

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
April 9, 2008**

A. ROLL CALL

ABSENT

William Apperson
David Gussman
John Hughes
Henry Lindsey
Larry Waltrip

OTHERS PRESENT

County Staff

The James City County Wetlands Board meeting was opened concurrently with this Board meeting.

B. MINUTES

The March 12, 2008 Board Meeting minutes were approved as presented.

C. PUBLIC HEARINGS

**1. CBE-07-080 – Chris and Julie Rouzie – 144 Holdsworth Rd
continued from 12/12/07 and 1/9/08 and 2/13/08**

Pat Menichino presented the following information to the Board:

On February 13, 2008, the Board granted Chris and Julie Rouzie a continuance of CBE 07-080 until April 9, 2008.

The applicants are requesting a Chesapeake Bay Exception to allow a driveway modification and expansion including the construction of retaining walls. Staff has reviewed and is satisfied that the revised mitigation-planting plan meets the requirements of the Environmental Division. The applicants have executed a Chesapeake Bay Restoration Agreement and posted adequate surety to guarantee the installation of the required plantings.

Staff recommends the Board grant the exception request with the following conditions:

1. The driveway surface shall be constructed of sand set brick type pavers as shown on the Land Tech plan dated 2/12/08.
2. The retaining walls shall be constructed as shown on the Land Tech plan dated 2/12/08.
3. The infiltration trench and storm drainage system shall be installed as shown on the Land Tech plan dated 2/12/08.
4. The applicants must obtain all necessary approvals and permits from other regulatory agencies that may have jurisdiction.

5. The RPA mitigation-planting plan shall be implemented as shown on the LPDA plan dated 3/11/2008. The applicants must also adhere to the terms and conditions set forth in the Chesapeake Bay Restoration Agreement executed on 2/1/08.
6. This exception shall become null and void if construction of the above improvements is not begun by April 9, 2009.

A. Mr. Rouzie stated he would answer any questions the Board might have.

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

Mr. Hughes made a motion to adopt the resolution granting the exception for tax map #5010300088, case CBE-07-080.

The motion was approved by a 5-0 vote.

2. CBE-08-016 – John and Judith Anton – 7511 & 7513 Oak Cove Road

Pat Menichino presented the following information to the Board:

Project Summary and Description

Mr. John H. Anton requested an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of approximately 94 linear feet of vinyl retaining wall along with the disturbance of 1,410 sqft of buffer on the above referenced lot in Cypress Point. The lot is 20,010 sqft or .46 acres in size.

The lot was recorded prior to the adoption of the Ordinance and there was no RPA present on the lot at the time of recordation. The single-family residence on the lot was constructed in 1967. The 100-foot RPA buffer is located on the rear of the property and encompasses about 50% of the lot.

Staff cannot support the installation of the retaining wall and associated impacts for the following reasons:

1. The Ordinance considers retaining walls as an accessory structure.
2. Staff visited the project site and was unable to determine an existing erosion problem in the rear yard that would warrant the installation of the proposed 94 linear feet of retaining wall and 1,410 square feet of disturbance.

Background

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 retaining wall could not be approved administratively and the applicants have chosen to request an appeal and exception from 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 applicant has submitted a WQIA for this project.

The applicant has also submitted a mitigation plan that proposes to mitigate for the impacts to the RPA by planting (8) native trees and (16) understory trees and (24) native shrubs in the RPA. This vegetation will be located to the rear of the residence adjacent to the proposed retaining wall to help filter nonpoint source pollution. This mitigation plan would create 3000 sqft of vegetated RPA buffer landward of the proposed retaining wall. Staff believes the creation of 3000 sqft of buffer would have a positive affect on the water quality function of the existing buffer.

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 Ordinance:

Recommendations

Staff does not recommend approval of the exception as it involves the creation of an impervious, accessory structure or use in the RPA. Both the Ordinance and staff consider the retaining wall as an accessory structure. Staff has not allowed the administrative creation of accessory structures in the RPA in the past.

If the Board considers approval of this exception, staff recommends the following modifications and conditions are imposed:

1. An RPA mitigation plan depicting the species and location of the proposed (8) canopy, (16) understory and (24) shrubs must be submitted and approved by the Environmental Division. The plan must show the entire 3000 square foot mitigation area covered with 4 inches of wood mulch. Any upslope areas disturbed during construction must be restored by the applicant or his contractor.
2. Implementation 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 satisfactory to the County Attorney.
3. The applicant must obtain all other approvals from regulatory agencies that may have jurisdiction over this project, including a James City County building permit.
4. A preconstruction meeting must be held onsite prior to the onset of work.
5. The retaining wall must be installed with a sand based backfill and filter fabric.

This exception request approval shall become null and void if construction has not begun by April 9, 2009.

Mr. Lindsey said the proposed retaining wall appeared to be right at the waters edge and asked if it was therefore in the seaward 50' foot buffer as opposed to the landward 50' foot buffer as stated in the application. He also asked if it should be considered as a bulkhead rather than a retaining wall.

Mr. Menichino stated there was an error on the application, the proposed wall was definitely in the seaward 50' buffer and could possibly be considered a bulkhead.

Mr. Gussman referred to the "creation of 3000 of sqft buffer" stated in the staff report and asked if there was not already vegetative buffer upland of the proposed retaining wall.

Mr. Menichino stated the current buffer was sparse and the applicant was proposing to add additional plantings to improve the buffer.

Mr. Apperson opened the public hearing.

A. John Anton, owner, stated the original proposal brought before the Wetlands Board in December was not approved because the proposed bulkhead was all across the property. The change to a

retaining wall was made by the contractor at the suggestion of Mr. Menichino. He stated the proposed wall had been moved back at least 3 feet from the original plan and could not be moved back farther because of the land slope. He added that his intention was to prevent the erosion of the property to save the existing and proposed vegetation in the RPA buffer.

Mr. Lindsey stated he visited the property and did not see evidence of erosion.

A. Mr. Anton stated the erosion has occurred over many years.

Mr. Waltrip asked how much and what type of fill would be placed around the trees and asked if the proposed wall would be tied into the existing bulkheads.

B. Wilbur Jordan, Jordan Marine, contractor for the project confirmed that the proposed wall would be located above mean high water and that it was above the riprap line and in the Chesapeake Bay Board's jurisdiction. He stated it would be tied in to the bulkheads on either end and the height would be continuous and therefore approximately 3 ft high around the trees and the fill would consist of about 80% sand.

Mr. Gussman asked staff if there were planting techniques that could be used to control the erosion on the slope on this property.

Mr. Menichino stated the upland water flow could be diverted and the buffer plantings increased to prevent the erosion.

A. Mr. Anton stated he did not understand how this proposed 94 feet of wall would have an adverse effect on water quality.

Mr. Gussman stated it was not one specific wall but the cumulative impact of installing unnecessary bulkheads or walls within the RPA buffer.

A. Mr. Anton argued that the erosion had occurred and he needed to install the wall to save his property.

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

Mr. Hughes stated he believed the water quality would actually be improved by the proposed plantings in the buffer.

Mr. Lindsey stated he agreed with Mr. Gussman and was concerned with allowing unnecessary structures in the RPA.

Mr. Waltrip stated he believed the proposal would prevent erosion that appeared to have occurred on the property and the Board needed to consider cases on an individual basis.

Mr. Apperson asked the applicant how he would maintain the buffer.

A. Mr. Anton stated he would keep it in a natural state.

Mr. Gussman made a motion to adopt the resolution denying the exception request for tax map numbers 1910100014 and 1910100015, case CBE-08-16.

The motion to deny was denied by a 2-3 vote:

AYE: Lindsey, Gussman (2) NAY: Hughes, Waltrip, Apperson (3)

Mr. Hughes made a motion to adopt the resolution granting the exception request for tax map numbers 1910100014 and 1910100015, case CBE-08-16.

The motion to grant was approved by a 3-2 vote:

AYE: Hughes, Waltrip, Apperson, (3). NAY: Lindsey, Gussman (2)

3. CBE-07-107 – Vanasse Hangen Brustlin, Inc/Busch Properties – Spencer’s Grant continued from 11/14/07 and 1/9/08

Pat Menichino presented the following information to the Board:

On February 13, 2008, the Chesapeake Bay and Wetlands Boards continued the above referenced Chesapeake Bay Exception request and Wetlands case and received additional public comment. Following that meeting, another continuance to the April 9, 2008 Board meeting was subsequently granted to the applicant.

On March 14, 2008, an onsite meeting was arranged by the applicant and representatives from Chesapeake Bay Local Assistance (CBLA), Department of Conservation, and Recreation (DCR) Shoreline Erosion Advisory Service (SEAS), Virginia Institute of Marine Science (VIMS), and County Staff was invited to attend.

Because of that meeting, the applicant has made the following revisions to the proposed project.

1. The proposed backshore armor stone revetment was decreased in length by approximately 83 linear feet.
2. The entire length of the armor stone revetment (1213 LF) will be in-filled with sand and then covered with approximately 1 foot of sand fill.
3. The entire revetment area (12,500 SF) will be then be planted with beach grasses.

Summary

The exception (CBE 07-107) is requesting Board approval for 29,000 square feet of RPA buffer grading impacts, along with the installation of 1213 linear feet of armor stone revetment, located within the backshore beach area, resulting in another 17,750 square feet of impacts. The Wetlands case is requesting approval for the expansion to offensive armor stone breakwaters, and 4,000 cubic yards of sand fill for beach nourishment.

The proposals before the Board have been revised and refined several times in an effort to reduce impacts to the minimum necessary. In keeping with that intent, preservation areas within the RPA buffer and within the beach area have been maximized to reduce overall impacts.

Mitigation for the proposed RPA impacts, include the installation of native plant material within the buffer in the following areas and quantities:

1. Zone III A - lower bank - (37) Trees, (74) Understory Trees, (111) Shrubs (total 222)
2. Zone III – upper bank - (60) Trees, (120) understory Trees, (180) Shrubs (total 360)
3. Armor stone revetment planting with beach grasses totaling 12,500 sqft.
4. Additional offsite RPA native plantings located at the adjacent River’s Bluff project totaling (185) trees and understory trees.

Mitigation proposed for the Wetlands phase includes:

1. The installation of approximately (80) native trees and shrubs within the backshore area of the beach.
2. The installation of approximately 51,500 sqft of herbaceous plantings (beach grasses) along the entire beach length.

The shoreline stabilization phase of this project has now been reviewed by staff from VIMS and SEAS. The SEAS engineer has provided a letter indicating that the project as designed will protect the shoreline and upland bank, and minimizes environmental impacts to the greatest extent possible.

Recommendations

Staff recommends that the Wetlands Board approve W-25-07 for the following reasons.

Staff believes that the proposed shoreline stabilization phase of this project (breakwaters and beach nourishment) is an appropriate method of shoreline stabilization and is consistent with other shoreline projects approved by the Board.

The proposed project has been thoroughly reviewed and has had input from the best technical people available.

A net increase of 450 sqft to the Intertidal Beach Community will result from the beach nourishment.

Mitigation planting with Wetlands type grasses and other upland type plantings are proposed to offset any impacts.

Staff also recommends approval of CBE-07-107 as revised for the following reasons.

The proposed backshore armor stone revetment is designed to protect a steep, unstable wooded slope from damage caused by wave attack, and storm surge generated by future storm events along the James River.

The applicant and their consultants have worked with staff to eliminate, minimize, and mitigate for proposed RPA impacts on this project. The proposed slope-grading activity has been significantly reduced to the minimum necessary and includes only those unstable areas of the slope, most at risk of failure.

The proposed grading of slopes within the RPA buffer is an approved method of stabilization and is consistent with other shoreline projects similarly situated, that have been reviewed and approved by the Board.

The proposed project will not be a substantial detriment to water quality. At staff's recommendation, the applicant has reduced overall impacts to the RPA buffer and provided for RPA mitigation plantings.

In addition, the proposed plan will permanently divert all stormwater runoff away from the steep slopes along the shoreline and convey the runoff to an approved Best Management Practice (BMP) pond, where the stormwater can be effectively treated and released.

Staff recommends the following conditions be included should the Board vote to approve this Chesapeake Bay Exception and Wetlands Permit:

1. The applicant must obtain all other permits necessary and required by other agencies, including a James City County Land Disturbance Permit prior to the required preconstruction meeting.
2. A preconstruction meeting shall be held onsite prior to land disturbance.
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 prior to the pre-construction meeting. The surety shall be held for one full year following the initial installation and inspection of the plant material. All plant material must be alive and thriving as determined by the Environmental Division at the time of the one-year anniversary inspection. If during the anniversary inspection, plant material is determined to be dead, diseased or missing, the surety will be held until all planting material required by the plan, is installed and thriving.
4. All proposed mitigation plantings shall be reviewed by County staff prior to installation and may be modified by staff, as deemed necessary to achieve a satisfactory result.
5. All trees proposed for installation shall be a minimum 6'-7' in height or 1" caliper. All shrubs shall be 3-5 gallon container size, and 18" to 36" in size.
6. The entire re-graded slope shall first be stabilized using 4-6" of new topsoil, and conservation seed mix of native grasses, and covered with EC-2 type blanket matting.
7. The applicant shall arrange for weekly project inspections to be performed by a qualified independent professional. The weekly inspection reports generated shall be submitted to the Environmental Division, to insure that the project is being constructed in accordance with the approved plan, project specifications, and requirements, along with the permit conditions of the Chesapeake Bay Board and Wetlands Board. Prior to the preconstruction meeting, the applicant must provide the name of the person or firm, who will perform said inspections.
8. The applicant must receive approval from the County Engineer for any proposed activity within conservation easements located on the property. The applicant must also resolve any property line and conservation easement conflicts or issues with the County Engineer.
9. The exception shall not conflict with the provisions of the approved plan for development for Kingsmill-Spencer's Grant, County Plan No. SP-53-05.
10. All additional conditions stipulated within the previous staff reports for W-25-07 and CBE -07-107 and not addressed in this memo, shall be incorporated into these conditions.
11. RPA signs shall be installed by the applicant along the landward extent of the RPA buffer as directed by staff.

A. Neville Reynolds, Vanasse Hangen Brustlin, Inc (VHB), representing Coastal Design & Construction (CD&C) and Busch Properties, stated that over the past five months they had been working on this project with the Environmental Staff, the Board, and representatives from the Virginia Institute of Marine Science (VIMS) and the Department of Conservation and Recreation (DCR). He stated their objective was to create a long-term, stable shoreline and since the original submission of this plan, they had greatly reduced the encroachment into the RPA, preserved existing vegetation, and increased the mitigation plantings. He referred to the March 26, 2008 letter from Michael Vanlandingham, DCR Shoreline Engineer, (~~copy attached~~) and noted his comment that "the proposed project appears to minimize environmental impacts to the greatest extent possible". He also referred to the April 3, 2008 Letter from Alice Baird, DCR Riparian Buffer Specialist and Nancy Miller, DCR Senior Environmental Planner (~~copy attached~~) which states the project would adequately mitigate for the proposed disturbance, as required in James City County's Chesapeake Bay Ordinance. Finally, he stated the proposal was in compliance with the Ordinance: section 23-7(1)(d), with the DCR Riparian Buffer Manual, with James City County's Comprehensive Plan and with James City County's and DCR's erosion control requirements and therefore respectfully requested the approval of the Board.

copy of letter's from DCR are in case file CBE-07-107

B. Robert Richardson, 2786 Lake Powell Road, presented comments to the Board (copy ^{in case file} attached) and spoke against the project stating he did not believe the shoreline stabilization was needed as there was no imminent threat to any structure.

C. Dr. Gerald H. Johnson, 4513 Wimbledon Way, also provided written comments (copy ^{in case file} attached) and spoke against the project because of the impact to the RPA and lack of need for stabilization. In addition, he stated the owner had been negligent in protecting the RPA over the past 30 years and therefore the current conditions were self-imposed. He also stated he believed there had been political pressure to approve this project.

D. Jack Fowler, resident for 65 years, spoke against the project because he felt there was no immediate threat of erosion in the area.

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

Mr. Hughes stated it was apparent the existing wash out was self-created from neglect by the property owner.

Mr. Waltrip stated regardless of the cause, he believed the wash out had caused erosion and created the need for stabilization and he was impressed with the engineering for this project. He asked what percentage of the total property would be disturbed.

A. Mr. Reynolds responded that approximately 40% of the area would be disturbed.

Mr. Apperson stated he agreed with Mr. Waltrip regarding the engineering and need for stabilization. He stated his only regret was the loss of the teaching area for Dr. Johnson but the only consideration for this Board was the impact on water quality.

E. Vernon Geddy, representing the applicant, stated Busch Properties would allow Dr. Johnson to continue studies on their property at River's Edge and Grove Creek where other exposed fossil beds existed. He also stated Busch Properties had not applied political pressure to any of the state agencies.

Mr. Lindsey also congratulated the applicant on their presentation and their efforts to reduce the impacts to the RPA but he was still not convinced of the need for the project

Mr. Gussman stated he would support the Wetlands Permit but not the Chesapeake Bay Exception. He stated the applicant should first control the upland run off and after approximately 5 years, if the area was not stabilized, additional measures could be considered. He asked if the Resolution for the Chesapeake Bay Exception could be modified to allow the armor stone revetment but not the re-grading of the slopes.

Adam Kinsman, Deputy County Attorney, stated the Board did not have the authority to modify the Exception Request and were required to accept or deny it.

A. Mr. Reynolds stated he wanted to present additional comments.

The Boards took a short recess at 9:20 and reconvened at 9:25.

Mr. Apperson reopened the public hearing.

F. Camille Kattan, Geotechnical Engineer, stated he performed the stability analysis using nationwide acceptable standards on soil borings taken from the bluffs and in his opinion; the slopes were not stable or safe.

Mr. Gussman asked if the soils would be considered over consolidated.

F. Mr. Kattan stated they were and this factor was taken into account in the analysis.

A. Mr. Reynolds stated the intent of the applicant was to stabilize the area prior to construction because it was the prudent thing to do.

C. Dr. Johnson stated no construction was shown on the plat within the vicinity of the bluffs and therefore the stability was irrelevant and the furthermore the historical evidence did not support the finding of instability.

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

Mr. Gussman made a motion to adopt the resolution denying the exception request for tax map numbers 5130100004 and 5130100005, case CBE-07-107.

Mr. Lindsey asked staff to specify exactly what was included in this exception request.

Mr. Menichino stated an Aye vote would be a vote to deny the exception request, which includes the armor stone revetment at the toe of the slope, the sand cover, and infill, 29,000 sqft of slope grading and the mitigation-planting plan that contains the proposed stormwater diversion at the top of the slope.

The motion to deny was denied by a 1-4 vote:

AYE: Gussman (1) NAY: Waltrip, Hughes, Lindsey, Apperson (4)

Mr. Hughes made a motion to adopt the resolution granting the exception request for tax map numbers 5130100004 and 5130100005, case CBE-07-107.

The motion to grant was approved by a 3-2 vote:

AYE: Waltrip, Lindsey, Apperson (3) NAY: Gussman, Hughes (2)

D. BOARD CONSIDERATIONS - none

E. MATTERS OF SPECIAL PRIVILEGE – Resolution of Appreciation – Jennifer C. Lyttle

WHEREAS, Jennifer C. Lyttle has served the citizens of James City County as Counsel to the Wetlands and Chesapeake Bay Boards from August 2006 to March 2008; and

WHEREAS, Jennifer C. Lyttle has provided invaluable legal guidance to the Boards and to County Staff; and

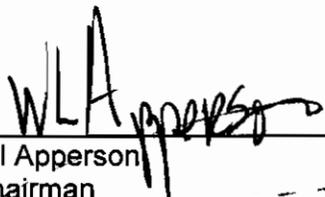
WHEREAS, through her guidance the Boards have rendered fair and impartial decisions, resolutions, and provided exceptional public access to the Boards.

NOW, THEREFORE BE IT RESOLVED that the Wetlands Board and Chesapeake Bay Board of James City County do hereby proclaim, great appreciation to Jennifer C. Lytle for her dedication, commitment and exceptional service to the Boards and to the citizens of James City County.

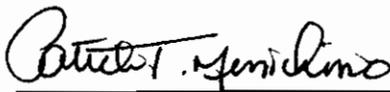
BE IT FURTHER RESOLVED that the issuance of this Proclamation be entered into the official minutes of the Wetlands Board and Chesapeake Bay Board of James City County.

F. ADJOURNMENT

The meeting adjourned at 9:55 PM



Bill Apperson
Chairman



Patrick T. Menichino
Compliance Specialist