

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
SEPTEMBER 14, 2005 - 7:00 PM**

**A. ROLL CALL**  
Henry Lindsey  
David Gussman  
John Hughes

**ABSENT**  
William Apperson  
Larry Waltrip

**OTHERS PRESENT**  
County Staff

**B. MINUTES** – The August 10, 2005 minutes were approved as presented.

**C. PUBLIC HEARINGS**

1. James T Duguay, Jr. Inc – 3621 Bridgewater Drive

Mr. Darryl Cook presented the case as follows:

**Project Description:** Mr. James Duguay had applied, on behalf of Performance Contracting for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of a single family principal structure on the above referenced lot in Mill Creek Landing. The lot is 25,227 square feet or 0.58 acres in size.

The principal structure is proposed to create approximately 3037 square feet of impervious cover in the RPA consisting of the principal dwelling and portions of the concrete driveway and sidewalks. There will be a total disturbance of 6626 square feet in the RPA. Approximately 35% of the lot is to be cleared to allow for the construction of the dwelling.

**Background:** The lot was recorded in 1992 after the adoption of the Chesapeake Bay Preservation Ordinance but there was no RPA present on the lot at recordation. However, last year, 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 stream on the rear of the lot requiring that a 100 foot RPA buffer be established on the lot around the stream. This 100 foot RPA buffer encompasses about 93% of the lot.

According to provisions of the Ordinance; 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 accordance with the following criteria:

1. Encroachments into the buffer shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.
2. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
3. The encroachment may not extend into the seaward 50 feet of the buffer area
4. The lot or parcel was created as a result of a legal process in conformity with the county's subdivision regulations.

In this case, it is necessary to encroach into the seaward 50 feet of the buffer in order to obtain a reasonable building area, and therefore, the exception request 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. Performance Contracting has submitted a WQIA for this project. The issue before the Chesapeake Bay Board is the 6626 square foot RPA impact (clearing and grading) and creation of 3037 square feet of impervious cover in the RPA associated with the construction of the principal structure.

The WQIA proposes to mitigate for the impacts to the RPA by planting 8 native canopy trees, 16 native under story trees, and 24 native shrubs on the lot in 2400 square feet of enhanced landscape beds on the lot in the RPA on the lot to help filter nonpoint source pollution. The amount of mitigation proposed meets the standard requirements.

The Board was 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 recommends approval of the exception as the lot was created prior to the establishment of the RPA requirement, the house is located at the front building setback thereby minimizing the encroachment for this proposal, the project does not confer any special privileges to the applicant, and the exception is not based on self-imposed conditions. Staff recommends approval with the following conditions:

1. Full implementation of the landscape plan submitted with the WQIA shown on sheets 3 and 4 of 4 of the site plan.
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. 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.
4. Gravel must be installed under the deck as shown on sheet 4 of 4 of the site plan.
5. This exception request approval shall become null and void if construction has not begun by September 14, 2006

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.

Mr. Hughes requested clarification of an item depicted on page 3 of the plat.

Mr. Cook explained that it was a landscape bed area.

Mr. Lindsey opened the public hearing, and as no one wished to speak, closed the public hearing.

Mr. Hughes made a motion to approve the exception with staff's recommendations.

Mr. Gussman requested clarification on what the Board was granting by their action – was it a permit?

Mr. Cook explained that the Board was granting an exception to the Chesapeake Bay Preservation RPA Ordinance so that Mr. James Duguay could apply for a building permit.

The motion was approved by a 3-0 vote.

Mr. Darryl Cook presented the case as follows:

**Project Description:** Mr. Scott Wise had applied, on behalf of Settler's Mill, Inc. for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of a single family principal structure on the above referenced lot in Settler's Mill. The lot is 17,612 square feet or 0.40 acres in size.

The principal structure is proposed to create approximately 3075 square feet of impervious cover in the RPA consisting of the principal dwelling and portions of the concrete driveway and sidewalks. There will be a total disturbance of 9096 square feet in the RPA. Approximately 65% of the lot is to be cleared to allow for the construction of the dwelling.

**Background:** The lot was recorded in 1999 after the adoption of the Chesapeake Bay Preservation Ordinance but there was no RPA present on the lot at recordation. However, last year, 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 stream on the rear of the lot requiring that a 100 foot RPA buffer be established on the lot around the stream. This 100 foot RPA buffer encompasses about 93% of the lot.

According to provisions of the Ordinance; 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 accordance with the following criteria:

1. Encroachments into the buffer shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.
2. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
3. The encroachment may not extend into the seaward 50 feet of the buffer area.
4. The lot or parcel was created as a result of a legal process in conformity with the county's subdivision regulations.

In this case, it is necessary to encroach into the seaward 50 feet of the buffer in order to obtain a reasonable building area, and therefore, the exception request 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. Settler's Mill, Inc. has submitted a WQIA for this project. The issue before the Chesapeake Bay Board was the 9096 square foot RPA impact (clearing and grading) and creation of 3075 square feet of impervious cover in the RPA associated with the construction of the principal structure.

The WQIA proposes to mitigate for the impacts to the RPA by planting 8 native canopy trees, 16 native under story trees, and 24 native shrubs on the lot in 3100 square feet of enhanced landscape beds on the lot in the RPA on the lot to help filter nonpoint source pollution.

The Board was 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 recommends approval of the exception as the lot was created prior to the establishment of the RPA requirement, the house is located at the front building setback thereby minimizing the encroachment for this proposal, the project does not confer any special privileges to the applicant, and the exception is not based on self-imposed conditions. Staff recommends approval with the following conditions:

1. Full implementation of the landscape plan submitted with the WQIA shown on sheets 3 and 4 of 4 of the site plan.
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. 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.
4. The patio shall be constructed of non-interlocking, sand set brick pavers.
5. This exception request approval shall become null and void if construction has not begun by September 14, 2006.

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.

Mr. Lindsey opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. Gussman made a motion to approve the exception with staff's recommendations.

The motion was approved by a 3-0 vote.

**D. BOARD CONSIDERATIONS - None**

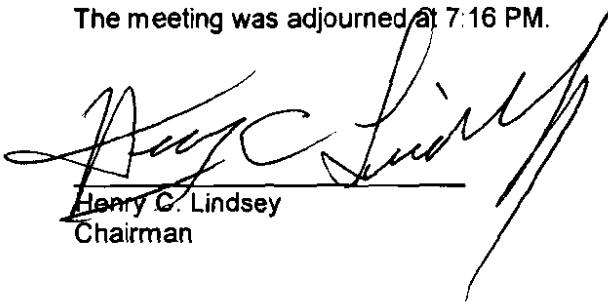
**E. MATTERS OF SPECIAL PRIVILEGE**

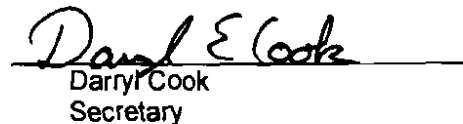
Mr. Cook invited all of the Board members to a special RPA Workshop to be held on Wednesday, September 28, 2005 from 9:00 to 11:00 am, at the Community Center on Longhill Road. The workshop is being sponsored by the James City County Environmental Division Staff.

The Board requested that staff mail them information on the workshop.

**F. ADJOURNMENT**

The meeting was adjourned at 7:16 PM.

  
Henry C. Lindsey  
Chairman

  
Darryl Cook  
Secretary