

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
APRIL 12, 2006 - 7:00 PM**

**A. ROLL CALL**  
William Apperson  
John Hughes  
Larry Waltrip

**ABSENT**  
Henry Lindsey  
David Gussman

**OTHERS PRESENT**  
County Staff

**B. MINUTES** – The March 8, 2006 minutes were approved as presented.

**C. PUBLIC HEARINGS**

Mr. Pat Menichino requested and the Board approved a change in the order of the two cases on the agenda.

1. CBE-06-012 - William B. Warrick – 101 Spring Branch

Mr. Pat Menichino presented the case as follows:

**Project Description:** Mr. William Warrick, owner, 101 Spring Branch, applied for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of a 440 sq. ft. sand set, brick paver patio. Mr. Warrick was also appealing an administrative decision by staff and requesting that the Board grant approval for an existing decorative block landscape wall on the above referenced lot, in Settler's Mill. The residence is located adjacent to a perennial stream.

**Background:** The residence was constructed in 1999 after adoption of the Chesapeake Bay Preservation Ordinance but there was no RPA present on the property when the residence was built. However, 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 field evaluation was conducted for a stream, adjacent to the residence and it was determined that the stream is a water body with perennial flow requiring that a 100 ft RPA buffer be established around the stream. This 100 ft RPA buffer encompasses virtually all the rear yard on the property.

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.

The issue for the Chesapeake Bay Board's consideration is the placement of a 440 sq. ft. brick paver patio and landscape wall 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 could not be approved administratively and the applicants have chosen to request an exception from 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 RPA. The applicant has 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 patio (440 sq. ft.).

The WQIA proposes to mitigate for the impacts to the RPA by planting 5 native trees, 8 native understory trees, and 6 native shrubs in the RPA. This vegetation will be located to the rear of the residence adjacent to the proposed patio to help filter nonpoint source pollution. This mitigation plan exceeds the typical mitigation requirements of planting one tree or three shrubs for each 100 sq. ft. of impervious cover established.

Mr. Warrick 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 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 consider the brick paver as an impervious surface. Staff has not allowed the creation of accessory structures in the RPA in the past. However, the Board did approve construction of similar brick paver patios in Ford's Colony, at 153 John Pott Drive, on May 11, 2005, at The Vineyards Clubhouse, on July 13, 2005, and at 2658 Jockeys Neck Trail, The Vineyards, on March 8, 2006.

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 submitted with the WQIA.
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. The patio shall be constructed using a non-interlocking paver (a floating paver system). Information on the specific paver to be used, needs to be submitted to the Environmental Division prior to beginning work.
4. This exception request approval shall become null and void if construction has not begun by April 12, 2007.

Mr. Waltrip asked about the elevation of the wall and patio.

Mr. Menichino stated that it was approximately 15 to 20 ft above the stream level.

Mr. Hughes asked if the 94 ft from wall to the stream, indicated on the site plan, was accurate.

Mr. Menichino stated that is was.

Mr. Apperson opened the public hearing.

A. Mr. Warrick, the applicant, stated that there was nothing in his deed about the RPA buffer so he was not aware of the restrictions. He stated that his intention was to correct the damage on his property caused by Hurricane Isabel and the subsequent use of his property to remove damaged trees in the subdivision. He further stated that the Settler's Mill Home Owners Association had approved the proposed structures.

B. Mr. Fletcher Frye, agent for the applicant, approached the Board and provided information about the brick pavers and additional pictures of the patio and wall.

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

Mr. Waltrip agreed that the mitigation plan would improve the damage to the property. He stated that this was only 6 ft into the RPA and because of the elevation; he felt this was a minimal encroachment.

Mr. Waltrip made a motion that the Board approve the exception and appeal with staff's recommendations.

The motion was approved by a 3-0 vote.

## 2. CBE-06-009 - Busch Entertainment Corp – New France Expansion

Mr. Darryl Cook presented the case as follows:

**Project Description:** Mr. Ronnie Orsborne, LandMark Design Group, Inc. applied on behalf of Busch Entertainment, for an exception to the Chesapeake Bay Preservation Ordinance for impacts associated with the New France Ride Expansion. The project is located on the current site of the LaMans track within the Busch Gardens amusement Park in immediate proximity to both the Alpengeist and Lochness Monster roller coasters.

As is the case with many of the existing roller coasters in the Busch Gardens amusement park, Busch Entertainment is proposing 0.301 acres of total encroachment into the Resource Protection Area (RPA).

**History:** Busch Entertainment has been involved in several meetings regarding this project with James City County Staff pertaining to clarification of site plan submittal requirements, information required to obtain final site plan approval, and information required to receive a recommendation of approval from environmental staff to this Chesapeake Bay Board.

Environmental Division conditions for approval of the master plan consisted primarily of reestablishing the RPA in cleared areas throughout the park. This is to be accomplished using the methods contained in the Chesapeake Bay Local Assistance Department 2003 Guidelines for Riparian Buffers. Additional measures such as turf reinforcement matting on all cut and fill slopes and conservation seed mix in areas that require on-going maintenance shall be implemented on the final site plan prior to receiving final site plan approval.

A site specific perennial stream evaluation revealed that at least one perennial stream existed on the parcel, which outfalls into the Rhine River lake and ultimately the James River. As this plan of development was submitted after January 1, 2004, the project is not grandfathered from the revised Chesapeake Bay Preservation Ordinance and as a result, a Resource Protection Area (RPA) buffer of 100 feet has been imposed around the lake's perimeter and on both sides of any streams and contiguous wetlands.

Under Section 23-11 of the new Ordinance, it states that a water quality impact assessment shall be required for any proposed land disturbance resulting from development or redevelopment within RPAs. LandMark Design Group has submitted the assessment for the associated project. The issues before the Chesapeake Bay Board are the resulting impacts (clearing and grading) associated with the installation of the structural components and track for the proposed rollercoaster.

**Water Quality Impact Assessment:** The impacts to the RPA buffer and RPA features resulting from the current plan of development requiring a board action are 0.301 acres. These impacts are associated with the construction and installation of multiple footers, stanchions, safety netting, a retaining wall, and structural track associated with the amusement park ride. This location is currently the site of the LeMans race track with an existing impervious cover of 1.38 acres of which 0.057 acres are in the RPA. The proposed redevelopment of the site has a total impervious cover of 1.13 acres with 0.043 acres located in the RPA. The proposed redevelopment will yield a net decrease in impervious cover for the overall site of 18.1% and a decrease within the RPA of 24.5%. To mitigate for these impacts, the following will be implemented into the associated plan of development

- Replanting of the RPA will be performed in accordance with the 2003 Chesapeake Bay Local Assistance Department Riparian Buffer Manual guidelines in areas throughout the park as shown on the various exhibits contained in the associated WQIA;
- Turf reinforcement matting (Type EC-3) will be provided on all cut and fill slopes associated with the proposed improvements;
- Conservation seed mix will be planted on slopes and other disturbed areas that must have on-going maintenance performed because of the ride.

LandMark Design Group acting on behalf of Busch Entertainment, 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 does find 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) of the James City County Code. Staff therefore recommends that the Chesapeake Bay Board approve the WQIA as it pertains to the New France Expansion project only. Furthermore, all recommendations listed therein are to be incorporated into the site plans for the associated project, which must then receive final approval by the Environmental Division. This exception request approval shall become null and void if construction has not begun by April 12, 2007. Any changes to the plan of development that would cause a deviation from the items listed in the WQIA, either in the form of increased impacts to components of the RPA or omission of mitigation requirements from the submitted plan of development must be reviewed and approved by the Board.

Mr. Apperson asked for clarification on the change in the impervious cover.

Mr. Cook stated that the current attraction contained 1.38 acres of impervious cover and the proposed redevelopment would reduce that to 1.13 acres.

Mr. Waltrip stated and Mr. Cook confirmed that all of the run off would be handled by the Rhine River lake before discharging into the James River.

Mr. Apperson opened the public hearing.

A. Mr. Larry Giles, Vice President Engineering Busch Entertainment, stated that he concurred with the information in the staff report and the 40 acre Rhine River lake was built to contain the Park runoff and is maintained as a BMP.

Mr. Waltrip stated and the other Board members agreed that Busch Gardens did an excellent job of maintaining the water quality in the lake.

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

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

The motion was approved by a 3-0 vote.

#### D. BOARD CONSIDERATIONS

Mr. Cook asked if the Board would consider requesting approval from the state Chesapeake Bay Local Assistance Department to allow administrative approval for some accessory structures in the RPA, such as small sheds, picnic tables, or other items that do not require building permits. He added that one of the northern Virginia counties had made a similar change in their administrative program.

Mr. Cook asked if the Board members would be comfortable with the administrative approval on road crossings, when they created the majority of the RPA impact but, were also serving as BMP dams or crossed over utilities, which are items that the Board considers for approval. His purpose for this request is to avoid duplicate approvals on the same area of impact.

Mr. Apperson and Mr. Waltrip both stated that these were reasonable requests but felt they should be proposed and decided on, by the full Board.

Mr. Menichino asked if the Board had specific guidelines for allowing impacts in the first 50 ft of the RPA. Specifically fill impacts.

Mr. Waltrip repeated that this should be decided by the full Board but in his opinion, the purpose of the Board was to review exceptions on a case-by-case basis and not set specific guidelines.

#### E. MATTERS OF SPECIAL PRIVILEGE

The Board and County Staff held a short discussion regarding the possible appeal of the Marywood case that was denied by the Board, at their meeting on March 8, 2006. The Board members stated that they had been contacted by AES, agent for the applicant and/or Kaufman and Canoles, attorneys for the applicant, regarding the WQIA and their decision.


Mr. Adam Kinsman, Assistant County Attorney, stated that at this time, there was nothing in the Chesapeake Bay Ordinance to prevent the applicant from submitting a new application for the same development and there was no time limit for appealing the Board's March 8, 2006 decision. He further stated that the Board members were not obligated to speak or meet with the applicant, their agent, or their attorneys. However, he would be available to accompany or advise any Board member who wanted to meet with the applicant.


Mr. Hughes added and Mr. Kinsman agreed that no more than two Board members could meet at the same time, unless the meeting was publicized first.

There were additional discussions regarding future developments and sewer crossings in the RPA.

#### G. ADJOURNMENT

The meeting adjourned at 8:15 PM.

  
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William Apperson  
Chairman

  
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Darryl Cook  
Secretary