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Secretary of Natural Resources

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Director

COMMONWEALTH of VIRGINIA
DEPARTMENT OF CONSERVATION AND RECREATION

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December 20, 2006

Mr. Rick Scarper
Planner
Planning and Community Development
Operations Building, Room 115
Municipal Center
Virginia Beach, Virginia 23456

Dear Mr. ~~Scarper~~ ^{Rick}:

I have reviewed the "Application for Exception to CBPA Buffer Area Requirements of the City of Virginia Beach CBPA Ordinance" you so kindly provided to me in late October 2006. This application proposes to encroach, fill, and develop much of the existing Resource Protection Area on this 107.4 acre site, resulting in significant impacts to tidal wetlands, existing buffer areas, and existing water courses. An overriding general comment on this application is that it does not take into account the natural limitations of the site and proposes to develop this environmentally sensitive area to a level of impervious coverage of over 50 percent, despite the fact that only 69 acres lie above mean low water. Based on this fact, it is the Department's position that the proposal is inconsistent with Chesapeake Bay Preservation Area Designation and Management Regulations and should not be approved as submitted.

In order to approve this application, the Regulations require that the City's Chesapeake Bay Board must consider it in light of the following findings (from Section 110(H) of Appendix F, Chesapeake Bay Preservation Area Ordinance):

- (1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in Chesapeake Bay Preservation Areas who are subject to the provisions of this ordinance and are similarly situated;
- (2) The application is not based upon conditions or circumstances that are or have been created or imposed by the applicant or his predecessor in title;

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- (3) The variance is the minimum necessary to afford relief;
- (4) The variance is in harmony with the purpose and intent of this ordinance, and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare;
- (5) There is no increase in nonpoint source pollution load;
- (6) Reasonable and appropriate conditions are imposed which will prevent the variance from causing or contributing to a degradation of water quality; and
- (7) Any development or land disturbance exceeding an area of two thousand five hundred (2,500) square feet shall comply with all applicable erosion and sediment control requirements.

The site currently has 23.6 acres of Resource Protection Area and the application proposes to eliminate 13.5 acres of the existing RPA through the filling of two existing perennial water bodies to allow for residential development in the existing RPA along these features and other work in the existing water features. This proposed elimination of greater than 13 acres of RPA, results in impacts to over 57 percent of the existing RPA features on this site.

Specific proposed impacts include:

- ▶ grading for multifamily building;
- ▶ encroachments for a public pedestrian pathway,
- ▶ grading for reshaping of a pond and replacement wetlands;
- ▶ filling a pond and ditch to create building area for single-family detached dwellings and associated parking;
- ▶ regrading to create an area for tidal wetland creation;
- ▶ substantial encroachments into both seaward and landward RPA for a multifamily residential complex;
- ▶ substantial encroachments for construction of 8 single family detached dwellings; and
- ▶ additional encroachments for several more single-family dwellings to include site grading to address floodplain requirements

The application provides no justification for these extensive encroachments, other than to note that the RPA is extensive, and divides the subject property into four land bays, which limits the number of units that could be developed and impacts the connectivity of the site. While the application proposes mitigation for the proposed impacts, it fails to meet a number of the required findings as outlined in the Regulations themselves, (see 9 VAC 10-20-150 C 1 of the Regulations). Based on the information presented to the Department, the application does not meet the following findings:

- (1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in Chesapeake Bay Preservation Areas who are subject to the provisions of this ordinance and are similarly situated;
- (2) The application is not based upon conditions or circumstances that are or have been created or imposed by the applicant or his predecessor in title;
- (3) The variance is the minimum necessary to afford relief;

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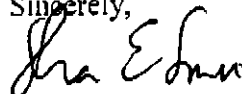
(4) The variance is in harmony with the purpose and intent of this ordinance, and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare;

Approval of this application would certainly set a dangerous precedent, in the following manner:

- ▶ that RPA features are "vacated" at their request which appears to be a special privilege not granted to other owners of property in CBPAs;
- ▶ that the need for the requested impacts rests solely on the desired density of development;
- ▶ that a request to impact 57 percent of the RPA is not the "minimum necessary to afford relief" and in fact, the application does not state that application of the RPA would eliminate development of the property, merely that it could not be developed to the desired density; and,
- ▶ finally, the request is not in harmony with the purpose and intent of the Bay Act because of the extensive impacts to the RPA.

I am available to meet with City staff to discuss my comments. If you wish to schedule a meeting, please call me at 1-800-243-7229 or my direct line at 804-371-0609 or via email at Shawn.Smith@den.virginia.gov. Thank you for the opportunity to comment on this proposal.

Sincerely,



Shawn E. Smith
Principal Environmental Planner

cc: Ms. Joan Salvati, Division Director