

JAMES CITY COUNTY CHESAPEAKE BAY BOARD

MINUTES

Wednesday July 10, 2013

A. ROLL CALL

David Gussman - Chair
William Apperson
John Hughes
Larry Waltrip
Charles Roadley

ABSENT

OTHERS PRESENT

County Staff (Staff)

The responsibility of this Board is to carry out locally the Commonwealth policy to protect against and minimize pollution and deposition of sediment in wetlands, streams, and lakes in James City County, which are tributaries of the Chesapeake Bay.

B. MINUTES

The June 12, 2013 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBE-13-101: Lucas – 116 Godspeed Lane – continued from 6/12/13

Michael Woolson Senior Watershed Planner stated the applicant had withdrawn his exception request. Therefore no decision was required from the Board. The only required action was closing the public hearing.

Mr. Gussman closed the public hearing for case CBE-13-101 at 116 Godspeed Lane.

2. CBE-13-113: Robillard – 87 Kestrel Court

Michael Woolson Senior Watershed Planner presented this case for an exception request submitted by John and Laurie Robillard (the applicants), for encroachment into the Resource Protection Area (RPA) at 87 Kestrel Court, parcel No. 3220800015 in the Season's Trace/Heron Run subdivision. The exception request was for installation of a swing set and shed totaling no more than 160 square feet of impervious cover in the landward RPA buffer. Mr. Woolson reminded the Board of this applicant's May 8, 2013 appeal for unauthorized clearing, in the conservation easement on this property, by a previous owner. This Board denied that appeal and therefore the proposed mitigation for this exception request included partial restoration of the conservation easement through the removal of turf-lawn grass, installation of a perimeter water quality treatment filter strip, native plantings, and installation of a rainwater harvesting system to treat run off from the proposed shed and corner of the existing home. Staff determined the impacts to be moderate and recommended approval of the exception request with the conditions specified in the Resolution to Grant the Exception

Mr. Apperson asked if the turf grass would be removed or just sprayed with herbicide.

Mr. Roadley was concerned with compaction of the proposed soil/sand mixture in the filtration strip design.

Mr. Woolson stated the method of turf removal would be at the owner discretion and staff would provide documentation on the recommended composition for the filtration strip.

A. John Robillard, property owner, stated he would be glad to hear any recommendations from the Board. He stated he had also requested and received approval from his home owners association and they will allow him to move the structures even further out of the easement allowing for the removal of additional turf.

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

Mr. Roadley recalled that the applicant purchased the lot in its current condition and felt the proposal represented a good compromise for meeting the applicants request and restoring the easement.

Mr. Waltrip agreed and also recommended the applicant use proper composition for filtration.

Mr. Roadley made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case CBE-13-113 at 87 Kestrel Court, Parcel No. 3220800015 with guidance from Staff for composition of the filtration strip.

The motion was approved by a 5-0 vote.

RESOLUTION

GRANTING AN EXCEPTION ON JCC RE TAX PARCEL NO. 3220800015

WHEREAS, John and Laurie Robillard, (the "Applicants") have appeared before the Chesapeake Bay Board of James City County (the "Board") on July 10, 2013 to request an exception to the use of the Resource Protection Area (the "RPA") on a parcel of property identified as JCC RE Tax Parcel No. 3220800015 and further identified as 87 Kestrel Court in the Heron Run/Season's Trace subdivision (the "Property") as set forth in the application CBE-13-113 for the purpose of installing a swing set and shed; and

WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record.

NOW, THEREFORE, following a public hearing, the Chesapeake Bay Board of James City County by a majority vote of its members FINDS that:

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 Chapter 23, Chesapeake Bay Preservation, of the James City County Code, to other property owners similarly situated in the vicinity.
3. The exception request will be in harmony with the purpose and intent of Chapter 23 of the James City County Code, 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.
5. Reasonable and appropriate conditions are hereby imposed, as set forth below, which will prevent the exception request from causing a degradation of water quality.
6. In granting this exception, the following conditions are hereby imposed to prevent this exception request from causing degradation of water quality:

- 1) The applicant must obtain all other necessary federal, state, and local permits as required for the project.
- 2) Surety of \$250 will be required in a form acceptable to the County Attorney's office. Applicant to confer with Staff for acceptable soil composition in infiltration trench
- 3) County staff will concurrently administratively process the application consistent with the Conservation Easement program of the County and the recorded Deed of Easement.
- 4) This exception request approval shall become null and void if construction has not begun by July 10, 2014
- 5) Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 6 weeks prior to the expiration date.

D. BOARD CONSIDERATIONS

1. CBV-13-005 – Dec – 4072 Penzance Place Appeal Notice of Violation for unauthorized clearing

Michael Woolson, Senior Watershed Planner presented this appeal stating that Mr. John Dec and Ms. Jill Lee, residing at 4072 Penzance Place in Section 1 of the Windsor Ridge subdivision, filed an appeal to the James City County Chesapeake Bay Board (Board) on May 30, 2013. They are appealing a decision to restore the cleared area within the easement to a natural state. The plat of subdivision was recorded on 9 March 2012 as Instrument Number 120005503 and the Deed of Buffer Easement was recorded on 13 November 2012 as Instrument Number 120005628.

Background Information

On or before February 6, 2013, an anonymous complaint was filed with the Planning Division regarding the removal of vegetation from this lot near the lake edge. Staff investigated the complaint and found that there had been vegetation removed from the lot within the easement area. At that time, Ms. Jill Lee stated that they were removing the vines and weeds in the area and that they would replant with trees and shrubs. At a later date, Mr. John Dec applied for a building permit for a deck. Staff explained and outlined the limits of the easement to him at that time and also required a foundation survey.

During a follow up site visit on or about May 2, 2013, staff noticed that the deck was nearing completion and that the restoration was not completed in the easement area. Furthermore, staff noticed that grass was being established in a portion of the easement near the new deck. Staff issued a Notice of Violation on May 16, 2013. Staff informed the property owners that the restoration was not complete. Ms. Jill Lee called and scheduled an on-site meeting for May 29, 2013. When staff arrived, it was noticed that the entire area has recently been sodded, including the previously replanted area. After some discussion, staff informed them that all of the sod needed to be removed and the entire area restored. It was during this discussion that Mr. Dec and Ms. Lee decided to appeal the Notice of Violation.

Staff Guidance and Recommendations

Staff has reviewed the appeal and violation documents and offers the following information for the Board's consideration.

- 1) Mr. John Dec and Ms. Jill Lee are currently the owners of the property, 4072 Penzance Place, where a violation of the Slope Buffer Easement has taken place.
- 2) The Slope Buffer Easement was recorded on 13 November 2012 in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City as Instrument Number 120005628.
- 3) The Deed of Easement states that the "Grantor wishes to establish on each of the Buffer Lots a natural buffer area as part of Grantor's efforts to enhance the quality of the development."
- 4) The restrictions outlined in the Deed of Easement and the restrictions which the Grantee (County of James City, Virginia) is hereby entitled to enforce, shall be as follows:

- a) No building or structure shall be built or maintained within the Buffer Areas other than such building or structure approved by the County Engineer, in writing;
- b) The Buffer Areas shall remain in their natural condition with respect to understory and canopy trees comprised of trees of a four inch (4") or greater diameter measured at four feet six inches (4'6") in height, or of such lesser diameter as required by James City County ordinance (collectively, the "Vegetation"). The activities of Grantor within the Buffer Areas shall be limited to those which do not remove or damage the Vegetation except with the expressed written consent of the County Engineer. Grantor may, within the Buffer Area, engage in selective trimming and pruning which do not materially alter the natural character of the Buffer Areas, install walking trails and removed dead, diseased, poisonous or invasive vegetation;
- c) Grantee and its representatives may enter upon the Buffer Areas from time to time for inspection and to enforce the terms of this Deed of Easement; and
- d) (1) In the event of a violation of this Deed of Easement, the Grantee shall have the right to seek all appropriate legal and equitable relief, including but not limited to: reasonable attorney's fees and costs; the right to restore the Buffer Areas to its natural condition; and the right to assess the cost of such restoration as a lien against any of the Buffer Lots on which the restored Buffer Area is located.
 (2) Although the Buffer Easement in gross will benefit the public in the ways cited above, nothing herein shall be construed to convey a right to the public of access to or use of the Buffer Areas, and the Grantor, for itself and its successor owners of each of the Buffer Lots shall retain exclusive right to such access and use, subject only to the provisions herein recited, and, unless otherwise lawfully considered non-developable areas pursuant to the ordinances of James City County, Virginia, the Buffer Areas shall not, by reason of being subject to the Buffer Easement, be considered to be undevelopable or otherwise restricted for purposes of calculating developable areas of the Buffer Lots for governmental permitting and approval purposes.

Under Section 23-17(b) of the Chesapeake Bay Preservation Ordinance, it states that "in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of this chapter. The Board shall not decide in favor to the appellant unless it finds:

- 1) The hardship is not generally shared by other properties in the vicinity;
- 2) The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
- 3) The appellant acquired the property in good faith and the hardship is not self-inflicted."

Staff's guidance to the Board on deciding this matter is as follows:

- 1) The hardship is shared by other properties immediately adjacent to the appellant's property as well as numerous other properties within the Windsor Ridge subdivision that have the slope buffer easement located on them.
- 2) The granting of the appeal in this case will adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity. Granting relief to the appellant resulting from a violation of the Deed of Easement could result in similar unauthorized actions by other property owners in the vicinity and will lead to a degradation of water quality in the tributaries to the Bay.
- 3) The appellant acquired the property in good faith and the hardship is self-inflicted.
- 4) Staff contends that to be consistent with the purpose and intent of the Ordinance and the Deed of Easement, the Board should deny the appeal.

Mr. Woolson displayed diagrams and photos of the cleared area and plantings already installed.

The appellant was requesting that this Board overturn Staff's decision to restore the cleared easement to a natural state per the recorded Deed of Easement.

Mr. Gussman asked what procedures and options would ensue should the Board deny the appeal and uphold Staff's decision.

Mr. Woolson stated it was Staff's desire to work with the owner on developing a restoration plan that met County requirements. Staff would give consideration for the plantings already in place as well as selected substitutions for native species and the owner would be required to enter into a restoration agreement with surety to guarantee completion of the restoration plan. Should the owner not wish to be cooperative, the County could perform the restoration and put a tax lien on the property for the cost of the restoration. The owner could also appeal this Board's decision to the Circuit Court.

Mr. Waltrip asked if the turf would be removed.

Mr. Woolson stated that it would and could easily be removed as it was only recently installed.

Mr. Gussman asked if the appellant had been notified of tonight's meeting.

Mr. Roadley asked if the owner formally requested this appeal as their May 30, 2013 letter only requested guidance on the restoration.

Mr. Woolson displayed the copy of the Notice of Violation, signed by the appellants stating they wished to appeal this violation and they were verbally notified of this meeting..

Mr. Apperson asked if the conservation easement applied uniformly around the pond.

Mr. Roadley asked if the steep slopes were graded, as the area did not appear to be steep in the photographs.

Mr. Woolson stated the steep slope buffer easement was created through the civil engineering construction package and only applied to 14 consecutive lots in section 1 of the Windsor Ridge development. Part of the slope may have been graded by the house but not near the pond.

Mr. Hughes asked if the current owners purchased the house already built or contracted to have it built and who cleared the easement.

Mr. Waltrip asked if the owners were aware of the restriction on the lot when they purchased it.

Mr. Woolson stated that Ryan Homes built the house but he did not know if it was contracted by the owners or if they purchased during construction. The current owners were responsible for the unauthorized clearing. He could not speak as to their prior knowledge of the restrictions but the lot was platted and the deed of easement recorded prior to construction of the house.

Mr. Roadley stated he was sympathetic to property owners finding themselves in situations they were unaware of however; in this case language of the easement was clear.

Mr. Gussman agreed the requirements in the easement were clear and although he wished the owners were in attendance to state their request, the Board should proceed to take action on the appeal.

Ms. Lola Perkins, Assistant County Attorney stated the Board could defer their decision if they wished to give the appellants another opportunity to state their case however by Ordinance, written notification of this meeting was not required only that the appellant be notified at least 10 days prior to the meeting and she was satisfied they had received verbal notice from Mr. Woolson.

Mr. Gussman stated the appellants also had some responsibility for verifying when their request would be considered.

Mr. Apperson stated he was also satisfied that Staff had visited the site enough times and given the appellants notice of this meeting.


Mr. Hughes made a motion to adopt the resolution to deny the appeal of case #CBV-13-005 at 4072 Penzance Place, Parcel ID 1331000014.

The motion to deny was approved by a 5-0 vote

E. MATTERS OF SPECIAL PRIVILEGE - None

F. ADJOURNMENT

The meeting adjourned at 7:50 p.m.



David Gussman
Chesapeake Bay Board Chair



Melanie Davis
Secretary to the Board