

Chesapeake Bay Board

Building F

Aug. 9, 2012, 7 p.m.

A. Roll Call

B. Minutes

From July 12, 2012 – Board Meeting

C. Public Hearing(s)

1. CBV-12-009 APPEAL – Benson – 328 Mill Stream Way – Deck

D. Board Consideration(s)

1. CBE-10-038 – Cooke’s Gardens – 1826 Jamestown Rd – 2nd extension request

E. Matters of Special Privilege

1. Annual Report from Scott J. Thomas

F. Adjournment

MEMORANDUM

Date: August 8, 2012

To: The Chesapeake Bay Board

From: Michael D. Woolson, Senior Watershed Planner *MW*

Subject: Appeal of Notice of Violation, Natural Open Space Easement and Resource Protection Area
328 Mill Stream Way, Settler's Mill at Jamestown, Section 6
JCC PIN 4711900018

Mr. and Mrs. Michael and Mechelle Benson, owners of the above referenced property, are appealing the administrative decision to remove a deck that was built in an area designated as natural open space (NOS) easement and resource protection area (RPA). The deck was built without the Zoning Enforcement Division's approval and without any building permits from Building Safety and Permits Division.

The lot was platted on April 28, 1999, with the conservation easement clearly identified on the lot but without any RPA designation. This was due to the fact that there was no defined RPA identified on or adjacent to the lot as defined by the Ordinance in effect at that time. However, on January 1, 2004, revisions to the Ordinance became effective that changed how perennial water bodies are identified and now it is required that determinations be made based on a field investigation. In 2007, property owners who were affected by the revised ordinance were notified by mail.

On or about January 9, 2012 representatives from the Engineering and Resource Protection and Zoning Enforcement Divisions visited the property at the request of the real estate agent listing the property for sale. A deck was observed in the NOS easement and RPA, not attached to the principal structure. Further research into County records did not indicate any of the necessary approvals or building permits for the deck structure. The Benson's purchased the property later in January 2012.

The two issues before the Board are similar in nature; therefore it is staff's intent that any decision be applied to both issues (RPA and NOS). The deck is a violation of condition #1 of the easement as no written documentation has been found nor provided indicating that the County Engineer approved the structure being placed in the easement. The deck is also considered an accessory structure under the provisions of the Ordinance as it is a free-standing structure not part of the principal structure (primary residence) on the lot. The matter is before the Board for the RPA issue as staff does not have the ability under to Ordinance to authorize the placement of an accessory structure in the RPA. The matter is before the Board for the NOS easement issue as the easement was placed on the lot to partially satisfy the stormwater requirements set forth under the Ordinance for the subdivision.

In their appeal letter, the Benson's indicate that no mature canopy trees were removed for the deck. Staff believes this to be a true statement, as no evidence to the contrary could be found. The

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Benson's also indicate that they are willing to replant the understory and shrub layers that were removed.

In making a decision on this appeal, the Ordinance states that the Board needs to *balance* the hardship to the property owner with the purposes, intent and objectives of the Ordinance. The Board needs to make the following findings in order to decide in favor of the appellant:

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.*

The Board can impose reasonable and appropriate conditions to the granting of any exception, waiver or variance as it deems necessary in the public interest to ensure that the purpose and intent of the Ordinance are preserved.

If the Board decides to adopt the resolution to grant the appeal, staff would recommend that the Benson's be required to enter into a Chesapeake Bay Restoration Agreement and mitigate the impervious area of the deck at a rate of twice the normal rate to ensure that water quality is not adversely affected. In this case, the plantings would be onsite and consist of 2 understory trees and 6 shrubs.

Staff is available to answer questions related to this appeal.

Attachments:

Notice of Violation, Natural Open Space, dated May 15, 2012

Notice of Violation, Resource Protection Area, dated May 15, 2012

Appeal Letter, received June 8, 2012

MEMORANDUM

Date: August 8, 2012
To: The Chesapeake Bay Board
From: Michael D. Woolson, Senior Watershed Planner *MW*
Subject: Extension – CBE-10-038
Cooke's Garden Center

Mr. Charlie Martino, of Cooke's Garden Center, requested an extension to CBE-10-038 on July 11, 2012. This is more than two weeks prior to the expiration date, as stipulated in the approved conditions (August 11, 2012). The extension is being requested due to fiscal problems associated with the funding for all of the improvements on the approved site plan. All permit conditions required within the original approval for CBE-10-032 shall apply to the permit extension, with the exception of the expiration date, which shall be August 11, 2013. Staff concurs with this request and recommends that the Chesapeake Bay Board extend the expiration date to August 11, 2013. The Board may, at its discretion, reauthorize the approval for a two year period making the expiration date August 11, 2014.

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