

Chesapeake Bay Board

March 8, 2006

A. Roll Call

B. Minutes - February 8, 2006

C. Public Hearings

1. CBE06-002 - Gregory and Lynne Proios – 2685 Jockey's Neck Trail
2. CBE05-068/WQIA-010-04 - AES Consulting Engineers/Centex Homes – Marywood Subdivision__

D. Board Considerations

1. CBV05-011 - Jesse M. Huff – 2929 Leatherleaf Drive

E. Matters of Special Privilege

F. Adjournment

WQIA for 2685 Jockey's Neck Trail, The Vineyards

Staff report for the March 8, 2006 Chesapeake Bay Board public hearing.

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

Summary Facts

Applicant	Gregory and Lynne Proios
Land Owner	(same)
Location	2685 Jockeys Neck Trail, The Vineyards
Tax Map	4840200022
Staff Contact	Patrick Menichino Phone: 253-6675

Project Description

Gregory and Lynne Proios of 2685 Jockeys Neck Trail, have applied for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of a 590 square foot sand set brick paver patio adjacent to their existing residence on the above referenced lot in The Vineyards. The residence is located adjacent to Ajacan Lake.

Background

The residence was constructed in 2002 after adoption of the Chesapeake Bay Preservation Ordinance but there was no RPA present on the property when the structure was built. However, 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 Ajacan Lake, which the clubhouse is adjacent to, and it was determined that the lake is a water body with perennial flow requiring that a 100 foot RPA buffer be established around the lake. This 100 foot RPA buffer encompasses virtually all the rear yard on the property.

According to provisions of the Ordinance; when application of the buffer would result in the loss of a buildable area on a lot or parcel recorded between August 6, 1990, and January 1, 2004, encroachments into the buffer may be allowed through an administrative process in accordance with the following criteria:

1. Encroachments into the buffer shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.
2. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and

3. The encroachment may not extend into the seaward 50 feet of the buffer area. and obtain exceptions to the requirements of the chapter to allow for the beneficial use of the property to create a buildable area.
4. The lot or parcel was created as a result of a legal process in conformity with the county's subdivision regulations.

The issue for the Chesapeake Bay Board's consideration is the placement of a 590 square foot brick paver patio and sidewalk in the RPA. The *Resource Protection Area: Buffer Area Encroachments* guidance document adopted by the state Division of Chesapeake Bay Local Assistance on September 16, 2002, states on page 5 that "items not considered part of a principal structure include pools, gazebos, patios, free-standing decks, garages, or storage sheds, etc." Therefore, the patio could not be approved administratively and the applicant's have chosen to request an exception from the Board.

Water Quality Impact Assessment

Under Section 23-14 of the amended 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 a WQIA for this project. The mitigation plan contained within the WQIA offsets the proposed impervious cover impacts to the RPA buffer for the patio (590 square feet).

The WQIA proposes to mitigate for the impacts to the RPA by planting 1 native tree, 2 native understory trees, and 35 native shrubs in the RPA. This vegetation will be located to the rear and northwest of the residence adjacent to the proposed patio to help filter nonpoint source pollution. This mitigation plan exceeds the typical mitigation requirements by planting one tree or three shrubs for each 100 square foot of impervious cover established.

The Proios 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

Staff does not recommend approval of the exception as it involves the creation of an impervious, accessory structure or use in the RPA. Both the Ordinance and staff considers the brick paver as an impervious surface. Staff has not allowed the creation of accessory structures in the RPA in the past. However, the Board did approve construction of similar brick paver patios in Ford's Colony, at 153 John Pott Drive, on May 11, 2005 and at The Vineyards Clubhouse, July 13, 2005.

If the Board approves the exception, the proposed mitigation plan is in accordance with the standard mitigation requirements and would be acceptable for the proposed use. If approved, it should be conditioned on the following:

1. Full implementation of the landscape plan submitted with the WQIA
2. Implementation 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 satisfactory to the county attorney.
3. The patio shall be constructed using a non-interlocking paver (a floating paver system). Information on the specific paver to be used needs to be submitted to the Environmental Division prior to beginning work.
4. This exception request approval shall become null and void if construction has not begun by March 8, 2007.

Staff Report Prepared by: _____
Patrick Menichino

- Exception approved with Staff Recommendations
- Exception Denied

William Apperson
Chairman
Chesapeake Bay Board

Attachments:

1. Exception Request Application, dated January 23, 2006.
2. Water Quality Impact Assessment (WQIA), for 2685 Jockey' Neck Trail.
3. RPA Mitigation Landscape Planting Plan.
4. Photos taken on January 30, 2006, approximate area for the installation of the proposed brick patio.

WQIA-010-04. Marywood Subdivision.

Staff report for the March 8, 2006 Chesapeake Bay Board public hearing.

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

Summary Facts

Applicant	Mr. V. Marc Bennett, P.E. of AES Consulting Engineers, Inc.
Land Owner	Centex Homes
Location	North of Kingswood and Druid Hills subdivisions
Tax Map	(47-2) (1-47)
Staff Contact	William Cain, Phone: 253-6702

Project Description

Mr. V. Marc Bennett, P.E. of AES Consulting Engineers, Inc. has applied on behalf of Centex Homes, for an exception to the Chesapeake Bay Preservation Ordinance for impacts associated with the Marywood project. The project is generally located to the north of Kingswood and Druid Hills subdivisions, to the south of Hickory Sign Post Road, and to the west of the Riverside Medical Center and La Fontaine Condominiums.

For the purposes of constructing the necessary stormwater management facilities, sanitary sewer gravity main, and road infrastructure, Centex Homes is proposing 4.40 acres of total encroachment into the Resource Protection Area (RPA).

History

Centex Homes submitted the proposed plan of development for the Marywood development to the Planning Division in September, 2004. The James City County Planning Committee approved the master plan for the development at the December 5, 2005, Planning Commission meeting after the plan preparer and applicant addressed all concerns pertaining to perennial stream locations, stormwater management requirements, erosion and sediment control objectives, and planning issues which stemmed from previous DRC meetings where the plan was originally deferred.

Environmental Division conditions for approval of the master plan consisted primarily of lessening of impacts to environmentally sensitive areas. Plan modifications provided to address this requirement consisted of steeper cut and fill slopes, the relocation of the southernmost stormwater management basin, and a net decrease in the number of proposed lots.

A site specific perennial stream evaluation revealed that multiple perennial streams existed on the parcel, all of which outfall to Lake Powell and ultimately to the James River through the Mill Creek tributary. As this plan of development was submitted after January 1, 2004, the project is not grandfathered from the revised Chesapeake Bay Preservation Ordinance and as a result, a Resource Protection Area (RPA) buffer of 100 feet has been imposed on both sides of the streams and contiguous wetlands. Due to site restrictions resulting from the RPA requirements, one of the stormwater management facilities, which will handle the majority of stormwater runoff for the site, has been proposed for installation in the headwaters of the perennial stream. The location for construction of this basin as proposed will permanently inundate approximately 550+/- linear feet of the associated perennial stream and effectively relocate the RPA feature to the outfall of the proposed BMP.

Under Section 23-11 of the new Ordinance, it states that a water quality impact assessment shall be required for any proposed land disturbance resulting from development or redevelopment within RPAs. AES Consulting Engineers has submitted the assessment for the associated project. The issues before the Chesapeake Bay Board are the resulting impacts (clearing and grading) associated with an RPA utility crossing, and installation of a Best Management Practice dam embankment and discharge pipe in a perennial stream segment.

Water Quality Impact Assessment

The impacts to the RPA buffer and RPA features resulting from the current plan of development requiring either an administrative or board action are 4.40 acres. These impacts are associated with the construction of two road crossings (Impact #1A and B), an embankment for a stormwater management facility (Impact #2), the outfall of a stormwater conveyance system (Impact #3), and a utility bridge (Impact #4) and have been broken down in the associated assessment accordingly. Encroachments associated with “Impact #1A and B” and “Impact #3,” as stated in the assessment, require only an administrative action where those associated with “Impact #2” and “Impact #4” will require a Board action. With this being the case, the total impacts to components of the RPA requiring approval by the board at this time is 3.22 acres. To mitigate for these impacts, the following will be implemented into the associated plan of development:

- Erosion control type 3 blanket matting will be applied to all cut and fill slopes throughout the site;
- Stilling basins to reduce turbulence at stormwater outfalls and downstream erosion will be provided at all BMP outfalls and the outfalls of stormwater conveyance systems not immediately discharging to a stormwater management basin;
- RPA restoration performed in accordance with the 2003 Chesapeake Bay Local Assistance Department Riparian Buffer Manual guidelines for all disturbed areas upland, and in proximity to, the RPA exclusive of BMP embankments and/or stormwater or utility easements;

- Treatment of approximately 39.16 acres of stormwater runoff, the majority of which is currently uncontrolled discharge from the neighboring Kingswood development;
- Additional plantings to increase BMP efficiency will be provided with BMP #1 including plantings performed in accordance with the 2003 Chesapeake Bay Local Assistance Department Riparian Buffer Manual guidelines for areas between the 100-Year water surface elevation of the pond and the adjoining property lines and roadway rights-of-way;
- Conservation seed mix will be used on the slopes of all BMP embankments.
- A perpetual 15' principal building set back from the limits of the RPA will be applied to all lots.

A complete description of the mitigation measures is presented on pages 15 to 18 of the Water Quality Impact Assessment for the Marywood Subdivision.

AES acting on behalf of Centex Homes, has 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):

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 degradation of water quality.

Recommendations

Staff does find that the WQIA and the project are consistent with the spirit and intent of the Ordinance and the criteria as outlined in section 23-14(c) of the James City County Code. Staff therefore recommends that the Chesapeake Bay Board approve the WQIA as

it pertains to the Marywood project only. Furthermore, all other recommendations listed therein are to be incorporated into the site plans for the project, which must then receive final approval by the Environmental Division. This exception request approval shall become null and void if construction has not begun by May 8, 2007. Any changes to the plan of development that would cause any deviation from the items listed in the WQIA, either in the form of increased impacts to components of the RPA or omission of mitigation requirements from the submitted plan of development must be reviewed and approved by the Board.

William Cain;
Civil Engineer

CONCUR:

Darryl Cook;
Environmental Director

APPROVED:

William Apperson;
Chairman,
Chesapeake Bay Board

Attachment:

1. Water Quality Impact Assessment of proposed Site Improvements for the Marywood Subdivision (Revised February 2006).

MEMORANDUM

DATE: February 8, 2006
TO: The Chesapeake Bay Board
FROM: Darryl E. Cook, Environmental Director
SUBJECT: Case: Chesapeake Bay Board Appeal - Jesse M. Huff, 2929 Leatherleaf Drive

On December 16, 2005, Mr. Jesse M. Huff, of 2929 Leather Leaf Drive Toano VA. was issued a Chesapeake Bay Ordinance Notice of Violation (NOV) by Division Staff. The NOV was issued, because Mr. Huff had initiated development and construction of a retaining wall including the placement of fill, within an area of his property identified as a Resource Protection Area (RPA) buffer. The NOV directed Mr. Huff to remove the fill and retaining wall from within the RPA buffer and to stabilize the disturbed areas. Mr. Huff has filed an appeal to the Board so that he can leave the retaining wall and fill in place.

The James City County Chesapeake Bay Preservation Ordinance, Sec. 23-7, prohibits development within an RPA without prior approval from the Manager. The Environmental Division has no record of Mr. Huff contacting Staff or the Manager, in an effort to obtain prior approval for the proposed development. In addition the proposed development activity, (a retaining wall and related fill) constitutes an accessory structure, and the Manager may not grant an exception for this activity through an administrative process.

The lot was recorded in 1997 after adoption of the Chesapeake Bay Preservation Ordinance but there was no RPA present on the lot at recordation or when the residence was built in 1998. However, 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 the stream and wetlands, as part of the building permit process for 2939 Leatherleaf Drive which is a property, located slightly upstream of Mr. Huff, and it was determined that the stream is a water body with perennial flow requiring that a 100 foot RPA buffer be established adjacent to the stream and wetlands

The residence located on the subject property was approved for construction in 1998. Mr. Huff purchased the property in 2003. A review of the 1998 building permit application information clearly shows the proposed location of the residence along with the limits of clearing and grading. Staff has no evidence that would indicate that a retaining wall existed on the subject property, at the same location of the wall presently under construction, prior to January 1, 2004.

Staff has met with Mr. Huff several times, discussed the violation, Ordinance requirements, possible remedies, and provided Mr. Huff with opportunities to provide Staff with additional information in support of his request for an exception. Staff has determined that the retaining wall and filling operation presently under construction is located within the channel ward 50' RPA buffer component. Staff believes that the location of the wall and fill constitute an additional encroachment into the RPA buffer. Staff also believes that directing Mr. Huff to remove the retaining wall, all fill, and to require the restoration of the buffer, is the appropriate regulatory response and is consistent with Ordinance.

It is Staff's recommendation, that the Board evaluate the appeal, and then look to the following section of the Chesapeake Bay Ordinance for guidance in this matter:

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.

If the Board votes in favor of the appeal then a mitigation plan in accordance with the standard mitigation requirements should be required. If approved, it should be conditioned on the following:

1. The Owner obtaining all necessary building permits and approvals from other regulatory agencies prior to the continuance of work.
2. Submission of a WQIA, along with an acceptable mitigation plan for the proposed RPA encroachment impacts prior to the continuance of work.
3. If approved the mitigation 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 satisfactory to the county attorney.
4. The Owner shall agree to meet all of the requirements set forth by the Board and the Division.