

Chesapeake Bay Board

January 9, 2008

A. Roll Call

B. Minutes - December 12, 2007

C. Public Hearings

1. CBE-07-107 – Vanasse Hangen Brustlin, Inc./Busch Properties – Spencer’s Grant
Continued from 11/14/07 - Requested continuance to 2/13/08
2. CBE-07-080 – Chris and Julie Rouzie – 144 Holdsworth Road - Continued request
for driveway addition from 12/12/07 - Requested continuance to 2/13/08
3. CBE-07-112 – Associated Developers - McFarlin Park
4. CBE-07-120 – Hallmark Builders/Michael Mock - 105 Pine Valley

D. Board Considerations

E. Matters of Special Privilege

F. Adjournment

MEMORANDUM

DATE: January 9, 2008
TO: The Chesapeake Bay Board
FROM: Patrick T. Menichino, Environmental Compliance Specialist
SUBJECT: Deferral of CBE-07-107 - Busch Properties Inc, Spencer's Grant

Mr. Kevin Kolda on behalf of Bush Properties Inc. has requested a continuance of the above referenced Chesapeake Bay Board Exception request until February 13, 2008.

Staff recommends that the Board grant the applicant a continuance of CBE-07-107 as requested.

MEMORANDUM

DATE: January 9, 2008
TO: The Chesapeake Bay Board
FROM: Patrick T. Menichino, Environmental Compliance Specialist
SUBJECT: Deferral of CBE 07-080 - Christopher & Julie Rouzie of 144 Holdsworth Road

Christopher & Julie Rouzie of 144 Holdsworth Road, Williamsburg, Virginia, have requested a continuance of the above referenced Chesapeake Bay Board Exception request until February 13, 2008.

Staff recommends that the Board grant the applicants a continuance of CBE-07-080 as requested.

CBE-07-112. McFarlin Park BLE and Minor Subdivision. S-060-07

Staff report for the January 9, 2008 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. Vernon Geddy, III Geddy, Harris, Franck & Hickman, L.L.P., Attorneys at Law
Land Owner	Lyman R. Hall, Jr.
Location	205 Neck O'Land Road
Tax Map	4740100011, 4740100013
Staff Contact	Mr. Michael Woolson, Senior Watershed Planner, Phone: 253-6670

Project Description

Mr. Vernon Geddy, on behalf of Mr. Lyman Hall, has applied for an exception to Section 23-7 (a) (3) of the Chesapeake Bay Preservation Ordinance (Ordinance) for impacts associated with the building of a driveway to access a portion of Mr. Hall's property (S-060-07). The plan of development will upgrade an abandoned logging/access road on the property in order to access Mr. Hall's proposed single family residence. The project is situated within the tidal mainstem of Powhatan Creek, and is bordered to the north by T. K. Oriental and vacant property, to the south and west by Powhatan Creek and to the east by Jamestown Road.

Brief History

Vanasse Hangen Brustlin, Inc. (VHB) has been contracted for the environmental permitting of this driveway crossing and AES Consulting Engineers for engineering and plan development for the driveway. VHB has provided a report titled *Alternatives Analysis: Access to Lot 1 – McFarlin Park* outlining the various alternatives proposed for access along with a water quality impact analysis.

The alternatives analysis presented three different options for accessing the proposed lot. Alternative 1 is the applicant's preferred alternative and utilizes the existing, abandoned logging road. Alternative 2 is the alternative that staff could approve administratively, in accordance with Section 23-7 (a) (3) of the Chesapeake Bay Preservation Ordinance, because it has the least amount of RPA impacts (it crosses perpendicular to the RPA). Alternative 3 is least preferred due to the overall length and other impact types.

The applicant has secured a Corps of Engineers permit to upgrade the abandoned road crossing for alternative 1. Alternatives 2 and 3 would require more extensive Corps permits which may or may not be granted by the Corps. Alternative 1 impacts the least amount of steep slopes, while alternative 2 impacts the most. Regarding the construction of each alternative, alternative 1 and 2 could be built by bridging or with a culverted crossing while alternative 3 would have to be bridged to eliminate the flooding liability that would occur with a crossing so near the property lines. From a cost analysis, culverts are easier and less expensive to construct than a bridge system.

The following table summarizes the various impacts to resources that the three alternatives have. Staff only has the ability to take into account the direct RPA impacts. Wetland and steep slope impacts, while having a direct connection to water quality, can not be taken into account by staff administratively.

	Alternative 1	Alternative 2	Alternative 3
Steep slope impacts	Least (1)	Most (3)	Moderate (2)
Wetland impacts	Moderate (2)	Most (3)	Least (1)
RPA impacts	Most (3)	Least (1)	Moderate (2)
Construction Cost	Least (1)	Moderate (2)	Most (3)

Assuming each environmental factor (wetlands, steep slopes, RPA) is weighted equally and scoring the degree of impact for alternative successfully higher as the degree of impact increases, it becomes apparent that alternative 3 should be the preferred alternative as it scores a “5”, while alternative 1 scores a “6” and alternative 2 scores a “7”. If construction costs are included in the analysis, then alternative 1 then becomes the lowest ranked alternative (total rank of 7) over alternative 2 (total rank of 9) and alternative 3 (total rank of 8).

Water Quality Impact Assessment

Section 23-11 of the Chesapeake Bay Ordinance 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 and alternatives analysis present the impacts to the RPA buffer and other resources resulting from the plan of development. To mitigate for the proposed impacts, the following will be implemented into the associated plan of development:

- Use of a coastal plains seed mix within the disturbed area of the driveway for areas outside of all wetland areas; and
- Use of a wetland seed mix within the disturbed area of the driveway within the wetland areas; and
- Placement of orange safety fence around the limits of disturbance within the RPA and wetland systems.

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

While this request can not be processed administratively because the preferred alternative does not minimize the RPA impacts consistent with Section 23-7 (a) (3) of the Chesapeake Bay Preservation

Ordinance, the preferred alternative (#1) minimizes impacts to all the environmental resources, minimizes impacts to water quality, and therefore the project is 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 this exception request for driveway alternative 1 for the project known as McFarlin Park BLE and Minor Subdivision. Furthermore, all recommendations listed in the staff report are to be incorporated into the plan of development (S-060-07) for the project, which must then receive final approval by the Environmental Division.

This exception does not confer any property rights, nor does it confer any type of plan approval. Any offsite easements and/or additional permits that may be required for this development must be obtained and evidence of such presented to the Environmental Division prior to issuance of a land disturbing permit and/or final plan approval. This exception request approval shall become null and void if construction has not begun by January 9, 2009. 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 D. Woolson

CONCUR:

Scott J. Thomas

Attachments:

1. Alternatives Analysis: Access to Lot 1 – McFarlin Park, dated November 7, 2007
2. Water Quality Impact Assessment, dated December 17, 2007
3. McFarlin Park BLE and Minor Subdivision, access road to lot 1

WQIA for CBE-07-120 – 105 Pine Valley

Staff report for the January 9, 2008, 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	Michael and Helma Mock	
Land Owner	(same)	
Location	105 Pine Valley, Fords Colony, Williamsburg	
Parcel Identification	3720400116	
Staff Contact	Patrick Menichino	Phone: 253-6675

Project Summary and Description

Michael and Helma Mock, of 108 Bluffs Circle, 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 screened porch, totaling approximately 3000 square feet of impervious area. The lot is located adjacent to perennial features that require a 100-foot RPA buffer. This buffer encompasses approximately 80% 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 3000 square feet of impervious area by planting 8 canopy trees, 16 understory trees and 24 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.

Staff offers the following recommendations and guidance to the Board:

1. Staff recommends the Board approve the RPA buffer encroachment for the proposed house, deck and screened porch with staff recommendations:
2. 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 January 9, 2009. An extension can be requested in writing at least 2 weeks prior to the expiration date.

Full Report

The lot was recorded prior to the 1990 adoption of the Chesapeake Bay Preservation Ordinance. Following the adoption of the Ordinance a one hundred foot RPA buffer was required to be established on the lot adjacent to the resource. This 100 foot RPA buffer encompasses approximately 80% of the lot.

The owners have submitted a plan which proposes encroachments into the 100 and 50 foot RPA buffers through the construction of a single family residence, deck and screened porch totaling approximately 3000 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 prior to 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.

The attached deck and screened porch are proposed within the seaward 50 foot buffer therefore it cannot be approved administratively. These structures are considered to be part of the principal structure, and the applicants are requesting an exception for this encroachment from the Board.

The issue for the Board's consideration is the installation of a 3000 square foot residence, deck and screened porch within the 100 and 50 foot RPA buffers.

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 screened porch.

The WQIA proposes to mitigate for the impacts to the RPA by planting 8 native trees, 16 native understory trees, and 24 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:

Recommendations

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

Staff recommends approval of the exception request for the proposed residence and deck, and screened porch, 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.

Staff recommends approval with the following conditions:

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. 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 January 9, 2009.

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: _____
Scott J. Thomas

Attachments: