

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
AUGUST 10, 2005 - 7:00 PM**

**A. ROLL CALL**

Henry Lindsey  
William Apperson  
John Hughes  
Larry Waltrip

**ABSENT**

David Gussman

**OTHERS PRESENT**

County Staff

**B. MINUTES** – The July 13, 2005 minutes were approved as presented.

**C. PUBLIC HEARINGS**

1. Shirley J. Geoffroy – 2939 Leatherleaf Drive

Mr. Darryl Cook presented the case as follows: **Project Description:** Ms. Amy Schmidt had applied on behalf of Shirley Geoffroy 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 Stonehouse. The lot is 35,315 square feet or 0.81 acres in size.

The principal structure is proposed to create approximately 2325 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 8400 square feet in the RPA. Approximately 24% of the lot is to be cleared to allow for the construction of the dwelling.

**Background:** The lot was recorded in 1997 after adoption of the Chesapeake Bay Preservation Ordinance but 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 93% 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 between August 6, 1990, and January 1, 2004, 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.
3. The encroachment may not extend into the seaward 50 feet of the buffer area.
4. The lot or parcel was created as a result of a legal process in conformity with the county's subdivision regulations.

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. Hertzler Brothers has submitted a WQIA for this project. The issue before the Chesapeake Bay Board is the 8400 square foot RPA impact (clearing and grading) and creation of 2325 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 6 native canopy trees, 12 native understory trees and 18 native shrubs in approximately 2000 square feet of landscape beds on the lot in the RPA 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 there was no RPA on the lot at the time of its recordation, the house is located near 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 described in the WQIA.
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 shall 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. Three inches of gravel underlain by filter fabric must be installed under the deck.
5. This exception request approval shall become null and void if construction has not begun by August 10, 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. David Root, 104 Oak Ridge Court in Powhatan Secondary, addressed the Board and stated the James City County Ordinance states that encroachment may not extend into the seaward 50 feet of the buffer area and inquired why the Board would even consider an exception.

Mr. Cook responded that Section 23-14 of the Chesapeake Bay Preservation Ordinance outlines the process used to consider exception requests.

Mr. Root stated that it is the responsibility of the Board to protect wetlands and the spirit of the ordinance suggests the Board is not to grant exceptions.

Mr. Lindsey explained that it is the Board's responsibility to review all particulars of a case and if all criteria are met, the Board has no choice but to approve the exception.

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

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

The motion was approved by a 4-0 vote.

## 2. Colonial Heritage – Phase III - Section 3

Mr. Darryl Cook presented the case as follows: **Project Description:** Mr. Richard Smith of AES Consulting Engineers had applied on behalf on US Home Corporation for an exception to the Chesapeake Bay Preservation ordinance for impacts associated with Colonial Heritage, Phase 3 - Section 3. This project is located generally west of Richmond Road and north of Centerville road in Lightfoot known as the Massie-Ware Tract. Colonial Heritage Phase 3 – Section 3 encompasses 40.7 acres and 66 residential building units.

This project proposes to encroach into the existing Resource Protection Area by approximately 0.59 acres for the construction of stormwater management facility outfalls and sanitary sewer construction.

**History:** The Colonial Heritage project is a combined residential and commercial project involving 777.24 acres on the former Massie-Ware tract. The property was rezoned in 2001. At the time of rezoning, there were Resource Protection Areas associated with Yarmouth Creek, which borders the project on both the north and south sides.

Under the *Chesapeake Bay Preservation Ordinance Transition – Amendments and Grandfathering/Vesting Rules* resolution passed by the Board of Supervisors on November 25, 2003; this project is grandfathered under paragraph 5 which states "Approved rezoning and special use permits will have to comply with the provisions of the revised Ordinance unless the property cannot be legally developed to the proffered density, use, or square footage because of the new rules, or there is a specific feature . . . shown on the proffered zoning plan that is located within the RPA, in which case the landowner may develop . . . (while) minimizing any intrusion into the RPA to the extent possible."

Under Section 23-11 of the new Ordinance, it states that a water quality impact assessment shall be required for any proposed land disturbance development of redevelopment within RPAs. US Home Corporation has submitted this assessment for the project. This assessment containing two types of exceptions: an administrative exception and a Board exception. The issue before the Chesapeake Bay Board is the impacts associated with the two sanitary sewer connections through the RPA, impacting 0.14 acres of RPA.

**Water Quality Impact Assessment:** The total impacts to the RPA for this project are approximately 0.59 acres and encompass the construction of two stormwater management facility outfalls and two sanitary sewer connections. The Board is considering only the impacts to the RPA resulting from the sewer construction, 0.14 acres of encroachment. The disturbance is required to connect the sewer for this project to an existing sewer line adjacent to Yarmouth Creek that is in the RPA. Disturbed area for construction activities associated with the sewer extensions will be stabilized with a conservation seed mix of native grasses.

AES Consulting 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):

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 finds that the WQIA and the project are consistent with the spirit and intent of the Ordinance and the criteria as outlined in section 23-14(c). Staff recommends that the Chesapeake Bay Board approve the WQIA and the exception request with the following conditions:

1. All disturbed areas within the RPA shall be revegetated with a conservation seed mix.
2. All disturbed areas within the RPA shall be covered with an EC-3 erosion control matting material.
3. This exception request approval shall become null and void if construction has not begun by August 10, 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.

For the audience, Mr. Lindsey read from staff's report the criteria, as outlined in Section 23-14(c) of the Ordinance, which the Board must consider when deciding on an exception.

Mr. Lindsey opened the public hearing.

A. Mr. David Root, 104 Oak Ridge Court in Powhatan Secondary, informed the Board that he was in disagreement with how the Board interpreted Section 23-14(c). In particular he cited criteria #3, and stated that when the Board approves exceptions, such as in this case, pollutants, sediment, chlorine, etc. all increase and do contribute to the detriment of water quality. He stated that he was concerned that the Board was not doing their job when they grant exceptions.

Mr. Hughes explained that laws change and if the Board did not grant the exception they would be denying use of the property, and then the county would be placed in the position to purchase the property.

Mr. Cook explained that state law mandated that the county adopt the Chesapeake Bay Preservation Ordinance.

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

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

The motion was approved by a 4-0 vote.

### 3. Greensprings West – Phase VI

Mr. Darryl Cook presented the case as follows: **Project Description:** Mr. James Bennett of Jamestown Management Company, LLC, had applied on behalf of Jamestown, LLC, for an exception to the Chesapeake Bay Preservation ordinance for impacts associated with the Greensprings West,

Phase VI project. The project is generally located on the western side of Centerville Road within the Greensprings Plantation planned community.

The project proposes to encroach into the existing Resource Protection Area (RPA) by approximately 0.26 acres or 11,272 square feet for the construction of a sewer to serve the new residential development.

**History:** Greensprings West is part of the large master planned community of Greensprings Plantation that was rezoned in 1992. The rezoning occurred after adoption of the Chesapeake Bay Preservation Ordinance but at the time of approval, RPA buffers were only required around those perennial streams that were so identified on the USGS quadrangle maps. 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 Greensprings identified additional perennial streams on the project site. One of those additional perennial streams contains an existing sanitary sewer line that this project, Phase VI, must connect to for sewage disposal. The sewer was planned and installed prior to the establishment of the RPA. Phase VI is the last section of the project to be developed.

Section 23-11 of the revised Ordinance states that a water quality impact assessment shall be required for any proposed land disturbance resulting from development or redevelopment within an RPA. Jamestown, LLC has submitted this assessment for their project. The issue before the Chesapeake Bay Board is RPA impacts (clearing and grading) associated with the construction of sanitary sewer extension.

**Water Quality Impact Assessment:** The total impacts to the RPA for this project are approximately 0.26 acres and involve the construction of approximately 400 linear feet sanitary sewer gravity main in the RPA. To mitigate for environmental impacts, the project will use the following: erosion control type 3 (EC-3) blanket matting and a conservation seed mix to restabilize all disturbed areas in the RPA.

AES 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):

1. The exception request is the minimum necessary to afford relief;
2. Granting the exception will not confer upon the applicant any special privileges denied by this chapter to other property owners similarly situated in the vicinity;
3. The exception request will be in harmony with the purpose and intent of this chapter, and is not of substantial detriment to water quality;
4. The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels; and
5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing degradation of water quality.

**Recommendations:** Staff finds that the WQIA and the project are consistent with the spirit and intent of the Ordinance and the criteria as outlined in section 23-14(c). Staff recommends that the Chesapeake Bay Board approve the WQIA and the exception request with the following conditions:

1. All disturbed areas within the RPA shall be revegetated with a conservation seed mix.
2. All disturbed areas within the RPA shall be covered with an EC-3 erosion control matting material.
3. This exception request approval shall become null and void if construction has not begun by August 10, 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. James Bennett, Jamestown Management Company, LLC and agent for the owner, informed the Board that the owner agreed to all of staff's recommendations.

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

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

The motion was approved by a 4-0 vote.

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

##### **1. J.D. Blanchard Custom Home Builders – 104 Shield's Poynt**

At the July 13, 2005, Chesapeake Bay Board meeting, an RPA exception request for 104 Shields Poynt was presented to the Board. Because the applicant was not present to answer questions and the Board members wanted to have the lot marked with the location of the proposed house and the RPA line, the Board deferred action on the application.

Since the last meeting, the property has been staked and staff has presented the information requested. In response to one of the member's questions from the meeting, according to the tax records, the lot was purchased by the applicant on December 13, 2004.

Staff report from the July 13, 2005 Board meeting: **Project Description:** Mr. J.D. Blanchard had applied, on behalf of JD Blanchard Custom Home Builders 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 Scotts Pond. The lot is 20,272 square feet or 0.465 acres in size.

The principal structure is proposed to create approximately 3145 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 5850 square feet in the RPA. Approximately 30% of the lot is to be cleared to allow for the construction of the dwelling.

**Background:** The lot was recorded in 1996 after adoption of the Chesapeake Bay Preservation Ordinance but 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 100% 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 between August 6, 1990, and January 1, 2004, 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.
4. The lot or parcel was created as a result of a legal process in conformity with the county's subdivision regulations.

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 5850 square foot RPA impact (clearing and grading) and creation of 3145 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 8 native trees, 16 native understory trees and 24 native shrubs on the lot in about 1000 square feet of 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 there was no RPA on the lot at the time of its recordation, the house and driveway are located at the side property line 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 the site plan for the lot.
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 shall 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. Three inches of gravel underlain by filter fabric must be installed under the deck.
5. This exception request approval shall become null and void if construction has not begun by August 10, 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 chose to re-open the public hearing.

A. Mr. Donald W. Davis, 3630-Route 17, Yorktown, VA, land surveyor, spoke on behalf of the owner. He stated the lot was purchased in 2004 and the RPA buffer did not show on the survey. He said there really was no place to build the single-family dwelling without encroaching into the RPA; however, the owner is offering to construct a BMP and if asked, will submit a Declaration of Covenants/inspection/Maintenance of Drainage System to be recorded.

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

Mr. Hughes abstained from the case as he stated he has a relationship with one of the parties involved in the case.

Mr. Apperson stated he liked the fact that mitigation would be placed on site and that the applicant was willing to have an agreement recorded so that it would be maintained for future years.

Mr. Apperson made a motion to approve the exception with staff's recommendations and the added condition that a Declaration of Covenants/inspection/Maintenance of Drainage System be recorded to preserve the BMP.

The motion was approved by a 3-0-1 vote. AYE: Waltrip, Apperson, Lindsey (3). NAY: (0). Abstain: Hughes (1).

## 2. Michelle Point LLC – Michelle Point Extension

Mr. Cook presented the case stating that Mr. Jay Epstein, Managing Member of Michelle Point, LLC, had requested a one-year extension for the RPA exception granted last year by the Board. Work has not yet begun on the project due to delays in obtaining environmental permits from the state Department of Environmental Quality. All of the approved conditions required with the exception shall remain with the extension.

Mr. Hughes made a motion to approve the request to extend the exception to August 10, 2006.

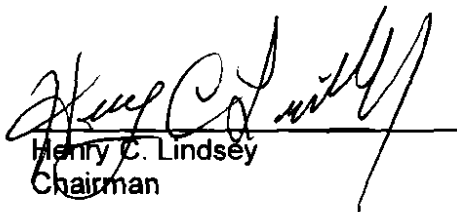
The motion was approved by a 4-0 vote.

## E. MATTERS OF SPECIAL PRIVILEGE

The Board and County Staff held a short discussion relating to property owner vested rights, ordinance criteria, mitigation and setbacks. It was decided that the Board would review the revised Wetlands Mitigation Policy and be prepared to discuss it at the next Wetlands Board meeting.

## F. ADJOURNMENT

The meeting was adjourned at 8:04 PM.

  
Henry C. Lindsey  
Chairman

  
Darryl Cook  
Secretary