

Chesapeake Bay Board

May 13, 2009 - 7:00 p.m.

A. Roll Call

B. Minutes

March 11, 2009 – Board Meeting

C. Public Hearings

1. CBE-09-076 – Ford’s Colony/Promark Custom Homes – 109 Mahogany Run
2. CBV-09-001 – APPEAL- Hutchens – 516 Sir George Percy

D. Board Considerations - None

E. Matters of Special Privilege - None

F. Adjournment

WQIA for CBE-09-076 – 109 Mahogany Run.

Staff report for the May 13, 2009, 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 Mark Buckley, Promark Custom Homes

Land Owner Ford's Colony First Choice Realty Inc.

Location 109 Mahogany Run, Williamsburg, Virginia

Parcel Identification 3131000010

Staff Contact Patrick Menichino Phone: 253-6675

Project Summary and Description

Mr. Mark Buckley, of Promark Custom Homes, on behalf of Ford's Colony First Choice Realty Inc., has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer, for the construction of a 10' x 14' wood frame storage shed totaling approximately 140 square feet. The lot is located in Ford's Colony and was recorded after the 1990 adoption of the Ordinance. Following the Ordinance revisions in 2004, a perennial feature and wetlands adjacent to the rear of the property was identified thereby requiring a 100' landward RPA buffer. The lot is 0.563 acres in size and the RPA buffer encompass approximately 54% of the lot or 0.29 acres. The wood frame storage shed will encroach into the landward 50' RPA buffer.

An RPA mitigation planting plan has been provided along with the exception request for your review. The plan proposes to mitigate for the RPA impacts by planting (1) native canopy tree and (3) native shrubs to filter runoff. The amount of plantings proposed meets the standard mitigation planting requirements of the County.

Staff evaluated the request for the wood frame storage shed, and consider it to be an accessory structure, and therefore according to the Ordinance it cannot be granted by administrative exception. The Board has in the past reviewed and granted exceptions for accessory structures within the RPA buffer.

Staff offers the following information as guidance to the Board concerning this application.

1. The applicants have applied for an exception to allow for a 10' x 14' wood frame storage shed within the RPA buffer, creating 140 square feet of impervious area.
2. The applicants have submitted an RPA mitigation planting plan that meets the standard mitigation planting requirements of the County.

3. Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal.

Brief History

The lot was recorded after the adoption of the Ordinance, and no RPA existed on the lot at that time. 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 perennial feature at the rear of the lot was identified requiring that a 100 foot RPA buffer be established on the lot. This 100 foot RPA buffer encompasses about 54% of the lot.

In this case, the exception request is for a wood frame storage shed within the 100 foot buffer and which does not qualify for an administrative waiver because the request is for an accessory structure. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

Water Quality Impact Assessment (WQIA)

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 the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant has submitted a WQIA for this project and proposes to mitigate for the impacts to the RPA by planting, (1) native canopy tree, and (3) native shrubs, in the RPA on the lot to help filter nonpoint source pollution.

The issue before the Board is the addition of the 140 square feet of impervious area created by the installation of the wood frame storage shed within the RPA buffer. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14(c) of the Ordinance.

Recommendations

Staff has evaluated the request for the wood frame storage shed and has determined it to be an accessory structure and therefore according to the Ordinance it cannot be granted by administrative exception. To be consistent with the ordinance requirements Staff can not support the approval of this exception request for an accessory structure.

If the Board votes to approve the exception request, then staff recommends that the following conditions be incorporated into the approval:

1. The applicant must obtain all other permits required from agencies that may have regulatory authority over the proposed activities, including a James City County building permit if required.
2. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements shall be guaranteed through the provisions of the

Ordinance contained in Sections 23-10(3) d. and 23-17(c), a form of surety satisfactory to the County Attorney.

3. The size of the mitigation trees shall be 1" caliper 6'-7' tall, and the shrubs shall be 3-5 gallon size 15"-18" tall. All trees and shrubs shall be native species approved by the Environmental Division.

Staff Report prepared by: _____

Patrick T. Menichino
Compliance Specialist

CONCUR:

Scott J. Thomas,
Secretary to the Board

Attachments:

MEMORANDUM

DATE: May 13, 2009
TO: The Chesapeake Bay Board
FROM: Patrick T. Menichino, Environmental Compliance Specialist
SUBJECT: CBV 09-001- Thomas Hutchens, 516 Sir George Percy

Mr. Thomas Hutchens (owner) 516 Sir George Percy, Kingsmill, filed an appeal to James City County's Chesapeake Bay Board on March 23, 2009. Mr. Hutchens is appealing a Notice of Violation and administrative order issued by the County on October 21, 2008. The Notice of Violation ordered the removal of an unauthorized retaining wall from within the Resource Protection Area (RPA) buffer and Conservation Easement (CE) located on his property. Staff has reviewed the unauthorized encroachment and estimates the RPA impacts as 50 square feet of decorative concrete block retaining wall, and 500 square feet of turf lawn.

On September 8, 2008 Staff became aware of the unauthorized encroachments following the submission of a buffer modification request to the Environmental Division by the owner. Staff has met with the owner several times to discuss resolving the RPA and CE issues on the property. The existence of a CE on the property requires that the CE be vacated and exchanged for a similar sized CE elsewhere in Kingsmill. The owner and representatives of Kingsmill have been working towards achieving that exchange, but as of this date the process has not been completed.

Staff has reviewed the appeal and violation documents and offers the following information for the Board's consideration.

1. Mr. Hutchens is the original owner of the property. The lot was recorded after the 1990 adoption of the Ordinance. The residence was constructed in 2005 and both the RPA and CE boundaries were identified on the residence's site development plan.
2. Mr. Hutchens' contracted to have a 50' long x 5' high decorative concrete block retaining wall installed on his property. The wall is situated approximately 20' channelward, of the 100' RPA buffer line.
3. Mr. Hutchens has recently applied for an after the fact building permit for the wall.
4. Staff has evaluated the adverse impacts associated with the 50 SF of impervious retaining wall and has determined them to be minimal. Staff has also noted that a significant amount of turf grass (approx. 500 SF) that has been established within the RPA.
5. The owner in his appeal letter indicates a willingness to provide native mitigation plantings in an area below the wall. However, the plan submitted along with the appeal does not show any proposed mitigation plantings.
6. The issue of the CE exchange has not yet been resolved. Staff would not recommend the Board act upon this appeal until the CE issue is finalized.
7. The retaining wall is considered to be an accessory structure.
8. To be consistent with the intent of the Ordinance, Staff does not support the granting of this appeal.

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.

Should the Board vote to grant the appeal, staff offers the following recommendations and guidance for consideration.

1. The owner shall mitigate for the retaining wall by installing (2) canopy trees, (4) understory trees and (6) shrubs in the area below the existing retaining wall. All plant material shall be native species and should meet the following size requirements: shrubs 3-5 gallon container size and trees 6-7 feet in height and 1"-1 ½" in caliper.
2. The removal of the existing turf from within the RPA buffer should be considered as a condition of approval.
3. A revised plan entitled: "Mitigation & Restoration Plan, for 516 Sir George Percy", incorporating any Board recommendations must be submitted to the Division for approval.
4. A Chesapeake Bay Restoration Agreement must be executed, along with surety in the amount of \$1,000.00 and submitted to the County in a form acceptable to the County Attorney to guarantee the full implementation of the "Mitigation & Restoration Plan for 516 Sir George Percy".