

Chesapeake Bay Board

December 10, 2008

A. Roll Call

B. Minutes

1. November 13, 2008 – Board Meeting

C. Public Hearings

1. CBE-09-048 – Sallwasser/Hallmark – 201 St Cuthbert

2. CBV-09-006 – APPEAL- Drummond – 165 Indian Circle

D. Board Considerations

1. Election of Board Secretary

E. Matters of Special Privilege

F. Adjournment

MEMORANDUM

DATE: December 10, 2008

TO: The Chesapeake Bay Board

FROM: Patrick Menichino, Environmental Compliance Specialist

SUBJECT: Chesapeake Bay Board Appeal – CBV-09-006
Mr. George F. Drummond, 165 Indian Circle

<p>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.</p>
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Mr. George F. Drummond of 165 Indian Circle filed an appeal to James City County's Chesapeake Bay Board on October 28, 2008. Mr. Drummond is appealing a Notice of Violation and administrative order issued by the County on October 21, 2008. That Notice of Violation ordered the removal of unauthorized fill, concrete driveway and retaining wall installed within the Resource Protection Area (RPA) buffer located on his property. Staff has reviewed the unauthorized encroachments and estimates the RPA impacts as: concrete driveway 500 square feet, fill 800 square feet and retaining wall 55 linear feet.

The Chesapeake Bay Preservation Ordinance

The ordinance was adopted by the James City County Board of Supervisors on August 6, 1990. It was titled Ordinance Number 183 and added to the County Code as: Chapter 19B, Chesapeake Bay Preservation.

As amended this ordinance is now titled: Chapter 23, Chesapeake Bay Preservation.

Description of the Property

The property is located at 165 Indian Circle and further identified as James City County Parcel Identification Number 5920200045.

The property is 1.09 acres in size and has a single family residence located on it. The residence was built in 1974, prior to the adoption of the ordinance. The rear of the property abuts an upper portion of Skiffes Creek, a tributary of the James River. A 100' RPA buffer was established adjacent to Skiffes Creek following the adoption of the ordinance in 1990. It is estimated that this RPA buffer encompass approximately 80% of the lot.

Summary of Facts

Mr. Drummond purchased the property in 2004. Mr. Drummond has maintained continuous possession and control over the property.

Since 2004 Mr. Drummond has applied twice to the County for Administrative Exceptions to the ordinance.

In 2006 Mr. Drummond was granted an administrative exception to install an additional roof attached to the rear of the principal residence in order to cover an existing patio.

In 2006 Mr. Drummond also applied to the Chesapeake Bay Board for an exception to build a detached garage in the RPA buffer. Prior to the case being presented to the Board Mr. Drummond withdrew his application for the exception.

In February 2008 Mr. Drummond submitted another exception request for a proposed 28 ft x 58 ft garage connected to the principal residence on one corner. Although this proposal received initial administrative approval, a thorough onsite inspection revealed that approximately 1800 square feet of new concrete driveway had been installed within the RPA buffer without authorization from the County. Following that inspection Mr. Drummond was notified that he would be required to file for an exception request with the Chesapeake Bay Board for both the driveway and the proposed garage. Mr. Drummond expressed concern about going before the Board. He requested that staff work with him in an effort to resolve the issue, and he indicated that he would be willing to reduce proposed impacts and provide mitigation for the existing impacts. Staff agreed to work towards an acceptable resolution of the issues.

On February 21, 2008, staff and Mr. Drummond reached agreement on the following specific actions and conditions required for a new administrative exception to be granted.

1. Mr. Drummond agrees to remove 175 square feet of unauthorized concrete drive and remove a 12 ft x 16 ft wood shed from within the RPA buffer.
2. A 10ft x 10ft bio-retention facility planted with (3) native shrubs and ground cover, shall be installed within the RPA buffer.
3. RPA mitigation plantings of (6) canopy trees, (12) understory trees and (18) shrubs shall also be installed within buffer.
4. An administrative approval shall be granted for the installation of an attached 24ft x 40 ft garage and a concrete driveway pad to service the principal structure expansion of 400 square feet.
5. An RPA mitigation plan showing the location of the proposed bio-retention facility and the locations and species of all required native plants, must submitted to staff within 30 days from February 21, 2008.

February 21, 2008, the administrative exception was granted by the Environmental Director and Mr. Drummond signed the exception. Mr. Drummond agreed to all of the conditions stipulated and signed an email from the Compliance Specialist detailing those conditions.

Mr. Drummond fails to submit the required RPA mitigation plan despite attempts by staff to obtain it.

October 21, 2008, following an inspection Code Compliance notified Environmental staff that Mr. Drummond had not followed the approved building site plan resulting in potential compliance issues. The Compliance Specialist contacted Mr. Drummond and informed him that staff will visit the site and perform an inspection. The Director and the Compliance Specialist visited the site and determined the following:

1. Approximately 900 square feet of concrete driveway pad had been installed. (500 square feet more than approved)
2. Approximately 55 linear feet of treated wood retaining wall had been installed within the RPA buffer.
3. Approximately 800 square feet of fill had been placed within the RPA buffer.
4. The required bio-retention facility had not been installed.
5. The required (6) canopy trees, (12) understory trees and (18) native shrubs had not been installed.
6. The 175 square feet of concrete driveway required to be removed as a condition of approval, had not been removed.
7. The garage had been completed as approved.
8. The 12ft x 16ft shed had been removed as required.

October 21, 2008, staff contacted Mr. Drummond to discuss the results of their inspection. Staff informed Mr. Drummond that a Notice of Violation (NOV) will be prepared and sent to him. The NOV was then sent, describing the violation and ordering Mr. Drummond to remove the unauthorized encroachments from within the RPA buffer.

October 30, 2008, Mr. Drummond filed an appeal to the Chesapeake Bay Board.

Staff Recommendations

Staff requests that the Board apply the guidance provided in the ordinance as follows:

Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance. The Board shall not decide in favor to the appellant unless it finds:

1. The hardship is not generally shared by other properties in the vicinity;
2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
3. The appellant acquired the property in good faith and the hardship is not self-inflicted.

Staff contends that Mr. Drummond has a thorough understanding of the County's Chesapeake Bay Ordinance, as it applies to development activities of this single family residence. Staff believes that Mr. Drummond has in the past been granted administrative relief from the ordinance on two separate occasions. Staff contends that additional relief from the ordinance is not warranted and any additional requests should be considered serial in nature. Staff has evaluated the impacts caused by the unauthorized encroachments and determined them to be moderate.

WQIA for CBE-09-048 – 201 St. Cuthbert

Staff report for the December 10, 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	George & Susan Sallwasser
Land Owner	(same)
Location	201 St. Cuthbert, Fords Colony
Parcel ID #	3721000054
Staff Contact	Patrick T. Menichino Phone: 253-6675

Project Summary and Description

George & Susan Sallwasser of 103 Quantico Loop Yorktown, VA, have applied for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of a concrete patio and attached masonry staircase located on the rear of a principal single family residence presently under construction in Fords Colony.

The applicants were granted an administrative exception on October 8, 2008 for a covered porch and upper deck attached to the rear of the single family residence. The proposed concrete patio will be located within the covered porch directly underneath of the upper deck, therefore there is no increase of impervious area. The proposed masonry staircase will create approximately 68 square feet of additional impervious area with the landward 50 ft RPA buffer.

The lot was recorded in 1998 after adoption of the Ordinance and no RPA was present at that time. In 2004 the Ordinance was amended to include water bodies with perennial flow. Following 2004 a perennial evaluation was performed on a pond adjacent to the rear of this property and it was determined to be perennial, resulting in the establishment of a 100 ft RPA buffer on this lot. The lot is 18,270 square feet or 0.42 acres in size. The 100 ft RPA buffer encompass approximately 0.175 acres or 40% of lot.

Staff considers patios and staircases not attached to the principal structure to be accessory. Staff does not have the authority to grant an administrative approval for encroachments of accessory structures. To be consistent with the Ordinance, staff can not support the installation of accessory structures in RPA components. However, the Board has in the past approved encroachments for accessory structures within the RPA buffer.

Staff would not be opposed to the Board granting the applicant's exception requests for the concrete patio and staircase for the following reasons:

1. Staff has determined that there would be no net increase in impervious area created by the concrete patio, and only 68 square feet created by the masonry staircase.
2. The patio and staircase are necessary to provide a rear exit from the principal structure and access to the ground from the raised porch.
3. Staff has evaluated the water quality impacts caused by the additional 68 square feet and determine them to be minimal.

Full Report

The lot was recorded in 1998 after the adoption of the Chesapeake Bay Preservation Ordinance but there was no RPA present on the lot at 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 conducted for a pond adjacent to this lot identified it as perennial thereby requiring that a 100 foot RPA buffer be established on the lot around the pond. This 100 foot RPA buffer encompasses about 40% of the lot.

According to provisions of Section 23-7 (c) 2 (b); 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 this case, the proposal is for an accessory structure encroachment within the 100 ft RPA buffer, therefore, the exception request must be processed by the Chesapeake Bay Board after a public hearing.

The issue for the Board's consideration is the additional impacts associated with the installation of the concrete patio and masonry staircase (accessory structure), resulting in 68 square feet of impervious area within the 100 ft 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 required to offset the 68 square feet of impervious cover impacts have already been incorporated within the RPA mitigation planting plan that was part of the administrative approval.

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 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 considers retaining walls to be accessory structures. Staff does not have the authority to grant an administrative approval for encroachments within the RPA buffer for accessory structures. To be consistent with the ordinance Staff can not support the installation of accessory structures in RPA components. However, the Board has in the past approved encroachments for accessory structures within the RPA buffer

Staff would not be opposed to the Board granting the applicant's exception requests for the following reasons:

1. Staff has determined that there would be no net increase in impervious area created by the concrete patio, and only 68 square feet created by the masonry staircase.
2. The patio and staircase are necessary to provide a rear exit from the principal structure and access to the ground from the raised porch.
3. Staff has evaluated the water quality impacts caused by the additional 68 square feet and determine them to be minimal.

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. This exception shall become null and void if construction of the patio and staircase and all required mitigation planting is not completed within 12 months from the date the exception or waiver is granted by the Board

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.

Staff Report Prepared by:

Patrick T. Menichino
Compliance Specialist

CONCUR:

Scott J. Thomas,
Secretary to the Board

Attachments: