

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
MAY 11, 2005 - 7:28 PM**

A. ROLL CALL

ABSENT

Henry Lindsey
David Gussman
John Hughes
Larry Waltrip

William Apperson

OTHERS PRESENT
County Staff

B. MINUTES – April 13, 2005 minutes to be considered at the next Board meeting

C. PUBLIC HEARINGS

1. Michelle Chan – 118 Whistle Walk - New Single Family Residence

Mr. Cook presented the case as follows:

Project Description: Ms. Michelle Chan had 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 and an attached garage on the above referenced lot in The Meadows. The principal structure, garage and driveway are proposed to create approximately 3625 square feet of impervious cover in the RPA.

The lot is approximately 70,000 square feet or 1.6 acres in size. It is located adjacent to Mill Creek and a portion of the connected wetlands system is present on the lot. The upland portion of the lot where the house will be located is currently covered with natural vegetation consisting of holly, oak, and beech trees. Approximately 5500 square feet of the RPA buffer on the lot is to be cleared to allow for the construction of the dwelling.

Background: The lot was recorded in 1986, 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). Mill Creek and the adjacent, connected wetlands behind and on this property were 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 94% 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.

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. ECS on behalf of Ms. Chan has submitted a WQIA for this project. The issue before the Chesapeake Bay Board is the RPA impacts associated with clearing, grading and creation of 3625 square feet of impervious cover in the RPA associated with the construction of the principal structure.

The WQIA proposes two types of mitigation to offset the impacts to the RPA. One proposal is to plant native grasses within the seaward 25-foot buffer and establish a rain garden with native shrubs and grasses. The rain garden is to be placed at the limit of disturbance. The alternate plan is to plant 14 canopy trees, 28 understory trees and 42 shrubs, all native, with the majority of the plants to be placed at the limits of disturbance on the lot to help filter nonpoint source pollution with the remainder placed throughout the lot within the RPA. Either plan is acceptable and would satisfy the mitigation requirements for the impacts.

Ms. Chan 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 house is located at the front building setback minimizing the encroachment for this proposal, 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. Full implementation of either of the mitigation landscape plans submitted for the project and submitted with the WQIA.
2. The size of the trees planted shall be a minimum size of 1-1/2 inch caliper (six to eight feet tall) and the shrubs shall be 3 gallon size.
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 May 11, 2006.

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.

Mr. Lindsey opened the public hearing.

A. Mr. Joe Terrell, Jr., builder, addressed the Board. He informed the Board that all attempts had been made to keep impacts to the RPA as minimal as possible, to include changing house plans. He asked the Board to vote favorable on the exception.

B. Mr. Chad Niemeyer, ECS LLC who prepared the Water Quality Assessment Report for the owner, explained the two mitigation plans to the Board. The owner would decide which mitigation plan to use.

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.

The motion was approved by a 4-0 vote.

2. Louis and Mary Butner – 3014 The Point Drive - New Single Family Residence

Mr. Cook presented the case as follows:

Project Description: Mr. Louis Buttner had 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 and an attached garage on the above referenced lot in Chickahominy Haven. The principal structure, garage and driveway are proposed to create approximately 4500 square feet of impervious cover in the RPA.

The lot is 40,106 square feet or 0.92 acres in size. It is located adjacent to a large wetlands system that is on the Chickahominy River. The lot is currently covered with natural vegetation consisting of holly, gum, pine and oak trees. Approximately 47% of the RPA buffer on the lot is to be cleared to allow for the construction of the dwelling. This will result in the loss of 14 trees greater than 12" in diameter with five of those trees being located in the 50-foot RPA.

Background: The lot was recorded in May, 1989, 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 Chickahominy River and the adjacent, connected wetlands behind and on this property were 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 86% 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. Mr. Buttner has submitted a WQIA for this project. The issue before the Chesapeake Bay Board is the RPA impacts associated with clearing, grading and creation of 4500 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 25 native trees and 60 native shrubs. The majority of the plants are to be placed at the limits of disturbance at the rear of the lot to help filter nonpoint source pollution with the remainder placed throughout the lot within the RPA. The amount of mitigation meets the standard of one tree or three shrubs for each 100 square foot of impervious cover established.

Mr. Buttner 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 house is located at the front and side building setbacks thereby minimizing the encroachment for this proposal, 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. Full implementation of the landscape plan dated 3-38-05 and submitted with the WQIA. One modification to the plan is required and that is to ensure that all the vegetation planted is located within the RPA. The willow oaks and river birch trees at the front of the lot are currently shown outside the RPA.
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.
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 May 11, 2006.

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.

Mr. Lindsey opened the public hearing.

A. Louis and Mary Buttner, owners, addressed the Board and stated they were environmentally conscientious to the area and would be good stewards. They then asked the Board to approve their exception.

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

Mr. Gussman made a motion to approve the exception with staff's recommendations.

The motion was approved by a 4-0 vote.

3. Todd and Jacqueline Halacy – 2512 Robert Fenton Rd - Add Screen Porch to Single Family Residence

Mr. Cook presented the case as follows:

Project Description: Mr. Todd Halacy has applied on for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of a 224 square foot screened porch attached to the existing single family principal structure on the above referenced lot in Landfall at Jamestown. The screened porch would encroach approximately 87 square feet into the RPA.

The lot is 43,450 square feet or 0.998 acres in size. It is adjacent to Powhatan Creek and consists primarily of natural vegetation present in either the wetlands on the lot or undisturbed uplands. Only the front portion of the lot where the house is located has been disturbed and cleared of vegetation.

Background: The lot was recorded in January, 2002, after the adoption of the Chesapeake Bay Preservation Ordinance. Therefore, there was a Resource Protection Area (RPA) present on the lot at the time of recordation. This 100 foot RPA buffer encompasses about 70% of the lot.

On January 12, 2005, the Halacys submitted an exception request to construct a screened porch attached to their principal structure that would encroach into the RPA by 87 square feet. On February 4, 2005, this exception was denied through an administrative action. The applicant chose to appeal this decision to the Board.

The basis for the decision is that in Section 23-7 (c)(2)b of the Ordinance and on page 3 of the *Resource Protection Area: Buffer Area Encroachments* guidance document adopted by the state Division of Chesapeake Bay Local Assistance on September 16, 2002, it is presented that the exception process is to be used when the

application of the full 100-foot buffer would result in the loss of a buildable area on a lot or parcel. This exception would result in the expansion of the principal structure into the RPA, not the denial of construction of a principal structure.

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 Halacys have submitted a WQIA for this project. The placement of the porch would result in the removal of three trees from the RPA. The mitigation plan contained within the WQIA proposes to offset the impervious cover impacts to the RPA buffer for the porch by planting ten trees and ten shrubs, and directing the runoff from the roof into drywells to minimize runoff.

This mitigation plan meets and exceeds the typical mitigation requirements of planting one tree or three shrubs for each 100 square foot of impervious cover established.

Recommendations: Section 23-17(b). Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with to 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 does not recommend approval of the exception as it involves encroachment into the RPA on a lot where the RPA line was shown on the recorded plat and marked on the lot in the field with signs. While there is some dispute that the RPA sign is not located in exactly the correct location, the line is shown on the plat and the established lawn closely follows the platted RPA line. Staff has not allowed encroachment into the RPA for the expansion of a principal structure in this subdivision or in any other location where the RPA was identified on the lot at time of recordation.

However, 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 shown on the enclosed plat of the lot entitled: Field Location of Mean High Watermark and RPA Location by Plat (VHB). The Environmental Division will work with the applicant and modify the plan as necessary to ensure that all the plants used are native species.
2. The size of the trees planted needs to be a minimum of 1-1/2 inch caliper (six to eight feet tall) and the shrubs shall be of 3 gallon size. Details need to be provided for the proposed drywells.
3. Implementation 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 satisfactory to the county attorney.
4. This exception request approval shall become null and void if construction has not begun by May 11, 2006.

Mr. Lindsey stated that the owner was aware of the RPA and he would support staff's recommendation.

Mr. Gussman stated the Board needed to maintain consistency and be mindful of setting precedence.

Mr. Lindsey opened the public hearing.

A. Mr. Todd M. Halacy, owner, stated he used the sign marking the RPA on his property as a reference marker and was not aware he would impact the RPA until he submitted the building permit. He had met with three separate contractors and they all said that the porch would not tie in properly anywhere else on the house, without having to redo the whole roof. He informed the Board he had worked hard on a mitigation plan to compensate for the impacts to the RPA. He then said that his builder had received verbal approval from the County.

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

Mr. Hughes inquired if the RPA line could change.

Mr. Cook responded that the RPA is measured from the average high tide based on the tide chart or the edge of the adjacent wetlands. There is the option to hire a professional to verify the line and if it needs to be changed, staff will conduct a field visit and the plat could be re-recorded showing the change in location for the RPA line.

Mr. Waltrip stated the tide varies and could be hard to determine the line. If the homeowner is right, and he pays the taxes, he supports the homeowner.

Mr. Gussman stated there is a procedure in place to determine the RPA that is pretty accurate along with a legal definition. He said the homeowner was aware of the RPA on his property and because the sign was not in the right place, he did not feel that was a valid argument.

Mr. Gussman made a motion to deny the waiver request.

The motion was approved by a 2-1-1 vote. AYE: Gussman, Lindsey (2). NAY: Waltrip (1). ABSTAIN: Hughes (1).

4. Dr. James Massengill – 153 John Pott Drive - Paver Patio for Single Family Residence

Mr. Cook presented the case as follows:

Project Description: Ms. Lisa Meddin of Harmony Design had applied on behalf of James and Sue Massengill for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of a 640 square foot sand set brick paver patio behind a single family principal structure on the above referenced lot in Ford's Colony. The lot is 31,166 square feet or 0.72 acres in size.

Over the years, the area where the lot is located was filled with soil material by Fords Colony and there is currently no mature vegetation on the majority of the lot. The front half of the lot is flat and then there is a steep slope back down to the original grade. At that point, the remainder of the lot, which was not filled, is covered with mature vegetation consisting of a mixed hardwood forest.

Background: The lot was recorded in 1984, prior to the adoption of the Chesapeake Bay Preservation Ordinance. Therefore, there was no Resource Protection Area (RPA) present on the lot at the time of 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 stream behind this property, a tributary of Longhill Swamp, was identified as a perennial stream on the quad map and an RPA buffer was placed on the lot. This 100 foot RPA buffer encompasses about 70% of the lot.

On April 4, 2002, an administrative exception was granted to allow encroachments into the RPA buffer for construction of a single family principal structure including a driveway. The exception was extended annually and last modified on February 14, 2005, with a total encroachment permitted of 1300 square feet in the landward 50-foot buffer to allow for construction of the principal structure, which is now under construction.

The issue for the Chesapeake Bay Board's consideration is the placement of a 640 square foot brick paver patio in the RPA. 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 patio, which originally was proposed to be made of stamped concrete, could not be approved administratively and was denied. The applicant chose to appeal this decision to 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 Massengills have submitted a WQIA for this project. The mitigation plan contained within the WQIA offsets the proposed impervious cover impacts to the RPA buffer for the principal structure (1300 sf) and the patio (640 sf).

The WQIA proposes to mitigate for the impacts to the RPA by planting 13 native trees and 21 native shrubs to the rear of the house primarily on the steep, created fill slope to help filter nonpoint source pollution. This mitigation plan meets the typical mitigation requirements by planting one tree or three shrubs for each 100 square foot of impervious cover established.

Recommendations: Section 23-17(b). Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with to 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 does 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 brick paver as an impervious surface. Staff has not allowed the creation of accessory structures in the RPA in the past.

However, if the Board approves the exception, the proposed mitigation plan is in accordance with 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 entitled:
Landscape Design and Planting Plan #1 dated March 23, 2005 for
Massengill Residence, #153 John Pott Drive, Williamsburg, VA 23188
2. Implementation 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 satisfactory to the county attorney.
3. This exception request approval shall become null and void if construction has not begun by May 11, 2006.

Mr. Lindsey opened the public hearing.

A. Ms. Lisa Meddin, Harmony Design and agent for the owner, stated the proposed mitigation plan shows the intent is to be good stewards of the property. She asked for the Boards approval of the waiver request.

B. Dr. James Massengill, owner, stated that the use of chemicals to maintain the existing turf would be more harmful to the environment than the patio. He further stated that due to the drop off on his property there really was only one place to construct the patio.

C. Mr. Jim Burden, contractor, owner of an adjacent property, stated this was a unique lot and asked the Board to approve the waiver request.

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

Mr. Gussman and Mr. Lindsey stated they were concerned with setting precedence.

Mr. Hughes stated due to the nature of the property, referring to the drop off, he sympathized with the owners. He also stated considering the alternatives, such as a deck, which he felt would have a greater negative impact; he thought this was a good low impact design for wetlands.

Mr. Cook stated that he did want the Board to know that staff always requires underlying decks with gravel for runoff prevention.

Mr. Hughes made a motion to approve the exception with staff's recommendations and the added condition that the patio shall be constructed using a non-interlocking paver (a floating paver system).

The motion was approved by a 4-0 vote.

5. James Duguay, Jr. ~ 4905 Toddington Circle - New Single Family Residence

Mr. Cook presented the case as follows:

Project Description: Mr. James Duguay had applied, on behalf of Performance Contracting 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 Mill Creek Landing. The lot is 22,700 square feet or 0.52 acres in size.

Based on a field review of the lot, Environmental Division staff has determined that the location of the Resource Protection Area (RPA) was incorrect on the northeast portion of the lot and there are no longer impacts to the seaward 50 foot buffer resulting from construction of the house. Therefore, it is not necessary for the Chesapeake Bay Board to grant an exception; the case can be handled administratively by staff. An administrative exception has been granted for the lot.

Mr. Lindsey opened the public hearing and as no one wished to speak, Mr. Lindsey closed the public hearing.

No vote is necessary as there are no RPA impacts for the Board to take action on.

6. James Duguay, Jr. – 3657 Bridgewater Drive - New Single Family Residence

Mr. Cook presented the case as follows:

Project Description: Mr. James Duguay had applied, on behalf of Performance Contracting 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 Mill Creek Landing. The lot is 17,481 square feet or 0.401 acres in size.

The principal structure is proposed to create approximately 2985 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 8652 square feet in the RPA. Approximately 50% of the lot is to be cleared to allow for the construction of the dwelling.

Background: The lot was recorded in 1989 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 92% 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.

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. Performance Contracting has submitted a WQIA for this project. The issue before the Chesapeake Bay Board is the 8625 square foot RPA impact (clearing and grading) and creation of 2985 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 and 30 native trees on the lot in 3000 square feet of enhanced landscape beds on the lot in the RPA on the lot to help filter nonpoint source pollution. The amount of mitigation proposed meets the standard requirements.

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 is located at the front building setback thereby minimizing the encroachment for this proposal, 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. Full implementation of the landscape plan submitted with the WQIA shown on sheets 2 and 3 of 3 of the site plan.
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. Gravel must be installed under the deck as shown on sheet 3 of 3 of the site plan.
5. This exception request approval shall become null and void if construction has not begun by May 11, 2006.

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.

Mr. Lindsey opened the public hearing and as no one wished to speak, Mr. Lindsey closed the public hearing.

Mr. Hughes made a motion to approve the exception with staff's recommendations.

The motion was approved by a 4-0 vote.

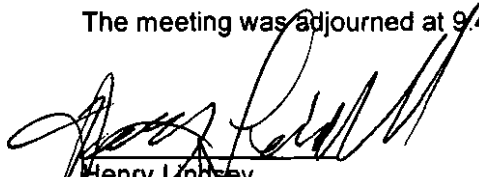
D. BOARD CONSIDERATIONS - None

E. MATTERS OF SPECIAL PRIVILEGE

Michael Drewry, Assistant County Attorney, gave a brief overview on the procedures used for Closed Sessions. He also stated that voting under the Chesapeake Bay Act Ordinance, the majority rule; unlike the Wetlands Ordinance which specifies a three member vote to pass.

F. ADJOURNMENT

The meeting was adjourned at 9:45 PM.


Henry Lindsey
Chairman


Darryl Cook
Secretary to the Board