

Chesapeake Bay Board

February 14, 2007

A. Roll Call

B. Minutes -January 17, 2007

C. Presentation

1. JCSA – Danny Poe – Sewer Bridges

D. Public Hearings

1. CBE-06-091 - David Barth – 204 Kilton Forest
2. CBE-06-084 – Environmental Specialties Group/Villa Development– Villas at Five Forks – Cont from 1/17/07
3. CBE-06-078 – Williamsburg Environmental Group/Rauch Development – White Hall – North Off-Site Utilities
4. CBE-07-003 – James City County – Ironbound Road Regional BMP
5. CBV-06-007 APPEAL – Peter Paluzsay – 128 Shellbank Drive

E. Board Considerations - none

F. Matters of Special Privilege

1. Increase number of Board members

G. Adjournment

WQIA for CBE-06-091 – 204 Kilton Forest, Fords Colony

Staff report for the February 14, 2007 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	David Barth
Land Owner	(same)
Location	204 Kilton Forest, Williamsburg
Parcel Identification	3233100028
Staff Contact	Patrick Menichino Phone: 253-6675

Project Summary and Description

Mr. David Barth, of 10091 Oakton Terrace, Oakton, VA, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of a single family residence, deck and concrete patio, totaling 3811 square feet of impervious area. The lot is located adjacent to perennial features that require a 100-foot RPA buffer. This buffer encompasses approximately 90% of the lot.

A detailed mitigation plan has been provided along with the exception request for your review. The proposed mitigation plan proposes to mitigate for the 3811 square feet of impervious area by planting 10 canopy trees, 20 understory trees and 30 shrubs in planting beds to filter runoff from the impervious areas. The mitigation plan is in accordance with the standard mitigation requirements of the County. If the amount of plantings required exceeds the area within the RPA buffer that is available for planting, then as an option the applicant shall pay into a County approved environmental fund. The amount paid into the fund shall equal \$100.00 times the number of trees and shrubs required that cannot be planted on the property.

Staff recommends approval of the exception as the lot was created prior to the establishment of the RPA requirement. The house cannot be relocated on the lot to further minimize the encroachment in the buffer.

Full Report

The lot was recorded in 2003 after adoption of the Chesapeake Bay Preservation Ordinance but prior to 2004 when the Ordinance requirements related to the determination of perennial flow were changed requiring that perennial water bodies be identified based on a field evaluation. In 2006, as part of the administrative review of a building permit application for a proposed dwelling on this lot, it was determined that the proposed residence is adjacent to wetland features with perennial flow requiring that a 100 ft RPA buffer be established around those features. This 100 ft RPA buffer encompasses approximately 90% of the lot.

The owners have submitted a plan which proposes encroachments into the 100 ft RPA buffer through the construction of a single family residence, deck and concrete patio, totaling 3811 square feet of impervious area.

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;
3. The encroachment may not extend into the seaward 50 feet of the buffer area.
4. The lot or parcel was created as a result of a legal process in conformity with the county's subdivision regulations.

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 residence, deck and patio proposed within the seaward 50 foot buffer could not be approved administratively. The applicants have chosen to request an exception for these structures from the Board.

The issue for the Board's consideration is the installation of a 3811 square foot residence, deck and patio within the 100 foot RPA buffer.

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 RPA. 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 construction of a single family dwelling, deck and patio.

The WQIA proposes to mitigate for the impacts to the RPA by planting 10 native trees, 20 native understory trees, and 30 native shrubs in the RPA. This vegetation will be located to the rear of the proposed residence. The mitigation plan meets the typical mitigation requirements by planting 1 tree, 2 understory trees, and 3 shrubs for each 400 square feet of impervious cover established.

The owners 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

The Ordinance does not authorize staff to give administrative approval for the creation of structures within the seaward 50 foot RPA buffer.

Staff recommends approval of the exception as the lot was created prior to the establishment of the RPA requirement. The house cannot be relocated on the lot to further minimize the encroachment in the buffer. The project does not confer any special privileges to the applicant, and the exception is not based on self-imposed conditions. Staff recommends approval with the following conditions:

1. Full implementation of the mitigation landscape plan submitted with the WQIA or if field conditions prevent the full implementation of the RPA mitigation plan, an alternate plan along with a contribution paid into a County approved environmental fund may substituted. The amount paid into the fund shall equal \$100.00 times the number of required trees and shrubs not able to be planted on the property.
2. 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.
3. The patio will be constructed using non-interlocking brick pavers set in sand, instead of concrete.
4. The deck shall have 3 inches of gravel on filter fabric installed underneath.
5. Implementation of 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 instrument satisfactory to the county attorney.
6. This exception request approval shall become null and void if construction has not begun by February 14, 2008.

All recommendations adopted by the Board must be incorporated into the site plans for the project, which then must be approved by the Environmental Division before construction can begin. If the Board grants the exception, the proposed mitigation plan is in accordance with the standard mitigation requirements for impervious surfaces.

Staff Report prepared by: _____
Patrick Menichino

CONCUR: _____
Darryl E. Cook

- Exception Approved with Staff Recommendations
- Exception Denied
- Exception Deferred

Attachments:

William Apperson
Chairman
Chesapeake Bay Board

CBE-06-084. Villas at Five Forks.

Staff report for the January 17, 2007 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	Ms. Julie Steele, Environmental Specialties Group
Land Owner	Villa Development, LLC
Location	248 Ingram Road
Tax Map	4620100015
Staff Contact	Michael Woolson, Phone: 253-6823

Project Description

Ms. Julie Steele of Environmental Specialties Group has applied on behalf of Villa Development, LLC, for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the Villas at Five Forks development plan. The project is located at 248 Ingram Road, near the intersection of Ironbound Road and John Tyler Highway, otherwise known as the Five Forks area, and consists of approximately 31 acres of residential development.

This project proposes to encroach into the RPA by approximately 0.34 acres for the construction of two sanitary sewer connections, one water line connections and a BMP outfall. Site restrictions require that the proposed gravity sanitary sewer system and the proposed water line system tie into the respective existing systems adjacent to the site by a connection through the RPA.

History

A site specific perennial stream evaluation for the site approved on October 7, 2004. The Resource Protection Area (RPA), as depicted on the site plans is correct. Under Section 23-11 of the revised Ordinance, it states that a water quality impact assessment (WQIA) shall be required for any proposed land disturbance within RPAs resulting from development or redevelopment activities. Environmental Specialties Group has submitted the WQIA for this project. The proposed project's RPA impacts involve both categories of Ordinance exceptions; administrative and Board exceptions. The issue to be considered by the Chesapeake Bay Board is the 0.13 acre impact (clearing and land disturbance) associated with the installation of two sanitary sewer connections and a water line connection within the limits of the RPA

Water Quality Impact Assessment

The total impacts to the RPA buffer and RPA features resulting from the current plan of development are 0.34 acres. The impacts for the Board's action are associated with the

construction and installation of the two sanitary sewer connections which are required in order to obtain gravity flow to the existing sewer system for this project. There is a further impact for the Board's action, and that is for the construction and installation of a water line connection to the existing water system for this project. Though the installation of these systems will not produce any impervious area within the RPA, the utility easements will require regular maintenance and the existing woody vegetation will not be permitted to re-establish. To mitigate for these project impacts, the following will be incorporated into the associated plan of development:

- Conservation seed mix will be planted in the utility easements that must have on-going maintenance performed.
- Expansion of the RPA buffer by 0.36 acres through the use of conservation easements as mitigation at a 1:1 ratio for the buffer impacts.

Environmental Specialties Group, acting on behalf of Villa Development, LLC, has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The WQIA includes a map of the site showing the areas of RPA impacts. There are several references in the WQIA to the project's "plan set" that contains more detailed information. This "plan set" is the approved site plan for the project and is available at the Environmental Division office for Board members interested in seeing more site details. 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 finds 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 Villas at Five Forks project only. Furthermore, all recommendations listed therein are to be incorporated into the site plans for the associated 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 January 17, 2008. Any changes to the plan of development that would cause a 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.

Staff Report Prepared by:

Michael Woolson, Watershed Planner

CONCUR:

Darryl Cook, Environmental Director

- Exception approved with Staff Recommendations
- Exception Denied

William Apperson,
Chairman, Chesapeake Bay Board

Attachment:

1. Water Quality Impact Assessment, Villas at Five Forks, as submitted for review and approval on January 9, 2007.

CBE-06-078. White Hall.

Staff report for the February 14, 2007 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	Ms. Toni E. B. Small, P.E. of Williamsburg Environmental Group, Inc.
Land Owner	HHHunt Communities, Inc.
Location	East of the Richmond Road (Route 60) and Barhamsville Road (Route 30) intersection, south of Old Stage Road (Route 746), and is bisected by Rochambeau Drive.
Tax Map	Tax Map (12-2) Parcel #'s (1-14A, 14B, 18, 19, 22 and 24)
Staff Contact	Darryl Cook, Phone: 253-6673

Project Description

Ms. Toni E. B. Small, P.E. of Williamsburg Environmental Group, Inc. has applied on behalf of HHHunt Communities, Inc., for an exception to the Chesapeake Bay Preservation Ordinance for impacts associated with the White Hall development. The project is generally located to the east of Richmond Road (Route 60) and Barhamsville Road (Route 30) intersection, south of Old Stage Road (Route 746), and is bisected by Rochambeau Drive.

For the purposes of constructing the necessary sanitary sewer gravity main, water line, road infrastructure and dam repair, HHHunt Communities is proposing 2.33 acres of total encroachment into the Resource Protection Area (RPA).

History and Background

The Master Plan (MP-07-05) for the White Hall development was approved by the Planning Commission on September 13, 2005 as part of a rezoning application. HHHunt Communities, Inc., has submitted plans for offsite utilities (September 2006), road improvements (September 2006) as well as a subdivision plan which includes stormwater management ponds (December 2006) associated with the White Hall development which are the source of impacts requiring the current hearing.

A majority of the property is situated in the Ware Creek drainage basin. In a letter dated, September 12, 2006, the Environmental Division approved a site specific perennial stream evaluation which revealed that multiple perennial streams existed on the parcels which comprise the overall White Hall development. As a result, a Resource Protection Area (RPA) buffer of 100 feet has been imposed on both sides of the perennial streams and contiguous wetlands.

Water Quality Impact Assessment

The impacts to the RPA buffer and RPA features as detailed in Section 3.2 and on the Resource Protection Area Plan in the attached White Hall Water Quality Impact Assessment are summarized below:

Impacts to be reviewed for board action:

P-1, P-2, & P-5. Utility (sanitary sewer and water) Connections – Permanent RPA impacts of 1.27 acres outside the project limits (P-1) and 0.20 acres inside the project limits (P-2) are necessary for the sanitary sewer connection to the existing gravity sewer main offsite. In addition, there are 0.06 acres of impact associated with the waterline extension (P-5) for a total area of encroachment into the RPA of 1.53 acres related to utility construction. The waterline impacts and a portion of the sanitary sewer impacts are within non-functioning portions of the buffer as they are located within the disturbed portions (rights-of-way) of Rochambeau Drive and Old Stage Road respectively.

Impacts to be processed administratively:

P-3. Dam Repair – A permanent RPA impact of 0.62 acres is necessary for the repair of an existing dam.

P-4. Rochambeau Median Turn Lane – The turn lane within the median of Rochambeau Drive, required under proffer, will permanently impact approximately 0.17 acres of RPA buffer. The turn lane impacts lie within non-functioning portions of the RPA buffer within the existing disturbed portion (right-of-way) of the Rochambeau Drive roadway

Future Impacts:

Proposed future RPA impacts as shown in the RPA Plan are graphical representations and may be subject to minor changes as design plans for these impacts are finalized. They include 3 permanent impact areas associated with future stormwater outfall locations (labeled F-1, F-2 & F-3) as well as offsite sewer impacts (labeled F-4). Impacts F-1, F-2 & F-3 will be processed administratively, whereas F-4 will require future board review. A future WQIA with mitigation will be required for these future, proposed impacts.

To mitigate for the both the proposed administrative and Board impacts, the following will be implemented into the associated plan of development:

- Site stormwater quality management exceeding the minimum removal requirements (12 points provided vs. 10 points required);
- Revegetation of a portion of the utility line easement with the RPA buffer where allowed by JCSA;
- Preservation/enhancement onsite of 0.97 acres adjacent to the RPA buffer;
- Use of EC-3 matting along utility corridor;

- Use of conservation seed mix on disturbed utility easements outside of wetland areas;
- Use of wetland seed mix on disturbed utility easements outside of wetland areas;
- On the Bertrand Geddy property, through which a large portion of the sewer will be extended offsite, an area of 2.02 acres is being preserved in a conservation easement directly adjacent to the northeast side of the RPA buffer effectively expanding/preserving additional RPA buffer in this area. In addition, the majority of the remainder of the parcel including the southwest border of the RPA buffer is being placed in a Farm & Ranch Lands Protection (FRPP) easement further protecting areas adjacent to the buffer;
- Placement of orange safety fence along the limits of disturbance in the RPA and all wetland systems;
- Purchase of wetland mitigation credits for jurisdictional wetlands impacts.

A complete description of the proposed mitigation measures is presented in Section 3.3 of the attached White Hall Water Quality Impact Assessment.

The owners 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

Given the treatment of significant portions of offsite drainage area allowing the project to achieve 12 BMP points exceeding the 10 point requirement for stormwater compliance, the revegetation of portions of permanent utility easements in the RPA buffer, the restoration and preservation of 0.97 acres adjacent to a portion of the RPA buffer on the project site, the preservation of additional buffer area on the Geddy property, the enhanced erosion control measures, wetland/conservation mix replanting and orange safety fence barriers to protect the adjacent RPA buffers/features, 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. In addition, the purchase of wetland mitigation credits for jurisdictional wetland impacts will also be undertaken.

Therefore, staff recommends that the Chesapeake Bay Board approve the WQIA and the exceptions for the White Hall project. Furthermore, all recommendations listed in the WQIA 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 February 14, 2008. 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.

Darryl Cook

- Exception approved with staff recommendations
- Exception Denied
- Exception Deferred

William Apperson
Chairman,
Chesapeake Bay Board

Attachment:

1. White Hall Water Quality Impact Assessment (January 22, 2007).

CBE-07-033. Ironbound Road Regional BMP

Staff report for the February 14, 2007 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. Sanford Wanner, County Administrator, James City County
Land Owner	James City County
Location	Ironbound Square Redevelopment Project
Tax Map	3910100131
Staff Contact	Darryl Cook, Phone: 253-6670

Project Description

Mr. Mike Woolson has applied on behalf of Mr. Sandy Wanner and the James City County Office of Housing and Community Development (OHCD) for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for impacts associated with the Ironbound Square Redevelopment project. The project involves the construction of 56 single family residential units and 67 elderly multifamily housing units. The project is generally bounded by Ironbound Road to the west, Magazine Road to the north and east, Chambrel to the east, and the City of Williamsburg to the south.

For the purposes of constructing the project's regional stormwater management facility, OHCD is proposing 0.50 acres of encroachment into the Resource Protection Area (RPA).

History

James City County OHCD is in the process of redeveloping the Ironbound Square area to improve and increase the amount of housing available for low and moderate income residents of the county. Phase I of the redevelopment project was rezoned in 2005 and a site plan has approved for this phase that includes 67 multifamily affordable elderly housing units and five single family lots. Phase II of the rezoning is currently under review and will include 51 residential units, 20 of which must be affordable housing.

A site specific perennial stream evaluation approved by the County revealed that a perennial stream existed on the parcel at the confluence of two degraded intermittent streams, all of which are unnamed tributaries to College Creek. As this plan of development was submitted after January 1, 2004, the project was 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 perennial stream and contiguous wetlands.

An analysis was performed to evaluate four alternatives to provide stormwater management for the site. Due to site constraints and restrictions, a regional stormwater management facility, which will handle the stormwater runoff for the site and portions of the Ironbound Road widening project, has been proposed for installation in the headwaters of the perennial stream. The preferred alternative (Alternative 4 in the WQIA) does not lose any of the redeveloped lots, stabilizes the intermittent channels, and protects the downstream perennial stream. The location for this basin will permanently impact approximately 70+/- linear feet of the associated perennial stream, impact 0.5 acres of RPA buffer, and effectively relocate the RPA feature to the outfall of the proposed BMP.

The Ordinance requirements for development activities in the RPA are presented in Chapter 23 of the James City County Code. Under Section 23-7(a), stormwater management facilities may be allowed in the RPA and approved administratively if certain conditions are met. Those conditions are spelled out in Section 23-7(4)(a) through (f) and are listed here for clarification purposes:

- a. The location within the RPA is the optimum location, meaning that it is the best place to locate the facility from an engineering and functionality consideration regardless of the presence of the RPA;*
- b. The size of the facility is the minimum necessary to provide necessary flood control, stream channel protection, stormwater treatment, or all three;*
- c. The facility must be consistent with a stormwater management program that has been approved by CBLAB as a Phase 1 modification to the county's program;*
- d. All applicable permits for construction in state and federal waters must be obtained from the appropriate agencies;*
- e. Approval must be received from the county prior to construction;*
- f. Routine maintenance must be performed on the facility to assure that it continues to function as designed.*

As James City County does not have a Phase 1 modification to its stormwater management program in the College Creek watershed, the exception request cannot be processed administratively but must be heard by the Chesapeake Bay Board in a public hearing.

Water Quality Impact Assessment

The Ordinance in Section 23-11 states that “a Water Quality Impact Assessment (WQIA) shall be required for any proposed land disturbance in the RPA resulting from development or redevelopment activities.” The attached WQIA presents the impact to the RPA buffer and stream resulting from the plan of development and offsetting mitigation measures. The impact is associated with the construction of a stormwater management facility and its embankment in the RPA. To mitigate for the proposed impacts, the following will be implemented into the associated plan of development:

- All standard Erosion and Sediment Controls measures required by the Environmental Division, including erosion control blanket (EC-2) of the downstream face of the BMP;

- Stabilization of the embankment faces of the BMP with a conservation seed mix (on-site mitigation).
- Stabilization of a degraded stream channel within the Powhatan Creek Watershed on the Warhill site (Figures 8, 9, and 10). The proposed mitigation stream channel has become scoured and is experiencing bank instability through the reach. The future design will address the reasons for the instability. The ratio of restoration to impacts for the channel impacts will be approximately 4:1. This means that a minimum of 280 linear feet of channel will be restored or enhanced at the Warhill site (off-site mitigation).
- Preservation/enhancement of open space at the Warhill site. The ratio of preservation area to impacts to the buffer will be approximately 3:1. This means that about 1.5 acres of open space will be preserved/enhanced at the Warhill site (off-site mitigation).
- A plunge pool/stilling basin to reduce turbulence and downstream erosion will be provided at the BMP outfall;
- Treatment of approximately 20 acres of onsite and offsite stormwater runoff, the majority of which is currently uncontrolled discharge from currently developed upland areas;

A complete description of the mitigation measures is presented in the “Proposed Mitigation” Section of the WQIA for the project. The applicant has provided information on alternative stormwater management plans that present the environmental and development impacts of the alternatives.

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

Given the mitigation measures, the reduced construction and maintenance costs associated with a single regional BMP, maximization of the affordable building lots of the redevelopment project, and the treatment of 20 acres of uncontrolled onsite and offsite runoff, 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 and the exceptions for the Ironbound Road Regional BMP. Furthermore, all recommendations listed in the WQIA 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 February 14, 2008. 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.

Darryl Cook

- Exception approved with staff recommendations
- Exception Denied
- Exception Deferred

William Apperson
Chairman,
Chesapeake Bay Board

Attachment:

1. Water Quality Impact Assessment of proposed Site Improvements for the Ironbound Road Regional BMP (January 31, 2007).

MEMORANDUM

DATE: February 14, 2007

TO: The Chesapeake Bay Board

FROM: Patrick Menichino, Environmental Compliance Specialist

SUBJECT: Case: Chesapeake Bay Board Appeal – CBV-06-007 Peter L. Paluzsay, 128 Shellbank Drive, JCC Property ID Number - 4510200003

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.

Mr. Jason R. Barney on behalf of Peter L. Paluzsay, requested an appeal to James City County's Chesapeake Bay Board on August 2, 2006. This appeal is requesting that the Chesapeake Bay Board overturn a County Administrative Order dated May 18, 2006, requiring the removal of an unauthorized retaining wall and concrete rubble installed within the Resource Protection Area (RPA) buffer.

Description of 128 Shellbank Drive.

128 Shellbank Drive is a 3.75 acre parcel of land situated with 180' LF of frontage on the James River. There is a 100' RPA buffer that extends landward into the property from the shoreline.

A single family residence exists on the property; the residence is set back from the river and is not within the buffer as defined above. The lot was recorded prior to the adoption of the Chesapeake Bay Ordinance.

The Chesapeake Bay Preservation Ordinance

The Chesapeake Bay Preservation Ordinance adopted by the James City County Board of Supervisors on August 6, 1990, titled Ordinance Number 183 of the County Code authorizes the County to regulate activities within RPA components. As amended this ordinance is now titled: Chapter 23, Chesapeake Bay Preservation.

Summary of Facts

Mr. Paluzsay is the owner of the property, commonly known as 128 Shellbank Drive, and has maintained continuous possession and control of the property since 1971.

On November 3, 2000 Mr. Paluzsay was issued a Chesapeake Bay Notice of Violation resulting from unauthorized grading activity within the RPA buffer located at 128 Shellbank Drive.

In 2003, Mr. Paluzsay hired Stuart Usher of Landscape Solutions to install approximately 180 linear feet of retaining wall within the 50-foot RPA buffer adjacent to the James River to address storm related erosion.

Prior authorization for the construction of the retaining walls within the RPA buffer was not obtained from the Environmental Division as is required by the Chesapeake Bay Ordinance.

In 2006, Mr. Paluzsay authorized the dumping and placement of concrete rubble within the RPA buffer resulting in additional unauthorized encroachments in the buffer and within the James River tidal zone.

Chronology of Important Events

On May 12, 2006, Environmental Division staff visited 128 Shellbank Drive and determined that retaining walls, a staircase and concrete rubble had been installed within the RPA buffer. Staff photographed the property and the structures within the RPA. Staff later determined that authorization for the installation of the above described structures was not obtained from the County as is required by the Chesapeake Bay Preservation Ordinance.

On May 18, 2006, Mr. Paluzsay was sent a Notice of Violation (NOV) by staff. The NOV describes and defines the violation and identifies the steps required to begin to resolve to violation. The NOV also required the removal of the unauthorized structures from within the RPA buffer.

On May 24, 2006, Mr. Paluzsay sent a letter to the Environmental Director responding to the NOV. In that letter Mr. Paluzsay stated that “after the hurricane we hired a contractor to replace the wooden retaining wall that was washed away by the storm.” Mr. Paluzsay also stated that “the work being condemned by your office was performed by a licensed contractor” (Stuart Usher of Landscape Solutions) “who as far as I know acted within all applicable lawful and legitimate laws and regulations of this Commonwealth and the County.”

On July 27, 2006, staff met onsite with Mr. Jason R. Barney of MSA P.C., an environmental consultant representing Mr. Paluzsay, to discuss the violation, the NOV, and the administrative order.

On August 9, 2006, Mr. Barney on behalf of Mr. Paluzsay filed an official appeal to the Chesapeake Bay Board.

On August 9, 2006, staff met again onsite with Mr. Barney of MSA P.C. to discuss the violation, the appeal process and the steps necessary to resolve the matter.

On November 27, 2006, Mr. Paluzsay sent the Environmental Director a letter requesting “additional time of 60 days to make a submittal for your approval of what we propose to do to resolve the existing issues.” The letter also stated, “we filed a formal appeal hoping that it would gain us sufficient time to convince Stuart Usher of Landscape Solutions that he created a serious problem by his irresponsible and negligent conduct and that he needed to do at James City County all that was necessary to alleviate the violations.....”

On November 30, 2006, staff sent Mr. Paluzsay a letter indicating the conditions and requirements under which a 60 day extension would be granted by the County. The letter required that Mr. Paluzsay sign and return the letter to the Division. Mr. Paluzsay failed to sign and return the letter to the Division as required.

Response to the August 2, 2006, appeal of the administrative order dated: May 18, 2006

Staff has reviewed the August 2, 2006, appeal filed by Mr. Barney and offers the following response:

On August 9, 2000, Mr. Paluzsay of 128 Shellbank Drive applied for and was granted a permit from the James City County Wetlands Board to allow for the construction of a 157 linear feet of new timber bulkhead and 70 linear feet of riprap revetment along the James River shoreline. During the construction process, it was determined that 2,350 square feet of unauthorized grading activity occurred on a slope within the RPA buffer and a Notice of Violation was issued to Mr. Paluzsay on November 3, 2000. Following the issuance of the NOV, numerous meetings and correspondence between the County and Mr. Paluzsay resulted in an agreement intended to resolve the Chesapeake Bay Ordinance violation. That agreement included a requirement that Mr. Paluzsay restore the 2,350 sqft of RPA buffer with native trees, shrubs and ground cover.

Given this history of previous enforcement actions, staff concluded that Mr. Paluzsay has a thorough knowledge and understanding of the County's Chesapeake Bay and Wetlands Ordinances, and of the County's permit process and requirements. Yet in 2003, Mr. Paluzsay hired Mr. Usher and authorized him to perform substantial work within the RPA buffer without the permits and approvals required by the County.

Therefore, staff believes that the May 18, 2006, administrative order requiring the removal of the unauthorized retaining walls and concrete rubble from within the RPA buffer located at 128 Shellbank Drive is consistent with the intent of the ordinance and is warranted.

Staff Recommendations

As part of this appeal, Mr. Barney of MSA on behalf of Mr. Paluzsay, is requesting an after-the-fact authorization to allow an existing retaining wall to remain, and for Board approval of new proposed retaining walls within the RPA buffer. Both the Ordinance and staff considers retaining walls as an accessory structure. Unfortunately, staff cannot recommend approval of this appeal as it involves an impervious, accessory structure or use in the RPA. Staff has not in the past, and currently, cannot administratively approve the creation of accessory structures in the RPA. However, the Board has approved the construction of decorative block retaining walls in the past.

A Chesapeake Bay Restoration Plan has been submitted as part of this appeal and proposes restoration plantings as mitigation for the proposed RPA encroachments.

Mr. Paluzsay has through his attorney agreed to execute a civil charge agreement with the County and to pay a civil charge of \$2,000.00.

Should the Board act to grant the appeal (staff would not be opposed), staff would respectfully request that the following recommendations be incorporated into the Board's action:

1. The broken concrete rubble placed within the buffer and intertidal zone must be removed and disposed of in a method that is acceptable to the County.
2. The Board should consider the structural integrity of the existing retaining wall and any authorization by the Board to allow the existing retaining wall to remain in place should be subject to the appellant obtaining a permits and approvals from the County's Code Compliance Division.
3. The installation of additional retaining walls proposed and shown on the plans requires review by and a permit from the County's Code Compliance Division.
4. As shown on the submitted plans, both the existing retaining wall and the proposed retaining walls extend onto adjacent property. Therefore, authorization from the adjacent property owner must be obtained prior to Board action.
5. The RPA Restoration Plan as submitted proposes the installation of 75 Yaupon Holly plants as mitigation. Staff believes that both the quantity and species of the proposed plantings is inadequate. A revised restoration plan must be developed, and submitted that proposes the installation of (8) native canopy trees (16) native understory trees and (75) native shrubs, with no one species exceeding 25% of the total in each group. In addition, all areas within the RPA buffer proposed for grass must be established with a native grass seed mix. Future alteration or maintenance of vegetation with the RPA buffer will require written approval from the Environmental Division.
6. An RPA Restoration Agreement, with surety, must be executed by the appellant sufficient to guarantee the implementation of the restoration planting plan.
7. The Appellant agrees to enter into a civil charge agreement and pay a civil charge of \$2,000.00 to the County. This civil charge agreement must be approved by the James City County Board of Supervisors.

Board Action

Staff requests that the Board in considering this appeal, follow the guidance provided within the Ordinance. This guidance, found in 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. Further, 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.