

Chesapeake Bay Board

July 10, 2013 – 7:00 p.m.

A. Roll Call

B. Minutes

June 12, 2013

C. Public Hearings

1. CBE-13-101 – Lucas – 116 Godspeed Land – Swimming Pool continued from June 12, 2013
2. CBE-13-113 – Robillard – 87 Kestrel Ct – Shed and swingset

D. Board Consideration

1. CBV-13-005 - Dec – 4072 Penzance Place - Appeal NOV for unauthorized clearing

E. Matters of Special Privilege

F. Adjournment

MEMORANDUM

DATE: July 10, 2013

TO: The Chesapeake Bay Board

FROM: Michael Woolson, Senior Watershed Planner *MW*

SUBJECT: Case No. CBE-13-101
116 Godspeed Lane

Mr. Albert Lucas, 116 Godspeed Lane, has requested that his application be withdrawn from consideration by this Board. Staff concurs with his request.

Chesapeake Bay Exception CBE-13-113: 87 Kestrel Court

Staff report for the July 10, 2013 Chesapeake Bay Board Public Hearing

This staff report is prepared by James City County Engineering and Resource Protection to provide information to the Chesapeake Bay Board to assist in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

Existing Site Data & Information

Applicant: John and Laurie Robillard

Location: 87 Kestrel Court; Lot 15 Phase 2 Heron Run (Season's Trace)

PIN: 3220800015

Lot Size/Zoning: 0.228 ac +/-; R2 General Residential Zoning

Area of Lot in RPA: 0.09 ac +/- (41%)

Watershed: Powhatan Creek, subwatershed 206, Upper Longhill Swamp
(HUC Code JL31)

Proposed Activity: Swing set and shed

Proposed Impacts

Impervious Cover: Approximately 160 square feet

RPA Encroachment: Approximately 160 square feet (landward side of 100 ft. RPA buffer)

Brief Summary and Description of Activities

Mr. and Mrs. Robillard have applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachments into the RPA buffer for the installation of a swing set and shed. Each item will be no larger than 8 ft x 10 ft. The lot is also encumbered with a Conservation Easement in the same approximate area as the RPA. The lot was platted in 1996, after the adoption of the Chesapeake Bay Preservation Ordinance and the house was built in 2004.

The project involves the construction of a child's swing set and a shed in the previously cleared area of the RPA and conservation easement. At this year's May 8, 2013 meeting of the Chesapeake Bay Board, the Board heard an appeal of a violation letter regarding the clearing of the conservation easement and the placement of a swing set and shed in the area. The Board, following a public hearing, formally denied the appeal by resolution. During the discussion of the case, the Board let it

be known that it was amenable to allowing the structure(s) if an adequate mitigation plan was submitted within 60 days, otherwise staff was to start the enforcement process.

Mr. Robillard subsequently met with staff to discuss the proposal on May 29, 2013 and formally submitted this new proposal (current application) on May 31st, 2013. The Robillard's have proposed to remove 600 square feet of turf-lawn grass and install a perimeter water quality treatment filter strip, 2 to 3 feet wide and deep with amended soils and planted with perennials (black-eyed Susan and other deer resistant plants). The remainder of the turf-lawn removal area is to be restored with wax myrtle and mulch while dogwood will be inter-planted in a complementary manner into the existing treeline edge. The applicant also is proposing a rainwater harvesting system to treat roof area from all of the proposed shed and a corner of the existing home and is currently implementing nutrient management practices on their lawn. It should also be noted that impervious cover for the current proposal is substantially reduced from previous concepts, thus demonstrating consistency with performance standards of the Ordinance to minimize impervious cover.

Staff Evaluation

Staff has evaluated the application and exception request for all work as described above. The proposal is for a swing set and shed. Staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board because these items are accessory structures. Therefore, the exception request must be considered by the Board following public hearing under the formal exception process. 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 the above stated improvements.

Water Quality Impact Assessment (WQIA)

Under Sections 23-11 and 23-14 of the County's Chesapeake Bay Preservation ordinance, a water quality impact assessment (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*. The applicant has submitted a *County Sensitive Area Activity Application* and has indicated that the backfilled area will be planted with native plants (quantity unspecified).

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-13-113 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

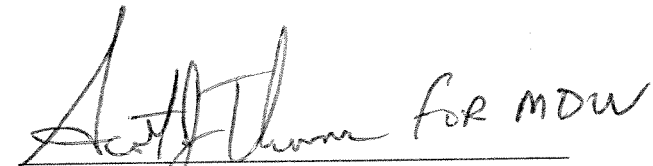
Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-13-113 are included for the Board's use and decision.

Staff Recommendations

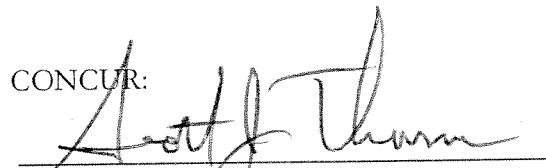
Staff has reviewed the application and exception request and has determined impacts associated with the proposal to be **moderate** for the proposed development. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions applied:

1. The applicant must obtain all other necessary federal, state and local permits as required for the project; and
2. Surety of \$250 will be required in a form acceptable to the County Attorney's office; and
3. County staff will concurrently administratively process the application consistent with the Conservation Easement program of the County and the recorded Deed of Easement; and
4. This exception request approval shall become null and void if construction has not begun by July 10, 2014; and
5. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 6 weeks prior to the expiration date.

Staff Report prepared by:


Michael Woolson
Senior Watershed Planner

CONCUR:


Scott J. Thomas, Director
Engineering and Resource Protection

- Attachments: Water Quality Impact Assessment Package (current application)
Email correspondence with applicant (current application)
Chesapeake Bay Board resolution – May 8, 2013 (appeal)
Staff memorandum – May 8, 2013 (appeal)

MEMORANDUM

DATE: July 10, 2013
TO: The Chesapeake Bay Board
FROM: Michael D. Woolson, Senior Watershed Planner
SUBJECT: Deed of Buffer Easement – 4072 Penzance Place

AT FOR NOW

Mr. John Dec and Ms. Jill Lee, residing at 4072 Penzance Place in Section 1 of the Windsor Ridge subdivision, have filed an appeal to the James City County Chesapeake Bay Board (Board) on May 30, 2013. They are appealing a decision to restore the cleared area within the easement to a natural state. The plat of subdivision was recorded on 9 March 2012 as Instrument Number 120005503 and the Deed of Buffer Easement was recorded on 13 November 2012 as Instrument Number 120005628.

Background Information

On or before February 6, 2013, an anonymous complaint was filed with the Planning Division regarding the removal of vegetation from this lot near the lake edge. Staff investigated the complaint and found that there had been vegetation removed from the lot within the easement area. At that time, Ms. Jill Lee stated that they were removing the vines and weeds in the area and that they would replant with trees and shrubs. At a later date, Mr. John Dec applied for a building permit for a deck. Staff explained and outlined the limits of the easement to him at that time and also required a foundation survey.

During a follow up site visit on or about May 2, 2013, staff noticed that the deck was nearing completion and that the restoration was not completed in the easement area. Furthermore, staff noticed that grass was being established in a portion of the easement near the new deck. Staff issued a Notice of Violation on May 16, 2013. Staff informed the property owners that the restoration was not complete. Ms. Jill Lee called and scheduled an on-site meeting for May 29, 2013. When staff arrived, it was noticed that the entire area has recently been sodded, including the previously replanted area. After some discussion, staff informed them that all of the sod needed to be removed and the entire area restored. It was during this discussion that Mr. Dec and Ms. Lee decided to appeal the Notice of Violation.

Staff Guidance and Recommendations

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

- 1) Mr. John Dec and Ms. Jill Lee are currently the owners of the property, 4072 Penzance Place, where a violation of the Slope Buffer Easement has taken place.
- 2) The Slope Buffer Easement was recorded on 13 November 2012 in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City as Instrument Number 120005628.

- 3) The Deed of Easement states that the “Grantor wishes to establish on each of the Buffer Lots a natural buffer area as part of Grantor’s efforts to enhance the quality of the development.”
- 4) The restrictions outlined in the Deed of Easement and the restrictions which the Grantee (County of James City, Virginia) is hereby entitled to enforce, shall be as follows:
 - a) No building or structure shall be built or maintained within the Buffer Areas other than such building or structure approved by the County Engineer, in writing;
 - b) The Buffer Areas shall remain in their natural condition with respect to understory and canopy trees comprised of trees of a four inch (4”) or greater diameter measured at four feet six inches (4’6”) in height, or of such lesser diameter as required by James City County ordinance (collectively, the “Vegetation”). The activities of Grantor within the Buffer Areas shall be limited to those which do not remove or damage the Vegetation except with the expressed written consent of the County Engineer. Grantor may, within the Buffer Area, engage in selective trimming and pruning which do not materially alter the natural character of the Buffer Areas, install walking trails and removed dead, diseased, poisonous or invasive vegetation;
 - c) Grantee and its representatives may enter upon the Buffer Areas from time to time for inspection and to enforce the terms of this Deed of Easement; and
 - d) (1) In the event of a violation of this Deed of Easement, the Grantee shall have the right to seek all appropriate legal and equitable relief, including but not limited to: reasonable attorney’s fees and costs; the right to restore the Buffer Areas to its natural condition; and the right to assess the cost of such restoration as a lien against any of the Buffer Lots on which the restored Buffer Area is located.
 (2) Although the Buffer Easement in gross will benefit the public in the ways cited above, nothing herein shall be construed to convey a right to the public of access to or use of the Buffer Areas, and the Grantor, for itself and its successor owners of each of the Buffer Lots shall retain exclusive right to such access and use, subject only to the provisions herein recited, and, unless otherwise lawfully considered non-developable areas pursuant to the ordinances of James City County, Virginia, the Buffer Areas shall not, by reason of being subject to the Buffer Easement, be considered to be undevelopable or otherwise restricted for purposes of calculating developable areas of the Buffer Lots for governmental permitting and approval purposes.

Under Section 23-17(b) of the Chesapeake Bay Preservation Ordinance, it states that “in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of this chapter. 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.”

Staff’s guidance to the Board on deciding this matter is as follows:

- 1) The hardship is shared by other properties immediately adjacent to the appellant’s property as well as numerous other properties within the Windsor Ridge subdivision that have the slope buffer easement located on them.

- 2) The granting of the appeal in this case will adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity. Granting relief to the appellant resulting from a violation of the Deed of Easement could result in similar unauthorized actions by other property owners in the vicinity and will lead to a degradation of water quality in the tributaries to the Bay.
- 3) The appellant acquired the property in good faith and the hardship is self-inflicted.
- 4) Staff contends that to be consistent with the purpose and intent of the Ordinance and the Deed of Easement, the Board should deny the appeal.

Attachments: Notice of Violation, May 16, 2013
Deed of Buffer Easement, Instrument Number 120005628
Plat, Instrument Number 120005503
Exhibit A, February 6, 2013
Exhibit B, May 2, 2013
Exhibit C, May 29, 2013