

Chesapeake Bay Board

7 P.M. – Building F

Jan. 12, 2011

A. Roll Call

B. Minutes

From December 8, 2010 – Board Meeting

C. Public Hearings

1. CBV-11-007 APPEAL – Haney – 3 Joy Circle – Dog Kennel

D. Board Considerations

E. Matters of Special Privilege

F. Adjournment

MEMORANDUM

DATE: January 12, 2011
TO: The Chesapeake Bay Board
FROM: Tina E. Creech, Senior Environmental Inspector
SUBJECT: CBV-11-007: Mr. Ronald Haney, 3 Joy's Circle, Hunter's Creek Subdivision

Mr. Ronald Haney has filed an appeal of the Chesapeake Bay Preservation Ordinance Notice of Violation requirements dated November 16, 2010. The Notice of Violation required the execution of a Chesapeake Bay Restoration Agreement, the restoration of RPA with native plantings, and removal of the dog kennel.

On November 8th 2010, staff was contacted about a possible unauthorized dog kennel located in the RPA at this particular residence. Staff initiated an investigation and as a result has documented a violation of the County's Chesapeake Bay Preservation Ordinance. Staff subsequently met with the property owner regarding this issue on November 16th 2010. The property owner filed a request to appeal the administrative decision on December 6th 2010 (received December 8th 2010).

Historical Background Information

The property has been sold three times since the home was built in 1994. The current property owners, Ronald and Janice Haney, purchased the property on February 10, 2010 and had no prior knowledge that a Chesapeake Bay Preservation Area was designated on the property. They have stated to staff that no disclosure was provided during the residential sale of the property.

Based on a review of 2007 GIS aerial photography, the area affected by the dog kennel did not have native vegetation removed. Based on site observations, the size of the dog kennel area is approximately 10 ft. wide by 20 ft. long. The dog kennel was placed on existing level ground approximately 20' from the creek. The dog kennel area has a mixed gravel and sand bedding surface and thus is considered as impervious cover and fill. The topography of their lot does not allow placement of the dog kennel in another level area on the property. The property owner stated that he utilizes a 50-gallon barrel for the collection, storage and disposal of waste material from the dog kennel operation. The existence of the barrel and shovel was evident in the picture submitted by the complainant on November 8th 2010 and during the initial site visit by staff.

Staff Guidance and Recommendations

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

1. Sections 23-10 and 23-11 of the County's Chesapeake Bay Preservation Ordinance require the submission, review and approval of a plan of development for any development or redevelopment exceeding 2,500 square feet of land disturbance in Chesapeake Bay Preservation Area (CBPA) and/or the submission, review and approval of a water quality impact assessment (WQIA) for any proposed land disturbance, development or redevelopment activity in RPA.
2. 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; and
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's guidance to the Board on deciding this matter is as follows:

1. The hardship is shared by other properties immediately adjacent to the appellants' property as well as numerous other properties within the Hunter's Creek Subdivision that have RPA components located on them.
2. The granting of the appeal in this case may not adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity.
3. This hardship was self-inflicted.

Should the Board find in favor the appellant, the Board should require that an application for dog kennel area come before them at a subsequent regularly scheduled Chesapeake Bay Board meeting within 90 days for review and consideration.

Should the Board find in favor of staff, staff will further pursue the violation in accordance with Section 23-18 of the County's Chesapeake Bay Preservation Ordinance and work with the County Attorney's office to resolve the matter through established civil penalty or civil charge provisions of the ordinance. This will involve removal of the dog kennel area and restoration with native plantings.

Resolutions for granting or denial of the appeal for Chesapeake Bay Violation CBV-11-007 are included for the Board's use and decision.

Attachments

1. Notice of violation dated November 16, 2010
2. Appeal statement dated December 9, 2010
3. Resolutions
4. Photographs