

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
JULY 12, 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 June 14, 2006 minutes were approved as presented.

C. PUBLIC HEARINGS

1. CBE-06-033 – Marc & Shanni Roth – 108 Stoweflake

Mr. Pat Menichino presented the case as follows:

Project Description: Marc and Shanni Roth, applied for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of three decorative block landscape retaining walls adjacent to the residence presently under construction on the above referenced lot in Fords Colony.

Background: In 2004, the Ordinance requirements related to the determination of perennial flow were changed requiring that perennial water bodies be identified based on a field evaluation. Prior to April 2005, a field evaluation was conducted for a stream, located upstream of the subject property. It was determined the stream had perennial flow. The perennial flow from the source upstream continues downstream into the lake that is adjacent to the subject property. The designation of a perennial water body requires a 100-ft RPA buffer be established around the lake. This 100-ft RPA buffer encompasses approximately 40% of the lot.

Unfortunately, through an administrative error by the County, a building permit was issued for the residence in April 2005 without the RPA being identified on the owner's approved building permit and site plan. A recent County inspection of the property revealed this error. Staff has attempted to remedy this mistake without placing unreasonable conditions on the owner. Staff has acknowledged to the owner the RPA encroachments on their approved 2005 site plan would be grandfathered, but any newly proposed encroachments would have to meet the requirements of the Ordinance.

The owners have submitted a new plan, which proposes additional RPA encroachments beyond those already grandfathered within the RPA buffer.

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 between August 6, 1990, and January 1, 2004, 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.
4. The lot or parcel was created as a result of a legal process in conformity with the county's subdivision regulations.

The issue for the Chesapeake Bay Board's consideration is the placement of three landscape retaining walls that will create approximately 60 sqft of impervious area, within the RPA buffer.

The *Resource Protection Area: Buffer Area Encroachments* guidance document adopted by the state Division of Chesapeake Bay Local Assistance on September 16, 2002, states on page 5 "items not considered part of a principal structure include pools, gazebos, patios, free-standing decks, garages, or storage sheds, etc."

Therefore, the proposed retaining walls could not be approved administratively and the applicants have chosen to request an exception for the proposed retaining walls from the Board.

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. The applicant 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 retaining walls (60 sq ft). However, this plan also shows additional clearing within the RPA buffer, beyond what was originally approved by the County.

The WQIA proposes to mitigate for the impacts to the RPA by planting three native shrubs in the RPA. This vegetation will be located to the right of the residence and at the limits of clearing to help filter nonpoint source pollution. This mitigation plan meets the typical mitigation requirements by planting one tree or three shrubs for each 100 sqft of impervious cover established. The WQIA does not address mitigation or restoration of any additional clearing within the RPA buffer beyond what was originally approved by the County.

The owners have 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: Staff does not recommend approval of the appeal and exception as it involves the creation of impervious, accessory structures (retaining walls), within the RPA. Both the Ordinance and staff considers block retaining walls as accessory structures and as an impervious surface. Staff has not allowed the creation of accessory structures in the RPA in the past. However, the Board did approve construction of similar retaining walls in Ford's Colony, at 105 Seven Oaks, on June 14, 2006, and in Settler's Mill, at 101 Spring Branch, on April 12, 2006.

If the Board grants the exception, the proposed mitigation plan is in accordance with the standard mitigation requirements for impervious surfaces, but it fails to address the restoration of additional RPA encroachments. If approved, it should be conditioned on the following:

1. The mitigation plan should be revised to include the restoration of any areas within the RPA buffer that have been cleared and graded beyond what was originally approved by the County as shown on the approved site plan. The restoration of these areas should be accomplished through the required planting of native trees and shrubs. The recommended planting restoration rate is, 1 canopy tree, 2 understory trees and 3 shrubs for each 400 sqft of RPA buffer encroachment.
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.
3. This exception request approval shall become null and void if construction has not begun by July 12, 2007.

Mr. Lindsey referred to the landscape plan submitted by the applicant and inquired about the limits of clearing and the proposed paver patio shown on the plan.

Mr. Menichino stated clearing had been done outside of the area approved by the County and the patio was not shown on the site plan approved by the County.

Mr. Apperson opened the public hearing.

A. Mr. Jeff Clark, Michael Brown Builders, contractor for the residence, approached the Board and stated the additional clearing was done for a swale and berm that were installed to prevent runoff onto the adjacent lot and these features were installed on the advice of Mr. Earl Croft, a James City County Environmental Inspector. He also stated the proposed retaining walls would reduce runoff into the RPA buffer.

B. Mr. Gary Krull, 104 Stoweflake, approached the Board and stated the swale and berm were effectively controlling the runoff onto his property and he was present when this solution was suggested by Mr. Croft.

Mr. Hughes asked what type of vegetation was currently in the area in question.

Mr. Menichino stated it was partially wooded.

Mr. Clark stated the landscape plan was not accurate and the natural tree area would not be cleared.

Mr. Hughes stated since the landscape plan was incorrect the staff recommendations should be amended and the Board should only consider the retaining walls at this time.

Mr. Menichino stated the issue of clearing for the swale and berm could be handled administratively.

C. Mr. Marc Roth, property owner, addressed the Board and asked if the paver patio outside of the basement doors could be approved by the Board so he could obtain a Certificate of Occupancy (CO) for his residence.

Ms. Jennifer Lyttle, Assistant County Attorney, stated because the patio was not on the original application and was not advertised, it could not be considered by the Board, at this meeting.

Mr. Darryl Cook stated if a waiver request for the patio was submitted to the Chesapeake Bay Board by August 2, 2006, it could be considered at the September 13, 2006 meeting.

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

Mr. Hughes made a motion that the Board approve exception CBE-06-033 for the three retaining walls, with staff recommendations #2 and #3.

The motion was approved by a 4-0 vote.

2. CBE-06-038 – Michael & Abigail Caviston – 7268 Osprey Drive

Mr. Pat Menichino presented the case as follows:

Project Description: Michael and Abigail Caviston applied for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of a 10' x 15' accessory structure (storage shed) on the above referenced lot in the Chickahominy Haven subdivision in James City County.

The lot is 22,575 sqft or 0.575 acres in size. It is located adjacent to a man made canal that is connected to the Chickahominy River. The existing residence on the lot encroaches into the 100-ft RPA buffer by approximately 1890 sqft. The applicant is requesting an additional 150 sqft of encroachment resulting in total impervious cover of approximately 2040 sqft in the buffer. No mature vegetation will be removed from the lot to allow for the placement of the proposed accessory structure.

Background: The lot was recorded prior to the adoption of the Chesapeake Bay Preservation Ordinance. There was no RPA present on the lot at recordation. On August 6, 1990, the Ordinance went into effect

establishing 100-ft RPA buffer 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 and adjacent, 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-ft RPA buffer encompasses about 60% 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 and an 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. Caviston has submitted a WQIA for this project. The issue before the Chesapeake Bay Board is the RPA impacts associated with creation of 150 sqft of impervious cover in the landward 50-ft 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 one native understory tree and three 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. Caviston 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) 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 July 12, 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. Apperson opened the public hearing and as no one wished to speak, Mr. Apperson closed the public hearing.

Mr. Hughes made a motion that the Board approve case CBE-06-038 with staff recommendations.

The motion was approved by a 4-0 vote.

3. CBE-06-032 – AES Consulting – Clubhouse Point Condominiums

Mr. Mike Woolson presented the case as follows:

Project Description: Mr. Marc Bennett of AES Consulting Engineers, Inc. applied on behalf of Futura, LLC for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the Clubhouse Point development plan. The project is located at 9821 Mill Pond Run, in the Stonehouse development and consists of 7.03 acres of residential development.

This project proposes to encroach into the RPA by approximately 0.17 acres for the construction of a sanitary sewer line (0.15 acres) and stormwater outlet protection (0.02 acres). Site restrictions require that the proposed gravity sanitary sewer system tie into the existing system adjacent to the site by a connection through the RPA.

History: A site-specific perennial stream evaluation for the site approved on December 3, 2004 revealed that the stream channel to the northwest 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, an RPA buffer of 100 feet was imposed on the site based off the edge of wetlands adjacent to the stream channel.

Under Section 23-11 of the revised Chesapeake Bay Preservation Ordinance, it states a water quality impact assessment (WQIA) shall be required for any proposed land disturbance within RPAs resulting from development or redevelopment activities. AES Consulting Engineers 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 0.15-acre impact (clearing and land disturbance) associated with the installation of the sanitary sewer.

Water Quality Impact Assessment: The total impacts to the RPA buffer and RPA features resulting from the current plan of development are 0.17 acres. The impacts for the Board's action are associated with the construction and installation of the sanitary sewer in the northwestern portion of the site 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 items will be incorporated into the associated plan of development:

- The existing stormwater pond (BMP #WC-069) will be modified to address more stringent stormwater criteria in place today from when the facility was originally built;
- Conservation seed mix will be planted in the utility easements that must have on-going maintenance performed.
- A sediment forebay will be constructed at the outfall from the storm pipe system outfall;
- Type 3 erosion control matting (EC-3) will be placed on all slopes for the sediment basin. Other matting will be placed on all cut/fill slopes;
- Orange safety fence, 4-ft tall will be installed at the construction limits of the sanitary sewer within the RPA limits;
- All BMP upgrades will be completed concurrently with the sanitary sewer construction.

AES, acting on behalf of Futura, LLC, 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 finds 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 the Chesapeake Bay Board approve the WQIA as it pertains to the Clubhouse Point project. Furthermore, all recommendations listed therein shall be considered an amendment to the approved site plan number SP-007-05 and are to be installed on site for this project. This exception request approval shall become null and void if construction has not begun by July 12, 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 asked what assurance the County had that the stormwater pond and utility easement would be maintained.

Mr. Woolson stated the County would hold surety for the improvements to the BMP and JCSA would be responsible for the utility easement.

Mr. Apperson opened the public hearing.

A. Mr. Marc Bennett, AES Consulting Engineers, stated the proposed sanitary sewer system would serve the Clubhouse Point Condominiums and the adjacent parcel of land.

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

Mr. Lindsey made a motion to approve case CBE-06-032 with staff recommendations.

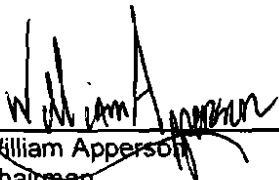
The motion was approved by a 4-0 vote.

D. BOARD CONSIDERATIONS - None


E. MATTERS OF SPECIAL PRIVILEGE - None

G. ADJOURNMENT

The meeting adjourned at 8:03 PM.



William Apperson
Chairman



Darryl Cook
Secretary