

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
DECEMBER 14, 2005 - 7:00 PM**

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| A. ROLL CALL Henry Lindsey William Apperson Larry Waltrip John Hughes David Gussman | ABSENT none |
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OTHERS PRESENT
County Staff

B. MINUTES – The November 9, 2005 minutes were approved as presented.

C. PUBLIC HEARINGS - None

D. BOARD CONSIDERATIONS

1. Appeal – Nicholas Kaplan – 5112 Essex Court - Shed

Mr. Darryl Cook presented the case as follows: **Project Description:** Mr. Nick Kaplan, owner of the above referenced property, began construction of a shed in an area on his lot designated as the 100-foot Resource Protection Area (RPA) buffer. After submission of his building permit application, Mr. Kaplan was informed by Environmental Division staff that his application was being rejected because of the shed's location in the RPA. Through an administrative error, a building permit was issued for the shed without approval from the Environmental Division. The framing for the structure was erected before the Division became aware of the construction. The structure was placed approximately 50 feet from the edge of Scott's Pond and adjacent wetlands thereby placing it within the RPA Buffer. Without prior approval, this constitutes a violation of the James City County Chesapeake Bay Preservation Ordinance, and the owner was cited for a violation and directed to remove the shed on November 14, 2005.

Background: The lot was platted in 2003 with no RPA designated on the lot. This was due to the fact that there was no perennial water body identified on or adjacent to the lot as defined by the Ordinance in effect at that time. However, on January 1, 2004, revisions to the Ordinance became effective that changed how perennial water bodies are identified and now it is required that determinations be made based on a field investigation.

Early in 2004, based on a field investigation conducted for a building permit application on another lot in Scott's Pond, it was determined that Scott's Pond was a water body with perennial flow. This determination had the effect of placing a 100-foot RPA buffer on all the lots bordering the pond in Scott's Pond. An exception was granted to Arcadia Construction on February 1, 2005, to allow for construction of the house.

Following a field visit where construction of the shed was observed, the owner was directed to stop work and was issued a Notice of Violation ordering them to remove the structure from the buffer and restore the area with native species plant material. Mr. Kaplan has chosen to appeal the Notice requiring removal of the shed. Currently, the frame of the structure is still located in the buffer. No mature vegetation was removed to allow for the shed construction

The shed is considered an accessory structure under the provisions of the Ordinance as it is a free-standing structure not part of the principal structure (primary residence) on the lot. The matter is before the Board as staff does not have the ability under to Ordinance to authorize the placement of an accessory structure in the RPA. In making a decision on this appeal, the Ordinance states that the Board needs to balance the hardship to the property owner with the purposes, intent and objectives of the Ordinance. The Board needs to make the following findings in order to decide in favor of the appellant:

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.*

The Board should impose reasonable and appropriate conditions to the granting of any exception, waiver or variance as it deems necessary in the public interest to ensure that the purpose and intent of the Ordinance are preserved.

Recommendations: If the Board decides to allow the structure to remain, staff would recommend that mitigation be required to ensure that water quality is not adversely affected. Mr. Kaplan has agreed to plant two native understory trees and two native shrubs in the buffer near the shed and install two 4"x 4" gravel trenches at both drip lines of the shed roof to infiltrate the roof runoff. If the Board decides to grant the appeal, these measures would be considered by staff to be an acceptable mitigation for the placement of the shed in the buffer.

Mr. Gussman asked if measures had been taken by the county, to prevent the administrative error from occurring again.

Mr. Cook responded that clerical errors were always a possibility.

Mr. Lindsey noted that the waiver application indicated two different dates for when the lot was platted.

Mr. Cook responded that the lot was platted in 2003, as indicated in the staff report.

Mr. Hughes stated that there appeared to be no other place on the lot for the shed.

Mr. Waltrip stated that many lots platted prior to 2004 are in the 100 foot buffer and the Board might have many of these appeals to decide.

Mr. Lindsey referred to the Chesapeake Bay Board training session he attended in Chesapeake, stating that in some other counties the Boards offer no exceptions for accessory structures in the RPA.

Mr. Waltrip stated that he felt the Board should mainly be concerned with the impact on the environment.

Mr. Lindsey stated that he did not want to grant a privilege to some homeowners and not others.

Mr. Pat Menichino, Environmental Staff, approached the Board to remind them that at this time, they only needed to act on the appeal of staff's decision for this case.

Mr. Lindsey asked the audience if there was anyone present who wished to speak on the matter.

A. Mr. Nicholas Kaplan, the appellant and homeowner, informed the Board that he had not been aware of the limitations on his lot. He had followed proper channels by obtaining a building permit and had stopped work when it was requested. He also indicated that he was agreeable to the staff mitigation requirements for keeping the shed in its current location.

The Board had no questions for Mr. Kaplan.

No one else present wished to speak on the matter.

Mr. Gussman stated that the county made a mistake by issuing the building permit and the citizen should not be penalized.

Mr. Adam Kinsman, Assistant County Attorney, approached the Board and advised them that legally no county employee can issue an invalid permit. Because of the environmental issue, Mr. Kaplan's permit was never valid and therefore did not need to be considered by the Board.

Mr. Waltrip stated that if this decision would not set precedence for future accessory structure cases, the Board only had to make the three findings identified in the staff report. He further stated that he did not feel this structure was harmful to the environment.

The remaining Board members agreed with Mr. Waltrip.

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

The motion was approved by a 5-0 vote.

E. MATTERS OF SPECIAL PRIVILEGE

The Board and County Staff held a short discussion regarding the decision process for future accessory structure cases.

Mr. Apperson stated that he would be concerned with large accessory structures in the RPA.

Mr. Gussman stated that he would be concerned with accessory structures in the seaward 50 foot buffer.

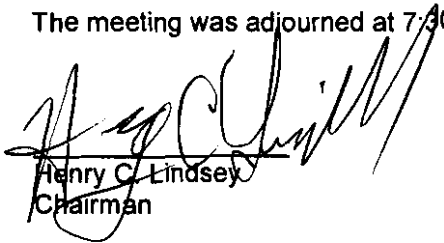
Mr. Kinsman stated that it would be very important to specify environmental reasons for accepting or denying each case. He further advised the Board and staff to have guidelines, not set rules, for deciding these cases.


Mr. Apperson agreed that approval for accessory structures in the RPA should continue to be decided by the Board after discussion and review of each case.

Mr. Cook requested that the Board provide the guidelines they want included in the staff reports for accessory structures.

F. ADJOURNMENT

The meeting was adjourned at 7:30 PM.


Henry C. Lindsey
Chairman


Darryl E. Cook
Secretary