

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
DECEMBER 13, 2006 - 7:00 PM**

A. ROLL CALL

Henry Lindsey
John Hughes
Larry Waltrip
William Apperson

ABSENT

David Gussman

OTHERS PRESENT

County Staff

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

C. PUBLIC HEARINGS

1. CBE-06-073 Brian Ostrom – 115 Jordans Journey

Mr. Pat Menichino presented the following case:

Project Summary and Description: Mr. Brian Ostrom, 115 Jordans Journey, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the modification and construction of a gravel driveway expansion, sand set brick paver walkways, a brick/bluestone portico floor, and a gray flagstone patio. The residence is located adjacent to a perennial water body (Lake Pasbeigh) located in First Colony. A detailed mitigation plan has been provided along with the exception request.

The residence was constructed prior to the adoption of the Ordinance. 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 Lake Pasbeigh and it was determined it is a water body with perennial flow requiring that a 100 ft RPA buffer be established around it. This 100 ft RPA buffer encompasses approximately 80% of Mr. Ostrom's lot.

Mr. Ostrom submitted a plan which proposes installation of accessory impervious structures and surfaces within the 50 ft and 100 ft RPA buffers.

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 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 brick paver walkways, brick/bluestone portico floor, and gray flagstone patio are all considered an accessory use and could not be approved administratively. The applicants have chosen to request an exception for the proposed construction from the Chesapeake Bay Board (Board).

The issue for the Board's consideration is the installation of approximately 670 sqft of new impervious accessory structures within the 50 and 100 ft RPA buffers.

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 670 sqft of impervious accessory structures.

The WQIA proposes to mitigate for the impacts to the RPA by planting 3 native understory trees, 22 native shrubs, and groundcover. This vegetation will be located within the RPA buffer to help filter nonpoint source pollution. This mitigation plan meets the typical mitigation requirements by planting one tree, two understory trees, and three shrubs for each 400 sqft of impervious cover established.

The owners have 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: The Board has approved construction of similar paver patios in Ford's Colony, at 153 John Pott Drive, on May 11, 2005, at The Vineyards Clubhouse, July 13, 2005, and at 2658 Jockeys Neck Trail, The Vineyards, on March 8, 2006.

If the Board grants the exception, the proposed mitigation plan is in accordance with the standard mitigation requirements for impervious surfaces. If approved, it should be conditioned on the following:

1. The mitigation for the proposed impervious accessory structures should be accomplished through the full implementation of the landscape plan submitted with the WQIA.
2. 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 satisfactory to the county attorney.
3. This exception request approval shall become null and void if construction has not begun by December 13, 2007.

Mr. Apperson opened the public hearing.

A. Lisa Meddin, landscape designer with Harmony Design, representing the applicant, stated the proposed patios and walkways would be replacing existing ones that were in disrepair. In addition this project was a functional restoration to allow the homeowner access between the carport and residence.

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

Mr. Lindsey stated because the residence was constructed prior to adoption of the ordinance and the request was for repair of existing walkways, he felt the Board should grant this exception.

Mr. Hughes added that the mitigation was more than adequate for the proposed impacts.

Mr. Lindsey made a motion to grant the exception for case CBE-06-073 with staff recommendations.

The motion was approved by a 3-0 vote. Mr. Apperson did not vote.

2. CBE-06-075 Eric Blackwell – 1419 Katherine Shaye Lane

Mr. Pat Menichino presented the following case:

Project Summary and Description: Mr. Eric Blackwell, 1205 River Ford Drive, Alabama, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of a detached garage and brick courtyard wall, totaling approximately 125 sqft of impervious area. The lot is located adjacent to perennial features that require a 100 ft RPA buffer. This buffer encompasses approximately 80% of the lot.

The lot was recorded in 1999 after the adoption of the Ordinance but prior to 2004, when the Ordinance requirements related to the determination of perennial flow were changed requiring that perennial water bodies be identified based on a field evaluation. In 2006, as part of the administrative review of a building permit application for a proposed dwelling on this lot, it was determined that the proposed residence is adjacent to a pond and other wetland features with perennial flow requiring a 100 ft RPA buffer be established around those features.

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 *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 detached garage and brick courtyard wall are considered an accessory use and could not be approved administratively. The applicants have chosen to request an exception for these structures from the Chesapeake Bay Board (Board).

The issue for the Board's consideration is the installation of a 575 sqft detached garage with 60 sqft of encroachment, and a brick courtyard wall with 65 sqft of encroachment in the 100 ft 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 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 construction of a single family dwelling and for the 125 sqft of accessory structures.

The WQIA proposes to mitigate for the impacts to the RPA by planting 7 native trees and 14 native understory trees and 28 native shrubs in the RPA. This vegetation will be located to the front and rear of the proposed residence and on property adjacent to this lot, owned by Governors Land, and deeded as Natural Open Space Easement. This mitigation plan meets the typical mitigation requirements by planting one tree, two understory trees, and three shrubs for each 400 sqft of impervious cover established.

The owners have 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: Both the Ordinance and staff consider a detached garage and brick courtyard wall, as accessory structures and as impervious surfaces. The Ordinance does not authorize staff to give administrative approval for the creation of accessory structures in the RPA. However, the Board has approved the construction of similar, landscape walls and detached structures in the past.

If the Board grants the exception, the proposed mitigation plan is in accordance with the standard mitigation requirements for impervious surfaces. If approved, it should be conditioned on the following:

1. The mitigation for the proposed garage and courtyard wall should be accomplished through the full implementation of the landscape plan submitted with the WQIA.
2. 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 satisfactory to the county attorney.
3. This exception request approval shall become null and void if construction has not begun by December 13, 2007.

Mr. Lindsey asked what would happen if the owners of the common area wanted to remove the plantings at a later date.

Mr. Menichino stated removal of the plantings would require approval from the County.

All Board members agreed that when space was not available on the specific lot, plantings in the natural open space was a good idea and commended staff on this solution.

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

Mr. Hughes made a motion to grant the exception for case CBE-06-075 with staff recommendations.

The motion was approved by a 3-0 vote. Mr. Apperson did not vote.

3. CBE-06-076 Brian Blackwell – 1423 Katherine Shave Lane

Mr. Pat Menichino presented the following case:

Project Summary and Description: Mr. Brian Blackwell, 3309 Summit Loop, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of a detached garage, brick paver patio, and brick courtyard wall, totaling 765 sqft of impervious area. The lot is located adjacent to perennial features that require a 100 ft RPA buffer. This buffer encompasses approximately 95% of the lot.

The lot was recorded in 1999 after adoption of the Ordinance but prior to 2004 when the Ordinance requirements related to the determination of perennial flow were changed requiring that perennial water bodies be identified based on a field evaluation. In 2006, as part of the administrative review of a building permit application for a proposed dwelling on this lot, it was determined that the proposed residence is adjacent to a pond and other wetland features with perennial flow requiring that a 100 ft RPA buffer be established around those features.

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 *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 detached garage, brick paver patio and brick courtyard wall are considered an accessory use and could not be approved administratively. The applicants have chosen to request an exception for these structures from the Chesapeake Bay Board (Board).

The issue for the Board's consideration is the installation of a 575 sqft detached garage, a 120 sqft brick paver patio, and a brick courtyard wall within the 100 ft 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 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 construction of a single family dwelling and for the 775 sqft of accessory structures.

The WQIA proposes to mitigate for the impacts to the RPA by planting 6 native trees and 12 native understory trees and 18 native shrubs in the RPA. This vegetation will be located to the rear of the proposed residence and on property adjacent to this lot, owned by Governors Land, and deeded as Natural Open Space. This mitigation plan meets the typical mitigation requirements by planting 1 tree, 2 understory trees, and 3 shrubs for each 400 sqft of impervious cover established.

The owners have 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: Both the Ordinance and staff consider a detached garage, brick paver patio and brick courtyard walls, as accessory structures and impervious surfaces. The Ordinance does not authorize staff to give administrative approval for the creation of accessory structures in the RPA. However, the Board has approved the construction of similar brick paver patios, landscape walls and detached structures in the past.

If the Board grants the exception, the proposed mitigation plan is in accordance with the standard mitigation requirements for impervious surfaces. If approved, it should be conditioned on the following:

1. The mitigation for the proposed garage, patio, and courtyard wall should be accomplished through the full implementation of the landscape plan submitted with the WQIA.
2. The patio will be constructed using non-interlocking brick pavers set in sand.
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 satisfactory to the county attorney.

4. This exception request approval shall become null and void if construction has not begun by December 13, 2007.

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

Mr. Lindsey made a motion to grant the exception for case CBE-06-076 with staff recommendations.

The motion was approved by a 3-0 vote. Mr. Apperson did not vote.

4. CBE-06-011 AES Consulting /Colonial Heritage LLC – Colonial Heritage – Phase III – Section 2

Mr. Mike Woolson presented the following case:

Project Description: Mr. Rick Smith of AES Consulting Engineers, Inc. has applied on behalf of Colonial Heritage, LLC, for an exception to the Chesapeake Bay Preservation Ordinance for impacts associated with the Colonial Heritage Phase 3, Section 2 project. The project is generally located at 6799 Richmond Road, between Phase 1, Sections 4 and 5 and the cross-country high-voltage electric transmission line.

For the purposes of constructing the necessary stormwater management facilities, sanitary sewer gravity main, and pedestrian bridge infrastructure, Colonial Heritage, LLC is proposing 0.24 acres of total encroachment into the Resource Protection Area (RPA). Impact #1, the stormwater outfall, is an administrative exception and comprises 0.03 acres of the total impact encroachment. The other three impact areas are considered Chesapeake Bay Board action items. Impact #2 is a combination sanitary sewer, water line, and pedestrian bridge crossing of 0.08 acres (already built); impact #3 is a continuation of the pedestrian path of 0.04 acres; and impact #4 is a continuation of the sanitary sewer and water line and is 0.09 acres.

Mr. Rick Smith and AES Consulting Engineers have worked with Environmental Division staff to reduce impacts to the RPA, from increasing BMP slope steepness (where feasible), to realignment of the utilities and pedestrian path to reduce grading and slope impacts.

History: AES Consulting Engineers first submitted the proposed plan of development for Colonial Heritage Phase 3, Section 2 to the Planning Division in February 2005. A site specific perennial stream evaluation revealed that multiple perennial streams existed adjacent to this plan of development, all of which drain towards Cranston's Mill Pond and ultimately to the James River through the Yarmouth Creek tributary. As this plan of development was submitted after January 1, 2004, the project was 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 on both sides of the streams and contiguous wetlands. Due to site restrictions resulting from the RPA requirements, one of the stormwater management facilities, which will handle the majority of stormwater runoff for the site, has been proposed for installation near the headwaters of the perennial stream.

Section 23-11 of the revised Ordinance states "a Water Quality Impact Assessment (WQIA) shall be required for any proposed land disturbance in the RPA resulting from development or redevelopment activities." Mr. Rick Smith and AES Consulting Engineers previously submitted a WQIA for this project and was heard at the May 10, 2006 Chesapeake Bay Board meeting. The project was deferred indefinitely at that time because the subdivision had lost the preliminary approval status that the Planning Division had granted. Preliminary approval was again granted by the Planning Division on December 1, 2006 and this WQIA can now go forward for deliberation by the Board.

Water Quality Impact Assessment: The impacts to the RPA buffer and RPA features resulting from the current plan of development requiring administrative and board actions are 0.24, of which 0.03 acres are administrative action items and 0.21 acres are Board action items. The following items are, or will be, implemented into the associated plan of development:

- Additional Natural Open Space easements, labeled as RPA Buffer Impact Mitigation Area #1 and #2 on Exhibit A, which total 0.11 acres. This preservation is beyond that which is required for overall project stormwater compliance;
- Erosion control type 3 blanket matting will be applied to all cut and fill slopes throughout the RPA impact areas;

- Conservation seed mix will be used on all upland disturbed areas within the RPA and a wetland seed mix on all disturbed areas within the wetlands;
- Stabilization of a severe head cut upslope of the RPA on the eastern limit of the project site to reduce the excessive sedimentation of the wetland system downstream.

AES, acting on behalf of Colonial Heritage, LLC, 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: Given the nature of the development and the mitigation measures proposed, staff finds that this 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 recommends that the Chesapeake Bay Board approve this WQIA and the exception for the Colonial Heritage Phase 3, Section 2. Furthermore, all recommendations listed within the Water Quality Impact Assessment, Dated December 1, 2006, are to be incorporated into the site plans for the project and must receive final approval by the Environmental Division. This exception request approval shall become null and void if construction has not begun by December 13, 2007. Any changes to the plan of development that would cause any deviation from the items listed in the WQIA, either in the form of increased impacts to the RPA or omission of mitigation requirements from the submitted plan of development must be reviewed or approved by the Board.

Mr. Lindsey asked how the pedestrian bridge crossing got built without approval from the Board.

Mr. Woolson explained that during the Colonial Heritage, Phase 4 and 5 plan of development a revision was submitted for a sanitary sewer that showed the bridge but it was missed by staff. During a site visit for Phase 3, Section 2, staff noticed the bridge and informed the applicant it would have to receive approval from this Board.

Mr. Apperson opened the public hearing.

A. Mr. Rick Smith, AES Consulting Engineers, confirmed there was no intent to hide the bridge; it was an oversight by County staff.

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

Mr. Lindsey made a motion to grant the exception for case CBE-06-011 with staff recommendations.

The motion was approved by a 3-0 vote. Mr. Apperson did not vote.

5. CBE-05-068 AES Consulting/Centex Homes – Marywood Subdivision

Mr. William Cain presented the following case:

Project Description: Mr. V. Marc Bennett, P.E. of AES Consulting Engineers, Inc. applied on behalf of Centex Homes, for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for impacts associated with the Marywood project. The project is generally located to the north of Kingswood and Druid Hills subdivisions, to the south of Hickory Sign Post Road, and to the west of the Riverside Medical Center and La Fontaine Condominiums.

For the purposes of constructing the necessary stormwater management facility outfalls, sanitary sewer gravity main, and road infrastructure, Centex Homes is proposing 2.24 acres of total encroachment into the Resource Protection Area (RPA). This has been reduced from the previously anticipated 4.40 acres associated with the previous application.

History: Centex Homes submitted the proposed plan of development for the Marywood development to the Planning Division in September 2004. The James City County Planning Committee approved the master plan for the development at the December 5, 2005, Planning Commission meeting after the plan preparer and applicant addressed all concerns pertaining to perennial stream locations, stormwater management requirements, erosion and sediment control objectives, and planning issues which stemmed from previous DRC meetings where the plan was originally deferred.

Environmental Division conditions for approval of the master plan consisted primarily of reducing impacts to environmentally sensitive areas. Plan modifications provided to address this requirement consisted of steeper cut and fill slopes, the relocation of the southernmost stormwater management basin, and a net decrease in the number of proposed lots.

A site specific perennial stream evaluation revealed that multiple perennial streams existed on the parcel, all of which outfall to Lake Powell and ultimately to the James River through the Mill Creek tributary. As this plan of development was submitted after January 1, 2004, the project was 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 on both sides of the streams and contiguous wetlands. Due to the necessity to connect the subdivision to the existing sanitary sewer pump station at Hickory Signpost, the sanitary sewer gravity main connection will be located within the limits of the RPA.

Section 23-11 of the revised James City County Chesapeake Bay Ordinance states that "a Water Quality Impact Assessment (WQIA) shall be required for any proposed land disturbance in the RPA resulting from development or redevelopment activities." AES Consulting Engineers previously submitted a WQIA for the Marywood project and that case was heard at the September 13, 2006, Chesapeake Bay Board meeting. Though staff recommended approval, the case was denied by the Board due to the location of the stormwater management basin within the limits of the RPA and atop a perennial stream. This basin has been removed from the plan and the revised areas of encroachment before the Chesapeake Bay Board at this time result from impacts (clearing and grading) associated only with a utility (sewer) crossing. All previous impacts have either been removed from the RPA or have been reduced to the point that they will only require an administrative exception.

Water Quality Impact Assessment: The impacts to the RPA buffer and RPA features resulting from the current plan of development requiring administrative and board actions have been reduced from 4.40 acres to 2.24 acres. The impacts are associated with the extension of Oxford Road (Impacts #1.1 and 1.2), the proposed ravine crossing of Braddock Road (Impact #2), stormwater conveyance system and BMP outfalls (Impacts #3.1, 3.2, 3.5), and a utility bridge (Impact #4). These impacts are presented in Section II of the WQIA as provided by AES. Only those encroachments associated with Impact #4 require a board action, as all others are administrative actions by Ordinance. With this being the case, the total impacts to components of the RPA requiring Board approval at this time are 0.32 acres. To mitigate for the both the proposed administrative and Board impacts, the following will be implemented into the associated plan of development:

- Erosion control type 3 blanket matting will be applied to all cut and fill slopes throughout the site;
- Stilling basins to reduce turbulence at stormwater outfalls and downstream erosion will be provided at all BMP outfalls and the outfalls of stormwater conveyance systems not immediately discharging to a stormwater management basin;
- Conservation seed mix will be used on the slopes of all BMP embankments.
- Installation of Rain Barrels on all houses along Collington Court (These units do not drain to one of the proposed stormwater management basins).

Other environmental considerations are the creation of a 15-foot building setback from the RPA buffer, and the preservation of 9+ acres of open space along Hickory Signpost Road.

AES acting on behalf of Centex Homes, 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 and the exceptions for the Marywood project. Furthermore, all recommendations listed therein are to be incorporated into the site plans for the 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 December 13, 2007. Any changes to the plan of development that would cause any 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. Danny Poe, Chief Wastewater Engineer for James City Service Authority (JCSA), addressed the Board stating JCSA's preference for the gravity sewer extension bridge. He stated the alternative would be to use multiple grinder pump units that are more maintenance intensive and prone to spillage during power outages. He stated sewer bridges were monitored and inspected regularly by JCSA.

Mr. Lindsey asked for a description of the proposed sewer line, specifically the length and height above ground. He also asked for information about drainage into Lake Powell and impact to the RPA from the 5 proposed BMPs.

Mr. Poe stated the pipeline would be above ground, placed on timber piles set in the ground at 18 foot spacing to hold the line in place and on grade.

Mr. Marc Bennett, AES Consulting Engineers, stated the total length of the pipeline would be 340 feet varying in grade from 0 to 3 or 4 feet above the wetland marsh. He stated only the sewer crossing was before the Board, but the current plan of development reduced the number of lots to 90 thus reducing the impervious area and runoff into the lake. He added that none of the proposed BMPs were in the RPA but they would discharge into the RPA as outlined in the WQIA.

Mr. Hughes asked if JCSA also maintained the grinder pumps.

Mr. Poe stated they were the responsibility of the resident but typically residents took advantage of maintenance agreements JCSA offered on the grinder pumps.

Mr. Waltrip asked how many of the proposed 90 lots would require grinder pumps with and without the proposed sewer extension.

Mr. Poe stated and Mr. Bennett confirmed 49 of the 90 lots would be serviced by the proposed gravity sewer system.

Mr. Apperson opened the public hearing.

A. Shereen Hughes, 103 Holly Road, spoke in opposition to the case because the storm water master plan for the site had not been reviewed. She stated this plan was important in determining if the intent of the Chesapeake Bay Preservation Ordinance was achieved. She stated her concern that without thorough review there might be additional impacts that have been overlooked. She then suggested the case be deferred or have conditions attached to include some infiltration type LID measures, turf management, water quality monitoring, and additional rain barrels on lots along Lake Powell.

B. Tony Opperman, 108 Spring Road, spoke in opposition to the case. As stated in his email correspondence (~~copy attached~~), the exception request did not satisfy the requirements of the Ordinance under section 23-14(c)(4). He added that because there were alternative methods to the gravity sewer system, and alternative options for developing the site, the circumstances in the exception request were self-created and self-imposed.
Copy of Mr Opperman's email is in the case file

C. Charles Lord, 3 Brandon Circle, spoke in opposition to the case because of the possible impact on the Lake Powell Dam.

D. Roark Mulligan, 105 N. Sulgrave, spoke in opposition to the case because of the impact on the environment.

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

Mr. Lindsey stated he was concerned with the impact on water quality and Lake Powell.

Mr. Hughes stated the only issue before the Board was the sewer bridge and whether or not the circumstances were self-imposed because there were alternative solutions. He stated his concern for the likelihood of damage to an elevated sewer line through a heavily wooded area in the RPA.

Mr. Waltrip stated he believed there were advantages to a gravity sewer line but was also concerned with impact on the RPA if there were damage to the sewer bridge from a fallen tree.

Mr. Apperson stated he had seen pressurized sewer systems leak but had never seen a sewer bridge broken by a fallen tree.

Mr. Hughes made a motion to deny the exception request for case CBE-05-068 because the conditions were self-created and self-imposed due to the available, alternate solutions.

The motion to deny the exception was approved by a 3-0 vote.
AYE: Lindsey, Hughes, Waltrip (3). Mr. Apperson did not vote.

D. BOARD CONSIDERATIONS

1. Amendments to the Ordinance (copies attached)

Ms. Jennifer Lyttle, Assistant County Attorney, presented a draft of an amendment to establish a one year time limit for re-submittal of a denied exception and a 30 day time limit for appealing a Board decision to the Circuit Court.

Mr. Hughes asked if other locations in the state enforced time limits.

Ms. Lyttle stated the Planning and Zoning Ordinances contained 30 day appeal periods and some jurisdictions tied their Chesapeake Bay Ordinance to their Zoning Ordinance in order to enforce these limits. Because James City County has a stand alone Chesapeake Bay Ordinance the proposed appeal period would require a change in the state regulations and the authority to change these regulations would have to come from the Chesapeake Bay Local Assistance Board (CBLAD). Therefore she was only requesting comments from the Board at this time.

It was a consensus of the Board members that this be put on January's Board Considerations so they would have additional time to review it.

Mr. Darryl Cook submitted a proposed amendment to the Ordinance for allowing administrative approval of small accessory structures in the RPA. He stated this was first suggested in August and favorably received by this Board.

Mr. Lindsey stated this was proposed by the City of Williamsburg and their Board was opposed to it.

Ms. Lyttle stated she was also checking with CBLAD on this amendment to make sure there was authority to make this change.

All Board members agreed consideration of these amendments should wait until the authority for the change is received from CBLAD.

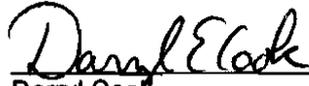
E. MATTERS OF SPECIAL PRIVILEGE - none

F. ADJOURNMENT

The meeting was adjourned at 8:23 PM.



William Apperson
Chairman



Darryl Cook
Secretary

MEMORANDUM

DATE: December 13, 2006

TO: The Chesapeake Bay Board

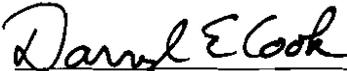
FROM: Darryl E. Cook, Environmental Director

SUBJECT: Ordinance to Amend and Reordain Chapter 23, Chesapeake Bay Preservation, Section 23-7 Development criteria for resource protection areas.

Attached for your consideration is a proposed ordinance to amend James City County Code Section 23-7, Development criteria for resource protection areas. Under the proposed ordinance the manager would have the authority to issue an exception to allow placement of a small accessory structure or use within the RPA.

The current Ordinance does not authorize the manager to grant exceptions for accessory structures or uses administratively. As a result, all citizen exception requests for RPA buffer encroachments involving accessory structures and uses must be processed through the Chesapeake Bay Board. Due to advertising, scheduling and public hearing requirements, this can result in a six to eight week process to obtain Board action on these accessory items. The amendment would add a new subparagraph (5) to allow for small accessory structures and uses (less than 150 square feet in size) to be granted administratively by the manager.

Staff recommends the Board approve the proposed ordinance.


Darryl E. Cook

Attachment
1. Ordinance

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 23, CHESAPEAKE BAY PRESERVATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 23-7, DEVELOPMENT CRITERIA FOR RESOURCE PROTECTION AREAS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 23, Chesapeake Bay Preservation, is hereby amended and reordained by amending Section 23-7, Development criteria for resource protection areas.

Chapter 23. Chesapeake Bay Preservation

Sec. 23-7. Development criteria for resource protection areas

- (5) A new accessory structure or use may be constructed in the RPA provided the following criteria are met:
- a. The applicant must comply with all other County Code requirements;
 - b. The maximum encroachment into the RPA buffer granted by the Manager shall not exceed 150 square feet;
 - c. The applicant has not previously been granted an administrative exception resulting in an RPA buffer encroachment for an accessory structure or use on the same property;
 - d. The proposed structure or use shall be located in an existing turf or maintained landscape area unless there are none available on the property;
 - e. The proposed structure or use shall not be located in the seaward 50 feet of the RPA buffer;
 - f. The lot or parcel must have been created prior to January 1, 2004, or have been recorded without an RPA line shown on the original recorded plat for the lot or subdivision;

MEMORANDUM

DATE: December 13, 2006

TO: The Chesapeake Bay Board

FROM: Jennifer C. Lyttle, Assistant County Attorney

SUBJECT: Ordinance to Amend and Reordain Chapter 23, Chesapeake Bay Preservation, Section 23-15 Applications for exceptions and Section 23-17, Appeals.

Attached for your consideration is a proposed ordinance to amend James City County Code Section 23-15, Applications for exceptions and Section 23-17 Appeals. Under the proposed ordinance a denied application for an exception may be resubmitted for the Chesapeake Bay Board's (Board) consideration one year after the Board's final decision denying the application. In addition, the proposed ordinance limits the appeal period for one to appeal a decision of the Board to the Circuit Court. Under the proposed ordinance an applicant shall have thirty days from the date of the Board's decision to appeal such decision to the Circuit Court. Currently, there is no appeal period defined.

Staff recommends the Board approve the proposed ordinance.


Jennifer C. Lyttle

Attachment
1. Ordinance

ORDINANCE NO. _____

AN ORDINANCE TO AMEND AND REORDAIN CHAPTER 23, CHESAPEAKE BAY PRESERVATION, OF THE CODE OF THE COUNTY OF JAMES CITY, VIRGINIA, BY AMENDING SECTION 23-15, APPLICATIONS FOR EXCEPTIONS AND SECTION 23-17, APPEALS.

BE IT ORDAINED by the Board of Supervisors of the County of James City, Virginia, that Chapter 23, Chesapeake Bay Preservation, is hereby amended and reordained by amending Section 23-15, Applications for exceptions and Section 23-17, Appeals.

Chapter 23. Chesapeake Bay Preservation

Sec. 23-15. Applications for exceptions.

Applications for exceptions shall be made in writing to the board or the manager as appropriate in accordance with sections 23-14(a) and (e), and shall include the following:

- (1) Name and address of applicant and property owner;
- (2) Legal description of the property and type of proposed use and development;
- (3) A sketch of the dimensions of the lot or parcel, locations of buildings and proposed additions relative to the lot line, the RPA, slopes greater than 25 percent and all wetlands;
- (4) Location and description of any existing private water supply or sewage system;

- (5) A water quality impact assessment completed in accordance with section 23-11 of this chapter and guidelines established by the manager; and
- (6) For exceptions that must be granted by the Chesapeake Bay Board, a nonrefundable processing fee of \$100 shall accompany each application to cover the cost of process.

Resubmission of an application for exception.

After one (1) year from the date of the board's final decision denying the grant of an exception, an applicant may resubmit the application for exception only if the resubmitted application is significantly different from the denied application and the resubmitted application incorporates changes which sufficiently address the board's reason(s) for denial.

Sec. 23-17. Appeals.

Appeal of Administrative Decisions.

(a) An owner of property subject to an administrative decision, order or requirement under this chapter may appeal by submitting a written application for review to the board no later than 30 days from the rendering of such decision, order or requirement. The board shall hear the appeal as soon as practical after receipt of the application. The appellant, the board of supervisors, the manager, the planning director and any person or agency representing an interest in the matter shall be notified by the board no less than ten days prior to the date of the hearing. Published notice of the

board's public meetings shall state that appeals from decisions under the Chesapeake Bay Preservation Ordinance may be heard.

(b) In rendering its decisions, the board shall balance the hardship to the property owner with the purpose, intent and objectives of this chapter. The board shall not decide in favor of 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.

(c) The board may impose conditions to the granting of any waiver or exception as it may deem necessary in the public interest, and may, to ensure compliance with the imposed conditions, require a cash escrow, bond with surety, letter of credit or other security as is acceptable to the county attorney.

~~(d) An owner of a property subject to a board decision, order or requirement may appeal to the Circuit Court of James City County.~~

Appeal from Decisions of the Board.

Any person jointly or severally aggrieved by the Chesapeake Bay Board may appeal to the Circuit Court of James City County through a petition specifying the grounds on which aggrieved within thirty (30) days after the final decision. A "final

*decision" is the decision that resolves the merits of the action pending before the board
or effect a dismissal of the case with prejudice.*

Bruce C. Goodson
Chairman, Board of Supervisors

ATTEST:
Sanford B. Wanner
Clerk to the Board

Adopted by the Board of Supervisors of James City County, Virginia, on this ____
day of _____, 2006.