

# Chesapeake Bay Board

## October 11, 2006

A. Roll Call

B. Minutes -September 13, 2006

C. Public Hearings

1. CBE-06-062. Performance Contracting – 2844 Castling Crossing

2. CBE-06-066. Hallmark Builders/Michael and Patricia Collmeyer – 117 Ridge Crossing

3. CBE-04-040. C. E. Newbaker Surveying and Planning - Michelle Point

4. CBE-06-053. Beatrice Gulbrandsen – 104 Dancy Place continued from 9/13

5. CBV-06-012. Appeal Robert & Bambi Walters – 5112 Shoreline Court continued from 9/13

D. Board Consideration

1. CBE-05-054. Dale and Paige Sprenkel – 141 Riverview Plantation Extension

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## **WQIA for CBE-06-062 - 2844 Castling Crossing**

Staff report for the October 11, 2006 Chesapeake Bay Board public hearing.

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

### **Summary Facts**

Applicant	Performance Contracting
Land Owner	(same)
Location	2844 Castling Crossing, Lot 18, Phase One, Lake Powell Forest
JCC PIN#	4812300018
Staff Contact	Patrick T. Menichino - 253-6675

### **Project Description**

Performance Contracting has applied 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 Lake Powell Forest. The lot is 6127 sqft or 0.140 acres in size.

The principal structure is proposed to create approximately 2197 sqft 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 6127 sqft in the RPA or 100% of the lot to allow for the construction of the dwelling.

### **Background**

The lot was recorded in 1999 after adoption of the Chesapeake Bay Preservation Ordinance but there was no RPA present on the lot at recordation. 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 conducted for this project's building permit application identified a perennial water body adjacent to the rear of the lot requiring that a 100 ft RPA buffer be established on the lot around the water body. This 100 ft RPA buffer encompasses all 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;
3. The encroachment may not extend into the seaward 50 feet of the buffer area, and
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 RPA. Performance Contracting submitted a WQIA for this project. The issue before the Chesapeake Bay Board is the 6127 sqft RPA impact (clearing and grading) and creation of 2197 sqft 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 6 native canopy trees, 12 native understory trees, and 18 native shrubs on the lot in 585 sqft of enhanced landscape beds on the lot in the RPA to help filter nonpoint source pollution.

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 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 cannot be relocated on the lot to minimize the encroachment in the buffer. 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. This exception request approval shall become null and void if construction has not begun by October 11, 2007.

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.

Staff Report Prepared by: \_\_\_\_\_  
Patrick T. Menichino

CONCUR: \_\_\_\_\_  
Darryl E. Cook

- Exception Approved with Staff Recommendations
- Exception Denied
- Exception Deferred

\_\_\_\_\_  
William Apperson  
Chairman,  
Chesapeake Bay Board

Attachments:

## **WQIA for CBE-06-066 - 117 Ridge Crossing.**

Staff report for the October 11, 2006 Chesapeake Bay Board public hearing.

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

### **Summary Facts**

Applicant	Michael and Patricia Collmeyer.
Land Owner	(same)
Location	117 Ridge Crossing, Lot 36, Section XIII-A, Ford's Colony
Tax Map	3720500036
Staff Contact	Patrick T. Menichino Phone: 253-6675

### **Project Description**

Mr. and Mrs. Collmeyer have applied 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 Ford's Colony. The lot is 20,211 square feet or 0.464 acres in size.

The principal structure is proposed to create approximately 4354 sqft 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 6400 sqft in the RPA. Approximately 30% of the lot is to be cleared to allow for the construction of the dwelling.

### **Background**

The lot was recorded in 1998 after the adoption of the Chesapeake Bay Preservation Ordinance but there was no RPA present on the lot at recordation. 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 conducted for this project's building permit application identified a perennial water body adjacent to the rear of the lot requiring that a 100 ft RPA buffer be established on the lot around the water body. This 100 ft RPA buffer encompasses approximately 85% 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;
3. The encroachment may not extend into the seaward 50 feet of the buffer area, and
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 RPA. Performance Contracting submitted a WQIA for this project. The issue before the Chesapeake Bay Board is the 6400 sqft RPA impact (clearing and grading) and creation of 4354 sqft 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 11 native canopy trees, 22 native understory trees, and 33 native shrubs on the lot in the RPA to help filter nonpoint source pollution. The mitigation plan submitted with the WQIA shows a majority of the proposed plantings installed within existing natural areas that are already heavily forested. It may be necessary for the applicant and staff to develop an alternate RPA mitigation based on existing vegetation and field conditions located on this lot.

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 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 cannot be relocated on the lot to minimize the encroachment in the buffer. 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 mitigation landscape plan submitted with the WQIA or if field conditions prevent the full implementation of the RPA mitigation plan, an alternate plan along with a contribution paid into a County approved environmental fund may substituted.
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. This exception request approval shall become null and void if construction has not begun by October 11, 2007.

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.

Staff Report Prepared by: \_\_\_\_\_  
Patrick T. Menichino

CONCUR: \_\_\_\_\_  
Darryl E. Cook

- Exception Approved with Staff Recommendations
- Exception Denied
- Exception Deferred

\_\_\_\_\_  
William Apperson  
Chairman,  
Chesapeake Bay Board

Attachments:

**CBE-04-040. Michelle Point.**

Staff report for the October 11, 2006 Chesapeake Bay Board public hearing.

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

**Summary Facts**

Applicant	Mr. Charles Newbaker, L.S. of C. E. Newbaker Inc.
Land Owner	Michelle Point, LLC
Location	9001 Barhamsville Road
Tax Map	(12-1)(1-3)
Staff Contact	William Cain, Phone: 253-6702

**Project Description**

Mr. Charles Newbaker, L.S. of C. E. Newbaker Inc. has applied on behalf of Michelle Point, LLC, for an exception to the Chesapeake Bay Preservation ordinance for impacts associated with the Michelle Point project. The project is generally located on the western side of Route 30 across from Stonehouse Industrial Park, just north of the Burnham Woods subdivision.

For the purposes of constructing a required stormwater management facility and sanitary sewer gravity main and pumping station, Michelle Point is proposing 2.56 acres of total encroachment into the resource protection area (RPA).

**History**

Michelle Point, LLC submitted a master plan to the Planning Division in May 2004. DRC approved the master plan for the development at the July 7<sup>th</sup> meeting, after the plan preparer and applicant addressed all concerns pertaining to perennial stream locations, stormwater management requirements, and erosion and sediment control objectives which stemmed from the May 21<sup>st</sup> DRC meeting where the plan was originally deferred. One of the conditions for approval of the master plan was that the site would accept and treat stormwater in two stormwater management ponds located onsite. With the afore mentioned items addressed, the case was heard at the August 11, 2004 Chesapeake Bay Board public hearing where the case was approved. Prior to the expiration of the approved WQIA on August 11, 2005, the applicant submitted a request for a one year extension due to delays in obtaining the required permits from the United States Army Corps of Engineers and the Department of Environmental quality. This extension was approved by the Chesapeake Bay Board on August 10, 2005. That extension has since expired and, as a result of this expiration, the case must be heard and approved by the board at this time.



A site specific perennial stream evaluation revealed that two perennial streams existed on the parcel, and because the plan for this project was not submitted prior January 1, 2004, the project is not grandfathered from the revised Chesapeake Bay Preservation Ordinance. Because of this, a Resource Protection Area (RPA) buffer of 100 feet has been imposed on either side of the streams and contiguous wetlands. Because of these site restrictions, one of the stormwater management facilities, which will handle the majority of stormwater runoff for the site, has been proposed for installation in the headwaters of the eastern most perennial stream. The construction of this basin will permanently inundate approximately 350 linear feet of the associated perennial stream and effectively relocate the RPA feature to the BMP outfall.

Under Section 23-11 of the new Ordinance, it states that a water quality impact assessment shall be required for any proposed land disturbance resulting from development or redevelopment within RPAs. Michelle Point, LLC has submitted this assessment for their project. The issue before the Chesapeake Bay Board is the impacts (clearing and grading) associated with the construction of sanitary sewer items and a stormwater management facility.

#### **Water Quality Impact Assessment**

The total impacts to the RPA for this project are approximately 2.56 acres and encompass the construction of a sanitary sewer pumping station and gravity main, and a stormwater management facility. Impacts associated with the installation of the sanitary sewer pumping station (0.02 acre) will be an administrative review and are not covered under the Board exception approval. Impacts associated with the installation of the sanitary sewer gravity main will cover approximately 0.10 acres, while impacts associated with the construction of a stormwater management facility will cover 2.44 acres. Therefore, the total RPA impact before the Board for approval is 2.54 acres. To mitigate for environmental impacts, the project will use the following: erosion control type 3 blanket matting to stabilize all slopes facing the RPA and those associated with the construction of the stormwater management facilities; stilling basins, to reduce outfall velocities from the stormwater management facilities, will be constructed at the outfalls of both BMPs; RPA restoration, in accordance with the 2003 Chesapeake Bay Local Assistance Department guidelines, will be conducted in all permissible areas around the BMP embankment located on the eastern portion of the site; additional treatment of 10.6 acres of currently uncontrolled offsite stormwater will be incorporated into the design of the onsite stormwater management facilities; additional plantings to increase BMP efficiencies will be installed on the eastern most BMP; and a conservation seed mix will be used on the downstream sides of all BMP embankments.

C. E. Newbaker Inc. has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. 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):

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 degradation of water quality.

**Recommendations**

Staff finds that the WQIA and the project are consistent with the spirit and intent of the Ordinance and the criteria as outlined in section 23-14(c). Staff recommends that the Chesapeake Bay Board approve the WQIA as it pertains to this project. Furthermore, all other recommendations listed therein are to be incorporated into the site plans for the project, which must then be approved by the Environmental Division. This exception request approval shall become null and void if construction has not begun by October 11, 2007.

\_\_\_\_\_  
William Cain

CONCUR:

\_\_\_\_\_  
Darryl Cook

- Exception approved with staff recommendations
- Exception Denied
- Exception Deferred

\_\_\_\_\_  
William Apperson  
Chairman,  
Chesapeake Bay Board

Attachment:

1. Michelle Point Project Water Quality Impact Assessment

## **WQIA for CBE-06-053 - 104 Dancy Place**

Staff report for the October 11, 2006 Chesapeake Bay Board public hearing.

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

### **Summary Facts**

Applicant	Mrs. Beatrice Gulbrandsen
Land Owner	Same
Location	104 Dancy Place, Lot 131, Section 2, Southall Quarter
Tax Map	5010300131
Staff Contact	Patrick Menichino     Phone: 253-6675

### **Project Description**

Mr. Robert F. Ripley on behalf of Mrs. Beatrice Gulbrandsen has applied, for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of an accessory structure on the above referenced lot in the Kingsmill Subdivision. The lot is 25,700 sqft or 0.590 acres in size. The accessory structure, a conservatory, is proposed to create approximately 623 sqft of impervious cover in the RPA consisting of the accessory structure and concrete sidewalk.

### **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 resubmitted a WQIA for this project. The issue before the Chesapeake Bay Board is the 623 sqft RPA impact and impervious cover in the RPA associated with the construction of the accessory structure.

The WQIA now proposes to mitigate for the impacts to the RPA by planting 2 native canopy trees, 3 native understory trees and 6 native shrubs on the lot in areas designated within the RPA buffer to help filter nonpoint source pollution. In addition storm water runoff generated from the proposed conservatory roof area will be directed into 3 drywells.

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 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 has reviewed and evaluated the proposed RPA encroachment and offers the following information to the Board for its consideration:

The proposed conservatory's overall dimensions are 35' long by 25' wide. The WQIA proposes to increase the impervious area within the RPA buffer and on the lot, by 623 Sqft because only 80% of the structure is within the buffer. Staff believes that this request exceeds the "minimum necessary to afford relief".

At this time Staff has no information that granting this exception will confer upon the applicant a special privilege denied to other property owners who are similarly situated.

The proposal to construct a conservatory that is a non-water dependant, detached accessory structure within the RPA buffer, is not in harmony or consistent with the intent of the regulations. The applicant has submitted a mitigation plan that exceeds the requirements of the Division. However there are numerous impervious areas (decks, patios, walkways, staircases, brick retaining walls, etc.) that were previously constructed within the RPA buffer.

Staff finds that this exception request is based upon conditions or circumstances that are self created and self imposed. The proposed structure's size and design far exceed the "minimum necessary to afford relief". The applicant has the option of proposing a conservatory that is attached to the principal structure and outside of the RPA buffer. If an attached conservatory is proposed it can be reviewed and approved by the Division administratively.

In conclusion, for the above stated reasons, Staff can not support the proposed exception request.

If the Board considers granting the exception, Staff recommends the following conditions be imposed.

1. Full implementation of the landscape plan shown on the site plan submitted with the WQIA
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. Any new walkways or replacement walkways or patios proposed within the RPA buffer shall be constructed using non-interlocking brick pavers on a sand base instead of concrete.
5. This exception request approval shall become null and void if construction has not begun by October 11, 2007.

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.

Staff Report Prepared by: \_\_\_\_\_  
Patrick T. Menichino

CONCUR: \_\_\_\_\_  
Darryl E. Cook

- Exception Approved with Staff Recommendations
- Exception Denied
- Exception Deferred

\_\_\_\_\_  
William Apperson  
Chairman,  
Chesapeake Bay Board

Attachments:

## MEMORANDUM

**DATE:** October 11, 2006  
**TO:** The Chesapeake Bay Board  
**FROM:** Patrick Menichino, Environmental Compliance Specialist  
**SUBJECT:** Case: Chesapeake Bay Board Appeal – CBV-06-012 Bambi and Rob Walters, 5112 Shoreline Court

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

Mr. and Mrs. Walters have filed an appeal to James City County's Chesapeake Bay Board on July 24, 2006, and as amended on August 16, 2006. The appeal lists four (4) specific items of appeal, they are as follows:

1. Request an appeal of recent enforcement of (a) resource protection area and (b) wetlands pursuant to section 404 as recently interpreted in Rapanos decision.
2. Request appeal to recently presented JCC Environmental Division's August 25, 2004 letter and review of Environmental Division's finding that our Property has been impacted by "unauthorized encroachments".
  - a. See Notice of Violation dated August 14, 2006 with a determination "that vegetation has been removed from within an area identified as a Resource Protection Area (RPA) buffer" and
  - b. See Notice of Violation dated August 14, 2006 with a determination unauthorized removal outside clearing limits;Request an appeal of JCC Environmental Division's July 24, 2006 requirement to submit buffer modification plan for review and approval to remove poison ivy, poison sumac, and poison oak.
3. Request review of Environmental Division's position that "regulatory status of the lake (Lake Powell) has not changed since 1990".

### **The Chesapeake Bay Preservation Ordinance**

The original ordinance was adopted by the James City County Board of Supervisors on August 6, 1990. It was titled Ordinance Number 183 and added to the County Code as: Chapter 19B, Chesapeake Bay Preservation. As amended this ordinance is now titled: Chapter 23, Chesapeake Bay Preservation.

## **Board Action**

Staff requests that the Board in considering this appeal, follow the guidance provided within the Ordinance.

Section 23-17(b) Appeals;

(a) “An owner of property subject to an administrative decision, order or requirement under this chapter may appeal by submitting a written application for review to the board no later than 30 days from the rendering of such decision, order or requirement. The board shall hear the appeal as soon as practical after receipt of the application” and,

(b) “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.

## **Staff Recommendations**

Mr. and Mrs. Walters have requested an appeal of (4) specific items to the Board. Section 23-17 of the Ordinance clearly limits the scope of the appeal to “administrative decisions, orders or requirements under this chapter”.

Staff asserts that appellant’s item # 1, “*Rapanos decision*” is not eligible for appeal to this Board, because it is not a result of an administrative decision, order or requirement under this chapter.

Staff asserts that appellants item # 3 “*regulatory status of the lake has not changed since 1990*” is not eligible for appeal to this Board, because it is not a result of an administrative decision, order or requirement under this chapter.

Staff believes that appellant’s item #2, “unauthorized encroachments” can be appealed to the Board. Staff believes that encroachments into areas designated to be preserved on the approved development plan for lot 58 have in fact occurred. (see previous staff report dated September 13, 2006 and photos)

Staff asserts that appellant's item #2 "requirement to submit a buffer modification plan" can be appealed to the Board. Staff contends that the Manager is clearly authorized under provisions of the Chesapeake Bay Ordinance to require an RPA Buffer Modification Plan, for the removal of vegetation within the buffer. Following the September 13, 2006 Board meeting, Staff met with the appellants, and approved the removal of poison ivy, sumac and oak, from within the fenced area of the rear yard. Since a plan for the removal has been approved by the Division, the appellant should now formally withdraw their appeal of this item from the Board's consideration.

Staff requests that the Board act upon only appellant's item # 2. Staff requests that the Board deny each of their appeals within item # 2.

Staff asserts that the appellant has not demonstrated that a hardship exists, or if one exists, it is "not generally shared by other properties in the vicinity".

The appellant acquired the property in good faith and was aware of the Resource Protection Area buffer located on lot 58 at the time of purchase.

Staff believes that any hardship claimed by the appellant would be self-inflicted.

Therefore Staff requests that the Board deny the appellants' requests.

- Appeal Approved with Staff Recommendations
- Appeal Denied
- Appeal Deferred

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William Apperson  
Chairman,  
Chesapeake Bay Board



## MEMORANDUM

**DATE:** October 11, 2006  
**TO:** Chesapeake Bay Board  
**FROM:** Darryl E. Cook, Environmental Director  
**SUBJECT:** Case No. CBE-05-054, 141 Riverview Plantation

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Mr. and Mrs. Sprenkel have requested a one-year extension for the RPA exception granted last year by the Board. Work has not yet begun on the project due to delays in finalizing their house plans. All of the approved conditions required with the exception shall to the extension.

Staff supports a 1 year extension of the exception; the new expiration date shall be November 9, 2007.