

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
JUNE 13, 2007 - 7:00 PM**

- A. ROLL CALL** **ABSENT**  
William Apperson  
Henry Lindsey  
John Hughes  
Larry Waltrip  
David Gussman  
Larry Waltrip

**OTHERS PRESENT**

- B. MINUTES** – The May 9, 2007 minutes were approved as presented.

**C. PUBLIC HEARINGS**

**1. CBE-07-019 – Gary Little – 7578 Vincent Drive - Continued from 5/9/07**

Pat Menichino stated Gary Little, the applicant, had requested another continuation in order to obtain the proper building specifications for the retaining wall.

Mr. Apperson made a motion to keep the public hearing open for case CBE-07-019.

The motion was approved by a 5-0 vote.

Mr. Gussman made a motion to continue the public hearing for case CBE-07-019 to July 11, 2007.

The motion was approved by a 5-0 vote.

**2. CBE-07-022 – Ronald Hazelwood - 8653 Hicks Island Road**

Pat Menichino stated Staff was withdrawing the case due to an error in the determination of the RPA and suggested the Board vote to refund the application fee to the applicant.

Mr. Hughes made a motion to accept the dismissal of case CBE-07-022 and request that staff return the \$100.00 application fee to Mr. Hazelwood.

The motion was approved by a 5-0 vote.

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

Mr. Pat Menichino presented the following case history staff report and recommendation:

**Case History**

**November 8, 2006 - James City County Wetlands Board Meeting**

The shoreline stabilization project identified as W-19-06 – 3 West Circle, was presented to the Wetlands Board. This project proposed the installation of a riprap revetment along the existing shoreline to eliminate the erosion caused by wave attack and storm events on the James River.

The joint permit application submitted for this project included reports from VIMS, VMRC, and COE, along with the plans submitted by the applicant's consultant. Staff recommendation was for the approval of this project with certain conditions required.

Based on the information provided, the Wetlands Board unanimously approved the issuance of a Wetlands Permit for this project.

**November 8, 2006 - James City County Chesapeake Bay Board Meeting**

Following the Wetlands Board meeting, the Chesapeake Bay Board convened and was presented with a Chesapeake Bay Board Exception Request, CBE-06-071 – 3 West Circle to allow for the installation of a retaining wall and fill on the property. The work proposed in this application was originally a part of the overall plan for 3 West Circle but was separated out at the request of staff to delineate the jurisdiction of each Board. Staff recommendation was for the approval of this project with certain conditions required. Following the public hearing the Board voted to deny the applicants exception request by a vote of 4-1.

Although both cases involving 3 West Circle were presented to both Boards on the same evening, the two separate staff presentations along with two phases of construction may have lead to confusion resulting in one phase approved and one denied.

**February 2, 2007**

In an effort to clarify the shoreline stabilization phase, staff reviewed the project plans and specification for Wetlands permit W-19-06 and issued a memo to the Wetlands Board Chairman that provided the Board with information and a determination on the scope of the work that was already approved within the Wetlands permit.

**March 14, 2007 - James City County Chesapeake Bay Board meeting**

The applicant and consultant met with staff numerous times and revised their proposal in a way to minimize impacts and increase the mitigation/restoration in the RPA buffer. The applicant presented a revised exception request of CBE-06-71 to the Chesapeake Bay Board for consideration.

During the public hearing, the Board also heard from two adjacent property owners who voiced their concerns.

Mr. Noel Hume stated his concern for the impact to the Wetlands and to his home caused by the installation of the proposed bridge.

Mr. Darryl Rickman submitted information to the Board and stated *"A reasonable size house, compatible with the neighboring homes can be placed on the mainland side and meet the required setbacks"*.

Following the close of the public hearing Board member David Gussman made a motion to deny the applicants request in part because of Mr. Rickman's statement, Mr. Gussman stated *"If there is a buildable area outside of the RPA, then the exception request is not the minimum necessary to afford relief"*.

The motion to deny the revised exception request was approved by a 4-0 vote.

**March 28, 2007**

Subsequent to the Chesapeake Bay Board's second denial of CBE-06-071, staff requested verification from the County's Zoning Office that the Zoning Ordinance would allow for a residence to be built on the mainland side as was asserted at the hearing by Mr. Darryl Rickman.

**April 3, 2007**

Staff met with the County Zoning Office to discuss setback requirements for 3 West Circle. Zoning provided documentation that the current setback requirements for 3 West Circle would not allow for a residence, regardless of the proposed size, to be constructed in the area on the mainland side and out of the RPA as stated by Mr. Rickman at the March 14, 2007 Chesapeake Bay Board meeting.

**April 11, 2007 - Chesapeake Bay Board meeting**

The Board appointed a special committee to review the information and facts concerning CBE-06-071, and to present a report of its findings at the next Chesapeake Bay Board meeting.

**April 13, 2007**

The County Zoning Office issued a memo concerning the setback requirements for 3 West Circle.

**May 9, 2007 - Chesapeake Bay Board meeting**

The Board received the special committee report along with a recommendation for the Board to rescind the denial of case CBE-06-071.

Following discussion, a motion was made by Larry Waltrip to rescind the previous vote to deny case CBE-06-071. The Board approved the motion by a 5-0 vote.

**Staff Report and Recommendation:**

Staff believes that all members of the Board have now been provided the information necessary to render a fair decision on this case.

In an attempt to be fair and transparent, the Board has allowed discussions of issues during the public hearing that were actually not part of the exception request and outside of the Board's purview. One of these issues was a proposed open pile bridge providing access to the property. This proposed bridge has now been granted an administrative exception by the Environmental Director.

Staff believes the majority of impact to the RPA buffer at 3 West Circle will occur during the shoreline stabilization or first phase of this project that was permitted under Wetlands permit W-19-06. This includes the installation of an armor stone revetment along the James River and filling and grading to elevation 90 where the fill will be tied into the existing high ground on the island. The area to be filled is the lower portion of the island and the small pond. The filling of the small pond area received approval from the COE. The placement of fill and the creation of a fill slope are necessary to install and support the armor stone. This phase of the project also requires removal of the existing earthen causeway that currently provides access to the island. The buffer in the causeway area will then be restored with wetlands plants. The Chesapeake Bay Preservation Ordinance permits removal of vegetation and the filling and grading of the RPA buffer for the purpose of shoreline stabilization.

The Board is now reconsidering the exception request to allow installation of 110 linear feet of retaining wall and the filling and grading of approximately 10,890 sqft within the RPA buffer on the upper portion of the island. This can be considered as the second phase of this project.

The retaining wall and the ¼-acre of grading and fill that are proposed in this phase will be installed after the armor stone revetment has been installed. To minimize the potential for any offsite discharge, an Erosion and Sediment Control Plan and a Land Disturbing Permit will be required by the County prior to any work on this phase. The project site will be monitored for environmental compliance by County staff until completion.

Staff offers the following information and findings to the Chesapeake Bay Board for its consideration.

- 1) Staff finds that the exception request is the minimum necessary to afford relief because:
  - a) The lot was recorded prior to the adoption of the ordinance.
  - b) A buildable area outside of the RPA does not exist on the lot.
  - c) The proposed disturbance within the buffer is relatively small and is consistent with other single-family exception requests granted by the Board.
  - d) The installation of the retaining wall will actually reduce the impacts within the RPA buffer.
  - e) The applicant has revised, minimized, and reduced the proposed impacts to the buffer.
- 2) Staff finds that granting this exception will not confer any special privileges to the applicant because:
  - a) The lot was recorded prior to the adoption of the ordinance.
  - b) Other similar single-family exceptions have been granted by the Board.
  - c) Adjacent properties have similar RPA encroachments.
- 3) Staff believes the exception request will be in harmony with the intent of the ordinance because it is clearly the intent of the ordinance to allow encroachments within the RPA buffer for single-family residences on lots recorded prior to the adoption of the ordinance.
- 4) Staff believes that this exception request is not based on self-imposed conditions or circumstances because there is not a buildable area outside of the RPA buffer on this lot.
- 5) Staff believes that reasonable and appropriate conditions can be imposed that will prevent the exception request from degrading water quality. Staff contends the RPA mitigation plan proposed for this project far exceeds the standard mitigation requirements approved by the Board for similar projects. Staff recommends the Board approve this project with all of the conditions previously submitted with staff reports along with any additional and reasonable conditions the Board may apply.

Mr. Apperson opened the public hearing.

A. Chuck Roadley, Williamsburg Environmental Group, representing the applicant, stated the exception request was not based on conditions that were self-imposed and granting the exception would not confer any special privileges because the proposed house could not be built elsewhere on the lot and its size was similar to other houses in the area, on waterfront property. He also stated there would be no more detriment to water quality than what was currently being occurring by the continuing erosion of the shoreline. He stated the purpose of the encroachment proposed in this exception request was for a retaining wall and fill to help preserve the buffer for the adjacent property owner and the marina.

B. Darryl Rickman, adjacent property owner at 4 West Circle, spoke in opposition to the case because of the overall impact to the environment and the neighboring properties. He stated in his opinion as a professional engineer, a house with a 1500 sqft footprint could be built in the upland area of the property. He stated Mr. Outlaw; a local archaeologist had observed the property and believed the island was an eagle and osprey habitat. Mr. Rickman also stated that considering where the property was located, Mr. Outlaw also recommended an archaeological survey be conducted for Indian artifacts, endangered species, plants and animals as well as civil war artifacts. Mr. Rickman stated he felt the applicant and the County were not forthcoming with information. He reminded the Board that they had denied applications for smaller impacts to the environment and asked that they also deny this application. He then asked the Board, if they did grant the request, to consider imposing conditions so that no more vegetation is removed from the property.

C. Noel Hume, adjacent property owner at 2 West Circle, spoke in opposition to the case. He confirmed the presence of eagles on the property and he felt the applicant had not been considerate of the adjacent property owners.

D. Mike Lyttle, resident of First Colony and realtor for the property, spoke in favor of the case because the property was suffering from neglect and eroding into the James River and the First Colony Marina. He stated the applicant was a local developer who understood the impacts on the community and was willing to invest in the improvement of this property. He stated the County had been very forth coming with him in providing information regarding the development of this lot.

With permission from the Board, Mr. Menichino asked Mr. Roadley if any research had been done for the presence of endangered fauna or flora on the property. He asked what the results were of the study done by the Virginia Dept of Game and Inland Fisheries, regarding the presence of endangered species on the property.

A. Mr. Roadley stated the research had been done as part of the Wetlands application and no endangered fauna or flora was found on the property. He stated the report from the Dept of Game and Inland Fisheries concurred with Mr. Rickman's comment regarding the presence of eagle and osprey on the property.

Mr. Menichino said the study reported there were eagles within two miles of the project location. He asked Mr. Roadley if it was commonplace for eagles to be within two miles of any project along the James River, what the requirements were for an eagle protection area, and if any eagle nests had been observed on the property.

A. Mr. Roadley stated there were 750 ft and 1300 ft zones imposed for eagle nests and although eagles were often seen in the area, he had not observed any nests on the property.

B. Mr. Rickman again stated he did not feel the applicants or County had given the adjacent property owners enough consideration for a project of this size. He further stated his concern for the impact this project would have on the environment.

E. Mr. Butch Palmer, one of the applicants, stated the purpose of the project was to stop the erosion of the shoreline and build a house on the property. He stated, if a house could not be built, no one was going to protect the property.

Mr. Hughes asked Mr. Palmer if he would consider surveying the area for historical sites.

Jennifer Lyttle, Assistant County Attorney, stated the Board could not impose this as a condition for granting the permit.

Mr. Menichino stated he wished to clarify the setback requirements on the property. He referred to zoning ordinance 24-237 (b): *Lots of more than 43,560 square feet shall have a minimum width at setback line of 150 feet*, and stated the buildable portion of the lot at 3 West Circle begins approximately 220 feet from the front property line, which would place a proposed house in the wetlands.

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

Mr. Gussman stated he felt the lot was unique and deserved special protection. He still believed this exception request was not the minimum necessary to afford relief and the property owner had other options including building a smaller house or requesting a variance from the Board of Zoning Appeals.

Mr. Lindsey stated the exception request had to be voted on with out dictating the size of the proposed residence.

Mr. Menichino stated the exception request was not for a house but for 110 ft of retaining wall and 10,890 sqft of fill.

Mr. Waltrip stated the majority of disturbance for this project had already been approved with the Wetlands Permit and he felt this was the best proposal for preserving the property therefore; he was in favor of granting this exception.

Mr. Hughes stated that based on his observation of the property it was not practical to build a house in the upland portion of the property so he was also in favor of granting the exception.

Mr. Apperson stated he felt this was a well-engineered project. He stated his concern for the impacts to the adjacent property owners but had to base his decision on the impacts to the environment.

Mr. Apperson made a motion to approve the exception request for case CBE-06-071 with staff 's previous recommendations (~~copy attached~~).

The motion was approved by a 4-1 vote.

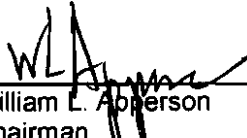
AYE: Lindsey, Hughes, Waltrip, Apperson (4). NAY: Gussman (1)

**D. BOARD CONSIDERATIONS - none**

**E. MATTERS OF SPECIAL PRIVILEGE**

**F. ADJOURNMENT**

The meeting adjourned at 8:33 PM.

  
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William L. Apperson  
Chairman

  
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Patrick T. Menichino  
Environmental Compliance Specialist