

# **Chesapeake Bay Board**

**April 11, 2007**

**A. Roll Call**

**B. Minutes - March 14, 2007**

**C. Public Hearings**

1. CBE-07-009 – Kathleen Small – 3000 North Riverside Drive
2. CBE-07-010 – Shawn and Julie Casey – 15 Mile Course
3. CBE-07-012 – C. Lewis Waltrip – 2515 Manion Drive
4. CBE-06-068 – AES/Colonial Heritage LLC - Colonial Heritage - Phase IV

**D. Board Considerations - None**

**E. Matters of Special Privilege - None**

**F. Adjournment**

**CBE-06-068. Colonial Heritage - Phase IV**

Staff report for the April 11, 2007 Chesapeake Bay Board public hearing.

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

**Summary Facts**

Applicant	Mr. Rick Smith, AES Consulting Engineers
Land Owner	Colonial Heritage, LLC
Location	6175 Centerville Road Yarmouth Creek Watershed
Tax Map	3110100011
Staff Contact	Michael Woolson, Senior Watershed Planner Phone: 253-6834

**Project Description**

Mr. Rick Smith of AES Consulting Engineers, Inc. has applied on behalf of Colonial Heritage, LLC, for an exception to the Chesapeake Bay Preservation 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 Chesapeake Bay Preservation Ordinance and as a result, a Resource Protection Area (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 handles 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, 2007. 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.

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Michael Woolson;  
Senior Watershed Planner

CONCUR:

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Darryl Cook;  
Environmental Director

- Exception approved with Staff Recommendations
- Exception Denied
- Exception Deferred

\_\_\_\_\_  
William Apperson;  
Chairman,  
Chesapeake Bay Board

**Attachment:**

1. Water Quality Impact Assessment for Subdivision Plan, Colonial Heritage Phase IV, March 2, 2007

**WQIA for CBE-07-009 – 3000 North Riverside Drive**

Staff report for the April 11, 2007 Chesapeake Bay Board public hearing.

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

**Summary Facts**

Applicant	Kathleen L. Small
Land Owner	(same)
Location	3000 North Riverside Drive, Chickahominy Haven
PIN	1820400015
Staff Contact	Patrick Menichino Phone: 253-6675

**Project Summary and Description**

Kathleen L. Small of 3000 North Riverside Drive, have applied for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the installation of a 120 square foot storage shed behind a single family principal structure on the above referenced lot in Chickahominy Haven. The lot is 130,175 square feet or 3.05 acres in size. Over 99% of the lot is designated as RPA buffer. The shed is proposed to be installed on a floating foundation that will be secured in place by four pilings.

Staff does not have the authority to grant an administrative approval for encroachments into the RPA buffer for accessory structures. In the past the Board has granted exception requests for accessory structures within the buffer.

The Applicant proposes to mitigate for the impacts to the RPA by planting six (6) native shrubs on the lot in the RPA to help filter nonpoint source pollution. The amount of mitigation proposed meets the standard requirements.

Staff is not opposed to the Board granting the applicant’s exception requests for the proposed shed.

**Full Report**

The lot was recorded prior to the adoption of the Chesapeake Bay Preservation Ordinance. Therefore, there was no Resource Protection Area (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 square foot 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 applicants 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.

Staff Report Prepared by:

\_\_\_\_\_  
Patrick Menichino

CONCUR:

\_\_\_\_\_  
Darryl Cook, Environmental Director

- Exception Approved with Staff Recommendations
- Exception Denied
- Exception Deferred

\_\_\_\_\_  
William Apperson  
Chairman  
Chesapeake Bay Board

Attachments:

**WQIA for CBE-07-010 – 15 Mile Course**

Staff report for the April 11, 2007 Chesapeake Bay Board public hearing.

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

**Summary Facts**

Applicant                      Shawn and Julie Casey

Land Owner                    (same)

Location                        15 Mile Course, Kingsmill

Parcel Identification # 5040200015

Staff Contact                  Patrick Menichino      Phone: 253-6675

**Project Summary and Description**

Shawn and Julie Casey of 15 Mile Course, have applied for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of two decks and a staircase totaling 500 square feet located behind a single family principal structure on the above referenced lot in Kingsmill. The lot is 56,550 square feet or 1.3 acres in size.

The staircase and decks proposed would be located on a 25% slope adjacent to Kingsmill Pond. Kingsmill Pond has been determined to be a water body with perennial flow requiring a 100 foot RPA buffer landward of the pond surface. The application indicates that the purpose of the staircase and decks is to provide access to an existing dock located on the pond.

The proposed decks are considered accessory structures, and staff does not have the authority to grant an administrative approval for encroachments into the RPA buffer for accessory structures. Staff has not administratively approved accessory structures in the past. Staff, however, can administratively approve a staircase with landing areas within the buffer to provide for access to the water. A review of other similarly situated properties indicates the presence of decks and staircases within the RPA buffer.

The applicant 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.

Staff would not be opposed to the Board granting the applicant’s exception requests if the plan is modified to reasonably reduce the size of each deck to further minimize the impacts.



### **Full Report**

The lot was recorded prior to the adoption of the Chesapeake Bay Preservation Ordinance. Therefore, there was no Resource Protection Area (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 on the lot around the water body. This 100 foot RPA buffer encompasses approximately 50% of the lot.

The issue for the Chesapeake Bay Board's consideration is the placement of approximately 500 square feet of staircases and decks within 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 decks 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 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**

Both the Ordinance and staff consider decks to be an accessory structure. Unfortunately, staff cannot support approval of this exception request 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 brick pavers 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, if the plan is modified to reasonably reduce the decks size.

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.

Staff Report Prepared by: \_\_\_\_\_  
Patrick Menichino

CONCUR:

\_\_\_\_\_  
Darryl Cook, Environmental Director

- Exception Approved with Staff Recommendations
- Exception Denied
- Exception Deferred

\_\_\_\_\_  
William Apperson  
Chairman  
Chesapeake Bay Board

Attachments:

**WQIA for CBE 07-012 - 2515 Manion Drive**

Staff report for the April 11, 2007 Chesapeake Bay Board public hearing.

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

**Summary Facts**

Applicant	C. Lewis Waltrip	
Land Owner	C. Lewis Waltrip	
Location	2515 Manion Drive, Lot 7, Section 1, Drummonds Field	
Tax ID	4630200007	
Staff Contact	Patrick T. Menichino	Phone: 253-6675

**Project Summary and Description**

C. Lewis Waltrip, owner, has applied for an exception to allow for the construction of approximately 100 linear feet of segmental block retaining wall, resulting in the creation of 200 square feet of impervious area within the seaward 50-foot Resource Protection Area (RPA) buffer. The proposed retaining wall will be installed to remedy an existing erosion problem. The property is located in Dummonds Field and is adjacent to the James River.

The applicant has submitted an RPA Mitigation Plan that proposes to offset the water quality impacts with the installation of (1) canopy tree, (2) understory trees, and (16) shrubs. The proposed plan exceeds the County’s mitigation requirements.

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.

**Full Report**

The lot was recorded prior to the adoption of the Chesapeake Bay Preservation Ordinance. Therefore, there was no Resource Protection Area (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. 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 square feet or 1.14 acres in size. The 100 foot RPA buffer encompasses about 20 % of the lot.

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 square feet of impervious area within the RPA buffer. Staff does not have the authority

to grant administrative approval for encroachments into the RPA buffer for accessory structures.

### **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 one canopy tree, two understory trees and 16 shrubs.

### **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 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.

Staff Report Prepared by: \_\_\_\_\_  
Patrick T. Menichino

CONCUR: \_\_\_\_\_  
Darryl E. Cook

- Exception Approved with Staff Recommendations
- Exception Denied
- Exception Deferred

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