

# **Chesapeake Bay Board**

**February 13, 2008**

**A. Roll Call**

**B. Minutes** - from January 9, 2008

**C. Public Hearings**

1. CBE-07-125. McKinney & Company/Heritage Resorts – The Colonies at Williamsburg
2. CBE-07-107. Vanasse Hangen Brustlin, Inc./Busch Properties – Spencer’s Grant
3. CBE-07-080. Chris and Julie Rouzie – 144 Holdsworth Rd - Continued from 1/9/08

**D. Board Considerations**

1. CBE-07-003. James City County – Ironbound Road Regional BMP - Extension Request
2. CBE-06-078. Williamsburg Environmental Group – Whitehall – Extension Request

**E. Matters of Special Privilege**

**F. Adjournment**

**CBE-07-125. The Colonies at Williamsburg. SP-031-07**

Staff report for the February 13, 2008 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. Kirk Bowers, PE McKinney & Company
Land Owner	Williamsburg Plantation, Inc.
Location	5350 and 5380 Olde Towne Road
Tax Map	3240100026, 3240100026A, 3240100030, 3330100030
Staff Contact	Mr. Michael Woolson, Senior Watershed Planner, Phone: 253-6670

**Project Description**

Mr. Kirk Bowers, on behalf of Williamsburg Plantation, has applied for an exception to Section 23-7 (a) (3) of the Chesapeake Bay Preservation Ordinance (Ordinance) for impacts associated with the building of a sanitary sewer connection. The plan of development proposes 365 timeshare units on 130.4 acres. The project is situated within the sub-watersheds 206 and 207 of the Powhatan Creek. It is bordered on the north and east by residential developments, to the south by Route 199, and to the west by Olde Towne Road.

**Brief History**

McKinney & Company has been contracted as the engineer for this current plan of development. The Master Plan and Special Use Permit for this development were approved by the Board of Supervisors on November 8, 2005. The current plan of development was initially submitted on May 15, 2007 and has undergone several rounds of County review and subsequent revisions. The plan, as currently configured, has minimized the RPA impacts to the greatest extent possible, as the existing sanitary sewer is within the RPA.

**Water Quality Impact Assessment**

Section 23-11 of the 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. The attached WQIA presents the sanitary sewer impact to the RPA buffer that is under consideration by the CBB. It also outlines an impact to

the RPA for storm sewer, which is an administrative waiver. To mitigate for both proposed impacts, the following will be implemented into the associated plan of development:

- Use of a coastal plains seed mix within the disturbed area of the sanitary sewer easement outside of all wetland areas; and
- Placement of orange safety fence around the limits of disturbance within the RPA; and
- Stabilization of head cuts south of Unit 26, as shown on Sheet C-302 within the Exception Request letter.

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 believes that the sanitary sewer impact has met the criteria as forth in 23-14 (c). The applicant has stated in the WQIA, under *Mitigating Factors #3*, that the reduction of drainage area to the head cuts will be sufficient to stop the migration of the head cuts. While staff agrees with the theory of this statement, in a situation where the project receives rainfall amounts in excess of the standard design storm events, these headcuts would receive greater volumes of water than under current, undeveloped conditions. Therefore, staff is asking that these two headcuts actually be stabilized, rather than be allowed to find equilibrium on their own over time.

Staff therefore recommends to the Chesapeake Bay Board that they approve this exception request for the sanitary sewer connection for the project known as The Colonies at Williamsburg. Furthermore, all recommendations listed in the staff report are to be incorporated into the plan of development (SP-031-07) for the project, which must receive final approval by the Environmental Division.

This exception does not confer any property rights, nor does it confer any type of plan approval. Any offsite easements and/or additional permits that may be required for this development must be obtained and evidence of such presented to the Environmental Division prior to issuance of a land disturbing permit and/or final plan approval. This exception request approval shall become

null and void if construction of the sanitary sewer impact has not begun by February 13, 2009. 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.

\_\_\_\_\_  
Michael D. Woolson

CONCUR: \_\_\_\_\_  
Scott J. Thomas

**Attachments:**

1. RPA Exception Request letter
2. The Colonies at Williamsburg, Water Quality Impact Assessment

## MEMORANDUM

**DATE:** February 13, 2008  
**TO:** JCC Chesapeake Bay Board & Wetlands Board  
**FROM:** Patrick T. Menichino, Environmental Compliance Specialist  
**SUBJECT:** CBE 07-107 & W-25-07 - Busch Properties, Inc. – Spencer's Grant  
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On November 14, 2007 the Chesapeake Bay and Wetlands Boards were presented with an exception request and Wetlands case by Staff. The exception (CBE 07-107) requested Board approval for 42,000 square feet of RPA buffer grading impacts, and the installation of 1300 linear feet of armor stone revetment, located within the backshore beach area, along the James River. The Wetlands case requested approval for the expansion to offensive armor stone breakwaters, and 4,000 cubic yards of sand fill for beach nourishment.

Following the Boards discussions, the applicants requested continuances to provide additional time to respond to specific issues and concerns raised by the Boards. A motion for a continuance of these cases until February 13, 2008 was voted on and approved by the Boards.

On December 11, 2007, a special meeting of the Boards was held to review additional information regarding CBE 07-107 & W-25-07.

Following that December 11, 2007 meeting, staff met with the applicant's consultants, and community representatives, and contacted other agencies to discuss the issues of specific concern to the Boards.

Staff has met with representatives of the Division of Chesapeake Bay Local Assistance (CBLA) to review this case, and discuss options and receive guidance. CBLA has submitted separate comments to Board (attached). CBLA representatives recommended that staff contact the Department of Historic Resources and Preservation for information on the exposed Yorktown Formation. Staff contacted Joanna Wilson with the Department of Historic Resources and Preservation. Ms. Wilson indicated that her department would not regulate the area of exposed Yorktown Formation located along the Spencer's Grant shoreline.

It should be noted that the applicant has throughout this process displayed willingness to work with staff and other groups in a cooperative manner to develop a revised proposal that would minimize impacts.

Staff believes that the revised application before the Board significantly reduces the proposed RPA buffer impacts, increases the area of undisturbed RPA buffer, provides RPA mitigation, and addresses the water quality issues.

This revised proposal before you this evening:

1. Eliminates 3,000 square feet of impacts caused by the proposed armor stone revetment installation, within the backshore RPA area.
2. Eliminates 13,000 square feet of proposed slope grading impacts within the RPA buffer.
3. Increases by 30%, the amount of RPA buffer area to remain undisturbed and protected.

4. Provides for offsite RPA buffer planting that is not required, but is proposed by the applicant's to additionally enhance an existing buffer located at the adjacent River's Bluff project.
5. Addresses stormwater runoff and water quality by redirecting surface flows away from steep river bank slopes and to an approved Best Management Practice (BMP).

The issue before the Chesapeake Bay Board this evening is a revised application, requesting Board approval for 29,000 square feet of RPA buffer impacts and 1300 linear feet of armor stone revetment (19,000 square feet) in the backshore area. These impacts will be necessary to grade and stabilize areas of the steep RPA slopes that are currently unstable, and to install an armor stone revetment at the toe, to prevent potential undercutting caused by storm surge.

### **Recommendations**

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

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

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

Mitigation planting with Wetlands type grasses and other upland type plantings are proposed.

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

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

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

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

The proposed project will not be a substantial detriment to water quality. The applicant has at the recommendation of staff reduced overall impacts to the RPA buffer. The applicant has provided for RPA mitigation plantings.

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

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

1. The RPA Buffer Mitigation Planting Plan shall be revised to include the following plantings:

Zone III A - lower bank - (37) Trees, (74) Understory Trees, (111) Shrubs (total 222)

Zone III – upper bank - (60) Trees, (120) understory Trees, (180) Shrubs (total 360)

River's Bluff offsite mitigation plantings, beach plantings and all other plantings shall remain in the same quantities as previously proposed.

2. The applicant must obtain all other permits necessary and required by other agencies, including a James City County Land Disturbance Permit prior to the required preconstruction meeting.
3. A preconstruction meeting shall be held onsite prior to land disturbance.
4. Surety for the implementation of the RPA Mitigation Plan shall be provided in a form satisfactory to the County Attorney, pursuant to sections 23-10(3)(d) and 23-17(c) of the James City County Code prior to the pre-construction meeting. The surety shall be held for one full year following the initial installation and inspection of the plant material. All plant material must be alive and thriving as determined by the Division at the time of the one year anniversary inspection. If during the anniversary inspection plant material is determined to be dead, diseased or missing then the surety will be held until all planting material required by the plan is installed and thriving.
5. All trees and understory trees proposed for installation shall at a minimum be 6'-7' in height or 1" caliper. All shrubs to be 3-5 gallon container size.
6. The entire re-graded slope shall be first stabilized using 4-6" of new topsoil, and conservation seed mix of native grasses, and covered with EC-2 type blanket matting.
7. The applicant shall arrange for weekly project inspections to be performed by a qualified independent professional. The weekly inspection reports generated shall be submitted to the Division, to insure that the project is being constructed in accordance with the approved plan, project specifications, and requirements, along with the permit conditions of the Chesapeake Bay Board and Wetlands Board. The applicant must provide the name of the person or firm, who will perform said inspections, prior to the preconstruction meeting.
8. The applicant must receive approval from the County Engineer for any proposed activity within conservation easements located on the property. The applicant must also resolve any property line and conservation easement conflicts or issues with the County Engineer.
9. The exception shall not conflict with the provisions of the approved plan for development or Kingsmill-Spencer's Grant, County Plan No. SP-53-05.
10. All additional conditions stipulated within the previous staff report for W-25-07 shall be incorporated into these conditions.

## MEMORANDUM

**DATE:** February 13, 2008  
**TO:** The Chesapeake Bay Board  
**FROM:** Patrick T. Menichino, Environmental Compliance Specialist  
**SUBJECT:** CBE 07-080 Chris and Julie Rouzie, 144 Holdsworth Road, Kingsmill  
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On December 12, 2007, the Board was presented CBE 07-080, requesting a Chesapeake Bay Exception to allow for a brick paver patio and a driveway modification/expansion. Staff's report to the Board indicated that the application for the driveway expansion lacked essential information. Following discussion, the Board voted to approve the patio and at the request of the applicant the Board deferred the remainder of the case until February 13, 2008.

Since the December meeting Staff has spoken with the applicant several times and has specifically advised the applicant concerning the information needed, that was previously omitted.

To date Staff has not received the information necessary to evaluate and advise the Board on this exception request.

Staff recommends the Board deny the exception request.



January 15, 2008

James City County Chesapeake Bay Board  
c/o James City County Environmental Division  
101-E Mounts Bay Road  
Williamsburg, Virginia 23187

RE: Ironbound Road Regional BMP, CBE-07-003

Dear Chesapeake Bay Board Members,

Mr. Sanford Wanner, James City County Administrator, respectfully requests a one-year extension to the exception request granted on February 14, 2007 for the above referenced project. The following factors should be considered when granting this extension:

1. County staff is working with Chambrel, the adjacent property owner, to try and combine stormwater requirements from their expansion plans into this project.
2. Final design of the BMP has been in flux pending the resolution of item 1 above. RPA and wetland impacts are not changing from what has already been approved.
3. County staff is working with the General Services and Parks and Recreation Divisions of James City County to coordinate all remaining construction near the proposed restoration area and secure any remaining agreements between the Divisions.
4. Final design of the restoration site has been in flux pending the resolution of remaining construction near the proposed restoration area.

The County has received Corps permits for impacts associated with both the BMP and the restoration site. Land disturbing permits will be applied for once the plans for each project have received approval. Due to the above mitigating factors, I look forward to your favorable response to this extension request.

Sincerely,

Michael D. Woolson  
Senior Watershed Planner  
James City County Environmental Division

cc: Mr. Sanford Wanner, County Administrator  
Ms. Mary Jones, Berkley District, Board of Supervisors

## MEMORANDUM

**Date:** February 13, 2008  
**To:** Chesapeake Bay Board  
**From:** Michael Woolson  
**Subject:** Whitehall, CBE-06-078, Extension Request

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Ms. Toni Small, Williamsburg Environmental Group, has requested an extension for the Whitehall development, please see attached request letter. Staff supports this extension to this exception request. The new expiration date shall be February 13, 2009.