Thomas said the proposed infiltration trench would need borings and would be designed to handle the entire terrace and the east side of the house.

Mr. Elkins asked why the pool could not be moved out of the RPA.

Mr. Thomas stated that had been recommended by staff however the terrace cap would still be within the RPA and the applicant had additional reasons for the proposed location.

Mr. Hughes asked if the elevation of the lot had been graded down to allow access to the garage or if it was the natural slope.

Mr. Waltrip asked what the elevation was at the lowest point.

Mr. Thomas stated the applicant indicated it was the natural slope. The lowest point indicated on the grading plan submitted to the County was 8 ½ ft above sea level and the proposed terrace was around 22 ft, requiring the proposed wall.

Mr. Gussman opened the public hearing.

A. Toni Small, Williamsburg Environmental Group, agreed with the information presented by staff and added that only a 64.73 sqft corner of the proposed pool encroached into the landward RPA. She explained the location of the house was due to the set back requirements and rules of the Governor's Land HOA and the pool was centered on the interior great room. She emphasized that the proposed mitigation was more than what was required for the encroachment into the RPA.

B. David Pulk, owner, stated the finished grade of the basement was 11' 8" and the reason for the basement was for the geothermal units which reduced the impervious area that would be required for multiple outdoor HVAC units. He added that many of the homes in the subdivision had 4-car garages and at staff's recommendation, he removed one of the proposed 2-car garages on the left side of the house and also reduced the size of the house by 4 feet on the side encroaching into the RPA.

Mr. Hughes stated it still could have been possible to redesign the house to move the pool out of the RPA.

Mr. Elkins asked if the location of the pool was mainly for aesthetics.

B. Mr. Pulk stated it was for aesthetics as well as functionality. He further explained his desire to move to this area, his reasons for purchasing this particular lot, health reasons for needing the pool, and his overall environmental stewardship.

Mr. Gussman asked if the RPA was marked on the plat when he purchased the property.

B. Mr. Pulk stated it was marked with a notation that "an exception to the requirements of the Chesapeake Bay Ordinance, to be granted on an individual lot basis at the time of building permit application", which he understood meant it "would" be granted not "might" be granted and he was assured of a buildable area by Governor's Land because of the previous mitigation of 3.3 acres of open space to the left of this lot.

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

Mr. Gussman stated he understood the need for encroachment into the RPA when a lot was platted prior to adoption or changes in the Ordinance however, in this case the RPA was present when the lot was platted and he felt this house could have been reengineered to not encroach into the RPA, therefore he was not in favor of granting this exception.

Mr. Elkins agreed with Mr. Gussman and stated that because of the size of this house, he did not believe this was the minimum necessary to allow a buildable area for a principal structure as required by the Ordinance and was also not in favor of granting the exception.

Mr. Apperson stated the proposed mitigation which included the infiltration trench was exceptional and the encroachment was minimal.

Mr. Waltrip stated considering the location the home on the adjacent property, the size of this lot, and other homes in this subdivision, the options were limited. He also felt the owner had worked with the County to reduce the impact to the RPA.

Mr. Hughes stated it was the developer, not the applicant, who created a lot that encroached into RPA. The size of the proposed house was expected in this neighborhood and if the exception request did not include part of a swimming pool, it would not be of concern. He also felt the applicant had made concessions and worked with the County by redesigning and moving the house, terrace, and pool.

Mr. Apperson made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case number CBE-10-066 on tax parcel #4310500008.

The motion was approved by a 3-2 vote (AYE: Apperson, Waltrip, Hughes)
(NAY: Elkins, Gussman)

D. BOARD CONSIDERATIONS - None

E. MATTERS OF SPECIAL PRIVILEGE

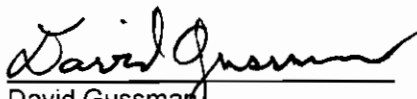
Scott J. Thomas, Environmental Director, notified the Board of a change in the County's Chesapeake Bay Local Assistance liaison from Nancy Miller to Adrienne Kotula.

He also announced the upcoming "Clean the Bay Day" held by the Chesapeake Bay Foundation on Saturday June 5, 2010 from 9 a.m. – Noon.

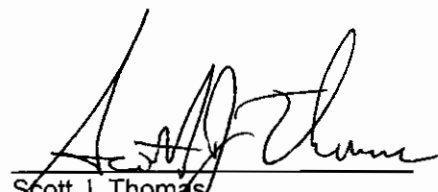
Mr. Apperson suggested, all Board members agreed, and directed staff to draft a Resolution of Appreciation for Pat Menichino's service to the Wetlands and Chesapeake Bay Boards.

F. ADJOURNMENT

The meeting adjourned at 8:16 PM.



David Gussman
Chairman



Scott J. Thomas
Secretary to the Board