

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

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

ABSENT
John Hughes

OTHERS PRESENT

B. MINUTES – The June 13, 2007 minutes were approved as presented.

C. PUBLIC HEARINGS

1. CBE-07-019 – Gary Little – 7578 Vincent Drive - Continued from 6/13/07

Pat Menichino stated Gary Little, the applicant, was not in attendance and staff had not heard from him since the board meeting in June. He stated the Board could defer for a third time to the next meeting on August 8, 2007 or vote on the appeal and the exception request at this time.

Mr. Lindsey stated he felt the Board should act on the appeal and exception at this time because the applicant had not provided the requested building specifications for the proposed retaining wall.

Mr. Waltrip agreed with voting on the appeal because the existing retaining wall had to be removed before a new wall could be installed.

Mr. Gussman asked if staff had tried to contact Mr. Little and if the appeal were denied how long the applicant would have to remove the existing wall.

Staff supplied the Board with a copy of the Case Decision Work Sheet that was mailed to the applicant immediately after the June 13, 2007 meeting ~~(copy attached)~~.

Mr. Menichino stated the applicant would have 30 days to remove the existing retaining wall.

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

Mr. Lindsey made a motion to deny the appeal of the violation and deny the exception for case CBE-07-019.

The motion to deny was approved by a 4-0 vote.

2. CBE-07-031 – Kenneth Brooks – 101 Brady Drive

Pat Menichino presented the following case:

Project Summary and Description

Kenneth K. & Billie D. Brooks applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with an existing accessory storage building on the above referenced property. The property is 235,000 sqft or 5.413 acres in size.

The lot was recorded prior to adoption of the Ordinance and there was no RPA present on the lot at recordation. 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 on this property in April 2007 verified the existence of a perennial stream requiring that a 100 ft RPA buffer be established on the

property around the stream. This 100 ft RPA buffer and wetlands encompass 30% of the lot.

In 2004, the owners constructed a 3,840-sqft storage building on their property, without first obtaining the required approvals from the County. Unfortunately this storage building is within the 100 ft RPA buffer located on the property. This accessory storage building is approximately 10 times larger than any accessory structure previously approved by the Board. There is also approximately 7,500 sqft of gravel drive, totaling approximately 11,340 sqft of impervious cover in the RPA. Total disturbance within the RPA on this lot is approximately 26,000 sqft.

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, this accessory storage building cannot be approved administratively by the Manager and must be submitted as an exception request to the Board.

The issue for the Chesapeake Bay Board's consideration is the placement of a 3,840 sqft accessory storage building and 7,500 sqft of gravel drive already constructed with 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 RPA. The owners have submitted a WQIA for this project.

The WQIA submitted does not propose any new mitigation to offset the impacts to the RPA. Mitigation planting with native trees, and shrubs was accomplished by the owners prior to this exception request. However, the amount of mitigation plantings already installed by the owners is far less than the standard County's mitigation requirements which would be twenty Eight (28) trees, fifty six (56) understory trees, and eighty four (84) shrubs for the 11,340 sq ft of impervious area.

The Board is to determine whether or not the existing 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 has not allowed the creation of accessory structures in the RPA in the past. Both the Ordinance and staff consider storage buildings as accessory structures and impervious surface. Staff believes that this exception request is inconsistent with the spirit and intent of the Ordinance and for that reason, does not support the granting of this exception.

Following the public hearing, should the Board vote to grant this exception request, staff would recommend the following conditions be applied:

1. The owners shall submit to the Environmental Division an RPA mitigation plan that is consistent with the County's standard mitigation requirements for impervious area. This mitigation plan may require the installation of a BMP in addition to native plantings. The required native plantings shall be at a minimum, 1-1/2 inch caliper trees (six to eight feet tall) and native shrubs that shall be 3 gallon container size. All vegetation shall be native species approved by the Environmental Division.

2. Implementation of the mitigation plan shall 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.
3. The owners shall execute a Chesapeake Bay Civil Charge Agreement with the County and provide for a one-time civil charge payment of \$7,500.00.
4. The owners must obtain any and all approvals and/or permits required by other agencies with regulatory authority over the existing or proposed work.
5. The exception request approval shall become null and void if all conditions imposed by the Board have not been met by July 11, 2008.

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.

Mr. Waltrip asked if a building permit was required for a private pole barn.

Jennifer Lyttle, Assistant County Attorney, stated there was a provision in the Zoning Ordinance to allow for construction of a pole barn for agricultural use. She further stated if the building were not used as a pole barn, it would be considered a zoning violation. She and Mr. Menichino advised the Board the matter for their consideration was not the use of the building but its location in the RPA buffer.

Mr. Apperson opened the public hearing.

A. Kenneth Brooks, the applicant, stated his property was zoned as agricultural and he thought he was allowed to build a pole barn without obtaining a permit. He stated he had not been aware of the RPA buffer and selected this area of his property after removing the trees downed by Hurricane Isabelle. He added that he had now applied for the required permits and would do whatever was necessary to bring the building into compliance.

Mr. Waltrip asked Mr. Brooks how the floor of the building was constructed and when the structure was built.

A. Mr. Brooks stated the floor was concrete. He stated some of the materials were purchased in 2003, and construction of the barn was completed in 2004.

Mr. Apperson asked if any fill was brought in and if Mr. Brooks had any proof that construction was started in 2003.

A. Mr. Brooks stated approximately 3 truck loads of fill were used to level the ground. He was not sure if he had proof of when construction was started.

Mr. Gussman and Mr. Lindsey stated an accessory structure of this size in the RPA would cause substantial detriment to water quality and granting this exception request would be contrary to the purpose and intent of the Ordinance.

A. Mr. Brooks asked if the Board would consider his application if he reduced the size of the building.

Jennifer Lyttle stated the Board could defer their decision allowing the applicant to revise his application and come back in 30 days with a new plan.

Mr. Waltrip made a motion to defer the decision for case CBE-07-031 and continue the public hearing to the next Board meeting on August 8, 2007.

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

D. BOARD CONSIDERATIONS.

1. Amendments to the Bylaws

Jennifer Lyttle, Assistant County Attorney, stated the Chesapeake Bay Board was currently operating under the bylaws of the Wetlands Board. The proposed Chesapeake Bay Board Bylaws were being presented to the Board members for their review to be discussed and voted on at the next Board meeting on August 8, 2007.

E. MATTERS OF SPECIAL PRIVILEGE

Darryl Cook informed the Board of his new position as County Engineer and introduced Scott Thomas, the new Environmental Director. Scott will assume the duties of the Director including serving as the Manager and Secretary to the Chesapeake Bay Board.

The Board welcomed Scott and thanked Darryl for his years of service to the Board.

F. ADJOURNMENT

The meeting adjourned at 8:33 PM.



William L. Apperson
Chairman



Darryl E. Cook
Secretary