

Chesapeake Bay Board

August 8, 2007

A. Roll Call

B. Minutes - July 11, 2007

C. Public Hearings

1. CBE-07-039. Jamestown Management , LLC - Trusswood Properties, LLC - 8963
Pocahontas Trail

2. CBE-07-019. Gary Little – 7578 Vincent Drive

3. CBE-07-031. Kenneth Brooks - 101 Brady Drive - continued from 7/11/07

D. Board Considerations

1. Amendments to the Bylaws

E. Matters of Special Privilege

F. Adjournment



MEMORANDUM

Date: August 8, 2007
To: Chesapeake Bay Board
From: Darryl E. Cook, County Engineer
Subject: Trusswood Waterline Extension, CBE-07-039

Since the time of advertisement, it has been determined that this case can be approved administratively and is therefore, being withdrawn from Board consideration. This memo presents the reason why the case is being withdrawn.

A site plan was approved in 2003 for the extension of a waterline to the Trusswood property, which is adjacent to the BASF property and James River Commerce Park. The waterline extension easement runs through both the BASF and Commerce Park property. Within the Commerce Park, the waterline is located on property owned by the County's Economic Development Authority (EDA). The EDA is working with the easement holder to adjust the location of the easement so that the easement will impact less developable land. The easement is being relocated on average about 40 feet to the west of its present location making it essentially parallel to the RPA line.

In 2003, when the site plan was approved, there was no RPA associated with the waterline construction. However, after the changes to the Chesapeake Bay Ordinance in 2004, the stream adjacent to portions of the waterline was declared to be perennial and an RPA has now been identified. A portion of the existing easement is within the RPA but these approved impacts are grandfathered in accordance with the vesting/grandfathering policy adopted by the Board of Supervisors when the Ordinance amendments were adopted in November, 2003.

When the revised location was first proposed, it was uncertain whether the changes would result in an overall increase or decrease in RPA impacts. If the impacts increased, it would require approval by the Board for those impacts. As there was a potential that the Board would have to hear the case, the case was advertised for public hearing at the August 8th meeting. However, the proposed changes to the waterline result in a decreased impact to the RPA of about 5900 square feet when compared to the existing approved plan. Because the changes to the easement result in a decreased impact to the RPA, staff can approve the changes administratively. The County Attorney's office concurs with the determination. Therefore, as the case does not need to be acted on by the Board, the case is being withdrawn.

MEMORANDUM

DATE: August 8, 2007
TO: The Chesapeake Bay Board
FROM: Patrick T. Menichino, Environmental Compliance Specialist
SUBJECT: CBE 07-019 - Gary W. Little, 7578 Vincent Drive

Mr. Gary W. Little is requesting an exception to allow for the construction of 150 linear feet of retaining wall within the Resource Protection Area (RPA) buffer located on the property. The retaining walls structural design, submitted with this application has been reviewed and stamped by a professional engineer. Staff believes that this structural design will meet the County's requirements for retaining walls. The proposed location of this retaining wall has not changed from the previous application submitted to the Board.

Background Information

The original May 9, 2007 Staff report has been included for the Boards review.

Mr. Gary W. Little appeared before the Board on May 9, 2007 to request an exception for a similar retaining wall located within the RPA buffer on his property. The Board agreed to defer the applicants request to the June 13, 2007, to allow the applicant time to address the Boards concerns.

The Boards concerns where as follows:

1. Was the proposed location of the retaining wall and amount of encroachment within the RPA buffer necessary?
2. Was the proposed retaining wall being constructed to building code standards and if not it could 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 revisions to the application. The applicant provided staff with revised construction cross section drawings of the new proposed wall but 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.

At the June 13, 2007 Chesapeake Bay Board Meeting, Mr. Gary W. Little failed to appear before the Board to present his revised exception request. Following Board consideration, the Board voted 4-0 to deny the applicants appeal and exception request.

On July 13, 2007 Staff sent Mr. Gary W. Little a letter advising him of the Boards decision and directing him to remove the partially built retaining wall within 30 days.

On July 13, 2007, Mr. Gary W. Little filed a new Chesapeake Bay Exception request for a retaining wall within the RPA buffer.

Recommendations

Staff cannot support the approval of this application for the following reasons. Both the Ordinance and staff considers the retaining walls as an accessory structure. Staff has not administratively

allowed the creation of accessory structures in the RPA in the past. In the original submittals to the Board the applicant stated that there was an existing erosion problem which necessitated the need for a retaining wall. A field review of the property by staff did not reveal an erosion problem in the rear yard requiring a retaining wall.

In the current July 13, 2007 exception request, the application states that the reason for the request is, "The retaining wall will be built at 40' from deck, (attached to home) this will give more yard space".

Staff does not believe that a retaining wall built within an RPA buffer for the purpose of creating more yard space is in "harmony with the purpose and intent" of the Ordinance. In addition, Staff contends that this proposed retaining wall is not required to correct a hardship, and is not the "minimum necessary to afford relief".

Following Board review, if the board considers approval of the applicant's exception request, staff recommends the following requirements and conditions be imposed and incorporated into that approval.

1. A revised RPA mitigation plan requiring the installation of (6) native trees, (12) native understory trees and (36) native shrubs be submitted to the Division for review and approval prior to the construction of the retaining wall.
2. 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 satisfactory to the county attorney.
3. The exception request shall become null and void if construction has not begun by August 8, 2008.

MEMORANDUM

DATE: August 8, 2007
TO: The Chesapeake Bay Board
FROM: Patrick T. Menichino, Environmental Compliance Specialist
SUBJECT: CBE 07-031 Kenneth K. & Billie D. Brooks, 101 Brady Drive

On July 11, 2007 the Board was presented an exception request from Kenneth K. & Billie D. Brooks, of 101 Brady Drive. This case (CBE 07-031) requested an after the fact approval for an existing 3840 square foot storage shed, constructed without County approval within the RPA buffer located on the property. Following board discussion, the applicants requested that the Board defer the case to provide them an opportunity to revise and resubmit their application, and reduce the size of the shed. A motion to defer this case until August 8, 2007 was approved by the Board.

On July 20, 2007 staff met with the applicants to discuss revising their exception request. At that meeting the applicants provided staff with a proposal to reduce the size of the existing 3840 square foot storage shed by removing 1440 square feet of the structure, including the concrete floor and foundation. The applicant also agreed to remove approximately 2400 square feet of gravel driveway.

Two revised plans have been submitted to the Board for review and consideration, these are labeled, Plan #1 and Plan #2.

Plan #1, is a demolition plan, which shows the proposed removal of 1440 square feet of structure and 2400 square feet of gravel drive.

Plan #2, is a mitigation plan, showing the removal of 1440 square feet of building and 2400 square feet of gravel drive, and these areas restored with (24) native trees and (24) native shrubs. The mitigation plan also requires the installation sand and topsoil, prior to the native plant installation, and the creation of an earthen berm to assist in the detention and infiltration of rainwater from the roof area. The installation of pipes or gutters to convey the rainwater to these areas is also required.

Staff believes that this revised application before the Board reduces the impervious impacts to the buffer and attempts to address the Boards water quality concerns.

The issue before the Board this evening is a revised application, requesting Board approval for a smaller 2400 square foot storage shed encroachment within the RPA buffer, located on the property.

The Board must consider if the removal of approximately 1440 square feet of the existing shed and 2400 square feet of existing gravel drive adequately reduces the RPA impacts, and if the proposed mitigation plan offsets the water quality impacts caused by the remaining structure.

Recommendations

Both the Ordinance and staff consider storage buildings as accessory structures and impervious surface. This proposed accessory structure is 2400 square feet in size, far larger then any other accessory structure approved by the Board. Staff believes that this exception request is inconsistent with the spirit and intent of the Ordinance. In addition Staff also believes that this

exception request is based on circumstances that are self imposed by the applicant and granting relief to the requirements of the Ordinance is not justified. For these reasons Staff does not support the granting of this exception.

However, should the Board vote to grant this exception request, staff would recommend the following conditions be applied:

1. The owners shall submit to the Environmental Division within 30 days, a more detailed RPA mitigation plan that is consistent with the County's standard mitigation requirements for impervious areas including the remaining shed area and gravel drive. Implementation of the mitigation plan shall 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.
2. All rainwater runoff from the proposed 2400 square foot shed roof will be conveyed to the proposed mitigation planting areas through pipes or downspouts.
3. Within 90 days of the Boards approval, the owners agree to execute a Chesapeake Bay Civil Charge Agreement with the County and provide for a one-time civil charge payment of \$5,000.00 for the previous unauthorized encroachment within the buffer.
5. Within 90 days of the Boards approval, the owners agree to obtain any and all approvals and/or permits required by other agencies with regulatory authority over the existing or proposed work.
6. Within 90 days of the Boards approval, the owners shall obtain a demolition permit from the County and begin removal of the 1440 square feet of storage shed structure and 2400 square feet of gravel drive.
7. This exception request approval shall become null and void if all conditions imposed by the Board and all required work is not completed by August 8, 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.