

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
MAY 12, 2004 - 7:49 PM**

A. ROLL CALL ABSENT

Henry Lindsey
William Apperson
Philip Duffy
Larry Waltrip
David Gussman

OTHERS PRESENT

Environmental Staff

B. MINUTES – April 14, 2004

The April 14, 2004 minutes were approved as presented.

C. OLD BUSINESS – None

D. PUBLIC HEARINGS

**1. CBE-04-009: Monticello Woods Active Adult LLC - The Settlement at Monticello,
4101 Monticello Ave**

Mr. Darryl Cook presented the case as follows:

Project Description

Mr. James Bennett of AES Consulting Engineers has applied on behalf on Monticello Woods Active Adult, LLC, for an exception to the Chesapeake Bay Preservation ordinance for impacts associated with The Settlement at Monticello project. This project is generally located south on Monticello Avenue (across from Monticello Woods), east of Powhatan Creek, west of Powhatan Plantation, and northwest of Powhatan Crossing. Phase 1 of The Settlement at Monticello encompasses 67.7 acres and 137 residential building lots.

This project proposes to encroach into the existing Resource Protection Area by approximately 0.95 acres for the construction of roads, stormwater management facility outfalls and sanitary sewer construction.

History

Since this project was first conceived over six years ago, there were Resource Protection Areas associated with Powhatan Creek and the major wetland system that traverses the site east to west.

Under the *Chesapeake Bay Preservation Ordinance Transition – Amendments and Grandfathering/Vesting Rules* resolution passed by the Board of Supervisors on November 25, 2003; this project is grandfathered under paragraph 5 which states “Approved rezoning and special use permits will have to comply with the provisions of the revised Ordinance unless the property cannot be legally developed to the proffered density, use, or square footage because of the new rules, or there is a specific

feature . . . shown on the proffered zoning plan that is located within the RPA, in which case the landowner may develop . . . (while) minimizing any intrusion into the RPA to the extent possible.”

Under Section 23-11 of the new Ordinance, it states that a water quality impact assessment shall be required for any proposed land disturbance development or redevelopment within RPAs. Monticello Woods Active Adult has submitted this assessment for this project. This assessment containing two types of exceptions: an administrative exception and a Board exception. The issue before the Chesapeake Bay Board is the impacts associated with the sanitary sewer connections through the RPA, impacting 0.20 acres of RPA.

Water Quality Impact Assessment

The total impacts to the RPA for this project are approximately 0.95 acres and encompass the building of a road crossing, stormwater management facility outfalls, and sanitary sewer connections. The Board is considering only the impacts to the RPA resulting from the sewer construction, 0.2 acres of encroachment. As part of the mitigation for the total impacts, Monticello Woods Active Adult proposes to expand the RPA buffer in certain areas so that it exceeds 100-feet in width. They are also looking into providing additional RPA planting in consultation with the Environmental Division in areas that were logged six years ago and are proposing to stabilize all disturbed areas accordingly. Disturbed area for construction activities associated with the sewer extensions will be stabilized with native grasses and possibly native shrubs if allowed by the James City Service Authority.

AES Consulting Engineers has 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):

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

Staff finds that the WQIA and the project are consistent with the spirit and intent of the Ordinance and the criteria as outlined in section 23-14(c). Staff recommends that all sanitary sewer easements be stabilized with a native conservation grass seed mix and that the Chesapeake Bay Board approve the WQIA as it pertains to this project only. Furthermore, all recommendations listed within the WQIA are to be incorporated into the site plans for the project, which then must be approved by the Environmental Division. The exception shall become null and void if sewer construction has not begun by May 12, 2005.

Mr. Lindsey opened the public hearing.

A. Mr. Chris Basic, AES Consulting Engineers, stated he was available to answer any questions that the Board might have.

There were no questions from the Board.

As no one else wished to speak, Mr. Lindsey closed the public hearing.

Mr. Apperson made a motion to approve case CBE-4-009/WQIA-002-04 with staff's recommendations.

The motion was approved by a 5-0 vote.

**2. CBE-04-008: New Town Associates, LLC - New Town–Sect. 4, Block 8,
5206 Monticello Ave**

Mr. Darryl Cook presented the case as follows:

Project Description

Mrs. Toni Small of Williamsburg Environmental Group has applied on behalf on New Town Associates, LLC, for an exception to the Chesapeake Bay Preservation ordinance for impacts associated with the New Town Section 4, Block 8 project. The New Town project is generally located northwest of the intersection of Monticello Avenue and Ironbound Road, south of Eastern State Hospital and east of Route 199. Section 4, Block 8 encompasses 15.89 acres within the New Town development.

New Town Associates proposes to encroach into the newly determined Resource Protection Area by approximately 1.65 acres for the construction of roads, residential structures, stormwater management facilities and sanitary sewer construction.

History

The owners of a tract of land formerly known as the Casey Tract, submitted a master plan and rezoning request over 7 years ago. Part of this submittal was a master stormwater plan and environmental inventory. When the original rezoning request was made, no Resource Protection Areas (RPAs) as defined by the ordinance in effect at the time were present on site. An RPA was required along a tributary stream, a solid blue line stream on the United State Geological Survey (USGS) 7.5 minute quadrangle map. Plans were developed based upon this definition. Gradually, development took place within the New Town project site, starting with the Williamsburg-James City County Courthouse and associated stormwater management facility (BMP). The other development fronting Monticello Avenue down to the United States Post Office is being developed in accordance with the New Town design standards.

On January 1, 2004, the Chesapeake Bay Preservation Ordinance of James City County was updated to meet the new guidance and regulations adopted by State statute and the State's Chesapeake Bay Local Assistance Department. The new ordinance changes how a RPA is to be defined, which is by using a field determination of perennality instead of a solid blue line stream on a USGS map. In order to comply with the new ordinance, New Town Associates hired Williamsburg Environmental Group to perform a stream perennality assessment for the entire project site. The perennality assessment was accepted by the County by letter dated March 15, 2004, to Mrs. Toni Small, of Williamsburg Environmental Group.

The new definition of RPA now affects approximately ½ of the streams that are present on site, including the entire western stream, downstream of the previously mentioned Courthouse BMP. Prior to January 1, 2004, plans were submitted for Section 4, Block 8, Phase 1 for the construction of residential units, a temporary sediment basin and associated erosion and sediment control structures. After January 1, 2004, plans were submitted for Section 4, Block 8, Phase 2.

Under the *Chesapeake Bay Preservation Ordinance Transition – Amendments and Grandfathering/Vesting Rules* resolution passed by the Board of Supervisors on November 25, 2003; Phase 1 of this project is grandfathered and Phase 2 is not grandfathered. Paragraph 3 states “Plans already in the development review process and those accepted for review prior to the effective date of the Ordinance will not be subject to the new ordinance.” However in paragraph 5, Rezoning and Special Use Permits, it states “Approved rezoning and special use permits will have to comply with the provisions of the revised Ordinance unless the property cannot be legally developed to the proffered density, use, or square footage because of the new rules, or there is a specific feature . . . shown on the proffered zoning plan that is located within the RPA, in which case the landowner may develop . . . (while) minimizing any intrusion into the RPA to the extent possible.”

Under Section 23-11 of the new Ordinance, it states that a water quality impact assessment shall be required for any proposed land disturbance resulting from development or redevelopment within RPAs. New Town Associates has submitted this assessment for both phases of Section 4, Block 8, even though they are technically grandfathered for

a portion of the project. The issue before the Chesapeake Bay Board is the impacts associated with the construction of roads, residential structures, stormwater management facilities and sanitary sewer construction.

Water Quality Impact Assessment

The total impacts to the RPA for this project are approximately 1.65 acres and encompass the building of residential structures, roads, one temporary sediment basin and sanitary sewer connections. New Town Associates proposes to develop the sediment basin into a stormwater management BMP facility after the upslope disturbed drainage area is stabilized. They have proposed two bioretention facilities up in the site along with use of two tree box biofilters, a relatively new technology. Furthermore, they propose to enhance the remaining RPA buffer with additional native plantings.

Williamsburg Environmental Group, Inc. has 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):

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

Staff finds that the WQIA and the project are consistent with the spirit and intent of the Ordinance and the criteria as outlined in section 23-14(c). Given all the prior planning and design development that has occurred prior to the effective date of the revised ordinance, staff recommends that the Chesapeake Bay Board approve the WQIA as it pertains to only this project. Furthermore, all recommendations listed therein are to be incorporated into the site plans for the project, which then must be approved by the

Environmental Division. The exception shall become null and void if construction has not begun by May 12, 2005.

Mr. Lindsey opened the public hearing.

A. Mrs. Toni Small, Williamsburg Environmental Group, addressed the Board and gave a quick overview of the project.

Mr. Apperson stated he would like the proposed mitigation tree list changed to remove those trees that were not native species to the area with native species.

Ms. Small responded that would be done.

In response to a question from Mr. Duffy, Mr. John McCann, New Town Associates, LLC, stated that the Resource Protection Area appears on all recorded plats so all new property owners are aware of the buffer.

As no one else wished to speak, Mr. Lindsey closed the public hearing.

Mr. Duffy inquired who would hear an appeal on the Board's decision.

Mr. Cook responded it would be heard by the Circuit Court.

Mr. Duffy made a motion to approve case CBE-4-008/WQIA-001-04 with staff's recommendations.

The motion was approved by a 5-0 vote.

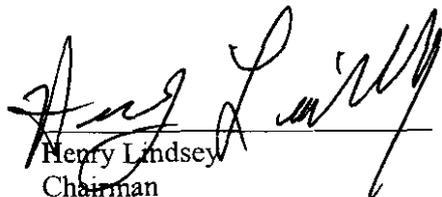
E. BOARD CONSIDERATIONS - None

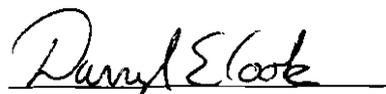
F. MATTERS OF SPECIAL PRIVILEGE

Mr. Cook informed the Board that if they desired, a Work Session could be held to discuss any issues the Board may have.

G. ADJOURNMENT

The meeting was adjourned at 8:45 PM.


Henry Lindsey
Chairman


Darryl E. Cook
Secretary