

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
FEBRUARY 14, 2007 - 7:00 PM**

**A. ROLL CALL**

William Apperson  
Henry Lindsey  
John Hughes  
Larry Waltrip  
David Gussman  
Larry Waltrip

**ABSENT** - none

**OTHERS PRESENT**

**B. MINUTES** – The January 17, 2007 minutes were approved as presented.

**C. PRESENTATIONS**

Larry Foster, General Manager, James City Service Authority introduced Danny Poe, Chief Engineer, James City Service Authority, who gave a brief presentation on the history, reliability and advantages of gravity sewer systems.

**D. PUBLIC HEARINGS**

**1. CBE-06-091 - David Barth – 204 Kilton Forest**

Mr. Pat Menichino presented the following case:

**Project Summary and Description**

Mr. David Barth, 10091 Oakton Terrace, Oakton, VA, 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 residence, deck, and concrete patio, totaling 3811 sqft of impervious area.

The lot was recorded in 2003 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 wetland features with perennial flow requiring that a 100 ft RPA buffer be established around those features. This 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 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."

Therefore, the residence, deck, and patio proposed within the RPA buffer could not be approved administratively. The applicants have chosen to request an exception for these structures from the Board.

The issue for the Board's consideration is the installation of a 3811 sqft residence, deck, and patio 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 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, deck, and patio.

The WQIA proposes to mitigate for the impacts to the RPA by planting 10 native trees, 20 native understory trees, and 30 native shrubs in the RPA. This vegetation will be located to the rear of the proposed residence. The 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**

The lot was created prior to the establishment of the RPA requirement, the house cannot be relocated on the lot to further 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 of the exception with the following conditions:

1. Full implementation of the mitigation landscape plan submitted with the WQIA or if field conditions prevent the full implementation of the RPA mitigation plan, an alternate plan along with a contribution paid into a County approved environmental fund may substituted. The amount paid into the fund shall equal \$100 for each required trees or shrub not able to be planted on the property.
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. The patio will be constructed using non-interlocking brick pavers set in sand, instead of concrete.
4. The deck shall have 3 inches of gravel on filter fabric installed underneath.
5. 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.
6. This exception request approval shall become null and void if construction has not begun by February 14, 2008.

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. If the Board grants the exception, the proposed mitigation plan is in accordance with the standard mitigation requirements for impervious surfaces.

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

Mr. Hughes commented that this case was similar to previous cases and the proposed mitigation plan was reasonable.

Mr. Gussman made a motion to grant the exception for case CBE-06-091 with staff recommendations.

The motion was approved by a 5-0 vote.

The Board made a change in the order of the Agenda for the following case:

**2. CBV-06-007 APPEAL – Peter Paluzsay – 128 Shellbank Drive**

**A.** Marina Phillips, Kaufman & Canoles, Attorney for the applicant, requested a deferral because the contractor and adjacent property owner were out of town and they were not prepared to present the case.

Mr. Lindsey stated his concern with another postponement by the applicant because the appeal had originally been requested in August 2006.

Jennifer Lyttle, Assistant County Attorney, and Pat Menichino, Environmental Staff, stated the County had no objections to the deferral request.

Mr. Apperson opened the public hearing.

Mr. Lindsey made a motion the deferral be granted and the public hearing for case CBV-06-007 be continued to March 14, 2007.

The motion was approved by a 5-0 vote.

**3. CBE-06-084 – Environmental Specialties Group/Villa Development LLC – Villas at Five Forks  
Cont from 1/17/07**

Mr. Darryl Cook presented the following case:

**Project Description**

Ms. Julie Steele, Environmental Specialties Group, applied on behalf of Villa Development, LLC, for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the Villas at Five Forks development plan. The project is located at 248 Ingram Road, near the intersection of Ironbound Road and John Tyler Highway, otherwise known as the Five Forks area, and consists of approximately 31 acres of residential development.

This project proposes to encroach into the RPA by approximately 0.34 acres for the construction of two sanitary sewer connections, one water line connections and a BMP outfall. Site restrictions require that the proposed gravity sanitary sewer system and the proposed water line system tie into the respective existing systems adjacent to the site by a connection through the RPA.

**History**

The project was presented to the Board at the January 17, 2007, meeting but the case was deferred until February 14, 2007, at the request of the applicant. A site specific perennial stream evaluation for the site approved on October 7, 2004. The RPA, as depicted on the site plans is correct. Under Section 23-11 of the revised Ordinance, it states that a water quality impact assessment (WQIA) shall be required for any proposed land disturbance within RPAs resulting from development or redevelopment activities. Environmental Specialties Group has submitted the WQIA for this project. The proposed project's RPA impacts involve both categories of Ordinance exceptions; administrative and Board exceptions. The issue to be considered by the Chesapeake Bay Board is the 0.13 acre impact (clearing and land disturbance) associated with the installation of two sanitary sewer connections and a water line connection within the limits of the RPA

### **Water Quality Impact Assessment**

The total impacts to the RPA buffer and RPA features resulting from the current plan of development are 0.34 acres. The impacts for the Board's action are associated with the construction and installation of the two sanitary sewer connections, which are required in order to obtain gravity flow to the existing sewer system for this project. There is a further impact for the Board's action, and that is for the construction and installation of a water line connection to the existing water system for this project. Though the installation of these systems will not produce any impervious area within the RPA, the utility easements will require regular maintenance and the existing woody vegetation will not be permitted to re-establish. To mitigate for these project impacts, the following will be incorporated into the associated plan of development:

- Conservation seed mix will be planted in the utility easements that must have on-going maintenance performed.
- Expansion of the RPA buffer by 0.36 acres through the use of conservation easements as mitigation at a 1:1 ratio for the buffer impacts.

Environmental Specialties Group, acting on behalf of Villa Development, LLC, has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The WQIA includes a map of the site showing the areas of RPA impacts. There are several references in the WQIA to the project's "plan set" that contains more detailed information. This "plan set" is the approved site plan for the project and is available at the Environmental Division office for Board members interested in seeing more site details. 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) of the James City County Code. Staff therefore recommends that the Chesapeake Bay Board approve the WQIA as it pertains to the Villas at Five Forks 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 February 14, 2008. 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. Hughes asked if any of the water or sewer lines continued into the RPA on the adjacent properties.

Mr. Cook stated all proposed impacts before the Board were on the Villas at Five Forks property.

Mr. Apperson opened the public hearing.

**A.** Julie Steele, Environmental Specialties Group, asked for the Board's approval of this exception for the utility crossings because all disturbed areas would be returned to grade, re-vegetated and there would be no detriment to water quality.

**B.** Aaron Small, AES Consulting Engineers, informed the Board that the project met the County's 10-point criteria. He stated the proposed sewer impacts were underground and the proposed water line was added at the request of James City Service Authority. He further stated the proposed water line stopped on the property line and RPA impacts on the adjacent property would be a separate case.

**C.** Buddy Spencer, Owner Villa Development, also asked the Board for their approval of this exception request. Mr. Apperson closed the public hearing as no one else wished to speak.

Mr. Gussman made a motion to grant the exception for case CBE-06-084 with staff recommendations.

The motion was approved by a 5-0 vote.

**4. CBE-06-078 – Williamsburg Environmental Group / HHHunt Communities, Inc - White Hall North Off-Site Utilities**

Mr. Darryl Cook presented the following case:

**Project Description**

Ms. Toni E. B. Small, P.E., Williamsburg Environmental Group, Inc. applied on behalf of HHHunt Communities, Inc., for an exception to the Chesapeake Bay Preservation Ordinance for impacts associated with the White Hall development. The project is generally located to the east of Richmond Road (Route 60) and Barhamsville Road (Route 30) intersection, south of Old Stage Road (Route 746), and is bisected by Rochambeau Drive.

For the purposes of constructing the necessary sanitary sewer gravity main, water line, road infrastructure and dam repair, HHHunt Communities is proposing 2.33 acres of total encroachment into the Resource Protection Area (RPA).

**History and Background**

The Master Plan (MP-07-05) for the White Hall development was approved by the Planning Commission on September 13, 2005 as part of a rezoning application. HHHunt Communities, Inc., has submitted plans for offsite utilities (September 2006), road improvements (September 2006) as well as a subdivision plan which includes stormwater management ponds (December 2006) associated with the White Hall development which are the source of impacts requiring the current hearing.

A majority of the property is situated in the Ware Creek drainage basin. In a letter dated, September 12, 2006, the Environmental Division approved a site-specific perennial stream evaluation, which revealed that multiple perennial streams existed on the parcels, which comprise the overall White Hall development. As a result, a Resource Protection Area (RPA) buffer of 100 feet has been imposed on both sides of the perennial streams and contiguous wetlands.

**Water Quality Impact Assessment**

The impacts to the RPA buffer and RPA features as detailed in Section 3.2 and on the Resource Protection Area Plan in the attached White Hall Water Quality Impact Assessment are summarized below:

**Impacts to be reviewed for board action**

*P-1, P-2, & P-5. Utility (sanitary sewer and water) Connections* – Permanent RPA impacts of 1.27 acres outside the project limits (P-1) and 0.20 acres inside the project limits (P-2) are necessary for the sanitary sewer connection to the existing gravity sewer main offsite. In addition, there are 0.06 acres of impact associated with the waterline extension (P-5) for a total area of encroachment into the RPA of 1.53 acres related to utility construction. The waterline impacts and a portion of the sanitary sewer impacts are within non-functioning portions of the buffer as they are located within the disturbed portions (rights-of-way) of Rochambeau Drive and Old Stage Road respectively.

**Impacts to be processed administratively**

*P-3. Dam Repair* – A permanent RPA impact of 0.62 acres is necessary for the repair of an existing dam.

*P-4. Rochambeau Median Turn Lane* – The turn lane within the median of Rochambeau Drive, required under proffer, will permanently impact approximately 0.17 acres of RPA buffer. The turn lane impacts lie within non-functioning portions of the RPA buffer within the existing disturbed portion (right-of-way) of the Rochambeau Drive roadway

### **Future Impacts**

Proposed future RPA impacts as shown in the RPA Plan are graphical representations and may be subject to minor changes as design plans for these impacts are finalized. They include 3 permanent impact areas associated with future stormwater outfall locations (labeled F-1, F-2 & F-3) as well as offsite sewer impacts (labeled F-4). Impacts F-1, F-2 & F-3 will be processed administratively, whereas F-4 will require future board review. A future WQIA with mitigation will be required for these future, proposed impacts.

To mitigate for the both the proposed administrative and Board impacts, the following will be implemented into the associated plan of development:

- Site stormwater quality management exceeding the minimum removal requirements (12 points provided vs. 10 points required);
- Revegetation of a portion of the utility line easement with the RPA buffer where allowed by JCSA;
- Preservation/enhancement onsite of 0.97 acres adjacent to the RPA buffer;
- Use of EC-3 matting along utility corridor;
- Use of conservation seed mix on disturbed utility easements outside of wetland areas;
- Use of wetland seed mix on disturbed utility easements outside of wetland areas;
- On the Bertrand Geddy property, through which a large portion of the sewer will be extended offsite, an area of 2.02 acres is being preserved in a conservation easement directly adjacent to the northeast side of the RPA buffer effectively expanding/preserving additional RPA buffer in this area. In addition, the majority of the remainder of the parcel including the southwest border of the RPA buffer is being placed in a Farm & Ranch Lands Protection (FRPP) easement further protecting areas adjacent to the buffer;
- Placement of orange safety fence along the limits of disturbance in the RPA and all wetland systems;
- Purchase of wetland mitigation credits for jurisdictional wetlands impacts.

A complete description of the proposed mitigation measures is presented in Section 3.3 of the attached White Hall Water Quality Impact Assessment.

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 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**

Given the treatment of significant portions of offsite drainage area allowing the project to achieve 12 BMP points exceeding the 10 point requirement for stormwater compliance, the revegetation of portions of permanent utility easements in the RPA buffer, the restoration and preservation of 0.97 acres adjacent to a portion of the RPA buffer on the project site, the preservation of additional buffer area on the Geddy property, the enhanced erosion control measures, wetland/conservation mix replanting and orange safety fence barriers to protect the adjacent RPA buffers/features, 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. In addition, the purchase of wetland mitigation credits for jurisdictional wetland impacts will also be undertaken.

Therefore, staff recommends that the Chesapeake Bay Board approve the WQIA and the exceptions for the White Hall project. Furthermore, all recommendations listed in the WQIA 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 February 14, 2008. 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. Apperson opened the public hearing.

**A.** Toni Small, Williamsburg Environmental Group and Aaron Small, AES Consulting Engineers were both present to answer questions from the Board.

Mr. Apperson asked if the owner of the adjacent property impacted by the proposed sewer crossing had any objection to the proposed plan.

**B.** Mr. Geddy, owner of the property at 3200 Rochambeau, stated he had worked with Aaron Small, approved of the proposed plan, and hoped the Board would grant the exception.

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

Mr. Hughes made a motion to grant the exception for case CBE-06-078 with staff recommendations.

The motion was approved by a 5-0 vote.

## **5. CBE-07-003 – James City County – Ironbound Road Regional BMP**

Mr. Darryl Cook presented the following case:

### **Project Description**

Mr. Mike Woolson applied on behalf of Mr. Sandy Wanner and the James City County Office of Housing and Community Development (OHCD) for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for impacts associated with the Ironbound Square Redevelopment project. The project involves the construction of 56 single-family residential units and 67 elderly multifamily housing units. The project is generally bounded by Ironbound Road to the west, Magazine Road to the north and east, Chambrel to the east, and the City of Williamsburg to the south.

For the purposes of constructing the project's regional stormwater management facility, OHCD is proposing 0.50 acres of encroachment into the Resource Protection Area (RPA).

### **History**

James City County OHCD is in the process of redeveloping the Ironbound Square area to improve and increase the amount of housing available for low and moderate income residents of the county. Phase I of the redevelopment project was rezoned in 2005 and a site plan was approved for this phase that includes 67 multifamily affordable elderly housing units and 5 single-family lots. Phase II of the rezoning is currently under review and will include 51 residential units, 20 of which must be affordable housing.

A site-specific perennial stream evaluation approved by the County revealed that a perennial stream existed on the parcel at the confluence of two degraded intermittent streams, all of which are unnamed tributaries to College Creek. 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 perennial stream and contiguous wetlands.

An analysis was performed to evaluate four alternatives to provide stormwater management for the site. Due to site constraints and restrictions, a regional stormwater management facility, which will handle the stormwater runoff for the site and portions of the Ironbound Road widening project, has been proposed for installation in the headwaters of the perennial stream. The preferred alternative (Alternative 4 in the WQIA) does not lose any of the redeveloped lots, stabilizes the intermittent channels, and protects the downstream perennial stream. The location for this basin will permanently impact approximately 70+/- linear feet of the associated perennial stream, impact 0.5 acres of RPA buffer, and effectively relocate the RPA feature to the outfall of the proposed BMP.

The Ordinance requirements for development activities in the RPA are presented in Chapter 23 of the James City County Code. Under Section 23-7(a), stormwater management facilities may be allowed in the RPA and approved administratively if certain conditions are met. Those conditions are spelled out in Section 23-7(4)(a) through (f) and are listed here for clarification purposes:

1. The location within the RPA is the optimum location, meaning that it is the best place to locate the facility from an engineering and functionality consideration regardless of the presence of the RPA;
2. The size of the facility is the minimum necessary to provide necessary flood control, stream channel protection, stormwater treatment, or all three;
3. The facility must be consistent with a stormwater management program that has been approved by CBLAB as a Phase 1 modification to the county's program;
4. All applicable permits for construction in state and federal waters must be obtained from the appropriate agencies;
5. Approval must be received from the county prior to construction;
6. Routine maintenance must be performed on the facility to assure that it continues to function as designed.

As James City County does not have a Phase 1 modification to its stormwater management program in the College Creek watershed, the exception request cannot be processed administratively but must be heard by the Chesapeake Bay Board in a public hearing.

#### **Water Quality Impact Assessment**

The Ordinance in Section 23-11 states, "a Water Quality Impact Assessment (WQIA) shall be required for any proposed land disturbance in the RPA resulting from development or redevelopment activities". The attached WQIA presents the impact to the RPA buffer and stream resulting from the plan of development and offsetting mitigation measures. The impact is associated with the construction of a stormwater management facility and its embankment in the RPA. To mitigate for the proposed impacts, the following will be implemented into the associated plan of development:

- All standard Erosion and Sediment Controls measures required by the Environmental Division, including erosion control blanket (EC-2) of the downstream face of the BMP;
- Stabilization of the embankment faces of the BMP with a conservation seed mix (on-site mitigation).
- Stabilization of a degraded stream channel within the Powhatan Creek Watershed on the Warhill site (Figures 8, 9, and 10): The proposed mitigation stream channel has become scoured and is experiencing bank instability through the reach. The future design will address the reasons for the instability. The ratio of restoration to impacts for the channel impacts will be approximately 4:1. This means that a minimum of 280 linear feet of channel will be restored or enhanced at the Warhill site (off-site mitigation).
- Preservation/enhancement of open space at the Warhill site: The ratio of preservation area to impacts to the buffer will be approximately 3:1. This means that about 1.5 acres of open space will be preserved/enhanced at the Warhill site (off-site mitigation).
- A plunge pool/stilling basin to reduce turbulence and downstream erosion will be provided at the BMP outfall;
- Treatment of approximately 20 acres of onsite and offsite stormwater runoff, the majority of which is currently uncontrolled discharge from currently developed upland areas;

A complete description of the mitigation measures is presented in the "Proposed Mitigation" Section of the WQIA for the project. The applicant has provided information on alternative stormwater management plans that present the environmental and development impacts of the alternatives.

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 mitigation measures, the reduced construction and maintenance costs associated with a single regional BMP, maximization of the affordable building lots of the redevelopment project, and the treatment of 20 acres of uncontrolled onsite and offsite runoff, 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 Ironbound Road Regional BMP. Furthermore, all recommendations listed in the WQIA 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 February 14, 2008. 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. Apperson stated he was impressed by the proposed treatment of 20 acres of currently uncontrolled stormwater runoff.

Mr. Hughes asked why James City County did not have a Phase 1 modification to its stormwater management program in the College Creek watershed.

Mr. Cook stated the modification had never been requested from CBLAB and this comment was added to the staff report for background information.

Mr. Gussman asked if only state and federal projects were exempt from Chesapeake Bay Board approval.

Mr. Cook stated that was correct.

Mr. Apperson opened the public hearing.

**A.** Mike Woolson, James City County Watershed Planner spoke on behalf of Sandy Wanner, County Administrator. He stated the proposed project had public benefits because it provided low and moderate income housing and combined the stormwater management requirements for the rezoning of Ironbound Square Phase I and the future widening of Ironbound Road. He then provided the Board members with photos of the stream systems on the site.

Mr. Lindsey stated he did not feel the provision of low income housing was necessary for the Boards consideration in granting the exception.

Mike Woolson stated this was provided for general information about the project.

Mr. Hughes asked about the specific location of the proposed storm water pond.

Mr. Woolson stated it would be immediately adjacent to the Cox Communication tower.

**B.** Terrance Strong, 114 Watford Lane, stated the proposed storm water pond would be directly behind his property and he was concerned for the safety of children, the increase in mosquitoes, and that land disturbance during warmer months might send snakes onto his property.

Mr. Waltrip asked about the depth of the proposed pond.

Mr. Strong said he was told it would be about 5 feet deep and approximately 1 acre in size.

Mike Woolson stated the pond configuration had not been finalized and there would be consideration for safety fencing and benches if necessary.

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

Mr. Hughes stated he felt the proposed location was a good area for the storm water pond.

Mr. Apperson made a motion to grant the exception for case CBE-076-003 with staff recommendations and the additional requirement of safety measures because the storm water pond could be considered an attractive nuisance.

The motion was approved by a 5-0 vote.

**E. BOARD CONSIDERATIONS**

**1. Proposals to increase the number of Chesapeake Bay and Wetland Board members from 5 to 7.**

Mr. Cook stated if the Board members were agreeable to this change, staff would present the request to the Board of Supervisors.

Mr. Lindsey stated he was in favor of this change because it would help insure the presence of enough Board members for a quorum at each meeting because only four Board members would be required for a quorum.

Mr. Apperson stated he thought two additional opinions might better serve the County citizens.

Mr. Hughes made a motion that Staff present this proposal to the Board of Supervisors.

The motion was approved by a 5-0 vote.

**F. MATTERS OF SPECIAL PRIVILEGE**

All Board members agreed that Staff should move forward with the proposal to amend the Chesapeake Bay Ordinance, Section 23-7, to allow for administrative approval on small accessory structures in the landward 50-foot buffer. (Copy of proposed amendment attached)

**G. ADJOURNMENT**

The meeting adjourned at 8:45 PM.



William Apperson  
Chairman



Darryl Cook  
Secretary

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;