

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
April 11, 2007 - 7:00 PM**

A. ROLL CALL

William Apperson
Henry Lindsey
John Hughes
Larry Waltrip
David Gussman

ABSENT

OTHERS PRESENT

County Staff

B. MINUTES – The March 14, 2007 minutes were approved as presented.

C. PUBLIC HEARINGS

1. CBE-07-009 – Kathleen Small – 3000 North Riverside Drive

Mr. Pat Menichino presented the following case:

Project Summary and Description

Kathleen L. Small, 3000 North Riverside Drive, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the installation of a 120-sqft storage shed behind a single-family principal structure on the above referenced lot in Chickahominy Haven. The lot is 130,175 sqft or 3.05 acres in size. The proposed shed is to be installed on a floating foundation that will be secured in place by four pilings.

The lot was recorded prior to the adoption of the Ordinance. Therefore, there was no 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. The Chickahominy River is located at the front of this property; therefore, there is a 100-foot RPA buffer landward of the river that encompasses more than 99% of the lot.

The issue for the Chesapeake Bay Board's consideration is the placement of a 120-sqft shed in the RPA. 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 that "items not considered part of a principal structure include pools, gazebos, patios, free-standing decks, garages, or storage sheds, etc." Therefore, the proposed shed cannot be approved administratively by the Manager and must be approved by 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 applicants have submitted a WQIA for this project.

The WQIA proposes to mitigate for the impacts to the RPA by planting six (6) native shrubs to the rear of the house to help filter nonpoint source pollution. This mitigation plan meets typical mitigation requirements for similar impervious cover.

Board Action

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

Both the Ordinance and staff consider storage sheds as an accessory structure. Unfortunately, staff cannot support approval of this exception as it involves an impervious, accessory structures and use in the RPA. Staff has not in the past, and currently, cannot administratively approve the creation of accessory structures in the RPA. However, the Board has approved the construction of similar accessory structures in the past.

Staff is not opposed to the Board granting the applicant's exception request.

After reviewing this case, if the Board considers approval of this exception, staff recommends that the following conditions be included within the Board action:

1. Full implementation of the mitigation 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. A continuous mulch planting bed will be created in the area around the storage shed where the proposed group mitigation plantings will be installed. A 3 to 4 inch deep mulch bed will be installed elsewhere around any individual proposed mitigation plantings.
4. 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.
5. This exception request approval shall become null and void if construction has not begun by April 11, 2008.

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

All Board members commented on and approved the applicant's proposal to use a floating foundation in the construction of the shed.

Mr. Gussman made a motion to grant the exception for case CBE-07-009 with staff recommendations.

The motion was approved by a 5-0 vote.

2. CBE-07-010 – Shawn and Julie Casey - 15 Mile Course

Mr. Pat Menichino presented the following case:

Project Summary and Description

Shawn and Julie Casey, 15 Mile Course, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of two decks and a staircase to provide access to an existing dock located on the pond behind a single family principal structure on the above referenced lot in Kingsmill. The lot is 56,550 sqft or 1.3 acres in size. The proposed staircase and decks would be located on a 25% slope adjacent to Kingsmill Pond.

The lot was recorded prior to the adoption of the Ordinance. Therefore, there was no RPA present on the lot at the time of recordation. However, 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. A field evaluation conducted for this project's building permit application identified a perennial water body adjacent to

the rear of the lot requiring that a 100-foot RPA buffer be established around the water encompassing approximately 50% of the lot.

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 that "items not considered part of a principal structure include pools, gazebos, patios, free-standing decks, garages, or storage sheds, etc." Therefore, the proposed decks cannot be approved administratively by the Manager and must be approved by the Board.

The issue for the Chesapeake Bay Board's consideration is the placement of approximately 500 sqft of staircases and decks within the RPA.

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 applicants have submitted a WQIA for this project.

The WQIA proposes to mitigate for the impacts to the RPA by planting one (1) native tree, two (2) native understory trees and twelve (12) native shrubs within the buffer to help filter nonpoint source pollution. This mitigation plan meets typical mitigation requirements for similar impervious cover.

Board Action

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 cannot support approval of this exception request as it involves an impervious, accessory structures and use in the RPA. However, the Board has approved the construction of brick paver patios, segmental block retaining walls, and other accessory structures in the past.

Staff is not opposed to the Board granting the applicant's exception request for the following reasons:

- There is no mature vegetation removal required by the installation of the staircase and decks.
- The proposed decks are part of a staircase system to provide access to the water.
- There are existing decks and staircases on adjacent properties.

After reviewing this case, if the Board considers approval of this exception, staff recommends that the following conditions be included within the Board action:

1. Full implementation of the mitigation 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. A 3 to 4 inch deep mulch bed will be installed elsewhere around any individual proposed mitigation plantings.
4. 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.
5. This exception request approval shall become null and void if construction has not begun by April 11, 2008.

Mr. Gussman asked for an explanation of the photos submitted with the applicant's exception request.

Mr. Menichino stated they were photos of other properties on Kingsmill Pond.

Mr. Apperson opened the public hearing.

A. Shawn and Julie Casey, the applicants, presented the Board with additional photos of their property and other properties around Kingsmill pond and supporting letters from their neighbors. (copies ~~attached~~ in case file).

Mr. Waltrip asked if the size of the decks could be reduced.

A. Ms. Casey stated the decks had already been designed with clipped corners to reduce the square footage and avoid removal of existing native trees. She stated they would be also be willing to add more native plants on the sloped areas and decrease the size of the existing yard.

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

Mr. Gussman stated there was already a large deck on the property outside of the RPA.

Mr. Menichino stated the proposed decks and stairs were for access to the water.

Mr. Lindsey stated the elimination of turf would further mitigate for the proposed decks.

Mr. Waltrip and Mr. Lindsey both stated the proposed decks were similar to those on other properties around the pond.

Mr. Hughes made a motion to grant the exception for case CBE-07-010 with staff recommendations and the implementation of additional mitigation by removing 400 sqft of turf from within the RPA buffer and replacing it with native plants consisting of (1) canopy tree, (2) understory trees, and (3) shrubs in a mulch bed.

The motion was approved by a 5-0 vote.

3. CBE-07-012 – C. Lewis Waltrip – 2515 Manion Drive

Mr. Pat Menichino presented the following case:

Project Summary and Description

C. Lewis Waltrip, owner, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of a segmental block retaining wall, resulting in the creation impervious area within the seaward 50-foot RPA buffer. The proposed retaining wall will be installed to remedy an existing erosion problem. The property is located in Drummonds Field and is adjacent to the James River.

The lot was recorded prior to the adoption of the Ordinance and there was no RPA present on the lot at the time of recordation. 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 James River was identified as a perennial stream on the quad map and an RPA buffer was placed on the lot. The lot is 51,000 sqft or 1.14 acres in size. The 100-foot RPA buffer encompasses about 20 % of the lot.

Staff does not have the authority to grant administrative approval for encroachments into the RPA buffer for accessory structures.

The issue for the Chesapeake Bay Board's consideration is the installation of 100 linear feet of segmental block retaining wall with (2) 5 foot returns, creating approximately 200 sqft of impervious area within the RPA buffer.

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. Waltrip has submitted a WQIA for this project. The mitigation plan contained within the WQIA proposes to offset the impervious cover impacts to the RPA buffer for the segmental block retaining wall by planting (1) canopy tree, (2) understory trees and (16) shrubs. The proposed plan exceeds the County's mitigation requirements.

Board Action

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 is not opposed to the installation of this retaining wall as it will correct an existing erosion problem and prevent sediment from entering the river.

After reviewing this case, if the Board considers approval of this exception, staff recommends that the following conditions be included within the Board action:

1. Full implementation of the mitigation 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. A continuous mulch planting bed will be created in the area above the proposed segmental block retaining wall where the proposed group mitigation plantings will be installed. A 3 to 4 inch deep mulch bed will be installed elsewhere around any individual proposed mitigation plantings.
4. 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.
5. This exception request approval shall become null and void if construction has not begun by April 11, 2008.

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

All Board members agreed the existing walls on the property were in need of repair.

Mr. Apperson also commended the owner for maintaining a natural yard and thus reducing the nutrient runoff.

Mr. Waltrip made a motion to grant the exception for case CBE-07-012 with staff recommendations.

The motion was approved by a 5-0 vote.

4. CBE-006-068 – AES/Colonial Heritage LLC – Colonial Heritage - Phase IV

Mr. Mike Woolson presented the following case:

Project Description

Mr. Rick Smith, AES Consulting Engineers, Inc. applied on behalf of Colonial Heritage, LLC, for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for impacts associated with the Colonial Heritage Phase IV project. The project is generally located adjacent to and north of Centerville Road, and south of Phase 3, Section 3 and the southern tributary of Yarmouth Creek.

For the purposes of constructing the necessary stormwater management facilities, sanitary sewer gravity main, water main, and the construction of Colonial Heritage Boulevard and bridge infrastructure, Colonial Heritage, LLC is proposing 0.88 acres of total encroachment into the Resource Protection Area (RPA). As identified in the Water Quality Impact Assessment (WQIA), Impacts #1, #2, and #3 are associated with the road and bridge construction, and Impact #4A is a stormwater outfall; all these are administrative exceptions. The administrative impacts are 0.73 acres of the total impact encroachment. The road and bridge impacts have already been approved. The other three impact areas are considered Chesapeake Bay Board action items. Impact #4B is for a portion of a BMP embankment at 0.02 acres, Impact #5 is for a combination sanitary sewer and water line extension at 0.07 acres, and Impact #6 is for the removal of an existing earthen embankment at 0.06 acres.

Mr. Rick Smith and AES Consulting Engineers have worked with Environmental Division staff to reduce impacts to the RPA as presented in the WQIA.

History

AES Consulting Engineers first submitted the proposed plan of development for Colonial Heritage Phase IV to the Planning Division in August 2005. A site-specific perennial stream evaluation revealed that multiple perennial streams existed adjacent to this plan of development, all of which drain towards Cranston's Mill Pond and ultimately to the James River through the Yarmouth Creek tributary. As this plan of development was submitted after January 1, 2004, the project was not grandfathered from the revised Ordinance and as a result, an RPA buffer of 100 feet has been imposed on both sides of the streams and contiguous wetlands. Due to site restrictions resulting from the RPA requirements, one of the stormwater management facilities, which will handle stormwater runoff from the site, has a minor encroachment (0.02 acres) into the RPA near the headwaters of the perennial stream.

Section 23-11 of the revised Ordinance states that "a Water Quality Impact Assessment (WQIA) shall be required for any proposed land disturbance in the RPA resulting from development or redevelopment activities." Mr. Rick Smith and AES Consulting Engineers have submitted a WQIA for this project. Preliminary approval was granted by the Planning Division on November 6, 2006, and this exception request can go forward for deliberation by the Board.

Water Quality Impact Assessment

The impacts to the RPA buffer and RPA features resulting from the current plan of development requiring administrative and board actions are 0.88, of which 0.73 acres are administrative action items and 0.15 acres are Board action items. The following items are, or will be, implemented into the associated plan of development:

- Additional Natural Open Space easements, labeled as RPA Buffer Enhancement Areas 1 through 5 on Exhibits C and D, which total 0.91 acres. This preservation is beyond that which is required for overall project stormwater compliance;
- Erosion control type 3 blanket matting will be applied to all cut and fill slopes throughout the RPA impact areas;
- Conservation seed mix will be used on all upland disturbed areas within the RPA and a wetland seed mix on all disturbed areas within the wetlands;
- Removal of an existing unstable embankment within the RPA with proper stabilization of the disturbed area with EC-3 matting.

AES, acting on behalf of Colonial Heritage, 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

Given the nature of the development and the mitigation measures proposed, staff finds that this 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 recommends that the Chesapeake Bay Board approve this WQIA and the exception for the Colonial Heritage Phase IV. Furthermore, all recommendations listed within the Water Quality Impact Assessment, dated March 21, 2007, are to be incorporated into the site plans for the project, and must receive final approval by the Environmental Division. This exception request approval shall become null and void if construction has not begun by April 11, 2008. Any changes to the plan of development that would cause any deviation from the items listed in the WQIA, either in the form of increased impacts to the RPA or omission of mitigation requirements from the submitted plan of development must be reviewed or approved by the Board.

Mr. Apperson asked what the height and size of the bridge.

A. Mr. Rick Smith, AES Consulting Engineers, stated the bridge was 25 feet high, 300 to 400 feet long and wide enough for 2 lanes of traffic as well as a bike and pedestrian path.

Mr. Apperson opened the public hearing.

B. Elizabeth Edwards, 6232 Centerville Road, an adjacent property owner asked what the impact would be to her property.

Mr. Hughes stated that because the property is upstream of the project, the runoff should not impact her property.

A. Mr. Smith confirmed the impact would be about ¼ mile away from the residential properties.

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

The Board members asked about the impact on Yarmouth Creek, the water and sewer lines, the erosion control methods and the re-vegetation of the disturbed areas.

Mr. Woolson stated the water and sewer lines would be underground, upstream of the bridge crossing. He added that the applicants' environmental consultant had worked with the Army Corp of Engineers and the Department of Environmental Quality to minimize the wetland impacts for this crossing.

Mr. Hughes made a motion to grant the exception for case CBE-06-068 with staff recommendations.

The motion was approved by a 5-0 vote.

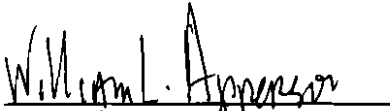
D. BOARD CONSIDERATIONS - none

E. MATTERS OF SPECIAL PRIVILEGE

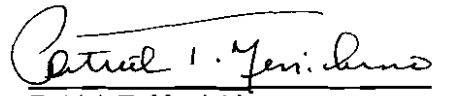
Mr. Waltrip gave notice that at the next Board meeting he would make a motion to rescind the March 14, 2007 decision to deny the exception for case CBE-06-071 - 3 West Circle. Mr. Apperson asked that a special committee of three Board members be formed to review the information on the case and present a report at the next Chesapeake Bay Board Meeting on May 9, 2007. Mr. Waltrip was appointed as the chairman of this special committee. Mr. Hughes and Mr. Gussman were selected as the other two members for the special committee. It was agreed that public notice would be given in advance of the special committee meeting and adjacent property notification would be given as well as public notice for the next Board meeting.

F. ADJOURNMENT

The meeting adjourned at 8:00 PM.



William L. Apperson
Chairman



Patrick T. Menichino
Environmental Compliance Specialist