

Chesapeake Bay Board

May 9, 2007

A. Roll Call

B. Minutes - April 11, 2007

C. Public Hearings

1. CBE-07-015 – Ronald Nervitt –108 Seven Oaks
2. CBE-07-019 – Gary Little – 7578 Vincent Drive
3. CBE-07-017 – HHHunt/Williamsburg Environmental Group – Mason Park

D. Board Considerations

1. CBE-06-071 - 3 West Circle - Special Committee Report
2. CBE-06-071 - 3 West Circle - Motion to rescind the March 14, 2007, decision on this case, which was to deny the exception.

E. Matters of Special Privilege

F. Adjournment

WQIA for CBE-07-015 – 108 Seven Oaks

Staff report for the May 9, 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	Ronald A. and Lois S. Nervitt	
Land Owner	(same)	
Location	108 Seven Oaks, Fords Colony, Williamsburg	
Parcel Identification	3130900038	
Staff Contact	Patrick Menichino	Phone: 253-6675

Project Summary and Description

Ronald and Lois Nervitt, 101 Stone Bridge Drive, Williamsburg, VA, have 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 and lap swimming pool, totaling 7034 square feet of impervious area. The lot is located adjacent to perennial features that require a 100-foot RPA buffer. This buffer encompasses approximately 95% 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 7034 square feet of impervious area by planting 18 canopy trees, 36 understory trees and 54 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.

The applicant has requested that the Board act upon (6) six specific requests included within the exception request.

Staff offers the following recommendations to the Board on those six requests:

1. Staff recommends the Board approve the RPA buffer encroachment for the proposed house and deck because encroachment into the buffer is unavoidable on this lot.
2. The clearing of utility easements for the purpose of individual service connections is authorized within the Ordinance as part of an authorized encroachment, therefore, separate Board approval is not required for utility easement clearing.
3. The Ordinance clearly prohibits staff from approving encroachments within the buffer for accessory structures or uses. The proposed infinity lap pool is considered an accessory structure and use. The Board has in the past granted exceptions for encroachments into the buffer for accessory structures such as; storage buildings, patios, decks and retaining

walls. The Board has not in the past received an exception request for a proposed swimming pool within the buffer; therefore, a precedent does not yet exist for the pool.

Staff believes that there is no difference in water quality impacts when comparing the impervious area of a storage shed and swimming pool within the buffer. However, the maintenance and construction requirements of a swimming pool exceed those of other accessory structures approved by the Board. In addition, the use is not a passive recreation facility of the type permitted in the buffer by the Ordinance. Without supporting documentation to the contrary, the Board should conclude greater overall water quality impacts will be caused from a swimming pool within the buffer than other accessory structures.

4. The removal of dead diseased or dying trees from within a buffer is authorized within the Ordinance and is approved administratively through the Division, therefore, separate Board approval is not required.
5. The installation of sod is approved within the areas identified as "Limits of Clearing" as shown on plan sheet 1 of 2, submitted by the applicant. Mitigation planting areas are identified on plan sheet 2 of 2, submitted by the applicant. Any additional clearing requests can be reviewed and approved administratively through the Division.
6. If the Board approves this exception request, the approval shall transfer with the land. This approval shall become null and void if construction has not begun by May 9, 2008. An extension can be requested in writing at least 2 weeks prior to the expiration date.

Full Report

The lot was recorded in 1997 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. Following 2004, an administrative review of the lake located behind this lot was determined to be a water body with perennial flow, requiring that a 100-foot RPA buffer be established around those features. This 100 foot RPA buffer encompasses approximately 95% of the lot.

The owners have submitted a plan which proposes encroachments into the 100 foot RPA buffer through the construction of a single family residence, deck and concrete patio, totaling 7034 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.”

The residence, deck and lap swimming pool are proposed within the seaward 50 foot buffer and cannot 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 7034 square foot residence, deck and lap swimming pool 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 18 native trees, 36 native understory trees, and 54 native shrubs in the RPA. This vegetation will be located around and 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 placement of principal structures within the seaward 50-foot RPA buffer or accessory structures within the 100-foot buffer.

Staff recommends approval of the exception request for the proposed residence and deck, as the lot was created prior to the establishment of the RPA requirement. The residence cannot be relocated on the lot to further minimize the encroachment in the buffer. This portion of the proposal does not confer any special privileges to the applicant, and the exception is not based on

self-imposed conditions. Staff can not recommend approval of the infinity lap swimming pool for the reasons stated previously.

Staff recommends approval of the proposed residence and deck 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 deck shall have 3 inches of gravel on filter fabric installed underneath.
4. 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.
5. This exception request approval shall become null and void if construction has not begun by May 9, 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

William Apperson
Chairman
Chesapeake Bay Board

Attachments:

CBE-07-019 - 7578 Vincent Drive

Staff report for the May 9, 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	Gary W. Little
Land Owner	Gary W. & Patricia A. Little
Location	7578 Vincent Drive, Hunters Creek
PIN	2220400036
Staff Contact	Patrick Menichino Phone: 253-6675

Project Summary and Description

Mr. Gary Little is appealing an administrative order and applying for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of approximately 100 linear feet of timber retaining wall and the installation of 1200 square feet of fill on the above referenced lot in Hunters Creek. The lot is 68,077 square feet or 1.565 acres in size.

The lot was recorded prior to the adoption of the Chesapeake Bay Preservation Ordinance. Therefore, there was no Resource Protection Area (RPA) present on the lot at the time of recordation. The single family residence on the lot was constructed in 1987. In 2004, a stream behind this lot was determined to have perennial flow requiring that a 100-foot buffer be established adjacent to the stream. This 100-foot RPA buffer, located on the rear of the property, encompasses about 60% of the lot.

Staff has reviewed this application and cannot support the installation of 100 linear feet of retaining wall and associated fill for the following reasons:

1. The Ordinance considers retaining walls as an accessory structure.
2. Staff has visited the project site and was unable to determine that an erosion problem existed in the rear yard that would warrant the installation of the proposed 100 linear feet of retaining wall and related fill.
3. Staff has acknowledged existing erosion problems by the driveway and adjacent to the house but not in the RPA.

Full Report

The lot was recorded prior to the adoption of the Chesapeake Bay Preservation Ordinance. Therefore, there was no Resource Protection Area (RPA) present on the lot at the time of recordation. 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 adjacent to the residence and it was determined that the stream is a water body with perennial flow requiring that a 100-foot RPA buffer be established around the stream. 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 before August 6, 1990, 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 issue for the Chesapeake Bay Board's consideration is the installation of approximately 100 linear feet of timber retaining wall and the installation of 1200 square feet of fill on the above referenced lot within 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 retaining wall could not be approved administratively and the applicants have chosen to request an appeal and 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 plan for this project which includes a mitigation plan to offset the proposed impacts to the RPA buffer for the retaining wall and fill.

That plan proposes to mitigate for the impacts to the RPA by planting 6 native trees and 50 native shrubs in the RPA. This vegetation will be located to the rear of the residence adjacent to the proposed retaining wall to help filter nonpoint source pollution. This mitigation plan exceeds the typical mitigation requirements of planting one tree or three shrubs for each 100 sq. ft. of impervious cover established.

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 consider the retaining wall as an accessory structure. Staff has not allowed the creation of accessory structures in the RPA in the past. However, the Board did approve construction of similar structures in Stonehouse at 2929 Leatherleaf Drive, and at 101 Spring Branch in Settlers Mill.

After reviewing this case, if the Board denies the appeal and exception request, then an RPA restoration plan should be required. If the Board considers approval of this exception, staff recommends that the following modifications and conditions be imposed:

1. The plan should be modified to limit the installation of retaining walls to areas where the applicant can clearly demonstrate that an erosion problem exists. Staff has not determined that an erosion problem exists across the entire back portion of the property. An erosion problem does exist in the area of the driveway.
2. The RPA mitigation plan is acceptable to staff and may be modified if the Board reduces the amount of retaining wall.
3. 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.
4. This exception request approval shall become null and void if construction has not begun by May 9, 2008.

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-07-017. Mason Park

Staff report for the May 9, 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 Small, PE, Williamsburg Environmental Group
Land Owner	HHHunt Communities, Inc.
Location	1916 Jamestown Road
Tax Map	4640100017
Staff Contact	Mr. Michael Woolson, Phone: 253-6670

Project Description

Ms. Toni Small has applied on behalf of HHHunt Communities for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for impacts associated with the Mason Park residential project. The project involves the construction of 15 single family residential units and assorted infrastructure, including roads, driveways, and stormwater BMP's. The project is situated within the tidal mainstem of Powhatan Creek, southeast of Jamestown Road, and southwest of the Landfall subdivision.

For the purposes of constructing the project, 0.14 acres of on-site RPA buffer and 0.09 acres of off-site RPA will be impacted for the installation of a sanitary sewer bridge and stormwater BMP outfall. Of the total 0.23 acres of RPA impact, 0.16 acres is related to the sanitary sewer (0.09 acres off-site and 0.07 acres on-site) and 0.07 acres is related to the stormwater BMP outfall. The sanitary sewer RPA impact is in the jurisdiction of the Chesapeake Bay Board to approve, while the stormwater BMP outfall will be processed administratively.

History

HHHunt Communities, Inc. proposes to construct the project known as Mason Park which will have 0.23 acres of permanent RPA impact due to the construction of a sanitary sewer connection and a stormwater BMP outfall. The applicant has undergone a detailed and extensive rezoning process which has been approved by the Planning Commission (8-7-06) and the Board of Supervisors (10-10-06).

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 impacts to the RPA buffer and wetlands resulting from the plan of development and the offsetting mitigation measures. The

impact is associated with the construction of a sanitary sewer bridge and a stormwater management facility and its outfall into the RPA. To mitigate for the proposed impacts, the following will be implemented into the associated plan of development:

- Site stormwater quality management exceeding the County standards for minimum pollutant removal requirements; and
- Use of a coastal plains seed mix within the utility easement outside of all wetland areas; and
- Use of a wetland seed mix within the utility easement within the disturbed wetland areas; and
- Placement of orange safety fence around the limits of disturbance within the RPA and all wetland systems; and
- Additional conservation areas adjacent to the regulatory RPA, placed within a conservation easement dedicated to James City County, in the amount of 0.6 acres at a ratio of 2.6:1.

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 and the compact nature of the development (utilizing Low Impact Development techniques), 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 to the Chesapeake Bay Board that they approve the WQIA and the exceptions for the project known as Mason Park. 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 May 9, 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.

Michael Woolson

CONCUR:

Darryl E. Cook

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

William Apperson
Chairman,
Chesapeake Bay Board

Attachment:

1. Mason Park Water Quality Impact Assessment, March 2007, revised April 2007.