

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
JANUARY 11, 2006 - 7:00 PM**

A. ROLL CALL

William Apperson
John Hughes
Henry Lindsey
David Gussman

ABSENT

Larry Waltrip

OTHERS PRESENT

County Staff

B. MINUTES – The December 14, 2005 minutes were approved as presented.

C. PUBLIC HEARINGS

1. Jared Jobe/Boyd Corporation – 2808 Durfey's Mill

Mr. Darryl Cook presented the case as follows:

Project Description

Mr. Jared Jobe had applied on behalf of Boyd Corporation for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of a single family principal structure and an attached garage on the above referenced lot in Lake Powell Pointe. It is located adjacent to Lake Powell and a connected wetlands system is present on the southeast side of the lot. The lot is 28,750 square feet or 0.66 acres in size.

The principal structure, garage, sidewalks and driveway are proposed to create approximately 3400 square feet of impervious cover in the RPA. There will be a total disturbance of approximately 8000 square feet in the RPA. Approximately 25% of the lot is to be cleared to allow for the construction of the dwelling.

Background

The lot was recorded in 1990, just prior to the adoption of the Chesapeake Bay Preservation Ordinance. Therefore, there was no RPA present on the lot at 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). Lake Powell and the adjacent, connected wetlands behind and on this property were identified as perennial water bodies on the quad map and an RPA buffer was placed on the lot. This 100 foot RPA buffer encompasses about 94% of the lot.

According to provisions of the Ordinance; when application of the buffer would result in the loss of a buildable area on a lot or parcel recorded prior to August 6, 1990, encroachments into the buffer may be allowed through an administrative process in accordance with the following criteria:

1. Encroachments into the buffer shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.
2. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
3. The encroachment may not extend into the seaward 50 feet of the buffer area..

In this case, it is necessary to encroach into the seaward 50 feet of the buffer in order to obtain a reasonable building area, and therefore, the exception request must be processed by the Chesapeake Bay Board after a public hearing.

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. Jobe has submitted a WQIA for this project. The issue before the Chesapeake Bay Board is the RPA impacts associated with clearing, grading and creation of 3400 square feet of impervious cover in the RPA associated with the construction of the principal structure. The issue of the clearing for a sightline mentioned in the attached letter from Mr. Jobe is a matter that will be handled administratively by staff when the house is constructed.

The WQIA proposes as mitigation to offset the impacts to the RPA the planting of 6 canopy trees, 14 understory trees and 38 shrubs, all native, with some of the plants to be placed at the limits of disturbance on the lot to help filter nonpoint source pollution with the remainder placed throughout the lot within the RPA. In addition, there are RPA buffer restoration plantings located on the lot, which were required as a remedy for a previous Chesapeake Bay violation committed by Boyd Corporation. The plants that are within the limits of construction for this project are to be relocated elsewhere on the lot within the RPA. The plan is acceptable and would satisfy the mitigation requirements for the impacts.

Mr. Jobe has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. He has proposed two alternative house locations, labeled Plan A and Plan B in the attachments. The house site on Plan A is set back further from the road than Plan B (70 ft vs 35 ft) but results in less impact to the 50-foot RPA buffer (275 sf vs 600 sf) and is Mr. Jobe's preferred alternative. 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) of the Chesapeake Bay Ordinance:

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 recommends approval of the exception with Plan A as the house location as the lot was created prior to the establishment of the RPA requirement, the house is located to minimize the encroachment into the 50-foot buffer for this proposal, the project does not confer any special privileges to the applicant, and the exception is not based on self-imposed conditions. Staff recommends approval with the following conditions:

1. Full implementation of either of the mitigation landscape plans submitted for the project and submitted with the WQIA.
2. The size of the trees planted shall be a minimum of 1-1/2 inch caliper (six to eight feet tall) and the shrubs be 3 gallon size.
3. 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 instrument satisfactory to the county attorney.
4. Existing shrubs planted to remedy an earlier violation of the RPA that are within the limits of construction are to be transplanted elsewhere on the lot in the RPA.
5. This exception request approval shall become null and void if construction has not begun by January 11, 2007.

All recommendations adopted by the Board must be incorporated into the site plans for the project, which then must be approved by the Environmental Division before construction can begin.

Mr. Lindsey asked if both Plan A and Plan B met the front setback requirements.

Mr. Cook replied that they did.

Mr. Apperson opened the public hearing.

A. Mr. Jared Jobe, the applicant, stated that the deck had been shortened so that it would not encroach into the RPA buffer.

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

Mr. Hughes stated and the Board agreed that it looked like the applicant had worked with the environmental staff.

Mr. Lindsey asked if Plan A was the site plan that staff was recommending.

Mr. Cook stated that it was.

Mr. Lindsey made a motion to approve the exception with Plan A and staff's recommendations.

The motion was approved by a 4-0 vote.

2. Bruce Schoch – 114 Discovery Lane

Mr. Darryl Cook presented the case as follows:

Project Description

Mr. Bruce P. Schoch had applied for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of a 10' x12' accessory structure (storage shed) on the above referenced lot in Powhatan Shores. The accessory structure will create approximately 120 feet of impervious cover in the RPA.

The lot is 15,660 square feet or 0.36 acres in size. It is located adjacent to a man-made canal that is connected to Powhatan Creek. There is currently an existing residence on the lot which encroaches into the 100-foot RPA buffer by approximately 3600 square feet. The applicant is requesting an additional 120 square feet of encroachment resulting in total impervious cover of approximately 3720 square feet in the buffer. No mature vegetation will be removed from the lot to allow for construction of the proposed accessory structure.

Background

The lot was recorded in 1977, prior to the adoption of the Chesapeake Bay Preservation Ordinance. Therefore, there was no RPA present on the lot at 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). Powhatan Creek and the adjacent, connected man-made canal behind this property were identified as a perennial water body on the quad map and an RPA buffer was placed on the lot. This 100 foot RPA buffer encompasses about 73% of the lot.

According to provisions of the Ordinance;

An exception request for encroachments into the RPA buffer for accessory structures may not be granted through an administrative process by the manager. In addition, as 73% of the lot is within the buffer, it may be necessary to encroach into the seaward 50 feet of the buffer in order to obtain a reasonable site or building area for the shed. For these two reasons, the exception request must be processed by the Chesapeake Bay Board after a public hearing.

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. Schoch has submitted a WQIA for this project. The issue before the Chesapeake Bay Board is the RPA impacts associated with clearing, grading and creation of 120 square feet of impervious cover in the RPA (approximately 24 square feet proposed in the seaward 50-foot buffer) associated with the construction of the accessory structure.

The WQIA proposes mitigation to offset the impacts to the RPA. The proposal is to plant six (6) native shrubs in a mulched landscape bed within the RPA buffer adjacent to the shed. This plan is acceptable and would satisfy the mitigation requirements for the impacts.

Mr. Schoch had 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) of the Chesapeake Bay Ordinance:

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

If following the public hearing, the Board votes for the approval of the exception and allows the accessory structure to be built within the buffer, Staff recommends the following conditions be required:

1. Full implementation of the mitigation landscape plans submitted for the project.
2. The size of the shrubs shall be a minimum of 3-5 gallon container size.
3. 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 final inspection by the Code Compliance office or through a surety instrument satisfactory to the county attorney.
4. This exception request approval shall become null and void if construction has not begun by January 11, 2007.

All recommendations adopted by the Board must be incorporated into the site plan for the project, which then must be approved by the Environmental Division before construction can begin.

Mr. Lindsey asked why part of the shed had to be located in the seaward 50-foot buffer.

Mr. Cook explained that a tree would have to be removed in order to move the shed out of this buffer.

Mr. Apperson opened the public hearing.

- A. Mr. Wayne Warren, 112 Discovery Lane, spoke in opposition of the case. He stated that the proposed location of the shed would block his view of the canal. He was also concerned that this obstruction would decrease the value of his property.
- B. Mr. Bruce Schoch, the applicant and property owner, stated that this was the only available level area on his property, not subject to tidal flooding.

Mr. Hughes asked what the setback requirements were for an accessory structure.

Mr. Cook stated that he was not sure.

Mr. Schoch stated that he was told it was 5 feet.

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

Mr. Gussman stated that he was sympathetic with Mr. Warren but, he felt the Board needed to decide this case based on the environmental impact and not the obstructed view.

Mr. Lindsey agreed with Mr. Gussman but wanted to consider Mr. Warren's objection.

Mr. Apperson asked Mr. Schoch and Mr. Warren if they could compromise on the location of the shed with the help of the Environmental staff.

Mr. Schoch stated that he would be willing to consider an alternate location for the shed.

Mr. Lindsey addressed Mr. Adam Kinsman, Assistant County Attorney, and asked for his guidance on the Board's actions.

Mr. Kinsman stated that the Board should decide this case based on environmental issues. He suggested that the Board vote to defer their decision on this case because the applicant was going to consider an alternate location for the shed.

Mr. Cook asked the Board if they would agree to additional encroachment into the seaward 50-foot buffer.

All Board members indicated they would not.

Mr. Hughes made a motion that the Board defer the decision on this case until the next board meeting on February 8, 2006.

The motion to defer was approved by a 4-0 vote

D. BOARD CONSIDERATIONS - None

E. MATTERS OF SPECIAL PRIVILEGE - Resolution of Appreciation – Henry Lindsey

RESOLUTION OF APPRECIATION

FOR SERVICE TO THE

JAMES CITY COUNTY WETLANDS BOARD AND CHESAPEAKE BAY BOARD

WHEREAS, Henry Lindsey has served the citizens of James City County as CHAIRMAN on the Wetlands Board continuously from January 1, 1987 to January 1, 2006; and

WHEREAS, Henry Lindsey served the citizens of James City County as CHAIRMAN on the Chesapeake Bay Board continuously from April 1, 2004 to January 1, 2006; and

WHEREAS, incalculable hours of voluntary service given by Henry together with his high qualifications to handle the many challenges of the program were invaluable to the successful betterment of the County's wetlands resources including his participation in the development and application of the Wetlands Mitigation Policy; his service as Chairman of the Board for over 19 years; and his 22 years of service on the Wetlands Board, and his service as Chairman to the Chesapeake Bay Board for approximately 2 years; and

NOW, THEREFORE, BE IT RESOLVED that the Wetlands Board and the Chesapeake Bay Board of James City County, Virginia, extends congratulations to Henry on his leadership that has given the County the stature it now enjoys and its sincere appreciation for services as a Wetlands Board Chairman and a Chesapeake Bay Board Chairman, and hopes that the coming years bring good

health, happiness, and a full share of those things that make this world a better place in which to live.

BE IT FURTHER RESOLVED that this resolution be entered into the Minutes of the Wetlands Board and the Chesapeake Bay Board and that a copy be presented to Henry Lindsey.

F. ADJOURNMENT

The meeting was adjourned at 7:50 PM.


William Apperson
Chairman


Darryl Cook
Secretary to the Board