

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
JUNE 8, 2005 - 7:00 PM**

A. ROLL CALL

ABSENT

Henry Lindsey
David Gussman
William Apperson
Larry Waltrip

John Hughes

OTHERS PRESENT

County Staff

B. MINUTES – The April 13, 2005 and the May 11, 2005 minutes were approved as presented.

C. PUBLIC HEARINGS

1. David Tuftee – 4047 South Riverside Drive

Mr. Cook presented the case as follows:

Project Description

Mr. David Tuftee, owner, has appealed a decision by the Environmental Division requiring him to remove a sunroom and a deck from the seaward 50-foot Resource Protection Area (RPA) buffer. These unauthorized encroachments involve the construction of 480 square feet of deck and sunroom attached to the single family principal structure on the above referenced lot in Chickahominy Haven. The lot is 14,570 square feet or 0.33 acres in size.

Background

The lot was recorded prior to the adoption of the Chesapeake Bay Preservation Ordinance. Therefore, there was no Resource Protection Area (RPA) present on the lot at the time of recordation. However, on August 6, 1990, the Ordinance went into effect establishing 100-foot RPA buffers around all water bodies with perennial flow. Under the provisions of the Ordinance in effect at that time, perennial water bodies were identified as a solid blue-line stream on the USGS 7-1/2 minute topographic quadrangle maps (scale 1:24000). The Chickahominy River was identified as a perennial stream on the quad map and an RPA buffer was placed on the lot. This 100 foot RPA buffer encompasses about 55% of the lot.

On October 22, 2001, an administrative exception was granted to allow a 500 square foot encroachment into the RPA buffer for construction of a house/garage on the lot. Another exception was granted on August 9, 2004, for an encroachment of 1440 square feet in the landward 50-foot buffer to allow for construction of the remainder of the principal structure, which was recently completed.

The issue for the Chesapeake Bay Board's consideration is the placement without approval of 480 square feet of deck and sunroom in the RPA. In staff's letter of August 9, 2004, where an exception was granted to allow construction of the principal structure, it was stated that no encroachment was authorized into the seaward 50-foot buffer. That is because in accordance with Section 23-7(c)(2)a of the Ordinance, staff does not have the authority to grant an administrative approval to encroach into the seaward 50-foot buffer even on pre-recorded lots.

During a site inspection by Joe Buchite, he noted that the sunroom and deck were constructed in the seaward 50-foot buffer and a Notice of Violation dated May 16, 2005, was issued to Mr. Tuftee requiring removal of the encroachment. Mr. Tuftee submitted a letter dated May 16, 2005, notifying staff and the Board of his intent to appeal staff's requirement to remove the encroachment to remedy the violation. Therefore, the Board needs to decide whether to uphold staff's order for removal of the sunroom and deck or allow them to remain with certain conditions.

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 RPAs. Mr. Tuftee has submitted a WQIA for this project. The mitigation plan contained within the WQIA offsets the proposed impervious cover impacts to the RPA buffer for the principal structure (1440 sf) and the sunroom/deck patio (480 sf).

The WQIA proposes to mitigate for the impacts to the RPA by planting 2 native canopy trees, 2 native subcanopy trees, and 45 native shrubs behind the house to help filter nonpoint source pollution. This mitigation plan meets the typical mitigation requirements by planting one tree or three shrubs for each 100 square foot of impervious cover established. In addition, 3 inches of gravel underlain by filter fabric will be placed under the deck to store and infiltrate runoff.

Recommendations

Section 23-17(b). Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with to 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.

The Notice of Violation was issued because staff cannot approve placement of structures in the 50-foot RPA buffer. If the Board decides to allow the sunroom and deck to remain, staff recommends the following conditions be applied to mitigate the impacts to the buffer:

1. Full implementation of the landscape plan entitled *Mitigation Plan., Lot 6, Chickahominy Haven, Section 4* with the additional requirement that the 480 square foot encroachment be mitigated at twice the normal planting rate.
2. Implementation of the mitigation plan would be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3)d. and 23-17(c) where installation of the plant material is required prior to the certificate of occupancy or through a surety satisfactory to the county attorney. In this instance, it would be necessary to provide a surety instrument.
3. The deck shall be underlain by filter fabric covered by three inches of gravel.
4. Payment of a civil charge of \$1500.

Mr. Lindsey opened the public hearing.

A. Mr. David Tuftee, owner, gave a brief history of the circumstances as to why he needed to come before the Board. He did state he failed to read the entire letter written by Mr. Cook dated August 9, 2004 and he then invested approximately \$40,000 into the deck and porch, which he would not have done if he would have read the letter in its entirety. Because of his mistake and the encroachment into the RPA, he hired Williamsburg Environmental Group to prepare a mitigation plan to address the impacts to the RPA. He asked the Board to vote favorable on his appeal.

Mr. Lindsey noted that while on the site visit, he noted a new section had been added to the bulkhead. He asked Mr. Tuftee if he had received a permit for it as he did not recall issuing a permit for it.

Mr. Tuftee responded that he had called VMRC approximately 6-7 years ago and he was told it would be OK to fill in the boat ramp and add to the bulkhead. However, if he needed to obtain a permit for the work, he would do so. He thought he had taken notes of the discussion with VMRC and he would research and contact staff with the information.

B. Mr. Doug Beisch, Williamsburg Environmental Group, informed the Board that the proposed mitigation plan would restore the buffer to a better condition than it was prior to the encroachment.

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

Mr. Apperson stated he felt the applicant did not intend to deceive, but rather a mistake on his part.

Mr. Gussman stated the Board needed to be mindful of setting precedence; however he did feel this was an honest mistake and the Board must use their judgment in deciding on cases.

Mr. Waltrip made a motion to approve the appeal with staff's recommendations.

The motion was approved by a 4-0 vote.

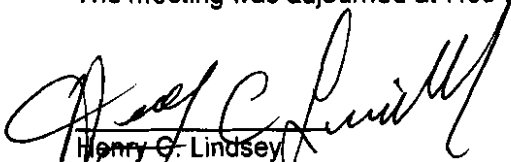
D. BOARD CONSIDERATIONS - None

E. MATTERS OF SPECIAL PRIVILEGE

Mr. Cook referenced the discussion held at the last Board meeting with Michael Drewry, Assistant County Attorney about what constitutes a majority. He stated he had contacted York County on what their procedure was and at the present time they were temporarily using their Wetlands Board procedures. He told the Board he would pursue getting a procedure in place for James City County.

F. ADJOURNMENT

The meeting was adjourned at 7:33 PM.



Henry C. Lindsey
Chairman



Darryl Cook
Secretary to the Board