

# Chesapeake Bay Board

## February 8, 2006

- A. Roll Call
- B. Minutes - January 11, 2006
- C. Public Hearings
  - 1. Bruce Schoch - 114 Discovery Lane
  - 2. Jesse M. Huff - 2929 Leatherleaf Drive
- D. Board Considerations
- E. Matters of Special Privilege
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## MEMORANDUM

**DATE:** February 8, 2006  
**TO:** The Chesapeake Bay Board  
**FROM:** Darryl E. Cook, Environmental Director  
**SUBJECT:** Case: Bruce P. Schoch, 114 Discovery Lane

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On January 11, 2006 the Board deferred action on a Chesapeake Bay Exception application by Mr. Bruce P. Schoch of 114 Discovery Lane. The purpose for the deferment was to provide the owner and Staff an opportunity to investigate if an acceptable alternate location for the construction of the proposed shed could be found within the buffer.

On January 17, 2006 Staff visited the property and met with Mr. Schoch and Mr. Warren of 112 Discovery Lane. Despite attempts to locate an alternate location for the proposed shed, consensus of an acceptable location could not be reached by the attendees.

It is Staff's recommendation that the Board act upon Mr. Schoch's application for a Chesapeake Bay Exception dated November 28, 2005. The WQIA Staff report submitted to at the January 11<sup>th</sup> meeting, should assist the Board in it's determination of this matter.

## MEMORANDUM

**DATE:** February 8, 2006  
**TO:** The Chesapeake Bay Board  
**FROM:** Darryl E. Cook, Environmental Director  
**SUBJECT:** Case: Chesapeake Bay Board Appeal - Jesse M. Huff, 2929 Leatherleaf Drive

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On December 16, 2005, Mr. Jesse M. Huff, of 2929 Leather Leaf Drive Toano VA. was issued a Chesapeake Bay Ordinance Notice of Violation (NOV) by Division Staff. The NOV was issued, because Mr. Huff had initiated development and construction of a retaining wall including the placement of fill, within an area of his property identified as a Resource Protection Area (RPA) buffer. The NOV directed Mr. Huff to remove the fill and retaining wall from within the RPA buffer and to stabilize the disturbed areas. Mr. Huff has filed an appeal to the Board so that he can leave the retaining wall and fill in place.

The James City County Chesapeake Bay Preservation Ordinance, Sec. 23-7, prohibits development within an RPA without prior approval from the Manager. The Environmental Division has no record of Mr. Huff contacting Staff or the Manager, in an effort to obtain prior approval for the proposed development. In addition the proposed development activity, (a retaining wall and related fill) constitutes an accessory structure, and the Manager may not grant an exception for this activity through an administrative process.

The lot was recorded in 1997 after adoption of the Chesapeake Bay Preservation Ordinance but there was no RPA present on the lot at recordation or when the residence was built in 1998. 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 was conducted for the stream and wetlands, as part of the building permit process for 2939 Leatherleaf Drive which is a property, located slightly upstream of Mr. Huff, and it was determined that the stream is a water body with perennial flow requiring that a 100 foot RPA buffer be established adjacent to the stream and wetlands

The residence located on the subject property was approved for construction in 1998. Mr. Huff purchased the property in 2003. A review of the 1998 building permit application information clearly shows the proposed location of the residence along with the limits of clearing and grading. Staff has no evidence that would indicate that a retaining wall existed on the subject property, at the same location of the wall presently under construction, prior to January 1, 2004.

Staff has met with Mr. Huff several times, discussed the violation, Ordinance requirements, possible remedies, and provided Mr. Huff with opportunities to provide Staff with additional information in support of his request for an exception. Staff has determined that the retaining wall and filling operation presently under construction is located within the channel ward 50' RPA buffer component. Staff believes that the location of the wall and fill constitute an additional encroachment into the RPA buffer. Staff also believes that directing Mr. Huff to remove the retaining wall, all fill, and to require the restoration of the buffer, is the appropriate regulatory response and is consistent with Ordinance.

It is Staff's recommendation, that the Board evaluate the appeal, and then look to the following section of the Chesapeake Bay Ordinance for guidance in this matter:

Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance. The Board shall not decide in favor to the appellant unless it finds:

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.

If the Board votes in favor of the appeal then a mitigation plan in accordance with the standard mitigation requirements should be required. If approved, it should be conditioned on the following:

1. The Owner obtaining all necessary building permits and approvals from other regulatory agencies prior to the continuance of work.
2. Submission of a WQIA, along with an acceptable mitigation plan for the proposed RPA encroachment impacts prior to the continuance of work.
3. If approved 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 satisfactory to the county attorney.
4. The Owner shall agree to meet all of the requirements set forth by the Board and the Division.