

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
April 13, 2005 - 7:00 PM**

**A. ROLL CALL**

**ABSENT**

Henry Lindsey  
William Apperson  
David Gussman  
John Hughes  
Larry Waltrip

none

**OTHERS PRESENT**

County Staff

Mr. John Hughes was welcomed back as a member of the Wetlands Board and the Chesapeake Bay Board.

**B. MINUTES** – The November 10, 2004 minutes were approved as presented.

**CLOSED SESSION**

Mr. Gussman made a motion to go into Closed Session pursuant to Section 2.2-3711(A)(7) of the Code of Virginia to discuss a legal matter.

On a roll call vote, the vote was: AYE: Waltrip, Gussman, Apperson, Hughes, Lindsey (5). NAY: (0).

Mr. Lindsey adjourned the Board into Closed Session at 7:05 p.m.

Mr. Lindsey reconvened the Board into Open Session at 7:15 p.m.

Mr. Gussman made a motion to adopt the Closed Session resolution.

On a roll call vote, the vote was: AYE: Waltrip, Gussman, Apperson, Hughes, Lindsey (5). NAY: (0).

**RESOLUTION**

**CERTIFICATION OF CLOSED MEETING**

WHEREAS, the Chesapeake Bay Board of James City County, Virginia, (the "Board") has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Chesapeake Bay Board of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only legal matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and, (ii) only such legal matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(7).

## **C. PUBLIC HEARINGS**

### **1. Michael C. Brown Custom Builders - 108 Great Glen**

Mr. Menichino presented the case stating that Mr. Chris Basic of AES Engineers had applied, on behalf of the owner, Michael C. Brown Custom Builder, for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of a 2-story single family principal structure located at 108 Great Glen in the Ford's Colony subdivision. The lot is 14,484 square feet or 0.33 acres in size.

The principal structure is proposed to create approximately 3667 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 8840 square feet in the RPA. Approximately 65% of the lot is to be cleared to allow for the construction of the dwelling.

#### **Background**

The lot was recorded in September, 1988, prior to the adoption of the Chesapeake Bay Preservation Ordinance. Therefore, there was no RPA present on the lot at recordation. However, last year, 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 stream on the rear of the lot requiring that a 100 foot RPA buffer be established on the lot around the stream. This 100 foot RPA buffer encompasses about 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 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. and obtain exceptions to the requirements of the chapter to allow for the beneficial use of the property to create a buildable area.

However, 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 RPAs. Michael C. Brown Custom Builders has submitted a WQIA for this project. The issue before the Chesapeake Bay Board is the 8840 square foot RPA impact (clearing and grading) and creation of 3667 square feet of impervious cover in the RPA associated with the construction of the principal structure.

The WQIA proposes to mitigate for the impacts to the RPA by planting 30 native shrubs at the limits of disturbance at the rear of the lot to help filter nonpoint source pollution. This lot is the last one to be built upon adjacent to the stream that is to be buffered. The other homes were built prior to 2004

when there was no RPA buffer requirement on those lots. As a result, the buffer has been compromised by construction on all the other lots that border the stream and the remaining buffer varies greatly in width. Therefore, it would not be reasonable to mitigate for loss of the buffer function to the same level as is normally done when buffers are impacted on single family lots. Typical mitigation would result in one tree or three shrubs for each 100 square foot of impervious cover established. This would result in 110 shrubs or 37 trees being planted in the RPA.

AES Engineers 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 recommends approval of the exception as the lot was created prior to the establishment of the RPA requirement, the project does not confer any special privileges to the applicant, and the exception is not based on self-imposed conditions. However, it is staff's position that additional mitigation and reduction of clearing would reduce the impacts to water quality from this exception request. Staff recommends approval with the following conditions:

1. The amount of shrubs planted be increased from 30 to 55 (or an equivalent number of trees). This will improve the function of the buffer and the plant material could be planted anywhere within the RPA.
2. The clearing limits be reduced behind the northwest corner of the house to allow the existing large 36" oak tree to be saved. The adjacent property owner has sent in a written request (attached) that trees on the side property lines be retained especially this large oak. This change would reduce the impact to the RPA and save some additional existing buffer vegetation.

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. This exception request approval shall become null and void if construction has not begun by April 13, 2006.

A discussion was held relating to adjusting the clearing limits in order to preserve additional trees in the buffer.

Mr. Gussman questioned whether the applicant had self-created or self-imposed the encroachment into the first 50 feet by selecting this house design, and wondered whether another design could avoid encroachment into the first 50 feet.

Mr. Menichino stated that he believed the owner had selected the house design and then submitted their request for a building permit. Upon a field visit it was then determined that the house would impact into the RPA buffer.

Mr. Lindsey opened the public hearing.

A. Mr. Michael Brown, builder and owner, addressed the Board. He stated that the house design was fairly small compared to most homes in the subdivision and it was selected prior to discovering there was a perennial RPA buffer on it. He also stated that to design a house with the existing setbacks to avoid the 50 feet would be extremely difficult and not economically feasible. He informed the Board that he was glad that he was the first case of this nature to be reviewed as he wanted to assist in establishing the administrative process. He felt the time involved to get to this point was crazy, but stated he was in favor of mitigation.

B. Mr. Chris Basic, AES Engineers and applicant, addressed the Board and a short discussion was held on how to adjust the clearing limits.

It was agreed that the clearing limits would be adjusted to minimize tree removal in the buffer and staff would evaluate the change and revise the mitigation requirements.

C. Mr. Sheppard Moore, asked for clarification between a canopy tree and an understory tree.

Mr Apperson responded to his question.

As no one else wished to speak, Mr. Lindsey closed the public hearing.

Mr. Hughes made a motion to approve the exception with staff's recommendations along with the modification that staff is to limit clearing limits by working with the owner to straighten the clearing line in the rear yard and the construction begin date to April 13, 2006.

The motion was approved by a 5-0.

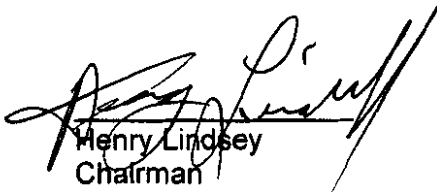
#### **D. BOARD CONSIDERATIONS**

It was decided that a resolution should be prepared recognizing and thanking Mr. Philip Duffy for his service on the Wetlands Board and Chesapeake Bay Board. Mr. Duffy was not re-appointed to the Boards at the end of his 5-year term.

#### **E. MATTERS OF SPECIAL PRIVILEGE - None**

#### **F. ADJOURNMENT**

The meeting was adjourned at 8:00 PM.

  
Henry Lindsey  
Chairman

  
Patrick Menichino  
Environmental Inspectors Supervisor