

# **Chesapeake Bay Board**

**October 14, 2009 - 7:00 p.m.**

**A. Roll Call**

**B. Minutes**

August 12, 2009 – Board Meeting

**C. Public Hearings**

1. CBV-09-013. APPEAL - Hines – 3657 Bridgewater
2. CBE-10-022. Pope – 12 Mile Course
3. CBE-10-023. McCann/Southern Landscape – 5026 River Drive

**D. Board Considerations**

1. CBE-07-003. Ironbound Road Regional BMP – Permit Extension

**E. Matters of Special Privilege**

**F. Adjournment**

## MEMORANDUM

**DATE:** October 14, 2009  
**TO:** The Chesapeake Bay Board  
**FROM:** Patrick T. Menichino, Environmental Compliance Specialist  
**SUBJECT:** CBV-09-013 – Mr. Jeffery A. Hines, 3657 Bridgewater Drive

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Mr. Jeffery A. Hines (Lessee) residing at 3657 Bridgewater Drive, Mill Creek Landing, on behalf of Scott and Brandi Brand (Owners), filed an appeal to James City County's Chesapeake Bay Board (Board) on August 14, 2009. Mr. Hines is appealing a Notice of Violation and administrative order issued by the County on July 28, 2009. The Notice of Violation required the execution of a Chesapeake Bay Restoration Agreement, and the restoration of the RPA with native plantings. Staff has reviewed the unauthorized clearing and estimates the RPA impacts as approximately 5000 square feet. It is important to note that a large portion of those impacts were actually within wetlands which is considered part of the resource.

On June 22, 2009 Staff became aware of the unauthorized clearing following a complaint from a resident. Staff initiated an investigation and as a result has documented a violation of the County's Chesapeake Bay Preservation Ordinance. Staff has met with the Owners and the Lessee several times to discuss resolving the violation. During those meetings, the owners appeared to be agreeable to entering into the restoration agreement but the Lessee was not.

### Historical Background Information

On May 11, 2005 the County's Chesapeake Bay Board granted an exception (CBE-05-029) to James Duguay of Performance Contracting, to allow for the construction of a single family residence within the RPA located on the above referenced property. That exception granted 8652 square feet of disturbance within the RPA buffer, and 2985 square feet of impervious area.

An extensive RPA mitigation planting plan was required to offset the proposed Impacts and that plan was approved by the Board. Because of the environmental features located on the property, such as wetlands, a major portion of the RPA mitigation plantings had to be located on the side and in front of the proposed residence.

On March 21, 2006, Scott and Brandi Brand purchased the property and residence from Performance Contracting.

On January, 4, 2007 James City County sent out standard RPA notification letters to property owners in the County, alerting them that RPA components may be located on their property. Scott and Brandi Brand of 3657 Bridgewater Drive were included in that official notification.

On June 22, 2009 Staff became aware of the unauthorized clearing and grading, and documented the violation.

On July 14, 2009 staff met with the Owners and the Lessee to discuss the violation and a possible method of resolution. During that meeting the owner exhibited a willingness to execute a Chesapeake Bay Restoration Agreement, but the Lessee requested time to explore other options.

On July 28, 2009 separate notices of violation were sent to the Owners and to the Lessee.

### Staff Guidance and Recommendations

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

1. Mr. Jeffrey A. Hines is currently the lessee of the property and not the owner. In a statement submitted to the Board, Mr. Hines appears to offer the following information in support of the appeal:
  1. He had no prior knowledge that a Chesapeake Bay Preservation Area was designated on the property.
  2. The Owners authorized his clearing of native vegetation within the RPA and the establishment of a lawn.
  3. That no disclosure was provided during the residential sale of the property.
  4. That he would like to have a lawn in the backyard for his family.
2. The Chesapeake Bay Preservation Ordinance Sections 23-7 and 23-10 require that authorization and a plan of development be reviewed and approved by the County prior to activities within RPA's.
3. Neither the Owners nor the Lessee have challenged the following facts in this case:
  1. No plan of development or RPA buffer modification plan was submitted to the County for review and approval as is required by the Ordinance.
  2. No authorization for the clearing and removal of native vegetation from within the RPA was requested from the County by either the Owners or the Lessee.
  3. That a violation of the County's Chesapeake Bay Ordinance resulted from the above referenced activities that occurred on the property.
4. 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.

Staff's guidance to the Board on deciding this matter is as follows:

1. The hardship is shared by other properties immediately adjacent to the appellant's property as well as numerous other properties within Mill Creek Landing that have RPA components located on them.
2. The granting of the appeal in this case will adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity. Granting relief to the appellant resulting from a violation of the ordinance and could result in similar

unauthorized actions by other property owners in the vicinity. In addition, granting the appeal will all but eliminate any remaining natural RPA buffer resulting in the removal of any notable water quality function on the entire property and degradation of water quality in the tributaries to the Bay.

3. The appellant in fact caused the hardship through an unauthorized activity thereby the hardship is self imposed.

Staff contends that to be consistent with the purpose and intent of the Ordinance the Board should deny the appeal, and allow the Chesapeake Bay Restoration Agreement process established by the County to proceed.

**CBE-10-022 – 12 Mile Course.**

Staff report for the October 14, 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 Carey Flannery

Land Owner Mary and Larry Pope

Location 12 Mile Course, Williamsburg, Virginia

Parcel Identification 5040200012

Staff Contact Patrick Menichino Phone: 253-6675

**Project Summary and Description**

Ms. Carey Flannery, of 12 Mile Course, on behalf of Mary and Larry Pope (Owners), has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer, for the construction of brick retaining walls totaling 300 LF in length, a 15' x 20' sand set brick paver patio, and the placement of approximately 3000 SF of sand fill/backfill. The lot is located in Kingsmill and was recorded prior to the 1990 adoption of the Ordinance. Following the Ordinance revisions in 2004, a perennial feature and wetlands adjacent to the rear of the property were identified thereby requiring a 100' landward RPA buffer. The lot is 1.424 acres in size and the RPA buffer encompass approximately 70% of the lot or 0.885 acres. The proposed retaining wall, patio and fill will encroach into the landward 50' RPA buffer.

A detailed RPA Mitigation Planting Plan (Plan) has been provided along with the exception request for your review. The plan proposes to mitigate for the RPA impacts by planting (2) native canopy trees, (29) native shrubs, and (37) native ground cover in mulch planting beds to help filter runoff. The amount of plantings proposed exceed the standard mitigation planting requirements of the County for impervious impacts. In addition to the proposed RPA mitigation offered, the applicant's proposed plan will actually reduce the square footage of turf area currently existing onsite. Therefore this proposal will reduce the current encroachment into the RPA.

Staff evaluated the request for the retaining walls and brick paver patio, and considers them to be accessory structures, and therefore according to the Ordinance 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 applicant has applied for an exception to allow for 300 LF of brick retaining walls, a brick paver patio, and approximately 3000 SF of fill. The retaining walls and patio are considered as accessory structures and therefore must be approved by the Board.
2. The retaining walls and proposed patio will encroach into the landward 50 foot RPA buffer.
3. The applicants have submitted an RPA Mitigation Planting Plan that exceeds the standard mitigation planting requirements of the County for impervious area.
4. The applicant's proposal will reduce the existing turf area on the property and therefore will reduce the overall encroachment into the RPA buffer.
5. Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal.

### **Background**

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 70% of the lot.

In this case, the exception request is for brick retaining walls, and sand set brick paver patio, within the landward 50 foot buffer. This request does not qualify for an administrative waiver because it is for an accessory structures. 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 600 SF of impervious area and approximately 3000 SF of fill 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**

The Ordinance does not authorize staff to give administrative approval for the placement of accessory structures within RPA buffer.

Staff has evaluated the adverse impacts associated with the proposed accessory structures and has determined them to be minimal.

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 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. 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 October 14, 2010, or all improvements including the required mitigation plantings are not completed by that expiration date.
5. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

Staff Report prepared by: \_\_\_\_\_  
Patrick T. Menichino  
Compliance Specialist

CONCUR:

\_\_\_\_\_  
Scott J. Thomas,  
Secretary to the Board

Attachments:

## CBE-10-023- 5026 River Drive

Staff report for the October 14, 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	Bill and Anne McCann
Land Owner	same
Location	5026 River Drive, Lanexa VA, Cypress Point
Parcel ID	0930300004
Staff Contact	Patrick Menichino      Phone: 253-6675

### **Project Summary and Description**

Bill and Anne McCann have applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of a 5' wide staircase, a 20'x18' detached deck, a 8'x6' lower landing, and 65 linear feet of timber wood retaining wall at the rear of their property on the above referenced lot in Cypress Point. The staircase, deck, landing, and retaining wall will create approximately 573 square feet of impervious cover in the RPA.

The lot is 21,967 square feet or 0.505 acres in size. It is located adjacent to Diascund Creek, a tributary to the Chickahominy River. The RPA buffer located on the lot encompasses 0.284 acres or approximately 56% of the lot. There is an existing residence on the lot that encroaches into the 100-foot RPA buffer. No mature vegetation will be removed from the lot to allow for the placement of the proposed staircase, detached deck, lower landing and retaining wall.

A detailed RPA Mitigation Planting Plan (Plan) has been provided with the exception request that proposes to mitigate for the 573 square feet of impervious area by planting (3) native canopy trees, and (10) native shrubs in planting beds to filter runoff from the impervious areas. This plan generally meets the standard mitigation requirements of the County.

Staff offers the following guidance to the Board:

1. The staircase is considered to be providing access to water and as such, is permitted. The proposed 18' x 20' wood deck and 8' x 6' lower landing are detached from the residence and therefore should be considered as accessory structures. The retaining wall should also be considered as an accessory structure.

2. Staff considers the size of the proposed deck to be more than the minimum necessary to afford relief and the deck is proposed within the seaward 50 foot buffer.
3. The applicant has submitted an RPA Plan that generally meets the County's typical planting requirements for impervious cover.
4. Staff evaluated the adverse water quality impacts caused by the additional 573 square feet of impervious area within the seaward 50 foot to be moderate.
5. Staff recommends the Board consider a reduction in the size of the proposed deck, or a significant increase in onsite mitigation to offset the adverse water quality impacts.

### **Background**

The lot was recorded prior to the adoption of the Ordinance, and there was no RPA present on the lot at recordation. On August 6, 1990, the Ordinance went into effect establishing 100 foot RPA buffers around all water bodies with perennial flow. Diascund Creek was then identified as a perennial water body on the quad map and an RPA buffer was placed on the lot. This 100 foot RPA buffer encompasses about 56% of the lot.

In this case, the exception request is for a 5' wide staircase, a 20'x18' detached deck, a 8'x6' lower landing and 65 linear feet of timber wood retaining wall which does not qualify for an administrative waiver because the request is for accessory structures. In accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

The issue for the Board's consideration is the 573 square feet of impervious area created by the proposed accessory structures within the seaward 50 foot RPA buffer.

### **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 RPA. The applicant has submitted a WQIA for this project. The mitigation plan contained within the WQIA generally offsets the proposed impervious cover impacts by planting (3) native canopy trees, and (10) native shrubs within the RPA buffer to help filter runoff.

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**

The Ordinance does not authorize staff to give administrative approval for the placement of accessory structures within RPA buffer.

Staff has evaluated the adverse impacts associated with the proposed accessory structures and has determined them to be moderate.

The Board has, in the past, granted an exception request for a staircase and deck combination to provide access to the water. In that particular case the Board did evaluate the size of the proposed deck, and required additional mitigation to offset for the adverse water quality impacts. Staff recommends the Board evaluate the need for the size of the deck proposed, or consider a significant increase in onsite mitigation to offset the adverse water quality impacts.

Should the Board vote to approve the exception, Staff recommends the following conditions be applied:

1. If required by the Board, revisions to the proposal and RPA Plan shall be submitted to the Environmental Division for review and approval.
2. Full implementation of the RPA Mitigation Planting Plan and 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 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.
4. The deck and landing shall have 3 inches of gravel on filter fabric installed underneath.
5. This exception request approval shall become null and void if construction has not begun by October 14, 2010, or all improvements including the required mitigation plantings are not completed by that expiration date.

6. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

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 Menichino  
Compliance Specialist

CONCUR: \_\_\_\_\_  
Scott J. Thomas  
Secretary to the Board

Attachments:

October 14, 2009

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 13, 2008 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 coordinate stormwater requirements and property access.
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