

# Chesapeake Bay Board

## December 13, 2006

A. Roll Call

B. Minutes - November 8, 2006

C. Public Hearings

1. CBE-06-073 Brian Ostrom – 115 Jordans Journey
2. CBE-06-075 Eric Blackwell – 1419 Katherine Shaye Lane
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1. Amendments to the Ordinance

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**WQIA for CBE-06-073 - 115 Jordans Journey, First Colony - Staff report for the December 13, 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.

**General Information**

Applicant                      Brian Ostrum

Land Owner                    (same)

Location                        115 Jordans Journey, First Colony

Parcel Number                4540200174

Staff Contact                 Patrick Menichino            Phone: 253-6675

**Project Summary and Description**

Mr. Brian Ostrum, of 115 Jordans Journey, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the modification and construction of a gravel driveway expansion, sand set brick pavers walkways, a brick/bluestone portico floor, and gray flagstone patio. The residence is located adjacent to a perennial water body (Lake Pasbeheigh) located in First Colony. A detailed mitigation plan has been provided along with the exception request for your review.

The residence predates the adoption of the Ordinance. The proposal includes the removal, alteration, and modification to existing impervious structures and the addition of approximately 670 sqft of new impervious accessory structures. The mitigation plan proposed is in accordance with the standard mitigation requirements. Although the Ordinance does not allow for administrative approval of accessory structures, staff is not opposed to this applicant's exception request.

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**Full Report**

The residence was constructed prior to the adoption of the Ordinance. 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 lake the residence is adjacent to and it was determined that the lake is a water body with perennial flow requiring that a 100 ft RPA buffer be established around it. This 100 ft RPA buffer encompasses approximately 80% of lot.

The owners have submitted a plan which proposes installation of accessory impervious structures and surfaces within the 50 ft and 100 ft RPA buffers.

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 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.

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."

The proposed brick paver walkways, bluestone pad and gray flagstone patio are all considered an accessory use and could not be approved administratively. The applicants have chosen to request an exception for the proposed construction from the Chesapeake Bay Board (Board).

The issue for the Board's consideration is the installation of approximately 670 sqft of new impervious accessory structures within the 50 and 100 ft RPA buffers.

### **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. The applicant has submitted a WQIA for this project. The mitigation plan contained within the WQIA offsets the proposed impervious cover impacts to the RPA buffer for the 670 sqft of impervious accessory structures.

The WQIA proposes to mitigate for the impacts to the RPA by planting 3 native understory trees, 22 native shrubs, and groundcover. This vegetation will be located within the RPA buffer to help filter nonpoint source pollution. This mitigation plan meets the typical mitigation requirements by planting one tree, two understory trees, and three shrubs for each 400 sqft of impervious cover established.

The owners have 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) of the 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**

Both the Ordinance and staff consider brick paver walkways, flagstone and bluestone patios, as accessory structures and as an impervious surface. The Ordinance does not authorize staff to give administrative approval for the creation of accessory structures in the RPA. The Board has approved construction of similar paver pads (patios) in Ford’s Colony, at 153 John Pott Drive, on May 11, 2005, at The Vineyards Clubhouse, July 13, 2005, and at 2658 Jockeys Neck Trail, The Vineyards, on March 8, 2006.

If the Board grants the exception, the proposed mitigation plan is in accordance with the standard mitigation requirements for impervious surfaces. If approved, it should be conditioned on the following:

1. The mitigation for the proposed impervious accessory structures should be accomplished through the full implementation of the landscape plan submitted with the WQIA.
2. 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 satisfactory to the county attorney.
3. This exception request approval shall become null and void if construction has not begun by December 13, 2007.

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-06-075 – 1419 Katherine Shaye Lane, Governors Land - Staff report for the December 13, 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 Eric V. Blackwell  
Land Owner (same)  
Location 1419 Katherine Shaye Lane, Williamsburg  
Parcel Identification 4310800006  
Staff Contact Patrick Menichino Phone: 253-6675

**Project Summary and Description**

Mr. Eric Blackwell, 1205 River Ford Drive, Alabama, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of a detached garage and brick courtyard wall, totaling approximately 125 sqft of impervious area. The lot is located adjacent to perennial features that require a 100 ft RPA buffer. This buffer encompasses approximately 80% of the lot.

The residence presently under construction on the lot, received administrative approval by the manager under the Ordinance. The Ordinance does not allow for the administrative approval of accessory structures within the RPA buffer. A detailed mitigation plan has been provided along with the exception request for your review. The mitigation plan includes plantings for both the proposed residence and the accessory structures now before the Board. The mitigation plan is in accordance with the standard mitigation requirements. Because the amount of mitigation plantings required exceed the available planting area on the lot, plantings will also be installed on the adjacent property owned by Governors Land and dedicated as a “Natural Open Space Easement”.

The proposal includes the construction of a 575 sqft detached garage with only 60 sqft of encroachment in the buffer, and a 65 sqft brick courtyard wall all within the 100 ft RPA buffer. The proposed mitigation plan is in accordance with the standard mitigation requirements. Although the Ordinance does not allow for administrative approval of accessory structures, staff is not opposed to this applicant’s exception request.

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**Full Report**

The lot was recorded in 1999 after the adoption of the Ordinance but prior to 2004, when the Ordinance requirements related to the determination of perennial flow were changed requiring that perennial water bodies be identified based on a field evaluation. In 2006, as part of the administrative review of a building permit application for a proposed dwelling on this lot, it was determined that the proposed residence is adjacent to a pond and other wetland features with perennial flow requiring that a 100 ft RPA buffer be established around those features. This buffer encompasses approximately 80% of the lot.

The owners have submitted a plan which proposes RPA encroachments for the installation of a detached garage and a brick courtyard wall within the 100 ft RPA buffer.

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.
4. The lot or parcel was created as a result of a legal process in conformity with the county's subdivision regulations.

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."

The proposed detached garage and brick courtyard wall are considered an accessory use and could not be approved administratively. The applicants have chosen to request an exception for these structures from the Board.

The issue for the Board's consideration is the installation of a 575 sqft detached garage with 60 sqft of encroachment, and a brick courtyard wall with 65 sqft of encroachment in the 100 ft RPA buffer.

#### **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. The applicant has submitted a WQIA for this project. The mitigation plan contained within the WQIA offsets the proposed impervious cover impacts to the RPA buffer for the construction of a single family dwelling and for the 125 sqft of accessory structures.

The WQIA proposes to mitigate for the impacts to the RPA by planting 7 native trees and 14 native understory trees and 28 native shrubs in the RPA. This vegetation will be located to the front and rear of the proposed residence and on property adjacent to this lot, owned by Governors Land and deeded as Natural Open Space. This mitigation plan meets the typical mitigation requirements by planting one tree, two understory trees, and three shrubs for each 400 sqft of impervious cover established.

The owners have 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) of the 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**

Both the Ordinance and staff consider a detached garage and brick courtyard wall, as accessory structures and as impervious surfaces. The Ordinance does not authorize staff to give administrative approval for the creation of accessory structures in the RPA. However, the Board has approved the construction of similar, landscape walls and detached structures in the past.

If the Board grants the exception, the proposed mitigation plan is in accordance with the standard mitigation requirements for impervious surfaces. If approved, it should be conditioned on the following:

1. The mitigation for the proposed garage and courtyard wall should be accomplished through the full implementation of the landscape plan submitted with the WQIA.
2. 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 satisfactory to the county attorney.
3. This exception request approval shall become null and void if construction has not begun by December 13, 2007.

Staff Report prepared by: \_\_\_\_\_  
Patrick Menichino

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

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

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

Attachments:

**WQIA for CBE-06-076 – 1423 Katherine Shaye Lane, Governors Land - Staff report for the December 13, 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                      Brian K. Blackwell

Land Owner                    (same)

Location                        1423 Katherine Shaye Lane, Williamsburg

Parcel Identification        4310800005

Staff Contact                 Patrick Menichino            Phone: 253-6675

**Project Summary and Description**

Mr. Brian Blackwell, of 3309 Summit Loop, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of a detached garage, brick paver patio, and brick courtyard wall, totaling 765 sqft of impervious area. The lot is located adjacent to perennial features that require a 100 ft RPA buffer. This buffer encompasses approximately 95% of the lot.

The residence presently under construction on the lot, received administrative approval by the manager under the Ordinance. The Ordinance does not allow for the administrative approval of accessory structures within the RPA buffer. A detailed mitigation plan has been provided along with the exception request for your review. The proposed mitigation plan includes plantings for both the proposed residence and the accessory structures now before the Board. The mitigation plan is in accordance with the standard mitigation requirements. Because the amount of mitigation plantings required exceed the available planting area on the lot, plantings will also be installed on the adjacent property owned by Governors Land and dedicated as a “Natural Open Space Easement”.

The proposal includes the construction a 575 sqft detached garage, 120 sqft brick paver patio, and a 70 sqft brick courtyard wall all within the 100 ft RPA buffer. The proposed mitigation plan is in accordance with the standard mitigation requirements. Although the Ordinance does not allow for administrative approval of accessory structures, staff is not opposed to this applicant’s exception request.

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**Full Report**

The lot was recorded in 1999 after adoption of the Chesapeake Bay Preservation Ordinance but prior to 2004 when the Ordinance requirements related to the determination of perennial flow were changed requiring that perennial water bodies be identified based on a field evaluation. In 2006, as part of the administrative review of a building permit application for a proposed dwelling on this lot, it was determined that the proposed residence is adjacent to a pond and other wetland features with perennial flow requiring that a 100 ft RPA buffer be established around those features. This 100 ft RPA buffer encompasses approximately 95% of the lot.



The owners have submitted a plan which proposes encroachments into the 100 ft RPA buffer through the installation of a 575 sqft detached garage, a 120 sqft non-interlocking brick paver patio, and a brick courtyard wall.

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.
4. The lot or parcel was created as a result of a legal process in conformity with the county's subdivision regulations.

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 detached garage, brick paver patio and brick courtyard wall are considered an accessory use and could not be approved administratively. The applicants have chosen to request an exception for these structures from the Board.

The issue for the Board's consideration is the installation of a 575 sqft detached garage, a 120 sqft brick paver patio, and a brick courtyard wall within the 100 ft RPA buffer.

#### **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. The applicant has submitted a WQIA for this project. The mitigation plan contained within the WQIA offsets the proposed impervious cover impacts to the RPA buffer for the construction of a single family dwelling and for the 775 sqft of accessory structures.

The WQIA proposes to mitigate for the impacts to the RPA by planting 6 native trees and 12 native understory trees and 18 native shrubs in the RPA. This vegetation will be located to the rear of the proposed residence and on property adjacent to this lot, owned by Governors Land, and deeded as Natural Open Space. This mitigation plan meets the typical mitigation requirements by planting 1 tree, 2 understory trees, and 3 shrubs for each 400 sqft of impervious cover established.

The owners have 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) 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**

Both the Ordinance and staff consider a detached garage, brick paver patio and brick courtyard walls, as accessory structures and impervious surfaces. The Ordinance does not authorize staff to give administrative approval for the creation of accessory structures in the RPA. However, the Board has approved the construction of similar brick paver patios, landscape walls and detached structures in the past.

If the Board grants the exception, the proposed mitigation plan is in accordance with the standard mitigation requirements for impervious surfaces. If approved, it should be conditioned on the following:

1. The mitigation for the proposed garage, patio and courtyard wall should be accomplished through the full implementation of the landscape plan submitted with the WQIA.
2. The patio will be constructed using non-interlocking brick pavers set in sand.
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 satisfactory to the county attorney.
4. This exception request approval shall become null and void if construction has not begun by December 13, 2007.

Staff Report prepared by: \_\_\_\_\_  
Patrick Menichino

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

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

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

Attachments:

**CBE-06-011. Colonial Heritage - Phase 3, Section 2** - Staff report for the December 13, 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. Rick Smith, AES Consulting Engineers
Land Owner	Colonial Heritage, LLC
Location	6799 Richmond Road Yarmouth Creek Watershed
Tax Map	(24-3) (1-32)
Staff Contact	Michael Woolson, Senior Watershed Planner Phone: 253-6834

**Project Description**

Mr. Rick Smith of AES Consulting Engineers, Inc. has applied on behalf of Colonial Heritage, LLC, for an exception to the Chesapeake Bay Preservation Ordinance for impacts associated with the Colonial Heritage Phase 3, Section 2 project. The project is generally located at 6799 Richmond Road, between Phase 1, Sections 4 and 5 and the cross-country high-voltage electric transmission line.

For the purposes of constructing the necessary stormwater management facilities, sanitary sewer gravity main, and pedestrian bridge infrastructure, Colonial Heritage, LLC is proposing 0.24 acres of total encroachment into the Resource Protection Area (RPA). Impact #1, the stormwater outfall, is an administrative exception and comprises 0.03 acres of the total impact encroachment. The other three impact areas are considered Chesapeake Bay Board action items. Impact #2 is a combination sanitary sewer, water line and pedestrian bridge crossing of 0.08 acres (already built); impact #3 is a continuation of the pedestrian path of 0.04 acres; and impact #4 is a continuation of the sanitary sewer and water line and is 0.09 acres.

Mr. Rick Smith and AES Consulting Engineers have worked with Environmental Division staff to reduce impacts to the RPA, from increasing BMP slope steepness (where feasible), to realignment of the utilities and pedestrian path to reduce grading and slope impacts.

**History**

AES Consulting Engineers first submitted the proposed plan of development for Colonial Heritage Phase 3, Section 2 to the Planning Division in February 2005. A site specific perennial stream evaluation revealed that multiple perennial streams existed adjacent to this plan of development, all of which drain towards Cranston's Mill Pond and ultimately to the James River through the Yarmouth Creek tributary. As this plan of development was submitted after January 1, 2004, the project was not grand fathered from the revised Chesapeake Bay Preservation Ordinance and as a result, a Resource Protection Area (RPA) buffer of 100 feet has been imposed on both sides of the streams and contiguous wetlands. Due to site restrictions resulting from the RPA requirements, one of the stormwater management facilities, which will handle the majority

of stormwater runoff for the site, has been proposed for installation near the headwaters of the perennial stream.

Section 23-11 of the revised Ordinance states that “a Water Quality Impact Assessment (WQIA) shall be required for any proposed land disturbance in the RPA resulting from development or redevelopment activities.” Mr. Rick Smith and AES Consulting Engineers previously submitted a WQIA for this project and was heard at the May 10, 2006 Chesapeake Bay Board meeting. The project was deferred indefinitely at that time because the subdivision had lost the preliminary approval status that the Planning Division had granted. Preliminary approval was again granted by the Planning Division on December 1, 2006 and this WQIA can now go forward for deliberation by the Board.

### **Water Quality Impact Assessment**

The impacts to the RPA buffer and RPA features resulting from the current plan of development requiring administrative and board actions are 0.24, of which 0.03 acres are administrative action items and 0.21 acres are Board action items. The following items are, or will be, implemented into the associated plan of development:

- Additional Natural Open Space easements, labeled as RPA Buffer Impact Mitigation Area #1 and #2 on Exhibit A, which total 0.11 acres. This preservation is beyond that which is required for overall project stormwater compliance;
- Erosion control type 3 blanket matting will be applied to all cut and fill slopes throughout the RPA impact areas;
- Conservation seed mix will be used on all upland disturbed areas within the RPA and a wetland seed mix on all disturbed areas within the wetlands;
- Stabilization of a severe head cut upslope of the RPA on the eastern limit of the project site to reduce the excessive sedimentation of the wetland system downstream.

AES, acting on behalf of Colonial Heritage, LLC, 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**

Given the nature of the development and the mitigation measures proposed, staff finds that this WQIA and the project are consistent with the spirit and intent of the Ordinance and the criteria as outlined in section 23-14(c) of the James City County Code. Staff recommends that the Chesapeake Bay Board approve this WQIA and the exception for the Colonial Heritage Phase 3, Section 2. Furthermore, all recommendations listed within the Water Quality Impact Assessment, Dated December 1, 2006, are to be incorporated into the site plans for the project and must receive final approval by the Environmental Division. This exception request approval shall become null and void if construction has not begun by December 13, 2007. Any changes to the plan of development that would cause any deviation from the items listed in the WQIA, either in the form of increased impacts to the RPA or omission of mitigation requirements from the submitted plan of development must be reviewed or approved by the Board.

\_\_\_\_\_  
Michael Woolson;  
Senior Watershed Planner

CONCUR:

\_\_\_\_\_  
Darryl Cook;  
Environmental Director

- Exception approved with Staff Recommendations
- Exception Denied
- Exception Deferred

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

**Attachment:**

1. Water Quality Impact Assessment for Subdivision Plan, Colonial Heritage Phase 3, Section 2, December 1, 2006.

**CBE-05-068. Marywood Subdivision.**

Staff report for the December 13, 2006 Chesapeake Bay Board public hearing.

This staff report has been prepared by the James City County Environmental Division to provide information to assist the Chesapeake Bay Board in making a recommendation. This information may also be found to be beneficial to the members of the general public who are interested in the environmental impacts as proposed with the associated project.

**Summary Facts**

Applicant	Mr. V. Marc Bennett, P.E. of AES Consulting Engineers, Inc.
Land Owner	Centex Homes
Location	North of Kingswood and Druid Hills subdivisions
Tax Map	(47-2) (1-47)
Staff Contact	William Cain, Phone: 253-6702

**Project Description**

Mr. V. Marc Bennett, P.E. of AES Consulting Engineers, Inc. has applied on behalf of Centex Homes, for an exception to the Chesapeake Bay Preservation Ordinance for impacts associated with the Marywood project. The project is generally located to the north of Kingswood and Druid Hills subdivisions, to the south of Hickory Sign Post Road, and to the west of the Riverside Medical Center and La Fontaine Condominiums.

For the purposes of constructing the necessary stormwater management facility outfalls, sanitary sewer gravity main, and road infrastructure, Centex Homes is proposing 2.24 acres of total encroachment into the Resource Protection Area (RPA). This has been reduced from the previously anticipated 4.40 acres associated with the previous application.

**History**

Centex Homes submitted the proposed plan of development for the Marywood development to the Planning Division in September, 2004. The James City County Planning Committee approved the master plan for the development at the December 5, 2005, Planning Commission meeting after the plan preparer and applicant addressed all concerns pertaining to perennial stream locations, stormwater management requirements, erosion and sediment control objectives, and planning issues which stemmed from previous DRC meetings where the plan was originally deferred.

Environmental Division conditions for approval of the master plan consisted primarily of reducing impacts to environmentally sensitive areas. Plan modifications provided to address this requirement consisted of steeper cut and fill slopes, the relocation of the

southernmost stormwater management basin, and a net decrease in the number of proposed lots.

A site specific perennial stream evaluation revealed that multiple perennial streams existed on the parcel, all of which outfall to Lake Powell and ultimately to the James River through the Mill Creek tributary. As this plan of development was submitted after January 1, 2004, the project was not grandfathered from the revised Chesapeake Bay Preservation Ordinance and as a result, a Resource Protection Area (RPA) buffer of 100 feet has been imposed on both sides of the streams and contiguous wetlands. Due to the necessity to connect the subdivision to the existing sanitary sewer pump station at Hickory Signpost, the sanitary sewer gravity main connection will be located within the limits of the RPA.

Section 23-11 of the revised James City County Chesapeake Bay Ordinance states that “a Water Quality Impact Assessment (WQIA) shall be required for any proposed land disturbance in the RPA resulting from development or redevelopment activities.” AES Consulting Engineers previously submitted a WQIA for the Marywood project and that case was heard at the September 13, 2006, Chesapeake Bay Board meeting. Though staff recommended approval, the case was denied by the Board due to the location of the stormwater management basin within the limits of the RPA and atop a perennial stream. This basin has been removed from the plan and the revised areas of encroachment before the Chesapeake Bay Board at this time result from impacts (clearing and grading) associated only with a utility (sewer) crossing. All previous impacts have either been removed from the RPA or have been reduced to the point that they will only require an administrative exception.

### **Water Quality Impact Assessment**

The impacts to the RPA buffer and RPA features resulting from the current plan of development requiring administrative and board actions have been reduced from 4.40 acres to 2.24 acres. The impacts are associated with the extension of Oxford Road (Impacts #1.1 and 1.2), the proposed ravine crossing of Braddock Road (Impact #2), stormwater conveyance system and BMP outfalls (Impacts #3.1, 3.2, 3.5), and a utility bridge (Impact #4). These impacts are presented in Section II of the WQIA as provided by AES. Only those encroachments associated with Impact #4 require a board action as all others are administrative actions by Ordinance. With this being the case, the total impacts to components of the RPA requiring Board approval at this time are 0.32 acres. To mitigate for the both the proposed administrative and Board impacts, the following will be implemented into the associated plan of development:

- Erosion control type 3 blanket matting will be applied to all cut and fill slopes throughout the site;
- Stilling basins to reduce turbulence at stormwater outfalls and downstream erosion will be provided at all BMP outfalls and the outfalls of stormwater conveyance systems not immediately discharging to a stormwater management basin;

- Conservation seed mix will be used on the slopes of all BMP embankments.
- Installation of Rain Barrels on all houses along Collington Court (These units do not drain to one of the proposed stormwater management basins).

Other environmental considerations are the creation of a 15-foot building setback from the RPA buffer, and the preservation of 9+ acres of open space along Hickory Signpost Road .

AES acting on behalf of Centex Homes, 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 does find 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) of the James City County Code. Staff therefore recommends that the Chesapeake Bay Board approve the WQIA and the exceptions for the Marywood project. Furthermore, all recommendations listed therein are to be incorporated into the site plans for the project, which must then receive final approval by the Environmental Division. This exception request approval shall become null and void if construction has not begun by December 13, 2007. Any changes to the plan of development that would cause any deviation from the items listed in the WQIA, either in the form of increased impacts to components of the RPA or omission of mitigation requirements from the submitted plan of development, must be reviewed and approved by the Board.



Staff report prepared by:

\_\_\_\_\_  
William Cain;  
Civil Engineer

CONCUR:

\_\_\_\_\_  
Darryl Cook;  
Environmental Director

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

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

**Attachment:**

1. Water Quality Impact Assessment of proposed Site Improvements for the Marywood Subdivision (Revised November 2006).