

Chesapeake Bay Board

APRIL 9, 2008

A. Roll Call

B. Minutes - from March 12, 2008

C. Public Hearings

1. CBE-07-080 – Chris and Julie Rouzie – 144 Holdsworth Rd - request for driveway addition and mitigation planting plan: Continued from 12/12/07, 1/9/08 and 2/13/08

2. CBE-08-016 – John and Judith Anton - 7511 & 7513 Oak Cove Road

3. CBE-07-107 – Vanasse Hangen Brustlin, Inc/Busch Properties – Spencer’s Grant
Continued from 11/14/07, 1/9/08, 2/13/08, and 3/12/08

D. Board Considerations

E. Matters of Special Privilege - None

F. Adjournment

MEMORANDUM

DATE: April 9, 2008
TO: The Chesapeake Bay Board
FROM: Patrick T. Menichino, Environmental Compliance Specialist
SUBJECT: CBE 07-080 Chris and Julie Rouzie, 144 Holdsworth Road, Kingsmill

On February 13, 2008, the Board granted Chris and Julie Rouzie a continuance of CBE 07-080 until April 9, 2008.

The applicants are requesting a Chesapeake Bay Exception to allow a driveway modification and expansion including the construction of retaining walls. Staff has reviewed the revised mitigation planting plan and is satisfied that it meets the requirements of the Environmental Division. The applicants have executed a Chesapeake Bay Restoration Agreement and posted adequate surety to guarantee the installation of the required plantings.

Staff recommends the Board grant the exception request with the following conditions:

1. The driveway surface shall be constructed of sand set brick type pavers as shown on the Land Tech plan dated 2/12/08.
2. The retaining walls shall be constructed as shown on the Land Tech plan dated 2/12/08.
3. The infiltration trench and storm drainage system shall be installed as shown on the Land Tech plan dated 2/12/08.
4. The applicants must obtain all necessary approvals and permits from other regulatory agencies that may have jurisdiction.
5. The RPA mitigation planting plan shall be implemented as shown on the LPDA plan dated 3/11/2008. The applicants must also adhere to the terms and conditions set forth in the Chesapeake Bay Restoration Agreement executed on 2/1/08.
6. This exception shall become null and void if construction of the above improvements is not begun by April 9, 2009.

CBE-08-016 - 7511 Oak Cove Road

Staff report for the April 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	John H. Anton
Land Owner	John H. Anton
Location	7511 Oak Cove Road, Cypress Point
PIN	1910100014 and 1910100015
Staff Contact	Patrick Menichino Phone: 259-1443

Project Summary and Description

Mr. John H. Anton is requesting an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of approximately 94 linear feet of vinyl retaining wall along with the disturbance of 1,410 square feet of buffer on the above referenced lot in Cypress Point. The lot is 20,010 square feet or .46 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 1967. This 100-foot RPA buffer, located on the rear of the property, encompasses about 50% of the lot.

Staff has reviewed this application and cannot support the installation of 94 linear feet of retaining wall and associated impacts 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 exists in the rear yard that would warrant the installation of the proposed 94 linear feet of retaining wall and 1,410 square feet of disturbance.

Background

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 WQIA for this project.

The applicant has also submitted a mitigation plan that proposes to mitigate for the impacts to the RPA by planting (8) native trees and (16) understory trees and (24) 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 would create 3000 square feet of vegetated RPA buffer landward of the proposed retaining wall. Staff believes the creation of 3000 square feet of buffer would have a positive affect on the water quality function of the existing buffer.

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 Ordinance:

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 administrative creation of accessory structures in the RPA in the past.

If the Board considers approval of this exception, staff recommends the following modifications and conditions are imposed:

1. An RPA mitigation plan depicting the species and location of the proposed (8) canopy, (16) understory and (24) shrubs must be submitted and approved by the Environmental Division. The plan must show the entire 3000 square foot mitigation area covered with 4 inches of wood mulch. Any upslope areas disturbed during construction must be restored by the applicant or his contractor.
2. 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.
3. The applicant must obtain all other approvals from regulatory agencies that may have jurisdiction over this project, including a James City County building permit.
4. A preconstruction meeting must be held onsite prior to the onset of work.
5. The retaining wall must be installed with a sand based backfill and filter fabric.

6. This exception request approval shall become null and void if construction has not begun by April 9, 2009.

Staff Report Prepared by:

Patrick Menichino

CONCUR:

Scott J. Thomas

MEMORANDUM

DATE: April 9, 2008
TO: JCC Chesapeake Bay Board & Wetlands Board
FROM: Patrick T. Menichino, Environmental Compliance Specialist
SUBJECT: CBE 07-107 & W-25-07 - Busch Properties, Inc. – Spencer's Grant

On February 13, 2008 the Chesapeake Bay and Wetlands Boards continued the above referenced Chesapeake Bay Exception request and Wetlands case and received additional public comment. Following that meeting, another continuance to the April 9, 2008 Board meeting was subsequently granted to the applicant.

On March 14, 2008 an onsite meeting was arranged by the applicant and representatives from Chesapeake Bay Local Assistance (CBLA), Department of Conservation and Recreation (DCR) Shoreline Erosion Advisory Service (SEAS), Virginia Institute of Marine Science (VIMS), and County Staff was invited to attend.

As a result of that meeting the applicant has made the following revisions to the proposed project.

1. The proposed backshore armor stone revetment was decreased in length by approximately 83 linear feet.
2. The entire length of the armor stone revetment (1,213 LF) will be in-filled with sand and then covered with approximately 1 foot of sand fill.
3. The entire revetment area (12,500 SF) will be then be planted with beach grasses.

Summary

The exception (CBE 07-107) is requesting Board approval for 29,000 square feet of RPA buffer grading impacts, along with the installation of 1,213 linear feet of armor stone revetment, located within the backshore beach area, resulting in another 17,750 square feet of impacts. The Wetlands case is requesting approval for the expansion to offensive armor stone breakwaters, and 4,000 cubic yards of sand fill for beach nourishment.

The proposals before the Board have been revised and refined several times in an effort to reduce impacts to the minimum necessary. In keeping with that intent preservation areas within the RPA buffer and within the beach area have been maximized to reduce overall impacts.

Mitigation for the proposed RPA impacts, include the installation of native plant material within the buffer in the following areas and quantities:

1. Zone III A - lower bank - (37) Trees, (74) Understory Trees, (111) Shrubs (total 222)
2. Zone III – upper bank - (60) Trees, (120) understory Trees, (180) Shrubs (total 360)
3. Armor stone revetment planting with beach grasses totaling 12,500 square feet.
4. Additional offsite RPA native plantings located at the adjacent River's Bluff project totaling (185) trees and understory trees.

Mitigation proposed for the Wetlands phase includes:

1. The installation of approximately (80) native trees and shrubs within the back shore area of the beach.
2. The installation of approximately 51,500 square feet of herbaceous plantings (beach grasses) along the entire beach length.

The shoreline stabilization phase of this project has now been reviewed by staff from VIMS and SEAS. The SEAS engineer has provided a letter indicating that the project as designed will protect the shoreline and upland bank, and minimizes environmental impacts to the greatest extent possible.

Recommendations

Staff recommends that the Wetlands Board approve W-25-07 for the following reasons.

Staff believes that the proposed shoreline stabilization phase of this project (breakwaters and beach nourishment) is an appropriate method of shoreline stabilization and is consistent with other shoreline projects approved by the Board.

The proposed project has been thoroughly reviewed and has had input from the best technical people available.

A net increase of 450 square feet to the Intertidal Beach Community will result from the beach nourishment.

Mitigation planting with Wetlands type grasses and other upland type plantings are proposed to offset any impacts.

Staff also recommends approval of CBE-07-107 as revised for the following reasons.

The proposed backshore armor stone revetment is designed to protect a steep, unstable wooded slope from damage caused by wave attack, and storm surge generated by future storm events along the James River.

The applicant and their consultants have worked with staff to eliminate, minimize, and mitigate for proposed RPA impacts on this project. Although slope grading activity is still proposed, it has been significantly reduced to the minimum necessary and includes only those unstable areas of the slope, most at risk of failure.

The proposed grading of slopes within the RPA buffer is an approved method of stabilization and is consistent with other shoreline projects similarly situated, that have been reviewed and approved by the Board.

The proposed project will not be a substantial detriment to water quality. The applicant has at the recommendation of staff reduced overall impacts to the RPA buffer. The applicant has provided for RPA mitigation plantings.

In addition, the proposed plan will permanently divert all stormwater runoff away from the steep slopes along the shoreline and convey the runoff to an approved Best Management Practice (BMP) pond, where the stormwater can be effectively treated and released.

Staff recommends that the following conditions be included should the Board vote to approve this Chesapeake Bay Exception and Wetlands Permit:

1. The applicant must obtain all other permits necessary and required by other agencies, including a James City County Land Disturbance Permit prior to the required preconstruction meeting.
2. A preconstruction meeting shall be held onsite prior to land disturbance.
3. Surety for the implementation of the RPA Mitigation Plan shall be provided in a form satisfactory to the County Attorney, pursuant to sections 23-10(3)(d) and 23-17(c) of the James City County Code prior to the pre-construction meeting. The surety shall be held for one full year following the initial installation and inspection if the plant material. All plant material must be alive and thriving as determined by the Environmental Division at the time of the one year anniversary inspection. If during the anniversary inspection plant material is determined to be dead, diseased or missing, the surety will be held until all planting material required by the plan is installed and thriving.
4. All mitigation plantings proposed shall be reviewed by County staff prior to installation and may be modified by staff, as deemed necessary to achieve a satisfactory result.
5. All trees and understory trees proposed for installation shall be a minimum 6'-7' in height or 1" caliper. All shrubs shall be 3-5 gallon container size, and 18" to 36" in size.
6. The entire re-graded slope shall first be stabilized using 4-6" of new topsoil, and conservation seed mix of native grasses, and covered with EC-2 type blanket matting.
7. The applicant shall arrange for weekly project inspections to be performed by a qualified independent professional. The weekly inspection reports generated shall be submitted to the Environmental Division, to insure that the project is being constructed in accordance with the approved plan, project specifications, and requirements, along with the permit conditions of the Chesapeake Bay Board and Wetlands Board. Prior to the preconstruction meeting, the applicant must provide the name of the person or firm, who will perform said inspections.
8. The applicant must receive approval from the County Engineer for any proposed activity within conservation easements located on the property. The applicant must also resolve any property line and conservation easement conflicts or issues with the County Engineer.
9. The exception shall not conflict with the provisions of the approved plan for development for Kingsmill-Spencer's Grant, County Plan No. SP-53-05.
10. All additional conditions stipulated within the previous staff reports for W-25-07 and CBE -07-107 and not addressed in this memo, shall be incorporated into these conditions.
11. RPA signs shall be installed by the applicant along the landward extent of the RPA buffer as directed by staff.