

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MAY 10, 2006 - 7:00 PM**

A. ROLL CALL
William Apperson
John Hughes
Larry Waltrip
Henry Lindsey
David Gussman

ABSENT
none

OTHERS PRESENT
County Staff

B. MINUTES – The April 12, 2006 minutes were approved as presented.

C. PUBLIC HEARINGS

1. CBE-06-021 – David Coleman – 107 Gladys Drive

Mr. Pat Menichino presented the case as follows:

Project Description: Mr. David W. Coleman applied for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of a 14' x 20' storage shed accessory structure on the above referenced lot in Indigo Park. The lot is 48,000 sqft or 1.091 acres in size.

The proposed structure will create approximately 352 sqft of impervious cover in the RPA and there will be a total disturbance of 420 sqft in the RPA. There is no proposed removal of trees or shrubs.

Background: The lot was recorded in 1971 before the adoption of the Chesapeake Bay Preservation Ordinance. There was no RPA present on the lot at recordation. However, on August 6, 1990, the Ordinance went into effect establishing 100-ft 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). Mill Creek and the adjacent, connected wetlands located on this property were identified as perennial water bodies on the quad map and an RPA buffer was identified on the lot. This 100-ft RPA buffer encompasses about 95% of the lot.

According to the provisions of the Ordinance, an Administrative exception or waiver cannot be granted for construction of an accessory structure within the buffer. This proposal results in an increase in both the impervious cover and the encroachment into the RPA. Therefore, the exception must be considered by the Chesapeake Bay Board as part of a public hearing process.

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. Coleman has submitted a WQIA for this project. The issue before the Chesapeake Bay Board is the 420 sqft RPA impact of 342 sq ft of impervious cover in the RPA associated with the construction of the accessory structure.

The WQIA proposes to mitigate for the impacts to the RPA by planting 2 native canopy trees, 2 native understory trees, 6 native shrubs on the lot in the RPA to help filter nonpoint source pollution. The amount of mitigation proposed exceeds the standard requirements.

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 as the lot was created prior to the establishment of the RPA requirement, the location selected for the accessory structure minimizes RPA disturbance and encroachment and, 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 a landscape plan 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 shall be 3-gallon size. All vegetation shall be native species approved by the Environmental Division.
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. This exception request approval shall become null and void if construction has not begun by May 10, 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 where the landward and seaward RPA limits were located, as they were not indicated on the provided site plan.

Mr. Menichino stated that the entire lot was in the RPA and the proposed shed would be located in the landward 50-ft buffer, just outside the seaward 50-ft buffer.

Mr. Apperson opened the public hearing.

A. Mrs. Coleman, owner, stated that she and her husband were in agreement with staff's recommendations.

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

Mr. Hughes stated that he had no problem with the proposed location of the shed. He further stated that there were many other comparable structures in the neighborhood.

Mr. Hughes made a motion that the Board approve case CBE-06-021 exception with staff's recommendations.

The motion was approved by a 5-0 vote.

2. CBE-06-011 – AES Consulting Engineers / Colonial Heritage LLC – Colonial Heritage - Phase III–Section 2

Mr. Darryl Cook presented the case as follows:

Project Description: This project is a 49 lot subdivision proposed within the Colonial Heritage planned community. The project was put on the agenda for the May 10th Chesapeake Bay Board and advertised as a public hearing in accordance with Chesapeake Bay Preservation Ordinance for consideration of Resource Protection Area (RPA) impacts associated with its construction.

However, on May 2, 2006, preliminary approval for the project expired. Therefore, staff recommends that the project be deferred from consideration by the Board until the project once again has preliminary approval by the Planning Division.

Mr. Lindsey made a motion that the Board defer consideration of case CBE-06-011.

The motion was approved by a 5-0 vote.

3. CBE-06-003 – Williamsburg Environmental Group / Noland Properties, Inc – Liberty Crossing

Mr. Darryl Cook presented the case as follows:

Project Description: Ms. Toni Small, Williamsburg Environmental Group, applied on behalf of Noland Properties Incorporated, for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the Liberty Crossing development plan. The project is located at 6601 Richmond Road, to the north of the Outlets Mall and behind the Smith Memorial Baptist Church and consists of 39.4 acres of residential development.

This project proposes to encroach into the RPA by approximately 0.86 acres for the construction of a road crossing forming the embankment for a stormwater management facility, and sanitary sewer construction. Site restrictions require that the proposed gravity sanitary sewer system tie into the existing system adjacent to the site by a connection through the existing RPA.

History: A site-specific perennial stream evaluation for the site approved on July 14, 2004, revealed that the stream channel to the southwest of the site was perennial. As the project's plan of development was submitted after January 1, 2004, the project was not grandfathered from the revised Chesapeake Bay Preservation Ordinance and as a result, a 100-ft RPA buffer was imposed on the site based off the edge of wetlands adjacent to the stream channel.

Williamsburg Environmental Group and AES Consulting Engineers met with County staff on several occasions regarding this project to clarify site plan submittal requirements, conditions required to obtain site plan approval, and information required to receive a recommendation of approval from Environmental Division staff to the Chesapeake Bay Board. Environmental Division conditions for approval of the site development plan consisted primarily of over-attenuation of stormwater runoff generated by the development site and runoff from uncontrolled offsite areas within the 63.77-acre watershed of the proposed basin. The over-attenuation of stormwater in the onsite facility will be accomplished for all storms up to and including the 100-year intensity. Over-attenuation of the stormwater runoff should allow native vegetation to re-establish within the degraded downstream channel section and help to stabilize it. However, should this not be the case, additional mitigation will be provided in the form of stream channel stabilization where needed.

Under Section 23-11 of the revised Ordinance, it states that a water quality impact assessment (WQIA) shall be required for any proposed land disturbance within RPAs resulting from development or redevelopment activities. Williamsburg Environmental Group has submitted the WQIA for this project. The proposed project's RPA impacts involve both categories of Ordinance exceptions; administrative and Board exceptions. The issue to be considered by the Chesapeake Bay Board is the 0.24-acre impact (clearing and land disturbance) associated with the installation of the sanitary sewer primarily consisting of two sewer bridges within the limits of the RPA

Water Quality Impact Assessment: The total impacts to the RPA buffer and RPA features resulting from the current plan of development are 0.86 acres. The impacts for the Board's action are associated with the construction and installation of the two sanitary sewer bridges in the western portion of the site which are required in order to obtain gravity flow to the existing sewer system in that location. Though the installation of this system will not produce any impervious area within the RPA, the utility easement will require regular maintenance and the existing woody vegetation will not be permitted to re-establish. To mitigate for the project impacts, the following will be incorporated into the associated plan of development:

- Over-attenuation of stormwater runoff generated from all sites within the 63.77 acre watershed of the proposed basin;
- Additional mitigation in the form of stream channel stabilization will be provided should the stream not stabilize on its own;
- Conservation seed mix will be planted in the utility easements that must have on-going maintenance performed.
- Two dry swale BMP facilities will provide additional water quality treatment for some of the project areas that do not drain to the primary stormwater BMP

Williamsburg Environmental Group, acting on behalf of Noland Properties Incorporated, 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 degradation of water quality.

Recommendations: Staff does find 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) of the James City County Code. Staff therefore recommends that the Chesapeake Bay Board approve the WQIA as it pertains to the Liberty Crossing project only. Furthermore, all recommendations listed therein are to be incorporated into the site plans for the associated project, which must then receive final approval by the Environmental Division. In addition, a minor error in the delineation of the RPA buffer was identified during the most recent review of the project's development plan review. This discrepancy must be corrected before final approval of the development plan. This exception request approval shall become null and void if construction has not begun by May 10, 2007. Any changes to the plan of development that would cause a deviation from the items listed in the WQIA, either in the form of increased impacts to components of the RPA or omission of mitigation requirements from the submitted plan of development must be reviewed and approved by the Board.

Mr. Lindsey referred to the project site plan and asked Mr. Cook to indicate where the 50-ft RPA delineation would be located.

Mr. Cook identified the area and stated that typically, only the 100-ft RPA line is identified on a development project.

Mr. Apperson opened the public hearing and as no one wished to speak, Mr. Apperson closed the public hearing.

Mr. Apperson made a motion that the Board approve case CBE-06-003 exception with staff's recommendations.

The motion was approved by a 5-0 vote.

D. BOARD CONSIDERATIONS - none

E. MATTERS OF SPECIAL PRIVILEGE

Mr. Cook provided the Board members with a draft proposal to allow for Administrative Exceptions on small accessory uses within the RPA buffer (memo attached). He stated that this draft was presented only for discussion and review at this time.

All Board members agreed that this proposal was a good idea and briefly discussed the type of exceptions and conditions they would allow. They agreed to review the proposal and discuss it further at the next Board meeting.

The Board and County Staff held a short discussion about informing James City County residents when their property is located in a Resource Protection Area (RPA). The Board and Staff agreed that it should be the responsibility of realtors when they buy and sell properties but the County could not enforce it.

Mr. Mike Woolson, County Staff, stated that he has regularly received calls from realtors regarding the RPA on properties in the county but it was more often for buyers rather than sellers.

Mr. Hughes asked if the County provided any information on-line regarding the RPA and mitigation requirements.

Mr. Cook stated that the County web site contained information about the RPA under the Chesapeake Bay Preservation Ordinance. He also stated that the Environmental Division was working on sending notification to property owners with RPA on their lots.

The Board and County Staff briefly discussed a citizen's complaint regarding the run off on Constance Road.

Mr. Cook and Mr. Kinsman informed the Board that AES had requested an on-site meeting with all Board members to educate them prior to the re-submittal of the Marywood Subdivision proposal.

Mr. Lindsey asked what would be different from the last proposal.

Mr. Kinsman stated that there was nothing in the ordinance to prevent them from re-submitting the same proposal but he believed the BMP was going to be repositioned.

Mr. Hughes and Mr. Gussman inquired about public notification and involvement in an on-site meeting.

Mr. Kinsman stated that the meeting would be a work session. It would be advertised and the public could be present but the Board did not have to conduct a public hearing or make any decisions.

Mr. Apperson stated that he was more comfortable meeting as a group rather than on an individual basis because then each Board member's decision would be based on the same information and presentation.

All Board members agreed that that they would like to have the new proposal or some preliminary information presented to the Board in writing, before going on-site.


Mr. Jason Grimes, AES, stated that he was researching alternative plans to move the BMP entirely out of the RPA and would like the Board to be aware of the additional clearing and reduction of open space that would be required to accomplish this.

The Board members stated that he could present this information along with the new proposal.

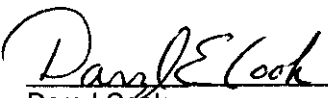
Mr. Kinsman stated that he would relay the Boards request to the applicant.

G. ADJOURNMENT

The meeting adjourned at 8:15 PM.



William Apperson
Chairman



Darryl Cook
Secretary

Memo

To: Chesapeake Bay Board
From: Darryl Cook, Environmental Director
Date: May 11, 2006
Re: Draft proposal to allow for Administrative Exceptions for small accessory uses within the RPA buffer.

Over the past year, Environmental staff has received numerous requests from citizens seeking administrative approval for proposed accessory structures and uses within areas identified as RPA buffers. As you know the County's Chesapeake Bay Preservation Ordinance presently does not authorize the Manager to grant exceptions for accessory structures or uses administratively. As a result, all citizen exception requests for RPA buffer encroachments involving accessory structures and uses must be processed through the Chesapeake Bay Board. Due to advertising, scheduling and public hearing requirements, this can result in a six to eight week process to obtain Board action on these accessory items.

To address this issue, staff is proposing a modification to the program that would allow for small accessory structures and uses to be granted administratively by the Manager. If the Board wishes to pursue this program change, it must also be reviewed and approved by both the Board of Supervisors as it would involve an Ordinance amendment and the Chesapeake Bay Local Assistance Board.

The following is a draft proposal of the types of structures and uses that could be administratively approved and the guidelines required for approval.

Accessory Structures:

Storage Buildings, Gazebos, Animal Shelters, Children's Play Houses and Sand Boxes, Swing Sets, Tents, Hammocks, Picnic Tables, Park Benches, Barbeques, Bird and Wildlife Feeding Stations, Exercise Stations, and other similar structures

Accessory Uses:

1. Picnic Areas, Non-interlocking Brick Paver Patios, Passive Sitting Areas, Exercise Areas, Landscape Gardens, Vegetable Gardens, Orchards, Bird and Wildlife Observation Stations, Hunting Stations
2. Storage of materials commonly associated with the principal use of the property, such as: Landscaping Materials, Firewood, Topsoil, Compost, Lumber, Sand, Stone, Yard debris. etc.

Process

Upon receipt of a completed RPA buffer exception application and a WQIA, the Manager shall review and evaluate the request. Following the review, the Manager may

administratively grant exceptions and allow for the encroachment within the RPA buffer for accessory structures and uses provided that the following conditions are met:

1. 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;
2. The applicant must comply with all other County Code requirements, and granting the exception will not confer upon the applicant any special privileges denied by state or federal regulatory agencies.
3. The exception request will not be 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.
6. The maximum encroachment into the RPA buffer granted by the Manager shall not exceed 150 square feet.
7. The applicant has not previously been granted an administrative exception resulting in RPA buffer encroachment for an accessory structure or use.
8. The proposed structure or use shall be located in an existing turf or maintained landscape area unless there are none available on the property.
9. The lot or parcel must have been created prior to January 1, 2004, or have been recorded without an RPA line shown on the original recorded plat for the lot or subdivision.

If the Manager denies an exception request, the applicant has the right to appeal the Managers Administrative Decision to the Chesapeake Bay Board.