

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
NOVEMBER 8, 2006 - 7:00 PM**

A. ROLL CALL

Henry Lindsey
David Gussman
John Hughes
Larry Waltrip
William Apperson

ABSENT
None

OTHERS PRESENT

County Staff

B. MINUTES – The October 11, 2006 minutes were approved as presented.

C. PUBLIC HEARINGS

1. CBE-06-071 Williamsburg Environmental Group / Huckaby – 3 West Circle

Mr. Pat Menichino presented the following case:

Project Description: Williamsburg Environmental Group on behalf of Mr. Frank Huckaby, owner applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of approximately 110 linear feet of retaining wall, and the filling and grading of approximately 18,750 sqft of RPA on the above referenced lot in First Colony. The lot is located adjacent to the James River.

Background: The lot was recorded in the 1970s prior to the adoption of the Ordinance; therefore, there was no RPA present on the lot at recordation. However, on August 6, 1990, the Ordinance went into effect establishing 100-ft 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 James River and the adjacent, connected wetlands on this property were identified as perennial water bodies on the quad map and an RPA buffer was placed on the lot. This 100-ft RPA buffer encompasses about 99% 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.

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 proposed retaining wall could not be approved administratively and the owners have chosen to request an exception to the Ordinance from the Chesapeake Bay Board (Board). The owners are also requesting an exception for the proposed fill and grading required for a future single family residence.

The issue for the Board's consideration is the placement of 110 linear feet of retaining wall and the grading and filling of 18,750 sqft within the RPA buffer.

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 applicant has submitted a WQIA for this project. The mitigation plan contained within the WQIA offsets the proposed impervious cover impacts of 113 sqft and the 18,750 sqft to the RPA buffer.

The WQIA proposes to mitigate for the impacts to the RPA by planting, 25 native canopy trees, 50 understory trees, and 75 native shrubs in the RPA. This vegetation will be located around the lot and adjacent to the retaining wall to help filter nonpoint source pollution. This mitigation plan exceeds the typical mitigation requirements by planting one tree or three shrubs for each 100 sqft of impervious cover established.

The applicant 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 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 believes the applicant has submitted a WQIA and mitigation plan that addresses the water quality impacts associated with the proposed retaining wall and fill. Unfortunately, staff can 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 retaining wall as an accessory structure. Staff has not allowed the creation of accessory structures in the RPA in the past. However, the Board has approved the construction of retaining walls within the buffer in the past and in this case, the retaining wall will reduce clearing and save some of the existing vegetation.

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 submitted with the WQIA.
2. Implementation would be guaranteed through a surety satisfactory to the Division and the County Attorney.
3. The applicant shall obtain all necessary permits and approvals from other agencies that have regulatory authority over the proposed construction, including a building permit.
4. This exception request approval shall become null and void if construction has not begun by November 8, 2007.

Mr. Hughes and Mr. Menichino stated the Board was only considering the proposed retaining wall, fill and grading in the RPA. The proposed bridge and house were not in the application before the Board.

Mr. Lindsey stated the application proposed to grade and fill approximately 18,750 sqft of the RPA. He asked for the size of the entire lot and height of the proposed wall.

Mr. Menichino stated it was approximately a 2 acre lot and the proposed wall would be 5 ft high.

Mr. Hughes asked how many mature trees would be removed in the pond area, how much fill would be added in the pond area, and how much fill would be added at the highest elevation on the lot.

Mr. Menichino stated fill would be approximately 9 ft at the pond area and approximately 2 ft at the highest elevation. He stated all of the mature trees would be removed and replaced and added that removal of trees for a shore line erosion project was a buffer modification allowed under the Ordinance.

Mr. Apperson opened the public hearing.

A. Mr. Darrell Rickman, 4 West Circle, spoke in opposition to the case because of the impact on the wetlands. He asked what the Chesapeake Bay Act and RPA delineation meant if the Board would allow almost ½ acre of wetlands to be filled.

B. Mr. Noel Hume, 2 West Circle, spoke in opposition to the case because of the impact on the wetlands during and after construction as well as the impact the construction would have on his property.

C. Mr. Chuck Roadley, Williamsburg Environmental Group, stated the proposed retaining wall would protect the wetlands from the fill at the back of the property, the proposed fill in the pond area was in association with the riprap, and the proposed fill at the highest elevation was for the proposed house.

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

Mr. Gussman and Mr. Waltrip both stated their concern with the impact from the proposed bridge.

Mr. Menichino and Ms. Lyttle reminded the Board that the bridge was not for their consideration.

Mr. Gussman stated his concern about the adverse conditions the proposed fill might create during a major storm.

All Board members agreed the applicant was proposing a lot of fill in the RPA.

At a request from the audience, Mr. Apperson re-opened the public hearing.

D. Ms. Bambi Walters, 5112 Shoreline Court, referred to the Ordinance, and stated the Board needed to consider if the proposed encroachment was the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.

C. Mr. Roadley stated the intent was to restore and maintain the 50 ft RPA buffer.

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

Mr. Hughes made a motion to deny the exception for case CBE-06-071.

The motion to deny the exception was approved by a 4-1 vote.

AYE: Gussman, Lindsey, Hughes, Waltrip (4). NAY: Apperson, (1).

2. CBE-06-070 Hallmark Builders/Mr. & Mrs Reuter – 232 Royal Dublin

Mr. Pat Menichino presented the following case:

Project Description: Mr. and Mrs. Reuter applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of a single family principal structure on the above referenced lot in Ford's Colony. The lot is 26,399 sqft or 0.61 acres in size.

The principal structure is proposed to create approximately 4272 sqft 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 approximately 8,000 sqft in the RPA. Approximately 40% of the lot is to be cleared to allow for the construction of the dwelling.

Background: The lot was recorded in 2001 after the adoption of the Ordinance but there was no RPA present on the lot at recordation. 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 conducted for this project's building permit application identified a perennial water body adjacent to the rear of the lot requiring a 100-ft RPA buffer be established on the lot around the water body. This 100-ft RPA buffer encompasses approximately 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 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, and
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 (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 RPA. The owners have submitted a WQIA for this project. The issue before the Board is the 8000 sqft of RPA impact (clearing and grading) and creation of 4272 sqft of impervious cover in the RPA associated with the construction of the principal structure and driveway.

The WQIA proposes to mitigate for the impacts to the RPA by planting 11 native canopy trees, 22 native understory trees, and 33 native shrubs on the lot in the RPA to help filter nonpoint source pollution. The mitigation plan submitted with the WQIA shows only 4 canopy trees, 7 understory trees and 11 shrubs installed within existing natural areas on the lot that are already heavily forested. It will be necessary for the applicant and staff to develop an additional RPA mitigation planting plan based on field conditions and vegetation located on this lot after clearing and grading has been accomplished. This additional RPA mitigation planting plan must provide for the planting of 7 additional canopy trees, 15 understory trees and 22 shrubs. As an alternative to the additional plantings the applicant may provide for the payment of \$3,200 into a County approved RPA mitigation fund.

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 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 and the house cannot be relocated on the lot to minimize the encroachment in the buffer. 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. Implementation of the mitigation landscape plan submitted with the WQIA and the development and implementation of an additional RPA mitigation plan. If field conditions prevent the implementation of the required additional RPA mitigation plan, an alternate plan or a contribution paid into a County approved RPA mitigation fund may be substituted.
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. This exception request approval shall become null and void if construction has not begun by November 8, 2007.

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 stated there was no alternative because the lot is small, heavily wooded and was platted prior to 2001.

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

Mr. Lindsey made a motion the Board approve case CBE-06-070 with staff recommendations.

The motion was approved by a 5-0 vote.

3. CBE-06-067 Matt Huff – 2929 Leatherleaf Drive

Mr. Pat Menichino presented the following case:

Project Description: Mr. Jesse M. Huff, owner, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the partial removal of an existing retaining wall and the construction of approximately 285 linear feet of terraced timber retaining walls on the above referenced lot in Stonehouse. The residence is located adjacent to a perennial stream and wetlands.

Background: The lot was recorded in 1997 after adoption of the Ordinance and there was no RPA present on the lot property when the residence was built in 1998. 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 and wetlands, which the residence is adjacent to, and it was determined the stream was a water body with perennial flow requiring that a 100-ft RPA buffer be established around the stream and adjacent wetlands. This 100-ft RPA buffer encompasses virtually all the rear and side 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; and
4. The lot or parcel was created as a result of a legal process in conformity with the county's subdivision regulations.

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."

The proposed timber retaining walls are considered an accessory use and cannot be approved administratively. The applicant has chosen to request an exception for the proposed walls 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 RPAs. The applicant has submitted a WQIA for this project. The mitigation plan

contained within the WQIA offsets the total proposed impacts to the RPA buffer created by the installation of the walls and fill (2,300 sqft).

The WQIA proposes to mitigate for the impacts to the RPA by planting 6 native understory trees, and 36 native shrubs within the fill and terraced retaining walls. The plantings within the retaining walls will be located to the rear of the residence and adjacent to the existing driveway to help filter nonpoint source pollution runoff. This mitigation plan exceeds the typical mitigation requirements of planting one tree or three shrubs for each 100 sqft of impervious cover. This mitigation plan proposes to mitigate for all proposed fill impacts.

Mr. Huff 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 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: On March 8, 2006, the Board denied Mr. Huff's appeal of an administrative order to remove the retaining wall. The order was issued because the wall was under construction and could not be approved administratively. The Board recognized the problem of needing to stabilize the steep slopes on his lot but felt the retaining wall proposed by Mr. Huff was not appropriate in the RPA. The Board requested that Mr. Huff work with staff to find a resolution that would stabilize the steep slopes but be less intrusive into the RPA. Staff has met with Mr. Huff several times and assisted him with this exception application.

Staff believes the applicant has submitted a WQIA and mitigation plan that addresses the water quality impacts associated with the proposed retaining walls. Unfortunately, staff can 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 timber retaining walls as an accessory structure. Staff has not allowed the creation of accessory structures in the RPA in the past. However, the Board has approved the construction of decorative block retaining walls in the past.

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 submitted with the WQIA.
2. Implementation would be guaranteed through a surety satisfactory to the Environmental Division and the County Attorney.
3. The applicant shall obtain all necessary permits and approvals, including a building permit.
4. This exception request approval shall become null and void if construction has not begun by November 8, 2007.

Mr. Hughes asked if the existing wall was permitted.

Mr. Menichino stated James City County Code Compliance office would inspect and certify the construction of both walls when Mr. Huff applied for the building permit.

Mr. Lindsey stated he had visited the property and agreed the walls were necessary to preserve the driveway.

Mr. Apperson opened the public hearing.

Mr. Lindsey asked the applicant, Mr. Huff, if he was agreeable to staff recommendations.

Mr. Huff stated he was.

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

Mr. Waltrip made a motion to approve case CBE-06-067 with staff recommendations.

The motion was approved by a 5-0 vote.

The Board recessed at 9:35 and reconvened at 9:45.

4. CBE04-040 C. E. Newbaker Surveying and Planning, - Michelle Point continued from 10/11/06

Mr. William Cain presented the following case:

Project Description: Mr. Charles Newbaker, L.S. of C. E. Newbaker Inc. has applied on behalf of Michelle Point, LLC, for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for impacts associated with the Michelle Point project. The project is generally located on the western side of Route 30 across from Stonehouse Industrial Park, just north of the Burnham Woods subdivision.

For the purposes of constructing a required stormwater management facility and sanitary sewer gravity main and pumping station, Michelle Point is proposing 2.56 acres of total encroachment into the Resource Protection Area (RPA).

History: Michelle Point, LLC submitted a master plan to the Planning Division in May 2004. DRC approved the master plan for the development at the July 7th meeting, after the plan preparer and applicant addressed all concerns pertaining to perennial stream locations, stormwater management requirements, and erosion and sediment control objectives which stemmed from the May 21st DRC meeting where the plan was originally deferred.

One of the conditions for approval of the master plan was that the site would accept and treat stormwater in two stormwater management ponds located onsite. With the afore mentioned items addressed, the case was heard at the August 11, 2004 Chesapeake Bay Board public hearing where the case was approved. Prior to the expiration of the approved WQIA on August 11, 2005, the applicant submitted a request for a one year extension due to delays in obtaining the required permits from the United States Army Corps of Engineers and the Department of Environmental Quality. This extension was approved by the Chesapeake Bay Board (Board) on August 10, 2005. That extension has since expired and, as a result of this expiration, the case must be heard and approved by the Board at this time.

A site specific perennial stream evaluation revealed that two perennial streams existed on the parcel, and because the plan for this project was not submitted prior January 1, 2004, the project is not grandfathered from the revised Ordinance. Because of this, a RPA buffer of 100 feet has been imposed on either side of the streams and contiguous wetlands. Because of these site restrictions, one of the stormwater management facilities, which will handle the majority of stormwater runoff for the site, has been proposed for installation in the headwaters of the eastern most perennial stream. The construction of this basin will permanently inundate approximately 350 linear feet of the associated perennial stream and effectively relocate the RPA feature to the BMP outfall.

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. Michelle Point, LLC has submitted this assessment for their project. The issue before the Board is the impacts (clearing and grading) associated with the construction of sanitary sewer items and a stormwater management facility.

Water Quality Impact Assessment: The total impacts to the RPA for this project are approximately 2.56 acres and encompass the construction of a sanitary sewer pumping station and gravity main, and a stormwater management facility. Impacts associated with the installation of the sanitary sewer pumping station (0.02 acre) will be an administrative review and are not covered under the Board exception approval. Impacts associated with the installation of the sanitary sewer gravity main will cover approximately 0.10 acres, while impacts associated with the construction of a stormwater management facility will cover 2.44 acres. Therefore, the total RPA impact before the Board for approval is 2.54 acres. To mitigate for environmental impacts, the project will use the following: erosion control type 3 blanket matting to stabilize all slopes facing the RPA and those

associated with the construction of the stormwater management facilities; stilling basins, to reduce outfall velocities from the stormwater management facilities, will be constructed at the outfalls of both BMPs; RPA restoration, in accordance with the 2003 Chesapeake Bay Local Assistance Department guidelines, will be conducted in all permissible areas around the BMP embankment located on the eastern portion of the site; additional treatment of 10.6 acres of currently uncontrolled offsite stormwater will be incorporated into the design of the onsite stormwater management facilities; additional plantings to increase BMP efficiencies will be installed on the eastern most BMP; and a conservation seed mix will be used on the downstream sides of all BMP embankments.

C. E. Newbaker Inc. 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 Board approve the WQIA as it pertains to this project. Furthermore, all other recommendations listed therein are to be incorporated into the site plans for the project, which must then be approved by the Environmental Division. This exception request approval shall become null and void if construction has not begun by November 8, 2007.

Mr. Hughes asked if there was anything different between this case and other cases that proposed BMPs in the RPA. Because he was not on the Board in 2004, he asked for the reasoning behind approval of the original application and asked if anything in the application had changed since the exception was approved in 2004.

Mr. Cain stated nothing applicable to the Chesapeake Bay Board had changed on the proposed plan since 2004 and although this was similar to other cases, this exception was approved in part because the treatment of 10.6 acres of currently uncontrolled offsite stormwater was part of the proposed mitigation for encroachment into the RPA. He also stated the tributary where the BMP is being placed, is severely incised because of the upland development.

As the public hearing was still open, Mr. Apperson asked if anyone wished to speak on the application.

A. Mr. Mike Ware, representative for the applicant, stated the encroachment was not self imposed by the applicant because the County required the treatment of offsite runoff. In addition he stated there was some disagreement on the perennial features of the stream where the BMP will be located.

Mr. Lindsey asked Mr. Cain the County's position on the stream.

Mr. Cain stated the stream was determined to be perennial 2 years ago.

Mr. Gussman stated the Board had previously denied applications for BMPs in the RPA and asked if the RPA was correctly delineated on the plans provided with the application.

Mr. Cain stated the RPA was correctly delineated.

Mr. Hughes stated each case needed to be decided on its own merits. He added it appeared the proposed BMP would correct the existing problems caused by the uncontrolled runoff from upland sources.

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

Mr. Hughes made a motion to approve the exception for case CBE-04-040 with staff recommendations.

The motion was approved by a 3-2 vote.

AYE: Apperson, Hughes, Waltrip (3). NAY: Gussman, Lindsey (2).

5. CBV-06-012 Appeal - Robert & Bambi Walters – 5112 Shoreline Court continued from 10/11/06

Mr. Pat Menichino stated the staff report was presented to the Board at the October 11, 2006 meeting and since the public hearing was still open, staff would hold any comments until after the appellant addressed the Board.

Ms. Jennifer Lyttle, Assistant County Attorney, commented that Mr. Cook had rescinded the notice of violation for the limits of clearing and a buffer modification had been submitted for the removal of the poison ivy.

Mr. Hughes asked specifically what issues were before the Board.

Mr. Menichino referred this question to the appellant.

A. Ms. Bambi Walters, appellant, asked the Board to appeal the two notices of violation dated August 14, 2006, for the unauthorized removal of vegetation in the RPA buffer and the unauthorized removal of vegetation outside the limits of clearing. She stated if the Board granted these she would withdraw the remaining items from consideration. She also agreed the poison ivy buffer modification had been resolved.

Mr. Gussman asked what the ramification to the County would be if the Board granted the appeal for the notices of violation.

Ms. Lyttle stated the Board would in effect be stating that County staff was incorrect in issuing the notices of violation.

All Board members agreed they wanted to hear arguments for the two notices of violation first.

A. Ms. Walters stated she had reported the notices of violation to various boards reviewing her moral character for her professional licenses, and they were requesting more than the letter rescinding the violation. She referred to documents previously presented to the Board and maintained there was no unauthorized clearing and there was no unauthorized encroachment into the RPA.

Mr. Cook stated a restoration plan had not been submitted but based on a field evaluation; the plantings were in place so the notice of violation for the limits of clearing was rescinded. Regarding the encroachment into the RPA, he stated the County was requiring a restoration plan and 3 additional canopy trees.

Mr. Hughes asked Ms. Walters if she would give representation that she would voluntarily have 3 additional canopy trees planted on her property.

Ms. Walters stated she would and added the trees were already on the property waiting to be planted.

Mr. Hughes stated in his opinion the buffer was restored or was in the process of being restored to the satisfaction of the County. Therefore he had no problem finding in favor of the appellant and granting the appeal for the notices of violation, showing no bias to the County for issuing the violations.

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

Mr. Hughes made a motion to grant the appeal of case CBV-06-012, for the two notices of violation.

The motion was approved by a 5-0 vote.

D. BOARD CONSIDERATIONS - None

1. Calendar Year 2007 Meeting Schedule

The Board adopted the 2007 Chesapeake Bay Board meeting schedule by a voice vote, to be held on the 2nd Wednesday of each month immediately following the Wetlands Board meeting, or at 7:00 PM if a Wetlands Board is not held, provided there are cases to be considered.


E. MATTERS OF SPECIAL PRIVILEGE - none

F. ELECTION OF OFFICERS FOR YEAR 2006

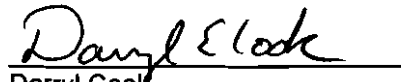
Mr. Lindsey moved that William Apperson be appointed as Chairman. All members were in favor. Mr. Apperson moved that Henry Lindsey be appointed as Vice-Chairman. All members were in favor. It was the consensus of the Board to re-appoint Darryl Cook as Secretary.

G. ADJOURNMENT

The meeting was adjourned at 11:23 PM.



William Apperson
Chairman



Darryl Cook
Secretary