

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
November 14, 2007**

A. ROLL CALL

ABSENT

Henry Lindsey
John Hughes
David Gussman
William Apperson
Larry Waltrip

OTHERS PRESENT

County Staff

B. MINUTES

The October 10, 2007 Board Meeting minutes were approved as presented.

C. PUBLIC HEARINGS

1. CBE-07-037 – Bury + Partners – Burlington Woods Subdivision

Mike Woolson presented the following case:

Project Description

Mr. Jan Breidé, on behalf of Burlington Woods, LLC, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for impacts associated with the Burlington Woods residential project. The project involves the construction of 26 single-family residential units and assorted infrastructure, including roads, driveways, and stormwater BMP's. The project is situated within the sub-watershed 204 of Powhatan Creek, and bordered to the north by Longhill Road, residential properties to the east, west, and south (figure 1).

For the purposes of constructing the project, off-site easements are required for both sanitary sewer connection and a storm water BMP outfall. Both of these items will require impacts to the resource protection area. The storm water BMP outfall impact requires an administrative exception while the sanitary sewer impact requires a Chesapeake Bay Board exception.

Brief History

Burlington Woods, LLC first submitted this project for a rezoning on December 28, 2004 to rezone from the then existing R-8 district to R-2. This rezoning, along with a master plan and special use permit conditions were approved by the Board of Supervisors on May 24, 2005 (County Plans Z-016-04, MP-012-04, and SUP-035-04). As part of the rezoning process, the applicant committed to providing on-lot stormwater management strategies to further reduce stormwater runoff and pollutant loading beyond traditional measures. Such management strategies include, but are not limited to, rain gardens, bio-retention swales, and infiltration swales and complement, but not replace, the traditional stormwater management practices.

Accordingly, Burlington Woods, LLC proposes to construct the project known as Burlington Woods, which will have 0.17 acres (7,441 sf) of permanent RPA impact due to the construction of a sanitary sewer connection (6141 SF) and a stormwater BMP outfall (1300 SF). This plan of development is currently under review by staff under County Plan S-055-06. Both the sanitary sewer and storm water outfall will be co-located in the same easement, as shown in the attached exhibit (figure 2), thus reducing the overall impacts to the RPA. Furthermore, the installation of the sanitary sewer will

include 0.07 (3,025 sf) acres of impacts to jurisdictional (Corps of Engineers) non-tidal wetlands. It is the impact to the RPA due to the construction of the sanitary sewer which is before the Board tonight. The impact to the RPA from the construction of the storm water outfall will be processed administratively.

Previous submittals of the project included a scenario with the RPA impacts for sanitary and storm sewers separated, with the total RPA impact equaling approximately 0.21 acres (figure 3). In this case, the impact total is approximate due to the fact that staff suggested comments to the applicant to reduce the total impacts and the applicant took those suggestions and modified the plan accordingly.

Water Quality Impact Assessment

The Ordinance, in Section 23-11, 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." The attached WQIA presents the impacts to the RPA buffer and wetlands resulting from the plan of development and the offsetting mitigation measures. The WQIA presents impacts associated with the construction of a sanitary sewer connection and a stormwater management facility outfall into the RPA. To mitigate for the proposed impacts, the following will be implemented into the associated plan of development:

- Use of a coastal plains seed mix within the utility easement outside of all wetland areas; and
- Use of a wetland seed mix within the utility easement within the disturbed wetland areas; and
- Placement of orange safety fence around the limits of disturbance within the RPA and wetland systems; and
- Placement of orange safety fence between the limits of disturbance and all Natural Open Space easements and conservation easements.

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 Low Impact Development stormwater measures proposed through the rezoning, presented on the current plan of development, and the reduction of RPA impacts through the co-location of storm and sanitary sewer in the same easement, staff finds that the WQIA and 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 to the Chesapeake Bay Board that they approve the WQIA and the exception for the sanitary sewer connection for the project known as Burlington Woods. Furthermore, all recommendations listed in the WQIA and in the staff report are to be incorporated into the site plans for the project, which must then receive final approval by the Environmental Division.

This exception does not confer any property rights, nor does it confer any type of plan approval. All offsite easements and additional permits that may be required for this development must be obtained

and evidence of such presented to the Environmental Division prior to final plan approval. This exception request approval shall become null and void if construction has not begun by November 14, 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 components of the RPA or omission of mitigation requirements from the submitted plan of development must be reviewed and approved by the Board.

The Board members asked if the orange safety fence was a new requirement and if it was only required during construction.

Mr. Woolson stated it was only for use during construction to clarify the limits of construction or in areas where there was high pedestrian traffic.

Mr. Apperson opened the public hearing.

A. Mr. Jan Breidé, Bury & Partners, stated he was available to answer questions for the Board.

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

Mr. Gussman made a motion to adopt the resolution for case CBE-07-037 granting an exception on tax parcel 3130100020.

The motion was approved by a 5-0 vote.

2. CBE-07-097 – Steven Davis – 116 Herndon-Jenkin

Pat Menichino presented the following case:

Project Summary and Description

Steven Davis, of 116 Herndon Jenkins Rd., applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the installation of a new 10' x12' wood deck directly underneath an existing elevated wood deck of the same size. Although staff does not calculate the square footage of the new 10' x 12' lower deck in the total impervious area, the creation of a lower deck is considered an impact to the RPA buffer that should require mitigation. The applicant is also requesting an exception to add an 8' x 14' section of new wood deck for an additional 112 sqft of impervious area at the ground elevation, under the bay window and for the addition of a spiral staircase to be installed onto the existing elevated deck down to the ground elevation. The applicant is also requesting as an option for Board consideration, an exception request to allow for the completion of retaining walls and a parking area totaling 240 sqft of impervious area to allow for a small area of additional off street parking. The lot is 0.856 acres in size and the RPA buffer encompasses approximately 95% of the lot or 0.813 acres. The proposed encroachments are landward of the 50' RPA buffer.

An RPA Mitigation Plan has been provided along with the exception request. The RPA Mitigation Plan proposes to mitigate for the 352 sqft of new impervious cover and 120 sqft of RPA impact caused by the new lower deck totaling 472 sqft. The proposed mitigation planting is; (2) native trees, (4) understory trees and (6) native shrubs in a planting beds to filter runoff from the proposed impervious areas. This plan meets the standard mitigation requirements of the County.

Staff has evaluated the requests, and determined them to be accessory in nature. Staff has not administratively approved the installation of accessory structures however, the Board has granted exceptions for accessory structures within the RPA buffer.

Staff offers the following information as guidance to the Board concerning this application.

1. One of the proposed new decks (10' x 12') will be directly underneath of an existing elevated deck of the same size. Although there is no increase in impervious area, it is still considered an RPA impact and should be evaluated. A second new deck area of 8' x 14' is also proposed under a bay window. Staff considers the installation of multiple decks to be accessory in nature and exceeding the "minimum necessary to afford relief".
2. A proposed spiral staircase attached to the existing upper deck has also been reviewed and evaluated by staff as accessory in nature, but may be evaluated by the board as a safety feature.
3. The RPA Mitigation Plan meets the County's requirements.
4. Staff believes that the adverse impacts caused by the installation of these accessory structures will be minor in nature.
5. The Ordinance provides that the Board can impose additional mitigation requirements to offset potential water quality impacts.

Brief History

The lot was recorded after January 1, 2004 and after the adoption of the Ordinance. 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 was conducted for this lot prior to the issuance of a building permit in 2005. A perennial stream at the rear of the lot was identified requiring that a 100-foot RPA buffer be established on the lot around the stream. This 100-foot RPA buffer encompasses about 95% of the lot.

According to provisions of Section 23-7 (c) 2 (b); 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 this case, the exception request is for an accessory structures encroachment within the 100 foot buffer and therefore 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.

The applicant has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant has submitted a WQIA for this project and proposes to mitigate for the impacts to the RPA by planting (3) native shrubs, and creating a mulched landscape bed in the RPA on the lot to help filter nonpoint source pollution.

The issue before the Board is the addition of 472 square feet of impervious cover in the RPA associated with the deck, spiral staircase, retaining wall and parking area. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14(c) of the Chesapeake Bay Ordinance.

Recommendations

The Ordinance does not authorize staff to give administrative approval for the placement of accessory structures within the 100-foot buffer. To be consistent with the Ordinance requirements staff cannot

support the approval of this exception request for the decks, retaining wall, and parking area. The

requested spiral staircase could be considered as a safety feature to allow for emergency access from the existing second floor deck down to the ground.

If the Board votes to approve the exception request, then staff recommends that the following conditions be incorporated into the approval:

1. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements must be completed prior to the issuance of the final certificate of occupancy.
2. The size of the shrubs shall be 3-5 gallon size. All vegetation shall be native species approved by the Environmental Division.
3. Surety for the implementation of the RPA Mitigation Plan shall be provided in a form satisfactory to the County Attorney, pursuant to sections 23-10(3)(d) and 23-17(c) of the James City County Code.
4. This exception request approval shall become null and void if construction has not begun by November 14, 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 before construction can begin. If the Board grants the exception, the proposed RPA Mitigation Plan is in accordance with the standard mitigation requirements for impervious surfaces.

Mr. Hughes asked if the retaining wall was already constructed and if this request was a for an after-the-fact permit.

Mr. Menichino stated the retaining wall was almost complete but the fill was not in place.

Mr. Apperson opened the public hearing.

A. Steven Davis, the applicant, stated he was not aware of the permit requirement for the off street parking area and retaining wall until he applied for a permit to construct the deck. He added that he was doing the parking area work himself.

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

Mr. Lindsey stated he was concerned with the lower deck prohibiting the growth of vegetation and the request for an after-the-fact permit.

Mr. Hughes stated only the parking area was after-the-fact, no contractor was involved and he believed the oversight was not intentional. With regard to the proposed deck, it was located in the 100-foot RPA and the applicant applied for a building permit as required.

Mr. Gussman stated the project was minimal and in character with the neighborhood.

Mr. Waltrip stated the construction appeared adequate and the staircase was a safety issue.

Mr. Apperson stated he approved of the mulch areas around the property.

Mr. Hughes made a motion to adopt the resolution for case CBE-07-097 granting an exception on tax parcel 3220100060.

The motion was approved by a 5-0 vote

3. CBE-07-107 – Vanasse Hangen Brustlin, Inc/Busch Properties – Spencer's Grant

Pat Menichino presented the following case:

Project Summary and Description

Mr. Kevin Kolda on behalf of Busch Properties Inc, owner, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the installation of 1300 linear feet of class 3 armor stone revetment (defensive structure) and the clearing and grading of approximately 42,000 sqft of RPA buffer along the James River. The purpose of this proposal is to hard armor the backshore area to provide for additional shoreline protection and to clear and grade the existing bluff, creating a uniform 1.5:1 earth slope from the top of bluff down to the proposed revetment. The proposed 1300 linear feet of backshore revetment will have a crest elevation to + 11 above MLW. There are presently no structures at risk of being damaged from shoreline erosion located within the upland areas adjacent to this shoreline.

The applicant also has a Wetlands permit application pending to extend offshore breakwaters (offensive structures) along with the addition of 4,000 cubic yards of sand fill landward of the breakwaters. The adjacent River's Edge shoreline project utilized similar offshore breakwaters (offensive structures) successfully and the shoreline has done exceptionally well through several major storm events.

Staff does not have the authority to grant an administrative approval for encroachments within the RPA buffer for accessory structures. The installation of this proposed backshore armor stone revetment in is at an elevation that is above the Wetlands Board jurisdiction therefore it must be reviewed and considered for approval by the Chesapeake Bay Board.

The applicant and their consultants from Vanasse, Hangen, Brustlin, Inc. (VHB) and Coastal Design and Construction have worked together in an attempt to avoid and minimize the impacts to the RPA buffer. The proposal before you this evening is a result of that joint effort to avoid and minimize RPA impacts. The applicant proposes to mitigate for the RPA impact by installing a total of 623 trees, understory trees, and shrubs along the re-graded bank. This mitigation plan meets the requirement for the total number of mitigation plantings required.

In addition, all of the runoff from the areas upslope of the re-graded bank will be directed to the existing onsite BMP.

Brief History

This section of the Kingsmill shoreline is located between two older sections of shoreline that had extensive shoreline stabilization work performed in the late 1990's. Kingsmill-River's Edge to the West utilized breakwaters (offensive structures) and beach nourishment. Kingsmill-Rivers Bluff to the East utilized both offensive and defensive structures. Approval for the earlier projects was obtained through the County's Wetlands Permit process, along with a County Land Disturbance Permit.

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 and proposes to mitigate for the impacts to the RPA by planting 623 native canopy trees, native understory trees, and native shrubs in areas identified on the plan to help filter nonpoint source pollution and re-establish the buffer. This RPA Mitigation Plan meets the typical mitigation requirements for mitigation planting.

Board Action

The issue for the Chesapeake Bay Board's consideration is the impact associated with the approximately 42,000 sqft of clearing and grading within RPA buffer along with the construction of 1300 linear feet of backshore armor stone revetment within the RPA buffer. The Board is to determine whether or not the proposed development is consistent with the spirit and intent of the Bay Act Regulations 9VAC 10-20-130.a (4), and make a finding based upon the criteria outlined in Section 23-14(c) of the Ordinance:

Recommendations

Staff would not be opposed to the Board granting the applicant's exception requests for the 1300 linear feet of backshore revetment and 42,000 sqft of clearing and grading with the following staff recommendations included.

1. The applicant must obtain all other permits necessary and required by other agencies, including a James City County Land Disturbance Permit.
2. A preconstruction meeting shall be held onsite prior to land disturbance.
3. Surety for the implementation of the RPA Mitigation Plan shall be provided in a form satisfactory to the County Attorney, pursuant to sections 23-10(3)(d) and 23-17(c) of the James City County Code prior to the pre-construction meeting. The surety shall be held for one full year following the initial installation and inspection of the plant material. All plant material must be alive and thriving as determined by the Environmental Division (Division) at the time of the one-year anniversary inspection. If during the anniversary inspection, plant material is determined to be dead, diseased or missing the surety will be held until all planting material required by the plan is installed and thriving.
4. All trees and understory trees proposed for installation shall be a minimum 6' in height or 1" caliper.
5. The entire re-graded slope shall first be stabilized using 4-6" of new topsoil, and conservation seed mix of native grasses, and covered with EC-2 type blanket matting.
6. The applicant shall arrange for weekly project inspections to be performed by a qualified independent professional. The weekly inspection reports generated shall be submitted to the Division to insure that the project is being constructed in accordance with the approved plan, project specifications, and requirements, along with the permit conditions of the Chesapeake Bay Board. Prior to the preconstruction meeting, the applicant must provide the name of the person or firm who will perform said inspections.
7. The applicant must receive approval from the County Engineer for any proposed activity within conservation easements located on the property.
8. This approval shall not conflict with the provisions of the approved plan of development for Kingmill-Spencer's Grant, County Plan No. SP-53-05.

Mr. Menichino stated the applicant had worked with the County to reduce the impacts from the original proposal and major areas of the slope will not be graded. He displayed the plan and pointed out these areas as well as areas of vegetation to be preserved and areas to be replanted.

Mr. Apperson opened the public hearing.

The Wetlands Board public hearing for the Spencer's Grant shoreline stabilization permit was opened and considered concurrently with this case. Refer to the November 14, 2007 Wetlands Board minutes for all public comments on this case.

A. Chris Frye, VHB, Inc. representing Busch Properties and Coastal Design asked for a deferral on both the Wetlands and Chesapeake Bay exception cases until January 9, 2008 to allow the Boards to gather more information and conduct an on-site meeting for this project.

Mr. Hughes made a motion to continue the public hearings until January 9, 2008.

The motion to continue the public hearing for case CBE-07-107 was approved by a 5-0 vote.

D. BOARD CONSIDERATIONS

1. Calendar Year 2008 Meeting Schedule

All Board members agreed to adopt the 2008 Chesapeake Bay Board meeting schedule. Provided there are cases to be considered, the meetings will be held on the 2nd Wednesday of each month immediately following the Wetlands Board meeting, or at 7:00 PM if a Wetlands Board meeting is not held.

2. CBE-06-067 - Matt Huff – 2929 Leatherleaf Drive - Permit Extension

Mr. Menichino stated Mr. Huff's current exception would expire on November 8, 2007 and as the project had not been started, was requesting an extension.

Mr. Lindsey asked if there was any assurance the project would be started if the extension were granted and suggested the Board grant a 60-day extension.

Mr. Menichino stated he could not speak for the applicant but due to the time of year, recommended a more reasonable extension period.

Mr. Hughes stated a 6-month extension was more reasonable, as this was the applicant's first extension request.

Mr. Hughes made a motion to adopt a resolution granting a 6-month extension for case CBE-06-067.

The motion was approved by a 5-0 vote.

E. MATTERS OF SPECIAL PRIVILEGE

1. Adjacent Property Owner objection to CBE-07-089 Dominick Mullori – 3324 Sawyer Way – Retaining Wall.

Mr. Menichino stated as an oversight, staff had neglected to include the protest letter from Mr. & Mrs. Brown, adjacent property owners who live out of town but own the vacant lot next to Mr. Mullori. He stated he spoke with the Brown's who wished their protest to be on record but would concede to the Board's decision.

Jennifer Lytle, Assistant County Attorney stated the Board could make a motion to rescind their decision on this case if they were swayed by the letter.

The Board recommended this letter be added to the case file for CBE-07-089 and included in the Board minutes.

F. ELECTION OF OFFICERS FOR YEAR 2008

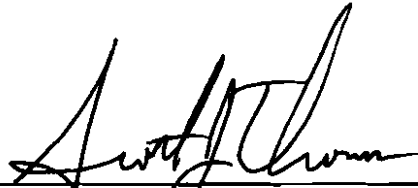
Mr. Lindsey moved that William Apperson be reappointed as Chairman. All members were in favor. Mr. Hughes moved that David Gussman be appointed as Vice-Chairman. All members were in favor. It was the consensus of the Board to reappoint Scott Thomas, Environmental Director, as Secretary to the Board.

G. ADJOURNMENT

The meeting adjourned at 8:55 PM.



Bill Apperson
Chairman



Scott J. Thomas
Secretary