

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
December 10, 2008 – 7:00PM**

**A. ROLL CALL**

David Gussman, Vice Chair  
John Hughes  
Terence Elkins  
Charles Roadley

**ABSENT**

William Apperson  
Larry Waltrip

**OTHERS PRESENT**

County Staff

The responsibility of this Board is to carry out locally the Commonwealth policy to protect against and minimize pollution and deposition of sediment in wetlands, streams, and lakes in James City County, which are tributaries of the Chesapeake Bay.

**B. MINUTES**

The November 13, 2008 Board Meeting minutes were approved with one spelling correction.

**C. PUBLIC HEARINGS**

**1. CBE-09-048 – Sallwasser/Hallmark – 201 St Cuthbert**

Pat Menichino presented the following case:

**Project Summary and Description**

George & Susan Sallwasser, 103 Quantico Loop, Yorktown, VA, applied for an exception to the Chesapeake Bay Preservation Ordinance(Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of a concrete patio and attached masonry staircase located on the rear of a principal single family residence under construction in Fords Colony.

The issue for the Board's consideration is the additional impacts associated with the installation of the concrete patio and masonry staircase (accessory structure), resulting in 68 sqft of impervious area within the 100 ft RPA buffer.

The applicants were granted an administrative exception on October 8, 2008 for a covered porch and upper deck attached to the rear of the single-family residence. The proposed concrete patio will be located within the covered porch, directly underneath the upper deck, creating no increase of impervious area. The proposed masonry staircase will create approximately 68 sqft of additional impervious area with the landward 50 ft RPA buffer.

**Brief History**

The lot was recorded in 1998 after adoption of the Ordinance and no RPA was present at that time. In 2004, the Ordinance was amended to include water bodies with perennial flow. Following 2004 a perennial evaluation was performed on a pond adjacent to the rear of this property and it was determined to be perennial resulting in the establishment of a 100 ft RPA buffer on this lot. The lot is 18,270 sqft or 0.42 acres in size. The 100 ft RPA buffer encompass approximately 0.175 acres or 40% of lot.

According to provisions of Section 23-7 (c) 2 (b); 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 this case, the proposal is for an accessory structure encroachment within the 100 ft RPA buffer, and the exception request must be processed by the Board after a public hearing.

### **Water Quality Impact Assessment (WQIA)**

Under Section 23-14 of the amended Ordinance, a 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 required to offset the 68 sqft of impervious cover impacts have already been incorporated within the RPA mitigation-planting plan that was part of the administrative approval.

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 Ordinance considers retaining walls to be accessory structures. Staff does not have the authority to grant an administrative approval for encroachments within the RPA buffer for accessory structures. To be consistent with the ordinance Staff cannot support the installation of accessory structures in RPA. In the past, the Board has approved encroachments for accessory structures within the RPA buffer

Staff would not be opposed to the Board granting the applicant's exception requests for the following reasons:

1. Staff has determined that there would be no net increase in impervious area created by the concrete patio, and only 68 sqft created by the masonry staircase.
2. The patio and staircase are necessary to provide a rear exit from the principal structure and access to the ground from the raised porch.
3. Staff has evaluated the water quality impacts caused by the additional 68 sqft and determine them to be minimal.

After reviewing this case, if the Board considers approval of this exception, staff recommends that the following conditions be included within the Board action:

1. This exception shall become null and void if construction of the patio and staircase and all required mitigation planting is not completed within 12 months from the date the exception or waiver is granted by the Board.

2. All recommendations adopted by the Board must be incorporated into the site plans for the project, which then must be approved by the Environmental Division before construction can begin.

Mr. Hughes asked for clarification on the mitigation requirements.

Mr. Menichino stated the mitigation plan submitted and administratively approved for the residence exceeded the requirements so it has also been accepted as mitigation for this exception request.

Mr. Gussman opened the public hearing.

A. Mike Carroll, Hallmark Builders, representing the applicant, stated he was available to answer questions.

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

Mr. Elkins stated the impact to the environments appeared to be minimal.

Mr. Hughes made a motion to adopt the resolution granting the Chesapeake Bay Exception for case number CBE-09-048 on tax parcel #3721000054.

The motion was approved by a 4-0 vote.

## **2. CBV-09-006 – APPEAL- Drummond – 165 Indian Circle**

Mr. Menichino presented the following case:

Mr. George F. Drummond, 165 Indian Circle, filed an appeal to James City County's Chesapeake Bay Board on October 28, 2008, appealing a Notice of Violation and administrative order issued by the County on October 21, 2008. The Notice of Violation ordered the removal of unauthorized fill, concrete driveway, and retaining wall installed within the Resource Protection Area (RPA) buffer located on his property. Staff reviewed the unauthorized encroachments and estimated the RPA impacts as follows: concrete driveway - 500 sqft, fill - 800 sqft, and retaining wall - 55 linear ft.

### **The Chesapeake Bay Preservation Ordinance**

The ordinance was adopted by the James City County Board of Supervisors on August 6, 1990. It was titled Ordinance Number 183 and added to the County Code as: Chapter 19B, Chesapeake Bay Preservation.

As amended, this ordinance is now titled: Chapter 23, Chesapeake Bay Preservation.

### **Description of the Property**

The property is located at 165 Indian Circle and further identified as James City County Parcel Identification Number 5920200045.

The property is 1.09 acres in size and has a single-family residence located on it. The residence was built in 1974, prior to the adoption of the ordinance. The rear of the property abuts an upper portion of Skiffes Creek, a tributary of the James River. A 100 ft RPA buffer was established adjacent to Skiffes Creek following the adoption of the ordinance in 1990. It is estimated that this RPA buffer encompass approximately 80% of the lot.

### Summary of Facts

Mr. Drummond purchased the property in 2004. He has maintained continuous possession and control over the property.

Since 2004, Mr. Drummond has applied to the County twice for administrative exceptions to the Ordinance.

In 2006, Mr. Drummond was granted an administrative exception to install an additional roof attached to the rear of the principal residence, in order to cover an existing patio.

In 2006, Mr. Drummond also applied to the Chesapeake Bay Board for an exception to build a detached garage in the RPA buffer. Prior to the case being presented to the Board, Mr. Drummond withdrew his application for the exception.

In February 2008, Mr. Drummond submitted another exception request for a proposed 28 ft x 58 ft garage connected to the principal residence on one corner. Although this proposal received initial administrative approval, a thorough onsite inspection revealed that approximately 1800 sqft of new concrete driveway had been installed within the RPA buffer without authorization from the County. Following that inspection, Mr. Drummond was notified that he would be required to file for an exception request with the Chesapeake Bay Board for both the driveway and the proposed garage. Mr. Drummond expressed concern about going before the Board and requested that staff work with him in an effort to resolve the issue. He indicated he would be willing to reduce proposed impacts and provide mitigation for the existing impacts. Staff agreed to work towards an acceptable resolution of the issues.

On February 21, 2008, staff and Mr. Drummond reached agreement on the following specific actions and conditions required for a new administrative exception to be granted.

1. Mr. Drummond agreed to remove 175 square feet of unauthorized concrete drive and remove a 12 ft x 16 ft wood shed from within the RPA buffer.
2. A 10ft x 10ft bio-retention facility planted with (3) native shrubs and ground cover, shall be installed within the RPA buffer.
3. RPA mitigation plantings of (6) canopy trees, (12) understory trees and (18) shrubs shall also be installed within buffer.
4. An administrative approval shall be granted for the installation of an attached 24ft x 40 ft garage and a concrete driveway pad to service the principal structure expansion of 400 square feet.
5. An RPA mitigation plan showing the location of the proposed bio-retention facility and the locations and species of all required native plants, must submitted to staff within 30 days from February 21, 2008.

On February 21, 2008, the administrative exception was granted by the Environmental Director and Mr. Drummond signed the exception. Mr. Drummond agreed to all of the conditions stipulated and signed an email from the Compliance Specialist detailing those conditions.

Mr. Drummond failed to submit the required RPA mitigation plan despite attempts by staff to obtain it.

October 21, 2008, following an inspection, Code Compliance notified the Environmental staff that Mr. Drummond had not followed the approved building site plan resulting in potential compliance issues. The Compliance Specialist contacted Mr. Drummond and informed him that staff would visit the site and perform an inspection. The Environmental Director and the Compliance Specialist visited the site and determined the following:

1. Approximately 900 sqft of concrete driveway pad had been installed (500 sqft more than approved).

2. Approximately 55 linear feet of treated wood retaining wall had been installed within the RPA buffer.
3. Approximately 800 sqft of fill had been placed within the RPA buffer.
4. The required bio-retention facility had not been installed.
5. The required (6) canopy trees, (12) understory trees and (18) native shrubs had not been installed.
6. The 175 sqft of concrete driveway required to be removed as a condition of approval, had not been removed.
7. The garage had been completed as approved.
8. The 12ft x 16ft shed had been removed as required.

October 21, 2008, staff contacted Mr. Drummond to discuss the results of their inspection. Staff informed Mr. Drummond that a Notice of Violation (NOV) would be prepared and sent to him. The NOV described the violation and ordered Mr. Drummond to remove the unauthorized encroachments from within the RPA buffer.

October 30, 2008, Mr. Drummond filed an appeal to the Chesapeake Bay Board.

### **Staff Recommendations**

Staff requests that the Board apply the guidance provided in the Ordinance as follows:

Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance.

The Board shall not decide in favor to 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.

Staff contends that Mr. Drummond has a thorough understanding of the County's Chesapeake Bay Ordinance, as it applies to development activities on this single-family residence. Staff believes that Mr. Drummond has in the past, been granted administrative relief from the Ordinance on two separate occasions. Staff contends that additional relief from the Ordinance is not warranted and any additional requests should be considered serial in nature. Staff has evaluated the impacts caused by the unauthorized encroachments and determined them to be moderate.

Mr. Menichino stated, as this was an appeal; Staff would address the Board after comments from the appellant.

Mr. Gussman opened the public hearing.

A. Mr. Drummond, the appellant, asked the Board for a deferral, stating he needed additional time to prepare answers and comments for some of the information on record.

Mr. Roadley stated based on his inspection of the property this was a stable area and he would not object to the deferral.

Mr. Menichino asked the Board to defer the case until February, allowing the appellant sufficient time to prepare and therefore ensuring the appeal would be considered at that time.

Mr. Hughes made a motion to defer the Board decision and continue the Appeal for case CBV-09-006 to February 11, 2009.

The motion was approved by a 4-0 vote.

**D. BOARD CONSIDERATIONS**

**1. Election of Board Secretary**

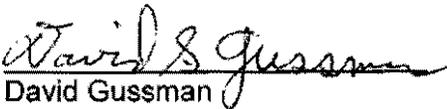
Mr. Gussman made a motion that Scott Thomas continue as Chesapeake Bay Board Secretary for calendar year 2009.

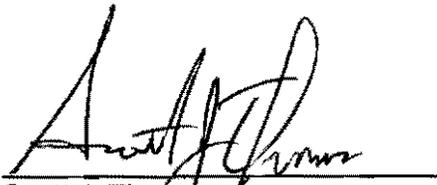
The Board approved the nomination by a 4-0 vote.

**E. MATTERS OF SPECIAL PRIVILEGE - none**

**F. ADJOURNMENT**

The meeting adjourned at 9:00 PM.

  
David Gussman  
Vice-Chairman

  
Scott J. Thomas  
Secretary to the Board