

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
November 10, 2004 - 7:00 PM**

A. ROLL CALL

ABSENT

Henry Lindsey
William Apperson
David Gussman
Philip Duffy
Larry Waltrip

none

OTHERS PRESENT

Environmental Staff

B. MINUTES – The August 11, 2004 minutes were approved as presented.

C. PUBLIC HEARINGS

1. Patrick and Sandra Carder - 2729 Jockey's Neck Trail - Gazebo

Mr. Cook presented the case stating that Patrick and Sandra Carder, owners of 2729 Jockey's Neck Trail, constructed a gazebo in an area designated as the 100-foot Resource Protection Area (RPA) buffer. The structure was placed approximately 30 feet from the edge of Joachim Lake in the RPA Buffer constituting a violation of the James City County Chesapeake Bay Preservation Ordinance.

The lot was platted on November 27, 1991, with no RPA designated on the lot. This was due to the fact that there was no perennial water body identified on or adjacent to the lot as defined by the Ordinance in effect at that time. However, on January 1, 2004, revisions to the Ordinance became effective that changed how perennial water bodies are identified and now it is required that determinations be made based on a field investigation.

Earlier this year on March 5th, based on a field investigation for a building permit application on another lot in the Vineyards, it was determined that Joachim Lake was a water body with perennial flow. This determination had the effect of placing a 100-foot RPA buffer on all the lots bordering both lakes in the Vineyards. However, property owners were not notified of the presence of the RPA buffer.

On September 22, 2004 representatives from the Environmental Division visited the Carder property at the request of Mrs. Carder to discuss the potential removal of 1 dead tree and several diseased limbs from other trees on the property. At that time, staff observed a structure being built in the backyard and inquired if a building permit had been obtained for the structure. Mrs. Carder informed staff that she had been advised by the James City County Division of Code Compliance that a permit was not required for a structure less than 150 square feet and that the placement of the structure in the current location was acceptable. Environmental Division staff informed Mrs. Carder that a 100-foot buffer had been placed around Lake Joachim following the previously mentioned perennial evaluation of the lake. Following the meeting of September 22, 2004, the Carders were issued a Notice of Violation ordering them to remove the structure from the buffer and restore the area with native species plant material. The Carders have chosen to appeal the

Notice requiring removal of the gazebo and currently, the structure is still located in the buffer. No vegetation other than turf grass was removed to allow for the gazebo construction.

The gazebo is considered an accessory structure under the provisions of the Ordinance as it is a free-standing structure not part of the principal structure (primary residence) on the lot. The matter is before the Board as staff does not have the ability under to Ordinance to authorize the placement of an accessory structure in the RPA. In making a decision on this appeal, the Ordinance states that the Board needs to balance the hardship to the property owner with the purposes, intent and objectives of the Ordinance. The Board needs to make the following findings in order to decide in favor of the appellant:

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.*

The Board should impose reasonable and appropriate conditions to the granting of any exception, waiver or variance as it deems necessary in the public interest to ensure that the purpose and intent of the Ordinance are preserved.

If the Board decides to allow the structure to remain, staff would recommend that mitigation be required to ensure that water quality is not adversely affected. The Carders have proposed to remove several hundred square feet of turf and replace it with native shrubs and mulch. The attached sketch plan presents in concept what would be considered by staff to be an acceptable mitigation for the placement of the gazebo in the buffer.

Mr. Duffy asked why the neighborhood had not been notified of the new regulation.

Mr. Cook responded that staff and the Board of Supervisors had held discussions relating to a notification policy for areas affected by the new law, however as that policy had not been finalized yet, they were hesitant to move forward until such time as the policy was finalized.

Mr. Duffy stated that in his opinion if the property owners were not notified by state or local government of the new law then the resource protection area did not exist in that area and the gazebo should stay. He stated that he felt this was a perfect example of how it was the failure of the government to support and protect the people it represents.

Mr. Lindsey opened the public hearing.

A. Mr. Bill Roberts, 2725 Jockey's Neck Trail, spoke in favor of the appeal and presented the Board with a letter of support.

B. Patrick and Sandra Carder, the appellants. They informed the Board that they followed proper channels by contacting the county office for permit information. They would have followed proper procedures if they would have known the process. They also stated the integrity of the gazebo would be jeopardized if they should have to move it, as well as the financial burden would increase. They stated there would be less turf and more mulched areas which would benefit the environment and help to preserve their property. They requested the Board approve their appeal.

C. Bill and Pat Fenwick, 2733 Jockey's Neck Trail, spoke in favor of the appeal.

Pat Menichino approached the Board to remind them and to clarify that the Board was to act on the appeal of staff's decision and nothing else, and that they needed to think about setting precedence.

As no one else wished to speak, Mr. Lindsey closed the public hearing.

Mr. Duffy stated he felt the appeal was in order and he would support it.

Mr. Gussman stated that he was very aware of setting precedence, however as notification letters had not been sent out making owners aware of the change in the law, he felt he would need to support the appeal. The remaining Board members agreed with Mr. Gussman.

Mr. Duffy requested Mr. Cook notify the Board of Supervisors and make them aware that the people in the county need to be notified of the law.

Mr. Duffy made a motion to approve the granting of the appeal thereby reversing the Environmental Director's determination.

The motion to approve the granting of the appeal for the construction of a gazebo in the RPA along with a mitigation plan at 2729 Jockey's Neck Trail was approved 5-0.

D. BOARD CONSIDERATIONS – None

E. MATTERS OF SPECIAL PRIVILEGE

Calendar Year 2005 Meeting Schedule

The Board adopted the 2005 Chesapeake Bay Board Meeting schedule by a voice vote, to be held on the 2nd Wednesday of each month immediately following the Wetlands Board meeting, or at 7:00 PM if a Wetlands Board is not held, provided there are cases to be considered.

F. ELECTION OF OFFICERS FOR YEAR 2005

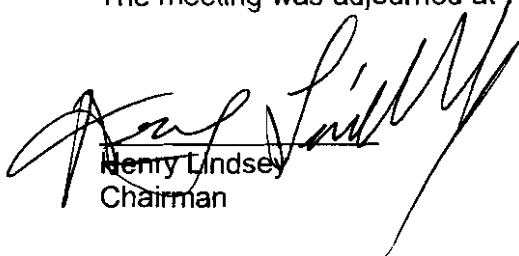
Mr. Duffy moved that 2004 Officers be re-elected for 2005, as follows:

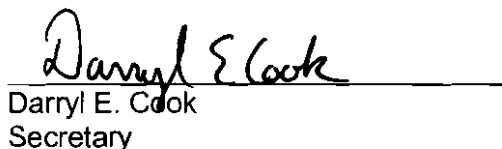
Henry Lindsey be re-appointed as Chairman. William Apperson be re-appointed as Vice-Chairman. Darryl Cook be re-appointed as Secretary.

The motion was approved by a 5-0 vote.

G. ADJOURNMENT

The meeting was adjourned at 7:35 PM.


Henry Lindsey
Chairman


Darryl E. Cook
Secretary

2733 Jockey's Neck Trail
Williamsburg, Virginia 23185
November 8, 2004

The James City County Chesapeake Bay Board
James City County Government Complex
101-C Mounts Bay Road
Williamsburg, VA 23185

Gentlemen:

We are writing you to demonstrate our support of Pat and Sandy Carder's application for a variance to construct and maintain a gazebo on their property located at 2729 Jockeys Neck Trail. The Carders have lived next door to us for more than 10 years. During that time, we have learned a great deal about them. They are a hard-working couple who care a great deal about their property and keeping it in the very best condition. They have spent innumerable hours designing, constructing, and maintaining their landscaping. Their efforts have enhanced and improved their property as well as the ambiance of the neighborhood. Whenever they planned to do any significant work on the property they have discussed it with us prior to taking any action. We have always felt that the actions they have taken were in the best interests of the property, the environment, the natural lay of the land, and the subdivision.

When the Carders told us of their plan to build a gazebo, we felt that their project was in keeping with the laws and regulations of the county and the neighborhood. We knew that they had requested guidance from James City County Codes and Compliance and had received approval from the Vineyards Homeowners Association. At no time did we feel that their plans had any negative impact on our local ecosystems or the Chesapeake Bay area. Since there were already many similar structures in the neighborhood, we certainly did not feel that the Carders were violating any regulations by their actions. As a matter of fact, since they had planned to do some significant landscaping around the gazebo, we were quite enthusiastic about the planned addition. We were totally shocked to learn that their property,


and ours for that matter, had recently been designated as a Resource Protection Area (RPA) without our knowledge.

We feel confident that the Carders' intent, when they constructed the gazebo, was to be environmentally sensitive and to follow county guidelines. They were careful to locate the gazebo so that it was not at the water's edge and have maintained a buffer of natural growth along the entire length of their lakefront property line. From our conversations with the Carders, we know that if they had been aware that a variance was necessary, they would have requested such. We strongly encourage you to look favorably on their request for a variance as we are confident that they will continue to be excellent stewards of the property and the protected areas.

Sincerely,



Willis L Fenwick



Patricia A. Fenwick

November 7, 2004

To: James City County Chesapeake Bay Board

From: Mr. And Mrs. W. E. (Bill) Roberts
2725 Jockeys Neck Trail
Williamsburg, Virginia 23185

The purpose of this letter is to offer our support to Mr. And Mrs. Patrick T. Carder in their appeal for a waiver to the Chesapeake Bay Act's restrictions against the placement of a gazebo on their property at 2729 Jockeys Neck Trail, Williamsburg, Virginia 23185.

The property in question is adjacent to our property. Mr. And Mrs. Carder have lived next door to us for over 10 years. During that period of time, both of them have worked very hard to preserve their property, which is adjacent to Lake Joachim in the Vineyards Subdivision. When they first built their home in 1994, the property was part of former pasture land and only scrub brush and scrub trees were located there. Since that time they have planted well over 20 trees on the property in an attempt to avoid any land erosion as well as to beautify their lot. Never once have I ever known either of them to take any action which I would have deemed contrary to good conservation practices in the care of their property. The parts of the property which approach the lake have always been mulched and planted with shrubbery and grass which helps to hold soil in place and absorb excessive runoff. As a result of the various hurricanes that we have experienced over the last several years, the Carders, like the rest of us, have lost several trees. In each case they have endeavored to replant new trees as quickly as possible to aid in soil conservation and land maintenance.

I believe that granting a waiver to the Carders so that they can maintain a small gazebo on their land would be consistent with the overall intent of any land maintenance program which would endeavor to have good land stewards owning any property which approaches or adjoins any body of water.



W. E. (Bill) Roberts



Rhoda Roberts