

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
SEPTEMBER 12, 2007**

**A. ROLL CALL**

William Apperson  
Henry Lindsey  
Larry Waltrip

**ABSENT**

David Gussman  
John Hughes

**OTHERS PRESENT**

County Staff

**B. MINUTES** – The August 8, 2007 minutes were approved as presented.

**C. PUBLIC HEARINGS**

**1. CBE-07-079 - John Klesch - 115 Stone Path**

Pat Menichino presented the following case:

**Project Summary and Description**

John J. & Jeanne N. Klesch, 115 Stone Path, Williamsburg, VA, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of 100 linear feet of interlocking decorative block retaining wall totaling 90 sqft of impervious area. The lot is 0.429 acres in size and the RPA buffer encompasses approximately 93% of the lot or 0.407 acres.

A mitigation-landscaping plan has been provided for your review. It proposes to mitigate for the 90 sqft of impervious area by planting (3) understory trees and (6) shrubs in planting beds to filter runoff from the impervious areas and proposes removal of 400 sqft of existing turf to be replaced with a mulched planting bed. This exceeds the standard mitigation requirements of the County.

This exception request is for the installation of an accessory structure within the RPA buffer. The Board has in the past granted exceptions for similar accessory structures within the RPA buffer.

Staff offers the following information as guidance to the Board concerning this application.

1. The proposed retaining wall will be a maximum of 16 inches high and will create approximately 90 sqft of impervious area. The proposed area for the installation of the wall is vacated conservation easement. In 2005, this vacated easement was approved by the County Engineer to be used by the owner as a rear yard.
2. No existing trees or shrubs are to be eliminated with this proposal.
3. 400 sqft of existing turf will be eliminated and a mulch bed created with ground cover.
4. A stormwater pond (BMP) is located downstream immediately adjacent to this property.
5. The RPA mitigation-landscaping plan exceeds the County's requirements.
6. Staff believes that any adverse impacts caused by this wall would be negligible.

**Full Report**

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. 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 lot in 2005 identified a perennial stream and pond 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 Section 23-7 (c) 2 (b); 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 this case, the proposal is for an accessory structure encroachment within the seaward 50 feet of the buffer 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.

The applicants have submitted a WQIA for this project and the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The WQIA contains the proposed mitigation-landscaping plan.

The issue before the Chesapeake Bay Board is the 90 sqft of impervious cover in the RPA associated with the construction of the retaining wall. 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 criteria outlined in Section 23-14(c) of the Chesapeake Bay Ordinance.

### **Recommendations**

The Ordinance does not authorize staff to give administrative approval for the placement of accessory structures within the 100-foot buffer. To be consistent with the ordinance requirements Staff cannot support the approval of this exception request for the proposed retaining wall.

If the Board votes to approve the exception request, staff recommends the following conditions be incorporated into the approval:

1. Full implementation of the RPA mitigation-landscaping plan submitted with the WQIA ("RPA Mitigation Plan") must be completed by September 12, 2008.
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. Surety for the implementation of the RPA Mitigation Plan shall be provided in a form satisfactory to the County Attorney, pursuant to sections 23-10(3)(d) and 23-17(c) of the James City County Code.
4. This exception shall become null and void if construction has not begun by September 12, 2008. For the purposes of this exception, construction shall mean commencement of installing the requested items of application CBE-07-079.

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. If the Board grants the exception, the proposed mitigation-landscaping plan is in accordance with the standard mitigation requirements for impervious surfaces.

Mr. Apperson opened the public hearing

**A.** John Klesch, property owner stated the purpose of the wall was to maintain the property.

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

Mr. Lindsey stated this proposal would also create a level yard for easier access.

Mr. Waltrip stated the 16-inch wall would be a good solution to prevent erosion on the property. He also suggested that applicant put weep holes in the wall for drainage.

Mr. Lindsey made a motion to adopt the resolution granting the exception for case CBE-07-079 with staff recommendations.

The motion was approved by a 3-0 vote.

## **2. CBE-07-081 – Harold Cherry – 107 Little Aston**

Pat Menichino presented the following case:

### **Project Summary and Description**

Harold & Nancy Cherry, 4273 Teakwood Drive, Williamsburg, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of a single family principal structure with deck, brick pavers patio, and a Koi pond (accessory structure). The proposed principal structure is located within the channel ward 50' RPA buffer. The total amount of impervious area is 3500 sqft for the house, deck, and brick paver patio, and 96 sqft for the Koi fishpond. The lot is 20,271 sqft or 0.466 acres in size.

Staff does not have the authority to grant an administrative approval for encroachments within the 50' RPA buffer but, would not be opposed to the Board granting the applicant's exception requests for the principal structure, deck, and brick paver patio for the following reasons:

1. The lot existed prior to the adoption of the Ordinance.
2. The entire lot is located within the RPA buffer.
3. The applicant has submitted an RPA mitigation plan that meets the typical mitigation requirements and adequately addresses the RPA impacts proposed in this case.

The Ordinance does not authorize staff to give administrative approval for the placement of accessory structures within the 100-foot buffer and to be consistent with the ordinance requirements Staff cannot support the approval of this exception request for the proposed Koi fishpond. However, the Board has approved encroachments for accessory structures within the RPA buffer in the past and the Koi fishpond is proposed within an area that will be impacted by construction of the single-family residence.

### **Full Report**

The lot was recorded prior to the adoption of the Chesapeake Bay Preservation Ordinance. There was no RPA present on the lot at the time of recordation. 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 was conducted for a stream adjacent to the lot and it was determined that the stream is a water body with perennial flow requiring that a 100 ft RPA buffer be established around it and wetlands located on the lot. This buffer encompasses approximately 100% of lot.

The issue for the Chesapeake Bay Board's consideration is the impacts associated with the construction of a single-family principal structure with deck, brick paver patio and a Koi fishpond (accessory structures) within the RPA buffer.

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 Koi pond and brick paver patio 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 9 native canopy trees and 18 native understory trees and 27 native shrubs to the rear of the house to help filter nonpoint source pollution. This mitigation-landscaping plan meets the 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 criteria outlined in Section 23-14(c) of the Chesapeake Bay Ordinance:

## **Recommendations**

Both the Ordinance and staff consider brick paver patios and fishponds accessory structures.

Staff is not opposed to the Board granting the applicant's exception request for the principal structure, deck, and brick paver patio. The proposed brick paver patio is to be constructed underneath of the attached deck, which is already considered impervious. Staff cannot support approval of the Koi fishpond as it involves an impervious, accessory structures and use in the RPA.

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 RPA mitigation-landscaping plan submitted with the WQIA ("RPA Mitigation Plan") must be completed prior to the issuance of the final certificate of occupancy.
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 around any individual or group RPA mitigation plantings, as shown on the RPA Mitigation Plan.
4. A 1' wide x 18" deep infiltration trench with washed gravel shall be installed adjacent to the brick paver patio.
5. Surety for the implementation of the RPA Mitigation Plan shall be provided in a form satisfactory to the County Attorney, pursuant to sections 23-10(3)(d) and 23-17(c) of the James City County Code.
6. The RPA Mitigation Plan shall be revised and resubmitted with all Board approved modifications, and conditions included.
7. This exception shall become null and void if construction has not begun by September 12, 2008. For purposed of this exception, construction shall mean the commencement of installing the requested items of application CBE-07-081.

Mr. Menichino stated a small retaining wall was shown on the site plan but was not included in the application or advertised. Therefore, the Board could not include this structure in their exception approval or denial. He also stated the Koi fishpond was not included in the mitigation calculation.

Mr. Apperson stated the lot was platted prior to adoption of the ordinance and the Board had previously approved this type of construction.

Mr. Lindsey stated the Board had denied pools in the RPA and he was therefore hesitant to approve a fishpond. He also asked about the potential danger of disease from an increase in mosquitoes.

Mr. Apperson opened the public hearing.

**A.** Josh Wright, contractor for the project asked for clarification on the exclusion of the retaining wall.

Mr. Apperson explained the wall was not included in the application and not advertised for public hearing. He advised the applicant to reapply for an exception to the ordinance for the retaining wall.

**B.** Harold Cherry, property owner, stated the size of the proposed Koi fishpond was 8 ft X 12 ft (96 sqft).. He showed the Board Members pictures of a pond similar to what was proposed and stated he would gladly increase the number of plantings. Concerning the potential for mosquitoes, he stated they were usually a problem in standing water and a pump would keep recycling the water in the proposed pond. He added that typically, Koi fed on mosquito larva.

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

Mr. Waltrip stated the size and nature of a fishpond were not the same as a swimming pool with chlorinated water.

Mr. Apperson agreed the proposed fishpond would have a small impact especially since the area would already be disturbed from construction of the home. He asked Pat Menichino what additional mitigation would be recommended for the proposed fishpond.

Mr. Menichino stated it would be 2 understory trees and 6 shrubs.

Mr. Apperson made a motion to adopt the resolution granting the exception for case CBE-07-081 with staff recommendations and additional mitigation of 2 understory trees and 6 shrubs.

The motion was approved by a 3-0 vote.

**D. BOARD CONSIDERATIONS**

1. Amendments to the Bylaws

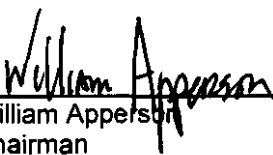
Mr. Apperson made a motion to adopt the Chesapeake Bay Board Bylaws as discussed at the Work Session.

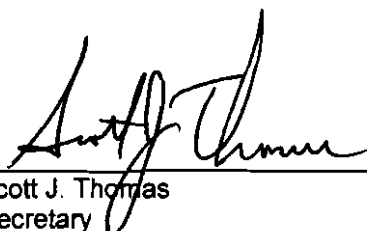
The motion was approve by a 3-0 vote.

**E. MATTERS OF SPECIAL PRIVILEGE**

**F. ADJOURNMENT**

The meeting adjourned at 7:35 PM.

  
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William Apperson  
Chairman

  
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Scott J. Thomas  
Secretary