

Chesapeake Bay Board

June 13, 2007

A. Roll Call

B. Minutes - May 9, 2007

C. Public Hearings

1. CBE-07-019. Gary Little – 7578 Vincent Drive - Continued from 5/9/07
2. CBE-07-022. Ronald Hazelwood - 8653 Hicks Island Road
3. CBE-06-071. Huckaby/Williamsburg Environmental Group – 103 West Circle

D. Board Considerations - None

E. Matters of Special Privilege - None

F. Adjournment

Memo

To: James City County's Chesapeake Bay Board

From: Patrick T. Menichino, Environmental Compliance Specialist

Date: June 13, 2007

Re: CBE-07-005 7578 Vincent Drive.

The above referenced case was presented to the Board at the May 9, 2007 meeting. The Board granted a request to defer this case to the June 13, 2007, to allow the applicant time to address the Boards concerns with staff and with Code Compliance. The Boards concerns are as follows:

1. Is the location of the retaining wall and amount of encroachment within the RPA buffer necessary.
2. The retaining wall did not appear to be constructed to building code standards and may constitute an environmental problem if it structurally fails.

Following the May 9, 2007 Board meeting, the applicant met with staff on June 3, 2007 to discuss the application. The applicant provided staff with revised construction cross section drawings of the new proposed wall and indicated that these revisions had not been reviewed by a design professional or by the Division of Code Compliance. The applicant also told staff that the new proposed wall would be installed at the same location as the existing unapproved wall.

Staff cannot support the approval of this application because the new retaining wall is proposed in the same location as the existing unapproved wall without any attempt by the applicant to minimize the RPA encroachment and impacts. Staff also believes that the request for a retaining wall is based on the applicant's desire to have a level yard and not to resolve a significant erosion problem on the property.

WQIA for CBE-07-022 – 8653 Hicks Island Road

Staff report for the June 13, 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 L. Hazelwood

Land Owner (same)

Location 8653 Hicks Island Road, Lanexa

Parcel Identification # 0910100011

Staff Contact Patrick Menichino Phone: 253-6675

Project Summary and Description

Mr. Ronald L. Hazelwood of 8653 Hicks Island Road, has applied for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of detached garage totaling 1500 square feet located behind a single family principal structure on the above referenced lot. The lot is 2.870 acres or 124,845 square feet in size. The property is zoned agricultural A-1.

The proposed garage is located within an area identified as RPA buffer due to a determination that the wetlands located at the rear of the property are connected to a perennial water body. A drain field located to the rear of the existing residence prevents the garage from being constructed in that area, behind the residence.

The proposed detached garage is considered an accessory structure, and staff does not have the authority to grant an administrative approval for encroachments into the RPA buffer for accessory structures. Staff has not administratively approved accessory structures in the past. A review of other similarly situated properties indicates the presence of accessory structures within the RPA buffer.

The applicant proposes to mitigate for the impacts to the RPA by planting four (4) native trees, eight (8) native understory trees and twelve (12) native shrubs within the buffer to help filter nonpoint source pollution. This mitigation plan meets typical mitigation requirements for similar impervious cover.

Staff is not opposed to the Board granting the applicant’s exception request.

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. In 1990 the County adopted the Chesapeake Bay Preservation

Ordinance which created Resource protection Areas adjacent to all water bodies with perennial flow. The front of the lot is adjacent to Upper Back Creek which is a tributary to Diascund Creek requiring a 100' RPA buffer be established on this lot. This 100' RPA buffer encompasses approximately 67% of the lot.

The issue for the Chesapeake Bay Board's consideration is the placement of a garage, 1500 square feet in size within the RPA buffer. 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 proposed garage cannot be approved administratively by the Manager and must be approved by 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 applicants have submitted a WQIA for this project.

The WQIA proposes to mitigate for the impacts to the RPA by planting four (4) native trees, eight (8) native understory trees and twelve (12) native shrubs within the buffer to help filter nonpoint source pollution. This mitigation plan meets typical mitigation requirements for similar impervious cover.

Board Action

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

Both the Ordinance and staff consider a garage to be an accessory structure. Unfortunately, staff cannot support approval of this exception request as it involves an impervious, accessory structures and 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 accessory structures in the past.

Staff is not opposed to the Board granting the applicant's exception request for the following reasons;

There is no mature vegetation removal required for the installation of the garage.

The proposed garage will be constructed over top of an existing gravel pad resulting in no net increase of impervious area.

There appears to be little opportunity to totally avoid an RPA encroachment on this property.

The RPA mitigation plantings proposed are consistent with the requirements of the Division.

After reviewing this case, if the Board considers approval of this exception, staff recommends that the following conditions be included within the Board action:

1. Full implementation of the mitigation landscape plan submitted with the WQIA.
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. A 3 to 4 inch deep mulch bed will be installed around all proposed mitigation plantings.
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. If field conditions prevent the installation of the proposed plantings at the locations shown on the approved plan then alternate planting locations must be reviewed and approved by the Division.
6. This exception request approval shall become null and void if construction has not begun by June 13, 2008.

Staff Report Prepared by:

Patrick Menichino

CONCUR:

Darryl Cook, Environmental Director

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

William Apperson
Chairman
Chesapeake Bay Board

Attachments:

Memo

To: James City County's Chesapeake Bay Board

From: Patrick T. Menichino, Environmental Compliance Specialist

Date: June 13, 2007

Re: CBE-06-071 – 3 West Circle

Case History

November 8, 2006 - James City County Wetlands Board Meeting

Shoreline stabilization project identified as W-19-06 – 3 West Circle, was presented to the Wetlands Board. This shoreline project proposed the installation of a rip rap revetment along the existing shoreline to eliminate the erosion caused by wave attack and storm events on the James River.

The JPA submitted for this project included reports from VIMS, VMRC, COE, along with the plans submitted by the applicant's consultant. Staff recommendation was for the approval of this project with certain conditions required.

Based on the information provided, the Wetlands Board unanimously approved the issuance of a Wetlands Permit for this project.

November 8, 2006 - James City County Chesapeake Bay Board Meeting

Following the Wetlands Board meeting the Chesapeake Bay Board convened and was presented a Chesapeake Bay Board Exception (CBE-06-071 – West Circle) to request a CBPO exception to allow for the installation of a retaining wall and fill on the property located at 3 West Circle. The work proposed in this application was originally a part of the overall plan for 3 West Circle but was separated out at the request of staff to delineate the jurisdiction of each Board.

Staff recommendation was for the approval of this project with certain conditions required.

Following the public hearing the Board voted to deny the applicants exception request by a vote of 4-1.

Although both cases involving 3 West Circle were presented to each Board the same evening by staff. The two separate staff presentations along with two phases of construction may have lead to confusion resulting in one phase approved and one denied, by the Boards.

February 2, 2007

In an effort to clarify the shoreline stabilization phase, staff reviewed the Wetlands permit (W-19-06), specifications and project plans and issued a memo to the Wetlands Board Chairman. That staff memo provided the Board with information and a determination on the scope of the work that was already approved within the Wetlands permit.

Over a period of months following the Chesapeake Bay Boards denial of (CBE-06-071) the second phase, the applicant and consultant have met with staff numerous times and they revised their proposal in a way to minimize impacts and to increase the mitigation/restoration to the RPA buffer.

March 14, 2007 - James City County Chesapeake Bay Board meeting

The applicant presented a revised exception request of CBE-06-71 to the Chesapeake Bay Board for consideration.

During the public hearing, the Board also heard from two adjacent property owners who voiced concern.

Mr. Noel Hume stated that his concern was for the impact to the Wetlands and to his home caused by the installation of the proposed bridge.

Mr. Darryl Rickman submitted information to the Board that stated that: *“A reasonable size house, compatible with the neighboring homes can be placed on the mainland side and meet the required setbacks”*.

Following the closing of the public hearing Board member Mr. David Gussman made a motion to deny the applicants request in part because of Mr. Darryl Rickmond’s statement, Mr. Gussman stated: *“If there is a buildable area outside of the RPA, then the exception request is not the minimum necessary to afford relief “*

The motion to deny the revised exception request was approved by a 4-0 vote.

March 28, 2007

Subsequent to the Chesapeake Bay Board’s second denial of CBE-06-071 staff requested verification from the County’s Zoning section that the Zoning Ordinance would allow for a residence to be built on the mainland side as was asserted at the hearing by Mr. Darryl Rickmond.

April 3, 2007

Staff meets with the County's Zoning office to discuss setback requirements for 3 West Circle. Zoning provides documentation that the current setback requirements for 3 West Circle would not allow for a residence, regardless of the proposed size, to be constructed in the area on the mainland side and out of the RPA as stated by Mr. Rickman at the March 14, 2007 Board meeting.

April 11, 2007 - Chesapeake Bay Board meeting

The Board appoints a special committee to review the information and facts concerning CBE-06-071, and to present a report of its findings at the next Chesapeake Bay Board meeting.

April 13, 2007

The County's Zoning office responds to staffs request and issues a memo concerning the setback requirements for 3 West Circle.

May 9, 2007 - Chesapeake Bay Board meeting

The Board receives the special committee report along with a recommendation for the Board to rescind its denial of CBE-06-071.

Following a discussion, a motion to rescind the previous vote to deny CBE-06-071 was made by Mr. Larry Waltrip and approved by the Board by a 5-0 vote.

Staff Report and Recommendation:

Staff believes that all members of the Board have now been provided the factual information necessary to render a fair decision on this case.

In an attempt to be fair and transparent the Board has in the past allowed discussions of issues during the public hearing that were actually not part of the exception request and are outside of the Boards purview.

One of these unrelated issues was a proposed open pile bridge providing access to the property. This proposed bridge has now been granted an administrative exception by the Environmental Director.

The application before you is an exception request to allow for 110 linear feet of retaining wall and the filling and grading of approximately 10,890 sqft. within the buffer located on the upper portion of the lot. This can be considered as the second phase of this project.

The first phase of this project was the shoreline stabilization phase already permitted under W-19-06. That phase of the project includes the installation of an armor stone revetment along the James River including filling and grading to elevation 90 where the fill will be tied into the existing high ground on the island. The area to be filled is the lower portion of the island along with the small pond. The filling of the small pond area received approval from the COE. The placement of fill and the creation of a fill slope are necessary to install and support the armor stone. As you know this island is subjected to wave attack as well storms producing significant storm surges. This phase of the project also requires the removal of the existing earthen causeway that currently provides access to the island. That area will then be planted with wetlands plants to restore the wetlands.

The Chesapeake Bay Preservation Ordinance permits the removal of vegetation and the filling and grading of RPA buffer for the purpose of shoreline stabilization projects. In fact the Wetlands Board has in the past routinely approved the grading and filling of RPA buffer for shoreline stabilization projects. Staff believes that the majority of impact to the RPA buffer at 3 west circle will occur during the shoreline stabilization phase (first phase). With only approximately ¼ acre of impact proposed during the Chesapeake Bay Exception phase before you tonight.

The retaining wall and the ¼ acre of grading and fill that are proposed in this phase will be installed after the armor stone revetment has been installed. To minimize the potential for any offsite discharge an erosion and sediment control plan along with a land disturbing permit will be required by the County prior to any work in the second phase. The project site will be monitored for environmental compliance by County staff until completion.

Staff believes that the Board now recognizes that the majority of impacts associated with the two phases of this project will actually occur during the first phase which is already permitted under the Wetlands permit.

In conclusion staff offers the following information and findings to the Chesapeake Bay Board for its consideration.

1. Staff finds that the exception request is the minimum necessary to afford relief because:
 - A. The lot was recorded prior to the adoption of the ordinance.
 - B. A buildable area outside of the RPA does not exist on the lot.
 - C. The proposed disturbance within the buffer is relatively small and is consistent with other single family exception requests granted by the Board.
 - D. The installation of the retaining wall will actually reduce the impacts within the RPA buffer.
 - E. The applicant has revised, minimized, and reduced the proposed impacts to the buffer.
2. Staff finds that granting this exception will not confer any special privileges to the applicant because:
 - A. The lot was recorded prior to the adoption of the ordinance.
 - B. Other similar single family exceptions have been granted by the Board.
 - C. Adjacent properties have RPA encroachments that are similar.
3. Staff believes that the exception request will be in harmony with the intent of the ordinance because:
 - A. It is clearly the intent of the ordinance to allow encroachments within the RPA buffer for single family residences on lots recorded prior to the adoption of the ordinance.
4. Staff believes that this exception request is not based on conditions or circumstances that are self imposed because:
 - A. There is not a buildable area outside of the RPA buffer on this lot.

5. Staff believes that reasonable and appropriate conditions can be imposed that will prevent the exception request from degrading water quality. Staff contends that the RPA mitigation plan proposed for this project far exceeds the standard mitigation requirements approved by the Board for similar projects.

Staff recommends that the Board approve this project with all of the conditions previously submitted within staff reports along with any additional and reasonable conditions the Board may apply.