

WQIA for CBE-10-001 – 2939 Leatherleaf Drive.

Staff report for the August 12, 2009, 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	Samuel Rehm
Land Owner	Same
Location	2939 Leatherleaf Drive, Toano, Virginia
Parcel Identification	0510200014
Staff Contact	Patrick Menichino Phone: 253-6675

**Project Summary and Description**

Mr. Samuel Rehm, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer, for the construction of two (2) segmental block retaining walls totaling 160 LF in length and eight (8) 8” x 48” riser steps on the N/W slope. The lot is located in Stonehouse and was recorded after the 1990 adoption of the Ordinance. Following the Ordinance revisions in 2004, a perennial feature and wetlands adjacent to the rear of the property was identified thereby requiring a 100’ landward RPA buffer. The lot is 0.81 acres in size and the RPA buffer encompass approximately 95% of the lot or 0.76 acres.

An RPA mitigation planting plan has been provided along with the exception request for your review. The plan proposes to mitigate for the creation of 142 SF of impervious area in the RPA impacts by planting (2) native canopy tree, within the buffer to help filter runoff. The amount of native plantings proposed meets the standard mitigation planting requirements of the County.

Staff evaluated the request for the retaining walls and riser steps, and because the proposed encroachments are for accessory structures, according to the Ordinance it cannot be granted by administrative exception. The Board has in the past reviewed exception applications for accessory structures within the RPA buffer.

Staff offers the following information as guidance to the Board concerning this application.

1. The applicant has applied for an exception to allow for the creation of 142 SF of impervious area within the within the seaward 50’ RPA buffer to allow for the construction of segmental block retaining walls and 8 riser steps. The amount of fill required for backfill will be obtained from the retaining wall excavation.

2. The applicants have submitted an RPA mitigation planting plan that meets the standard mitigation planting requirements of the County.
3. Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal and mitigated appropriately.

### **Brief History**

The lot was recorded after the adoption of the Ordinance, and no RPA existed on the lot at that time. 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 perennial feature at the rear of the lot was identified requiring that a 100 foot RPA buffer be established on the lot. This 100 foot RPA buffer encompasses about 95% of the lot.

In this case, the exception request is for accessory structures which according to the Ordinance do not qualify for an administrative exception. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

### **Water Quality Impact Assessment (WQIA)**

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 the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant has submitted a WQIA for this project and proposes to mitigate for the impacts to the RPA by planting, (2) native canopy tree, in the RPA on the lot to help filter nonpoint source pollution.

The issue before the Board is the addition of the 142 SF of impervious area within the RPA buffer. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14(c) of the Ordinance.

### **Recommendations**

Staff has evaluated potential adverse impacts of this proposal and determined them to be minimal but the RPA mitigation proposed should adequately mitigate any impacts.

If the Board votes to approve the exception request, then staff recommends that the following conditions be incorporated into the approval:

1. The applicant must obtain all other permits required from agencies that may have regulatory authority over the proposed activities, including a James City County building permit if required.
2. The mitigation trees proposed shall be a minimum of 1 1/2" in caliper and 6'-7' tall, minimum.

3. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c), a form of surety satisfactory to the County Attorney.
4. This exception request approval shall become null and void if construction has not begun by August 12, 2010.

Staff Report prepared by:

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Patrick T. Menichino  
Compliance Specialist

CONCUR:

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Scott J. Thomas,  
Secretary to the Board

Attachments:

WQIA for CBE-10-004 – 121 Stowe

Staff report for the August 12, 2009, 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                    Robert E. & Mary L. Schafrik

Land Owner                Robert E. & Mary L. Schafrik

Location                    121 Stowe, Williamsburg, Virginia

Parcel Identification    3720600043

Staff Contact              Patrick Menichino      Phone: 253-6675

**Project Summary and Description**

Mr. Warren Barnes, of Evan Sawyer Builder, on behalf of Robert E. & Mary L. Schafrik, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer, for the construction of an 11’ diameter, wood frame gazebo totaling approximately 121 square feet. The lot is located in Ford’s Colony and was recorded after the 1990 adoption of the Ordinance. Following the Ordinance revisions in 2004, a perennial feature and wetlands adjacent to the rear of the property was identified thereby requiring a 100’ landward RPA buffer. The lot is 0.542 acres in size and the RPA buffer encompass approximately 84% of the lot or 0.457 acres. The wood frame gazebo will encroach into the landward 50’ RPA buffer.

An RPA mitigation planting plan has been provided along with the exception request for your review. The plan proposes to mitigate for the RPA impacts by planting (30) native shrubs in the RPA to help filter runoff. The amount of plantings proposed exceeds the standard mitigation planting requirements of the County.

Staff evaluated the request for the wood frame gazebo, and consider it to be an accessory structure, and therefore according to the Ordinance it cannot be granted by administrative exception. The Board has in the past reviewed and granted exceptions for accessory structures within the RPA buffer.

Staff offers the following information as guidance to the Board concerning this application.

1. The applicants have applied for an exception to allow for an 11’ diameter wood frame gazebo to be constructed within the RPA buffer, creating 121square feet of impervious area. The gazebo is proposed to be constructed with a concrete foundation, permanently attached to the ground.

2. The applicants have submitted an RPA mitigation planting plan that exceeds the standard mitigation planting requirements of the County.
3. Staff has observed that a perennial stream immediately adjacent to the proposed gazebo has been filled in and modified in a way that impacts the natural flow.
4. Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal.

### **Brief History**

The lot was recorded after the adoption of the Ordinance, and no RPA existed on the lot at that time. 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 perennial feature at the rear of the lot was identified requiring that a 100 foot RPA buffer be established on the lot. This 100 foot RPA buffer encompasses about 84% of the lot.

In this case, the exception request is for a gazebo frame storage shed within the 100 foot buffer and which does not qualify for an administrative waiver because the request is for an accessory structure. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

### **Water Quality Impact Assessment (WQIA)**

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 the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant has submitted a WQIA for this project and proposes to mitigate for the impacts to the RPA by planting, (30) native shrubs, in the RPA on the lot to help filter nonpoint source pollution.

The issue before the Board is the addition of the 121 square feet of impervious area created by the installation of the gazebo within the RPA buffer. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14(c) of the Ordinance.

### **Recommendations**

Staff has evaluated the request for the gazebo and has determined it to be an accessory structure and therefore according to the Ordinance it cannot be granted by administrative exception. To be consistent with the ordinance requirements Staff can not support the approval of this exception request for an accessory structure.

If the Board votes to approve the exception request, then staff recommends that the following conditions be incorporated into the approval:

1. The applicant must obtain all other permits required from agencies that may have regulatory authority over the proposed activities, including a James City County building permit if required.
2. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c), a form of surety satisfactory to the County Attorney.
3. The size of the mitigation shrubs shall be 3-5 gallon size 15"-18" tall. All shrubs shall be native species approved by the Environmental Division.
4. The perennial stream located adjacent to the proposed gazebo shall be restored and stabilized to an adequate open channel that meets the requirements set forth by the County.

Staff Report prepared by:

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Patrick T. Menichino  
Compliance Specialist

CONCUR:

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Scott J. Thomas,  
Secretary to the Board

Attachments:

WQIA for CBE-10-006 – 2409 Sarah Spence.

Staff report for the August 12, 2009, 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 Carolyn Eshelman  
Land Owner Same  
Location 2409 Sarah Spence Court, Williamsburg, Virginia  
Parcel Identification 4840200016  
Staff Contact Patrick Menichino Phone: 253-6675

**Project Summary and Description**

Mrs. Carolyn Eshelman, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer, for the construction of a segmental block retaining wall totaling 58 LF in length. The lot is located in The Vineyards and was recorded after the 1990 adoption of the Ordinance. Following the Ordinance revisions in 2004, a perennial feature adjacent to the rear of the property was identified thereby requiring a 100’ landward RPA buffer. The lot is 0.75 acres in size and the RPA buffer encompass approximately 55% of the lot or 0.40 acres.

An RPA mitigation planting plan has been provided along with the exception request for your review. The plan proposes to mitigate for the creation of 58 SF of impervious area in the RPA impacts by planting (1) native canopy tree, and (3) native shrubs within the buffer to help filter runoff. The amount of native plantings proposed meets the standard mitigation planting requirements of the County.

Staff evaluated the request for the retaining wall, and because the proposed encroachment is for an accessory structure, according to the Ordinance it cannot be granted by administrative exception. The Board has in the past reviewed exception applications for accessory structures within the RPA buffer.

Staff offers the following information as guidance to the Board concerning this application.

1. The applicant has applied for an exception to allow for the creation of 58 SF of impervious area within the seaward 50’ RPA buffer to allow for the construction of segmental block retaining wall. The fill and topsoil required for backfill will be imported from offsite.

2. The applicants have submitted an RPA mitigation planting plan that meets the standard mitigation planting requirements of the County.
3. Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal and mitigated appropriately.

### **Brief History**

The lot was recorded after the adoption of the Ordinance, and no RPA existed on the lot at that time. 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 perennial feature at the rear of the lot was identified requiring that a 100 foot RPA buffer be established on the lot. This 100 foot RPA buffer encompasses about 53% of the lot.

In this case, the exception request is for accessory structures which according to the Ordinance do not qualify for an administrative exception. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

### **Water Quality Impact Assessment (WQIA)**

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 the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant has submitted a WQIA for this project and proposes to mitigate for the impacts to the RPA by planting, (1) native canopy tree, and (3) native shrubs in the RPA on the lot to help filter nonpoint source pollution.

The issue before the Board is the addition of the 58 SF of impervious area within the RPA buffer. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14(c) of the Ordinance.

### **Recommendations**

Staff has evaluated potential adverse impacts of this proposal and determined them to be minimal but the RPA mitigation proposed should adequately mitigate any impacts.

If the Board votes to approve the exception request, then staff recommends that the following conditions be incorporated into the approval:

1. The applicant must obtain all other permits required from agencies that may have regulatory authority over the proposed activities, including a James City County building permit if required.
2. The mitigation trees proposed shall be a minimum of 1 1/2" in caliper and 6'-7' tall, minimum and the shrubs shall be 3-5 gallon container size, 18" tall minimum.



3. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c), a form of surety satisfactory to the County Attorney.
4. This exception request approval shall become null and void if construction has not begun by August 12, 2010.

Staff Report prepared by: \_\_\_\_\_

Patrick T. Menichino  
Compliance Specialist

CONCUR:

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Scott J. Thomas,  
Secretary to the Board

Attachments:

## MEMORANDUM

**DATE:** August 12, 2009  
**TO:** The Chesapeake Bay Board  
**FROM:** Patrick T. Menichino, Environmental Compliance Specialist  
**SUBJECT:** CBV 09-001- Thomas Hutchens, 516 Sir George Percy

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On May 13, 2009, Mr. Thomas Hutchens of 516 Sir George Percy appeared before the Board and requested that case number CBV-09-001 be deferred until June 10, 2009. The purpose of the deferral was to provide additional time for the applicant to complete a conservation easement exchange with the County. On June 10, 2009 Mr. Hutchens appeared before the Board and requested an additional deferral until August 12, 2009. The Board granted the requested deferral.

Mr. Thomas Hutchens (owner) 516 Sir George Percy, Kingsmill, filed an appeal to James City County's Chesapeake Bay Board on March 23, 2009. Mr. Hutchens is appealing a Notice of Violation and administrative order issued by the County on October 21, 2008. The Notice of Violation ordered the removal of an unauthorized retaining wall from within the Resource Protection Area (RPA) buffer and Conservation Easement (CE) located on his property. Staff has reviewed the unauthorized encroachment and estimates the RPA impacts as 50 square feet of decorative concrete block retaining wall, and 500 square feet of turf lawn.

On September 8, 2008 Staff became aware of the unauthorized encroachments following the submission of a buffer modification request to the Environmental Division by the owner. Staff has met with the owner several times to discuss resolving the RPA and CE issues on the property. The existence of a CE on the property requires that the CE be vacated and exchanged for a similar sized CE elsewhere in Kingsmill. Staff has now been informed that the required exchange has been completed.

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Staff has reviewed the appeal and violation documents and offers the following information for the Board's consideration.

1. Mr. Hutchens is the original owner of the property. The lot was recorded after the 1990 adoption of the Ordinance. The residence was constructed in 2005 and both the RPA and CE boundaries were identified on the residence's site development plan.
2. Mr. Hutchens' contracted to have a 50' long x 5' high decorative concrete block retaining wall installed on his property. The wall is situated approximately 20' seaward, of the 100' RPA buffer line, within the landward 50' buffer.
3. Mr. Hutchens has recently applied for an after the fact building permit for the wall.
4. Staff has evaluated the adverse impacts associated with the 50 SF of impervious retaining wall and has determined them to be minimal. Staff has also noted that a significant amount of turf grass (approx. 500 SF) that has been established within the RPA.
5. The owner in his appeal letter indicates a willingness to provide native mitigation plantings in an area below the wall. However, the plan submitted along with the appeal does not show any proposed mitigation plantings.
6. The issue of the Conservation Easement exchange has now been resolved.

7. The Ordinance considers retaining walls to be accessory structures. Therefore to be consistent with the intent of the Ordinance, staff cannot support the installation of accessory structures within the RPA.
8. A revised RPA mitigation planting plan received by staff exceeds the County's mitigation requirements.

Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance.

The Board shall not decide in favor to the appellant unless it finds:

1. The hardship is not generally shared by other properties in the vicinity;
2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
3. The appellant acquired the property in good faith and the hardship is not self-inflicted.

Should the Board vote to grant the appeal, staff offers the following recommendations and guidance for consideration.

1. The owner shall mitigate for the retaining wall by installing (2) canopy trees, (4) understory trees and (6) shrubs in the area below the existing retaining wall. All plant material shall be native species and should meet the following size requirements: shrubs 3-5 gallon container size and trees 6-7 feet in height and 1"-1 1/2" in caliper.
2. The removal of the existing turf from within the RPA buffer should be considered as a condition of approval. This area should then be stabilized with native grasses and not subjected to routine mowing.
3. A revised plan entitled: "Mitigation & Restoration Plan, for 516 Sir George Percy", incorporating any Board recommendations and requirements must be submitted to the Division for approval.
4. A Chesapeake Bay Restoration Agreement must be executed, along with surety in the amount of \$1,000.00 and submitted to the County in a form acceptable to the County Attorney to guarantee the full implementation of the "Mitigation & Restoration Plan for 516 Sir George Percy".