

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
AUGUST 8, 2007**

**A. ROLL CALL**

William Apperson  
Henry Lindsey  
John Hughes  
Larry Waltrip

**ABSENT**

David Gussman

**OTHERS PRESENT**

County Staff

**B. MINUTES** – The July 11, 2007 minutes were approved as presented.

**C. PUBLIC HEARINGS**

**1. CBE07-039 - Jamestown Mgmt, LLC - Trusswood Properties, LLC - 8963 Pocahontas Tr**

Mr. Menichino stated it had been determined that this case could be approved administratively and was therefore, being withdrawn from Board consideration.

**2. CBE-07-019 – Gary Little – 7578 Vincent Drive**

Mr. Menichino presented the case stating Gary W. Little, the property owner was requesting an exception to allow for the construction of 150 linear feet of retaining wall within the Resource Protection Area (RPA) buffer located on his property. The structural design of the wall, submitted with this application, had been reviewed and stamped by a professional engineer. Staff believes that this structural design will meet the County's requirements for retaining walls. The proposed location of this retaining wall had not changed from the previous application submitted to the Board.

**Recommendations**

Staff cannot support the approval of this application. Both the Ordinance and staff consider retaining walls as an accessory structure.

In the original submittal to the Board, the applicant stated there was an existing erosion problem, which necessitated the need for a retaining wall. A field review of the property by staff did not reveal an erosion problem in the rear yard requiring a retaining wall.

In the current exception request, the application states the reason for the request is, "The retaining wall will be built at 40' from deck, (attached to home) this will give more yard space".

Staff does not believe that a retaining wall built within an RPA buffer, for the purpose of creating more yard space, is in "harmony with the purpose and intent" of the Ordinance. In addition, Staff contends that this proposed retaining wall is not required to correct a hardship, and is not the "minimum necessary to afford relief".

Following Board review, if the board considers approval of the applicant's exception request, staff recommends that the following requirements and conditions are imposed and incorporated into that approval.

1. A revised RPA mitigation plan requiring the installation of (6) native trees, (12) native understory trees and (36) native shrubs be submitted to the Environmental Division for review and approval prior to the construction of the retaining wall.
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. The exception request shall become null and void if construction has not begun by August 8, 2008.

Mr. Lindsey asked if this proposal was for the same, existing wall the Board had considered previously and if not had the original wall been removed.

Mr. Menichino stated this exception request was for a new wall. On July 13, 2007, the Board denied an appeal request for the existing wall and the applicant was given 30 days to remove it.

Mr. Apperson opened the public hearing.

**A.** Gary Little, the applicant stated the primary purpose of the retaining wall was to provide additional yard space. He did not believe the wall would have an adverse impact on the buffer and the Board had allowed accessory structures in the buffer before. He also stated the existing wall was contracted for removal pending the outcome of tonight's meeting.

**B.** Mrs. Bassett, the adjacent property owner at 150 Bush Springs Rd, asked for a definition of RPA and asked why she received a letter regarding this case.

Mr. Apperson stated it was an acronym for Resource Protection Area and the Chesapeake Bay Ordinance required notification of all adjacent property owners.

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

Mr. Hughes stated and the other Board members agreed that additional yard was not a valid purpose for granting an exception to the Ordinance.

Mr. Lindsey referred to the erosion problem near the driveway and asked if the Board had approved a permit for a retaining wall in that area.

Mr. Menichino stated the area near the driveway was not in the RPA and therefore not subject to approval from the Board.

Mr. Lindsey made a motion to deny the exception for case CBE-07-019.

The motion to deny was approved by a 4-0 vote.

**A.** Gary Little asked if he could receive an extension of time for removal of the existing wall.

Mr. Apperson advised him to request an extension from the Environmental Division.

### **3. CBE-07-031 – Kenneth Brooks – 101 Brady Drive - continued from 7/11/07**

Pat Menichino presented the case stating it was a continuation of the exception request from Kenneth & Billie Brooks, 101 Brady Drive, presented to the Board on July 11, 2007. The exception request was originally for approval of an existing 3840-sqft storage shed, constructed without County approval within the RPA buffer located on the property. Following Board discussion, the applicants requested a deferral to provide them an opportunity to revise and resubmit their application. A motion to defer this case until August 8, 2007 was approved by the Board.

On July 20, 2007, staff met with the applicants to discuss their revised exception request. The applicants provided staff with a proposal to reduce the size of the existing storage shed by removing 1440 sqft of the structure, including the concrete floor and foundation. The applicant also agreed to remove approximately 2400 sqft of gravel driveway.

Staff believes this revised application reduces the impervious impacts to the buffer and attempts to address the Board's water quality concerns.

Two revised plans, labeled Plan #1 and Plan #2, were submitted to the Board for review and consideration.

Plan #1, is a demolition plan, which shows the proposed removal of 1440 sqft of structure and 2400 sqft of gravel drive.

Plan #2, is a mitigation plan, showing these areas restored with (24) native trees and (24) native shrubs. This plan also requires the installation of sand and topsoil prior to the native plant installation, and creation of an earthen berm to assist in the detention and infiltration of rainwater from the roof area. The installation of pipes or gutters to convey the rainwater to these areas is also required.

The issue before the Board was the revised application, requesting an exception for a smaller 2400 sqft storage shed within the RPA buffer, located on the applicant's property.

The Board was to consider if removal of approximately 1440 sqft of the existing shed and 2400 sqft of the existing gravel drive adequately reduced the RPA impacts, and if the proposed mitigation plan offset the water quality impacts caused by the remaining structure.

### **Recommendations**

Staff does not support granting this exception. Both the Ordinance and staff consider storage buildings as accessory structures and impervious surface. The proposed, 2400-sqft accessory structure is far larger than any other accessory structure approved by the Board. Staff believes the exception request is inconsistent with the spirit and intent of the Ordinance, is based on circumstances that are self-imposed by the applicant, and granting relief to the requirements of the Ordinance is not justified.

If the Board votes to grant this exception request, staff would recommend that the following conditions be applied:

1. The owners shall submit to the Environmental Division within 30 days, a more detailed RPA mitigation plan that is consistent with the County's standard mitigation requirements for impervious areas including the remaining shed area and gravel drive. Implementation of the mitigation plan shall 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.
2. All rainwater runoff from the proposed 2400 sqft shed roof will be conveyed to the proposed mitigation planting areas through pipes or downspouts.
3. Within 90 days of the Boards approval, the owners agree to execute a Chesapeake Bay Civil Charge Agreement with the County and provide for a one-time civil charge payment of \$5,000.00 for the previous unauthorized encroachment within the buffer.
4. Within 90 days of the Boards approval, the owners agree to obtain all approvals and/or permits required by other agencies with regulatory authority over the existing or proposed work.
5. Within 90 days of the Boards approval, the owners shall obtain a demolition permit from the County and begin removal of the 1440 sqft of storage shed and 2400 sqft of gravel drive.
6. This exception request approval shall become null and void if all conditions imposed by the Board and all required work, is not completed by August 8, 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.

Mr. Menichino then referred to Section 23-14(c) of the Ordinance which states the Board *may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this chapter if the board finds that:*

- (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.*

Mr. Lindsey stated he did not believe any of the five conditions in the Ordinance had been met and asked for the size of largest accessory structure in the RPA, approved by the Board.

Mr. Menichino stated it was approximately 150 sqft.

A. Kenneth Brooks, the applicant, stated he began the project as a pole barn in September 2003 after Hurricane Isabelle and he was not aware of the change in the RPA, in January 2004. He stated he was currently working with the County's Code Compliance and Zoning Departments to obtain the required inspections and permits, and would agree to the conditions outlined in staff recommendations. He questioned the perennial designation of the stream because he believes it dries up once or twice a year. He also voiced his concern about the loss of buildable area on his properties because of the 2004 change in the RPA and stated he could not even sell one of the lots he owned because according to the RPA restrictions, it could not be built on.

B. Chuck Sheppard, Fire Tower Road, spoke in favor of the case because he was concerned with the rights of the agricultural community. He stated no building permits were needed for properties zoned agricultural. He also wanted to know how the law could be retroactive to properties deeded before the revision to the Ordinance.

Mr. Apperson stated the Board had never required removal of non-complying structures that were in existence before the Chesapeake Bay Preservation Ordinance was adopted.

Mr. Menichino confirmed that existing structures were grandfathered but new construction in an area designated as RPA, would require an approved exception waiver.

Mr. Hughes stated that property deeded prior to adoption or revision of the Chesapeake Bay Ordinance would be given special consideration for the construction of a single-family dwelling.

Jennifer Lyttle, Assistant County Attorney, clarified that property zoned A-1, Agricultural was not automatically exempt from requiring building permits. The exemption would only apply to a building with bonafide agricultural use on a property zoned A-1, with bonafide agricultural activity.

Mr. Menichino stated the agricultural exemption was for building permits. The Chesapeake Bay Preservation Ordinance does not allow accessory structures within the RPA buffer, even on properties zoned A-1.

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

Mr. Hughes stated he was not in favor of granting the exception because of the size and location of the building.

Mr. Waltrip stated he might be able to agree with the exception if the size of the building could be further reduced to about 1900 sqft.

Mr. Lindsey stated 1900 sqft was still larger than what was necessary for a storage shed and far exceeded the size of accessory structures previously approved by the Board.

Mr. Apperson stated he could not see anything in the Ordinance that would allow an exception for a building of this size. Approving this exception would grant a special privilege that was not afforded to other property owners.

Mr. Hughes made a motion to deny the exception for case CBE-07-031.

The motion to deny the exception was approved by a 3-1 vote.  
AYE: Apperson, Lindsey, Hughes, (3). NAY: Waltrip, (1).

**D. BOARD CONSIDERATIONS**

1. Amendments to the Bylaws

Jennifer Lyttle, Assistant County Attorney, stated that in addition to the proposed changes to the amendments, she would also be proposing formal resolutions for use in future Board cases. She suggested the amendments and resolutions be discussed in a Work Session to be held on Wednesday, Sept. 12, immediately following the Wetlands Board Work Session at 5:00 PM.

All members were in favor of this Work Session.

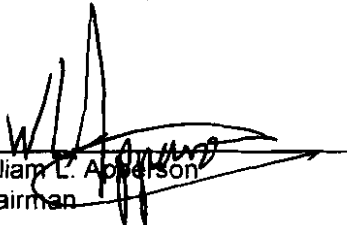
**E. MATTERS OF SPECIAL PRIVILEGE**

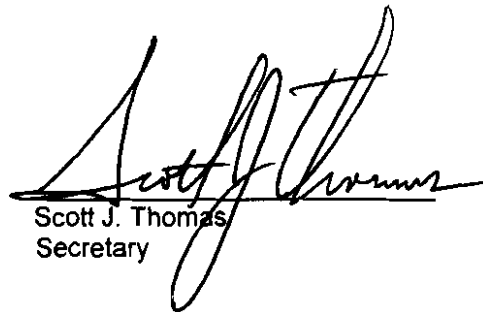
Scott Thomas, Environmental Director, re-introduced himself to the Board and presented the Board with a copy of guidelines he used when reviewing RPA exception requests.

Mike Woolson, Water Shed Planner gave a short educational presentation on the use of timber crib walls in the RPA. He explained the basic construction, purpose, and use of these walls and displayed photographs of several currently existing or under construction in the County.

**F. ADJOURNMENT**

The meeting adjourned at 9:00 PM.

  
William L. Apperson  
Chairman

  
Scott J. Thomas  
Secretary