

# Chesapeake Bay Board

## November 8, 2006

A. Roll Call

B. Minutes October 11, 2006

C. Public Hearings

1. CBE-06-071 Williamsburg Environmental Group / Huckaby – 3 West Circle

2. CBE-06-070 Hallmark Builders/Mr. & Mrs Reuter – 232 Royal Dublin

3. CBE-06-067 Matt Huff – 2929 Leatherleaf Drive

4. CBE04-040 C. E. Newbaker Surveying and Planning, - Michelle Point continued from 10/11/06

5. CBV-06-012 Appeal - Robert & Bambi Walters – 5112 Shoreline Court continued from 10/11/06

D. Board Consideration

1. Calendar Year 2007 Meeting Schedule

E. Matters of Special Privilege

F. Election of Officers for the Year 2007

G. Adjournment

## **WQIA for CBE-06-071-3 West Circle**

Staff report for the November 8, 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. Frank Huckaby
Land Owner	(same)
Location	3 West Circle, First Colony
PIN No.	484020080A
Staff Contact	Patrick Menichino      Phone: 253-6675

### **Project Description**

Williamsburg Environmental Group on behalf of Mr. Frank Huckaby has applied for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of approximately 110 linear feet of retaining wall, and the filling and grading of approximately 18,750 square feet of Resource Protection Area (RPA) on the above referenced lot in First Colony. The lot is located adjacent to the James River.

### **Background**

The lot was recorded in the 1970s prior to the adoption of the Chesapeake Bay Preservation Ordinance, therefore, there was no RPA present on the lot at recordation. However, on August 6, 1990, the Ordinance went into effect establishing 100-foot RPA buffers around all water bodies with perennial flow. Under the provisions of the Ordinance in effect at that time, perennial water bodies were identified as a solid blue-line stream on the USGS 7-1/2 minute topographic quadrangle maps (scale 1:24000). The James River and the adjacent, connected wetlands on this property were identified as perennial water bodies on the quad map and an RPA buffer was placed on the lot. This 100 foot RPA buffer encompasses about 99% 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 prior to August 6, 1990, 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; and

3. The encroachment may not extend into the seaward 50 feet of the buffer area.

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 retaining wall could not be approved administratively and the owners have chosen to request an exception to the Chesapeake Bay Ordinance from the Board. The owners are also requesting an exception for the proposed fill and grading required for a future single family residence.

The issue for the Chesapeake Bay Board’s consideration is the placement of 110 linear feet of retaining wall and the grading and filling of 18,750 square feet within the 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 RPAs. The applicant has submitted a WQIA for this project. The mitigation plan contained within the WQIA offsets the proposed impervious cover impacts of 113 square feet and the 18,750 square feet to the RPA buffer.

The WQIA proposes to mitigate for the impacts to the RPA by planting, 25 native canopy trees, 50 understory trees and 75 native shrubs in the RPA. This vegetation will be located around the lot and adjacent to the retaining wall to help filter nonpoint source pollution. This mitigation plan exceeds the typical mitigation requirements by planting one tree or three shrubs for each 100 square feet of impervious cover established.

The applicant 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) 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 believes that the applicant has submitted a WQIA and mitigation plan that addresses the water quality impacts associated with the proposed retaining wall and fill. Unfortunately, staff can 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 considers the retaining wall as an accessory structure. Staff has not allowed the creation of accessory structures in the RPA in the past. However, the Board has approved the construction of retaining walls within the buffer in the past and in this case, the retaining wall will reduce clearing and save some of the existing vegetation.

If the Board approves the exception, the proposed mitigation plan exceeds the standard mitigation requirements and would be acceptable for the proposed use. If approved, it should be conditioned on the following:

1. Full implementation of the landscape plan submitted with the WQIA.
2. Implementation would be guaranteed through a surety satisfactory to the Division and the County Attorney.
3. The applicant shall obtain all necessary permits and approvals from other agencies that have regulatory authority over the proposed construction, including a building permit.
4. This exception request approval shall become null and void if construction has not begun by November 8, 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-06-070 – 232 Royal Dublin**

Staff report for the November 8, 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. and Mrs. Horst Reuter
Land Owner	(same)
Location	232 Royal Dublin, Lot 135, Section 31, Ford's Colony
Tax Map	3710800135
Staff Contact	Patrick T. Menichino Phone: 253-6675

### **Project Description**

Mr. and Mrs. Reuter 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 26,399 square feet or 0.61 acres in size.

The principal structure is proposed to create approximately 4272 square feet 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 approximately 8,000 sq ft in the RPA. Approximately 40% of the lot is to be cleared to allow for the construction of the dwelling.

### **Background**

The lot was recorded in 2001 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 90% 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. The owners have submitted a WQIA for this project. The issue before the Chesapeake Bay Board is the 8000 square feet of RPA impact (clearing and grading) and creation of 4272 square feet of impervious cover in the RPA associated with the construction of the principal structure and driveway.

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 only 4 canopy trees, 7 understory trees and 11 shrubs installed within existing natural areas on the lot that are already heavily forested. It will be necessary for the applicant and staff to develop an additional RPA mitigation planting plan based on field conditions and vegetation located on this lot after clearing and grading has been accomplished. This additional RPA mitigation planting plan must provide for the planting of 7 additional canopy trees, 15 understory trees and 22 shrubs. As an alternative to the additional plantings the applicant may provide for the payment of \$3,200 into a County approved RPA mitigation fund.

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. Implementation of the mitigation landscape plan submitted with the WQIA and the development and implementation of an additional RPA mitigation plan. If field conditions prevent the implementation of the required additional RPA mitigation plan, an alternate plan or a contribution paid into a County approved RPA mitigation fund may be 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 November 8, 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-06-067, 2929 Leatherleaf Drive, Stonehouse**

Staff report for the November 8, 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	Jesse M. Huff
Land Owner	(same)
Location	2929 Leatherleaf, Stonehouse
Tax Map	0510200013
Staff Contact	Patrick Menichino      Phone: 253-6675

### **Project Description**

Mr. Jesse M. Huff, owner of 2929 Leatherleaf Drive, has applied for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the partial removal of an existing retaining wall and the construction of approximately 285 linear feet of terraced timber retaining walls on the above referenced lot in Stonehouse. The residence is located adjacent to a perennial stream and wetlands.

### **Background**

The lot was recorded in 1997 after adoption of the Chesapeake Bay Preservation Ordinance and there was no RPA present on the lot property 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 a stream and wetlands, which the residence is adjacent to, and it was determined that the stream was a water body with perennial flow requiring that a 100 foot RPA buffer be established around the stream and adjacent wetlands. This 100 foot RPA buffer encompasses virtually all the rear and side yard on the property.

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.

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 timber retaining walls are considered an accessory use and cannot be approved administratively. The applicant has chosen to request an exception for the proposed walls 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 mitigation plan contained within the WQIA offsets the total proposed impacts to the RPA buffer created by the installation of the walls and fill (2,300 square feet).

The WQIA proposes to mitigate for the impacts to the RPA by planting 6 native understory trees, and 36 native shrubs within the fill and terraced retaining walls. The plantings within the retaining walls will be located to the rear of the residence and adjacent to the existing driveway to help filter nonpoint source pollution runoff. This mitigation plan exceeds the typical mitigation requirements of planting one tree or three shrubs for each 100 sq. ft. of impervious cover. This mitigation plan proposes to mitigate for all proposed fill impacts.

Mr. Huff 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) 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**

On March 8, 2006, the Board denied Mr. Huff's appeal of an administrative order to remove the retaining wall. The order was issued because the wall was under construction and could not be approved administratively. The Board recognized the problem of needing to stabilize the steep slopes on his lot but felt the retaining wall proposed by Mr. Huff was not appropriate in the RPA. The Board requested that Mr. Huff work with staff to find a resolution that would stabilize the steep slopes but be less intrusive into the RPA. Staff has met with Mr. Huff several times and assisted him with this exception application.

Staff believes that the applicant has submitted a WQIA and mitigation plan that addresses the water quality impacts associated with the proposed retaining walls. Unfortunately, staff can 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 considers the timber retaining walls as an accessory structure. Staff has not allowed the creation of accessory structures in the RPA in the past. However, the Board has approved the construction of decorative block retaining walls in the past.

If the Board approves the exception, the proposed mitigation plan exceeds the standard mitigation requirements and would be acceptable for the proposed use. If approved, it should be conditioned on the following:

1. Full implementation of the landscape plan submitted with the WQIA.
2. Implementation would be guaranteed through a surety satisfactory to the Division and the County Attorney.
3. The applicant shall obtain all necessary permits and approvals, including a building permit.
4. This exception request approval shall become null and void if construction has not begun by November 8, 2007.

Staff Report Prepared by:

\_\_\_\_\_  
Patrick Menichino

CONCUR:

\_\_\_\_\_  
Darryl Cook, Environmental Director

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

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

Attachments: