

**Stafford County**  
**BOARD OF ZONING APPEALS**

**MINUTES APRIL 25, 2006**

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The regular meeting of the Stafford County Board of Zoning Appeals on Tuesday, April 25, 2006 was called to order with the determination of a quorum at 7:05 p.m. by Chairman Nick Kopchinsky in the Board of Supervisor's Chambers in the Stafford County Government Center. Mr. Kopchinsky introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing to tell the truth.

Mr. Kopchinsky said the By-laws of this Board state that the applicant is allowed up to ten minutes to state their case, the other speakers are allowed up to three minutes to testify, and the applicant is allowed up to three minutes for rebuttal.

**Members Present:** Nick Kopchinsky, Larry Ingalls, Julie Rutledge, John Overbey, and Steven Beach Cecelia Kirkman and Angelo Amador (arrived at 7:15 p.m.)

**Members Absent:** None

**Staff Present:** Dan Scharden, III, Director, Department of Code Administration  
Steve Hubble, Environmental Programs Coordinator  
Mike Zuraf, Planning & Community Development  
Amber Forestier, Planning & Community Development  
Wanda Doherty, Recording Secretary

**Declarations of Disqualification's:** **Mr. Ingalls – VO5-21/2600088** – It appears from some of the information our firm prepared the subdivision plat for that particular subdivision around 1995. I am able to make a decision impartially on that case.

**Mr. Ingalls – SE06-2/2600225** - This request is by the Utilities Department and Mr. Keith Dayton who signed the application. The Utilities Department and sometimes Mr. Dayton approve plans that my company submits to them and we have also responded to him for a RFP to get some work from his department. In that case I am going to abstain.

**Ms. Kirkman – VO5-20/2600091** – Abstain from this case.

**PUBLIC HEARINGS:**

Ms. Doherty reviewed the following case for the Board and Mike Zuraf, Planning & Community Development, presented the technical part of the staff report.

**V05-21/2600088 - LOIS Blaisdell** - Requests a Variance from Stafford County Code, Section 28-62(f)(1), "Chesapeake Bay Preservation Area Overlay District", to allow an above ground pool in the Chesapeake Bay Preservation Area Overlay District on Assessor's Parcel 54C-2-41. The property is zoned R-1, Rural Suburban, and is located at 6 Wade Court, Little Whim Subdivision.

Ms. Rutledge asked Mr. Zuraf if he prepared the plat that we have in our packet noted as the minor quality water impact assessment.

Mr. Zuraf stated no, another staff member prepared that document.

Ms. Rutledge stated there was no documentation to back it up and we usually get some kind of report.

Mr. Zuraf stated as far as the minor water quality impact assessment requirements these can basically be satisfied on the plat. When you get to a major water quality assessment that is when you need more written detailed information.

Ms. Kirkman stated it was not clear to her from the materials and the application, is the deck there now.

Mr. Zuraf stated yes, there is an existing deck and it is noted in the application there will be new deck that will be built around the proposed pool.

Ms. Kirkman stated she did not understand about the existing deck in that it appears that the waiver was for construction of the house not the deck. What has been done about that violation of the Chesapeake Bay Act.

Mr. Zuraf stated he was not certain if anything has been done about.

Ms. Kirkman stated but it is a violation because there is no variance for the deck.

Mr. Zuraf stated there was nothing in writing permitting that deck then it would be considered a violation and we need to look into that some more to see if that is truly the case. He stated he could not say here that they did not get approval.

Ms. Kirkman asked Mr. Zuraf to look into the subject and follow-up on it.

Mr. Ingalls stated Mr. Zuraf as I understand it and maybe I don't understand, this particular lot along with three others in 1995 a request to encroach into the buffer was made to the County. He stated in our packet last time was a letter issued by the County saying under what conditions that waiver was granted and this buffer line is showing up on the plat. He stated as long as they construct it outside of that buffer line would they be ok.

Mr. Zuraf asked what buffer line Mr. Ingalls was referring to.

Mr. Ingalls stated the one that was on the record plat the county referred to in their letter. He stated on this plat it is that dashed line along the back of the property line. He stated that is the buffer showing on the record plat and the county referred to in its planning.

Mr. Zuraf asked to approach so Mr. Ingalls could show him what he was talking about.

Mr. Zuraf stated if they are outside that area they would still need to seek a waiver. He stated he would have to research to see if they have to follow the new rules on that. He stated the old rules permitted a house in that area but if they propose a structure of the pool in that area they may have to seek an amendment to that old waiver. He stated as it is now the pool is not outside of that easement area.

Ms. Rutledge asked Mr. Zuraf if he had been to the property and Mr. Zuraf stated he had not. She said you stated in your presentation that the County recommends moving the pool into a different area, which is outside the 100 foot CRPA. She asked if there was anything topographically to make that impossible and is there any reason why they cannot put the pool there.

Mr. Zuraf stated he would like to refer to Amber Forestier, (planner) who did go out to the site.

Ms. Forestier stated she has been out to the property a few times. She stated there is not anything that would prevent the applicant from putting the pool on the right side where it would have much less impact on the RPA. She stated it is about the same slope and they are still going to have to grade whether they put it here or there but at least it would be outside the RPA.

Ms. Rutledge stated if we go one step further, if they do put it outside the RPA than, would you still state that it would have a significant impact on the creek and water quality.

Ms. Forestier stated the possibility would still exist.

Mr. Overbey stated when you say the right side of house is that looking at it from the rear.

Ms. Forestier stated that would be as you were looking at it from the stream.

Mr. Ingalls stated his understanding of the Ordinance if the request was for 50 feet the County could issue a waiver.

Mr. Zuraf stated County staff cannot issue a waiver under the new rules. He stated the rules get very convoluted about when the lot was created and if it falls into the time frames in the Ordinance. He stated since this is an accessory structure it requires a variance for any encroachment in the 100 foot RPA.

Mr. Ingalls asked if the Board even considered approving this, would you be agreeable if we made a condition that the water from the pool would not be drained into the stream and would it be hard to enforce.

Mr. Zuraf stated enforcement would be an issue and it is important to note the other five criteria that need to be assessed within the Chesapeake Bay Overlay District.

Mr. Kopchinsky stated in reading the Ordinance it shows me that the minor water quality impact assessment consists of about five sections, one is the location components of the CRPA and certainly this plat shows that, the second one is met, you also show the restoration area but that restoration area shown on the plat, is that what was required based on the previous tree cutting.

Mr. Zuraf stated yes.

Mr. Kopchinsky stated that was not specific to this request but they had to do this anyway and Mr. Zuraf stated that was correct.

Mr. Kopchinsky stated, so there is nothing specific about mitigating the pool within this plat.

Mr. Zuraf stated the restoration as a mitigation of establishing a buffer around the remainder of the RPA would at the same time satisfy the mitigation.

Mr. Kopchinsky stated it is also suppose to include in the minor impact assessment the number and types of trees and vegetation that are going to be removed and I don't see anything here. And it should include a re-vegetation plan and I don't see that, and the final thing, it says it must demonstrate through calculations that the remaining buffer and Best Management Practice's if any will result in the removal of at least 75 percent of sediment and 40 percent of nutrients and I don't see any calculations here at all. He stated he is wondering how County staff feels about that since this is not the only case we have like this one. He stated this plat, which simply draws a few lines for me, doesn't seem to meet the requirements of the Ordinance.

Mr. Zuraf stated we probably should have included the restoration.

Mr. Kopchinsky stated there should be something that tells me that this buffer is going to remove things. He stated he knows we are treading new grounds with all of these.

Mr. Zuraf stated how we treat the whole issue with calculations to assure proper removal is by going by the guidance that CBLAD sets for restoration and establishment of the resource protection buffer. He stated that re-planting criteria is basically set for the purpose of improving water quality.

Ms. Kirkman stated aren't they based on a 100-foot buffer and this is a decreased buffer so you would have to do additional calculations around the vegetation to ensure that you meet the threshold.

Mr. Zuraf stated they apply the threshold based on whole area so that planting would not just go where the pool would go but also to other areas of the buffer.

Mr. Kopchinsky stated you have signed an agreement with the property owner to restore what had been taken down previously, do you know if that restoration envisioned this pool or did it just replace what was removed.

Mr. Zuraf stated it allowed for the pool to be located in the buffer if it was approved. He stated it still established the required plants based on the whole area of impact.

Ms. Kirkman stated she had an additional question about the water quality assessment. She asked Mr. Zuraf if he did the impact assessment.

Mr. Zuraf stated he did not; he assisted Ms. Forestier who assisted the homeowner.

Ms. Kirkman stated she would like to hear about the site-specific determination and the measurements were done from the edge of the water resource. She stated it is not clear to her how precise the map is.

Ms. Forestier stated she has been to the applicant's home three or four times and measured multiple times as we tried to figure out where the pool was going to go. She stated it is measured on the horizontal all the way across.

Mr. Beach stated he understands other plants will be planted whether we approve the pool or not and Mr. Zuraf stated that was correct.

Mr. Beach stated if we approve the pool will there be additional plants.

Mr. Zuraf stated there would be no additional plants.

Mr. Beach stated the fact that he is mitigating the damaged area has nothing to do with our approval or denial of the pool.

Mr. Zuraf stated that is correct.

Mr. Robert Blaisdell stated he was the applicant and it is hard to start with so many questions and information going around.

Mr. Kopchinsky stated he did not mean to be picky but asked Mr. Blaisdell if he was co-owner of the property because the application is in Ms. Blaisdell's name.

Mr. Blaisdell stated he and his wife are co-owners of the property. He stated they have contracted a local company for \$3,000-\$4,000 to replace the trees that were taken out. He stated some of the trees would be placed as if they have the pool or not as to where they will be. He stated it is an above ground pool and so it will be a minimal amount of disturbance. He stated some of the shrubbery would be planted around the pool as a landscaping as if the pool were approved. He stated we don't plan on dumping the pool anywhere and have 60 feet of heavy foliage, weeds honeysuckle, wild roses and it is a very dense cover between our home, small yard and Babcock Creek behind us. He stated they have been there for four years and have never seen anything from our location that caused any sedimentation or anything extra such as rain and no disturbance on our part.

Mr. Ingalls stated the decking on the pool plans shows it is just a third of one side next to the existing deck.

Mr. Blaisdell stated it is just a little five-foot partial deck.

Mr. Ingalls asked if they have paved their driveway and expanded the area behind it so you could backup and pull out of your garage.

Mr. Blaisdell stated yes it is about 12 to 15 feet of asphalt from the back of our garage.

Mr. Ingalls stated he must take really long steps because he stepped it off as 25 feet.

Ms. Kirkman asked if they built the deck and Mr. Blaisdell stated it was there when they moved in.

Ms. Kirkman stated but you have paved in the critical resource protection area.

Mr. Blaisdell stated they have a two car garage under the house so you come down the driveway and swing to the left and however how many feet that is, I have not measured it. He stated it is wide enough for two cars to turn to go into the underground garage.

Ms. Rutledge asked the applicant if they have considered moving the pool to the right.

Mr. Blaisdell stated they had considered moving it approximately 10 feet, if you want it further it would be in a big shaded area because of all the trees back there. He stated it makes no sense to have a pool in the shade.

Ms. Rutledge stated if you built the pool on the right side of the house from the stream and Mr. Blaisdell stated that is all shaded area.

Ms. Rutledge stated they have outlined the tree line but you would be outside the RPA.

Mr. Blaisdell stated he and Amber had agreed we had measured it over approximately ten feet and took us X amount of feet from the stream because of curvature of the stream. He stated the further we go in that direction the more we would gain and we had said if we needed to move approximately ten feet, we would be glad to do that.

Ms. Rutledge stated if you look at the plat the twenty-four feet diameter pool could be built completely out of the RPA. She stated at the front corner of your house 22.47 feet so at the rear of your house and deck, 10 feet is not really going to take you much out of the RPA.

Mr. Kopchinsky opened the Public Hearing for other comments.

**Opponents:** None

**Proponents:** None

Mr. Kopchinsky gave the applicants a final opportunity to speak.

Ms. Blaisdell stated the only question she had is when you are talking about moving the pool ten feet and what my husband was trying to say is if we went back, beside the house and back that is mostly shaded morning and night. She stated they want to go out as far from the house and I don't care how far you want to go to the right but we don't want to go to far back. She stated if they move it too far to the front of the house it would be very shaded and it would not be the trees shading it but the house shading it. She stated you would really have to see the lot to see what we are saying. She stated as far as the trees we are replanting we got estimates and this is a small area to plant that many trees. She stated she did no understand how they came to the amount of trees to be replanted which is fifty-five and I don't understand the Chesapeake Preservation Act. She stated they did not know anything about any of this and when we cut the trees down we had no idea about the Chesapeake Preservation Area. She stated they are really willing to compensate any way they can. She stated it means a lot to us to have the pool or we would not go through all this to get it and we would appreciate it if you did approve it.

Mr. Kopchinsky closed the public hearing.

**Motion:**

Mr. Ingalls made the motion to deny.

Mr. Overbey seconded the motion.

Mr. Ingalls stated he made the motion because he believes the Board needs to take seriously the Chesapeake Bay Act. He stated if there is not suppose to be a pool in this area, I don't think we should allow it. He stated there is an option to put it on the side of the house, ok they may not like the shade but they can put the pool there. He stated he would be opposed in the future of almost anything going into the Chesapeake Bay Protection Area.

Mr. Overbey stated he seconded the motion for all those reasons addressed by my colleague.

Mr. Kopchinsky stated he wanted to point out Mr. Amador arrived before the important part of the case and if he is comfortable he can vote.

Ms. Rutledge stated she did not hear anything from the applicants to justify the criteria we have to meet to grant a variance and therefore will vote in favor of the motion.

**Vote:**

Motion carried 6-0-1 Abstained

Mr. Ingalls – yes  
Mr. Kopchinsky – yes  
Mr. Overbey – yes  
Ms. Rutledge – yes  
Mr. Beach – yes  
Ms. Kirkman - yes  
Mr. Amador- Abstain

Mr. Amador stated he abstained so there would be no appearance of impropriety, I did read the case and feel confident I could be fair.

Mr. Kopchinsky stated the application was denied with a vote of 6-0-1 Abstention and the applicants will get a letter from the County staff.

Mr. Kopchinsky stated you do not have U.S. Homes case 2600161 in you packet because the applicant did not complete the adequate submission of their water quality studies.

Mr. Kopchinsky stated the Kevin Sullivan's case 2600091 has been postponed.

Ms. Kirkman stated before you proceed with case SE06-2600225 I want to state my objections to this going to Public Hearing tonight. She stated as a citizen and a member of the Board of Zoning Appeals I came to the County today to review additional materials that should be with the application and those materials were not available. She stated she thinks both herself and the public have been denied a procedural right to review these materials in advance of the Public Hearing, thank you.

Mr. Kopchinsky stated, how do I take that, do I take it that you have made up your mind on this case and therefore you are not going to participate.

Ms. Kirkman stated I raised my objections with the County Attorney's office and I am sure they have been communicated to the applicant. She stated she supposed she could state in the form of a motion, but I can't make up my mind on the case because I don't have adequate access to the background information.

Mr. Kopchinsky stated he thought that could come out in the Public Hearing if that is what you want to bring forward.

Ms. Kirkman stated she is objecting to the procedural error, which has occurred, and this Public Hearing should not take place because those materials are not available publicly.

Mr. Amador stated I think the record will note the objection.

Ms. Kirkman stated that was fine.

Ms. Doherty reviewed the following case for the Board and Steve Hubble, Environmental Programs Coordinator, presented the technical part of the staff report.

**SE06-2/2600225 - COUNTY OF STAFFORD** - Request a Special Exception per Stafford County Code, Section 28-57(h)(3) "Permitted Uses in Floodway District", to allow a water intake and pumping station for the proposed Rocky Pen Reservoir on Assessor's Parcel 43-22B, zoned A-1, Agricultural.

Ms. Rutledge stated on the access easement I see the pump station and everything shown on the large plat and the access easement is shown on another plat. She stated the easement is shown as a fifty-foot egress ingress easement and have you obtained that easement yet.

Mr. Hubble stated you can address that question to Mr. Dayton.

Mr. Beauch asked what is a water intake for?

Mr. Hubble stated he could give a brief explanation and Mr. Dayton could give a much more detailed description. Briefly the reservoir has two methods for obtaining water, one method will be the traditional way, to build a dam with a lake behind it so the reservoir will catch the water that would have drained. He stated the purpose of the intake structure is also to be able to draw water from the Rappahannock River to also help fill the reservoir and maintain adequate levels.

Ms. Kirkman asked Mr. Hubble in preparing this presentation what materials did you look at that delineated the critical resource protection areas.

Mr. Hubble stated he had not looked at any data on the critical resource protection area.

Ms. Kirkman stated she wanted to check on the notification of adjacent property owners. She stated when she was looking through the file today she thought she saw something but did not see a list of property owners.

Mr. Hubble stated he defers the question to Ms. Doherty since she prepares that list.

Ms. Doherty stated there is not a specific list but copies of the Commissioner of Revenue information sheet for each of the adjacent property owners individually by tax ID number.

Ms. Kirkman stated she would like to see the file and documents in terms of notification because she was looking at it today and it was confusing.

Mr. Kopchinsky asked if the Board had any further questions for Mr. Hubble, being none the applicant was asked to come forward and give a brief explanation of what you are trying to do.

Mr. Dayton stated he is the Assistant Director of Stafford County Utilities and this project is for a water supply reservoir. He stated the nature of the reservoir is pump storage; it will take water out of the Rappahannock River and pump it into a reservoir that we are working on a dam design for now that we will call the Rocky Pen Run Reservoir. He stated they will take the water during the periods of high flow and store it in there and as they need it they will take the water out of the reservoir, treat it at the treatment plant, and send it out to the population. He stated this intake is designed for forty million gallons a day and the reservoir has a field of 13.2 million gallons a day. He stated they began the project initially in 1990 and identified in a master plan necessary to meet build out water needs for Stafford County. He stated that was reinforced in 1991 with the Comprehensive Water Supply study and at that point we began to look at a lot of different options to supply water. He stated this particular project was the one that was recommended.

He stated at that time we engaged a consultant to pursue environmental permits and that was in 1994. He stated in 1996 we published an environmental report; we had a lot of meetings with different agencies, on different issues such as terms, needs, and environmental studies, which went on for several years.

He stated they published the permit a few years after 1996 and there was a Public Hearing at that time about the environmental report. He stated they completed a permit application and submitted it to the Federal Agencies of Corp of Engineers, State Department of Environmental Quality and Virginia Marine Resources Commission.

He stated they again engaged in another five years of examination and study. He stated after years of examination and study in early 2004 and early 2005 we had gotten all of our permits. He stated there are three permits, Federal Agencies of Corp of Engineers, State Department of Environmental Quality and Virginia Marine Resources Commission to go ahead and construct

the intake along with the reservoir. He stated they had their permits but are not done working with the various agencies.

He stated one of the conditions of one of the permits was to study and examine at least three different configurations of the intake to determine which was the most environmentally sound but also the most practical alternative to construct. He stated the different options and the decision to build the submersible pumping station. With submersible screens, re-establish the river bank in its natural state as much as we possibly could, and still protect the intake itself, minimize the floodplain and into the river both visual, acoustic and environmental species. He stated the main thing is the screens and they are below water level and run parallel to the bank, the pipes will extend through the bank beneath the water level and enter a pump station that is also below grade with the top of the structure being equal with the existing grade. He stated they will armor the bank using rip rap filling in the cavities using soil material and plantings as dictated by the Department of Forestry. He stated they would put their control building in the back and agreed to screen it by trees. He stated we have agreed to leave as much natural screening as possible and open only the area we need for construction. He stated the key to this is very minimal impact to the existing flood plain. He stated essentially the screen and channel were under the water and a very small fill area was required right when we get to the bottom of the hill as well.

Ms. Rutledge stated she would like to know about the 50-foot ingress/egress easement.

Mr. Dayton stated they do have that easement in place as record.

Ms. Rutledge asked what would prevent residents or people from using the access easement and using the area you have cleared?

Mr. Dayton stated they will have two separate gates, one at the entrance to the drive itself and the second further back when we enter County property. He stated, as you know it is hard to keep out determined four wheelers. He stated they are on there now and we expect to have ongoing enforcement issues.

Ms. Rutledge stated if people walk on the structures in the areas you showed us, what would be the impact of that.

Mr. Dayton stated this type of structure is very good and secure. He stated you can lock the hatches down, you can lock the motor house down and we have them at many of our wastewater pumping stations and it is fairly rare in the water business to have an impact.

Ms. Kirkman asked what exists on the site now?

Mr. Dayton stated it is forested.

Ms. Kirkman asked what work has been with CBLAD about ensuring the appropriate mitigation is taking place.

Mr. Dayton stated they have mitigation plans filed with the State and Federal agencies. He stated they are required to mitigate both in the reservoir area and less so here because there are no stream impacts. He stated as far as the overall project they are doing stream mitigation in Claiborne Run and wetland mitigation through purchase of wetlands credits.

Ms. Kirkman stated no, I meant specifically regarding the vegetation on the site and CBLAD has specific requirements. She asked have you worked specifically with CBLAD.

Mr. Dayton stated, no mame.

Ms. Kirkman stated no, and are there any impacts to the flood plain?

Mr. Dayton stated it was .015 feet.

Ms. Kirkman stated, there is an impact. She stated from your plan that you submitted I don't see any critical resource protection areas delineated on this.

Mr. Hubble stated your first question was about the potential tree cutting and where we are at the stage of the County process is they are coming to you to seek a special exception before they pursue any site plans for this property. He stated the impact to the CBA would be evaluated at time of the site plan. He stated it was his opinion that this structure is water dependent and would be exempt from the CBA requirements. He stated he did not want to put CBA staff on the spot and they can comment but that may also be the reason why they have not identified the RPA because there has not been a need to do so yet. He stated the document was prepared as a flood plain study only to evaluate the impacts on the flood plain.

Ms. Kirkman stated but to be exempt from the CBA as a water dependent facility it has to be connected to a non-water dependent facility and what would that be.

Mr. Hubble stated he does not enforce that Ordinance anymore, but it has been my understanding through numerous meetings that would be the scenario here.

Ms. Kirkman stated we are suppose to make a determination that this special exception will not be detrimental to the character of the development of the area, how can we do that without a water quality impact assessment and the CPRA being delineated.

Mr. Hubble stated if you ask me this special exception is to address issues of flood plains not CBA, so I can understand your concern about those, but I don't see that they are integrally related.

Ms. Kirkman stated we are supposed to consider beyond the broader issue and suppose to look at the entire character of the area.

Ms. Rutledge stated, Mr. Hubble would it be appropriate if specifically we are granting this special exception for the flood elevation, would it be appropriate if we approve this to put an exception or condition that all CBA requirements be met.

Mr. Hubble stated he feels like all the conditions you have addressed that already but if you want to specifically spell out CBA requirements you can do that. He stated they are going to have to meet all those requirements when they come to the County for a site plan.

Mr. Beauch stated are you talking about the statement that is made on this one paper and Mr. Hubble stated whatever makes the Board comfortable.

Ms. Kirkman stated page 3 and what is not clear to me about the sketch is how much of this is above the water line and how much is below.

Mr. Dayton stated that is what the diagram really indicates.

Ms. Kirkman requested Mr. Dayton to point out what is above and below on the drawing and he did.

Ms. Kirkman stated to construct this you are going to have to go in and dam up the river to get the water out for some period of time while you construct it.

Mr. Dayton stated that is correct name. He stated they put in cofferdams as temporary water control structures. He stated we have in our permits that won't allow us to put cofferdams into the river during the fish-spawning season. He stated after the fish-spawning season they can put the coffer dams in and have to get the work done, restore the area and get the coffer dams out before next year and fish spawning season.

Ms. Kirkman asked where was the environmental impact assessment of that process. She stated she tried to get a copy of that today.

Mr. Dayton stated the environmental report was completed in 1996 and permitted in 2004/2005.

He stated there were public hearings for the environmental reports and both Virginia Resources and Department of Environmental Quality and Army Corp of Engineers prior to issuing a permit.

Ms. Kirkman asked if anything had been done to update the ten year old environmental assessment.

Mr. Dayton stated, yes name I have documents but did not bring them because of the volume of

documents. He stated as recent as 2002 and 2003 but that was current right up until we got the permits issued in 2004/2005.

Ms. Rutledge stated Mr. Chairman since Mr. Zuraf is still here can we ask him to answer the questions about the CBA requirements and will that be addressed in the site plan state.

Mr. Zuraf stated yes the CBA would be addressed in the site plan stage. He stated the site plan has to come through the Planning Department and reviewed to make sure it addresses the requirements of the CBA. He stated regarding the comment about it having to be connected to a non-water dependent use, I don't believe that is true. He stated there is an exemption for water dependent facilities and another section in that which says non-water dependent facilities need to be located out of the RPA and the two are not related.

Ms. Rutledge stated if we add a condition on this that all CBA requirements be met is that redundant.

Mr. Zuraf stated it is redundant.

Ms. Kirkman stated she had an additional question for the applicant about notification of adjacent property owners. She stated for some reason Rachel Hudson signed that rather than you.

Mr. Dayton stated he was not aware.

Mr. Kopchinsky asked Ms. Doherty to respond.

Ms. Doherty stated in the Zoning Department the adjacent property owners are not done by the applicant but by staff.

Ms. Kirkman stated there is supposed to be a copy of the letter in the file and it is not in the file.

Ms. Doherty stated the form letter is not kept in the file but the affidavit stating the letters were done is in the file.

Ms. Kirkman stated is says a copy of the form letter is attached and I don't see it.

Mr. Kopchinsky asked if there were any further questions of the applicant, thank you Mr. Dayton. Before we move on there are other staff members here are there any questions of staff.

Mr. Kopchinsky opened the Public Hearing.

**Opponents:** None

**Proponents:** None

Mr. Dayton stated he had no further comments.

Mr. Kopchinsky closed the Public Hearing.

**Motion:**

Ms. Rutledge made the motion to approve.

Mr. Beauch seconded the motion.

Ms. Rutledge stated she made the motion especially because of the mandate from the Board of Supervisors with the extensive study and permits and the whole process the County has gone through. She stated she thinks they have done a good job and thinks we are here specifically to grant a special exception concerning the base flood elevation increase and the other additional issues will be addressed later.

Mr. Beauch stated he agreed with Ms. Rutledge and also I read our Ordinance and I don't see where it is outside of that.

Mr. Amador stated he would like to suggest to the motion and the second to amend the motion to include the recommendations from the County.

Ms. Rutledge stated she agrees to make as part of my motion item number one as submitted obtain all applicable Federal, State and County permits and authorizations for streams encroachment water quality wetlands land disturbance.

Mr. Beauch stated he agreed.

Ms. Kirkman stated she is going to oppose the motion because she feels that we cannot make a determination that the use will not be detrimental to the character and the development of the adjacent land or that it will be in harmony with the purpose and intent of this chapter which includes the Chesapeake Bay Overlay District without that work having already been done. She stated additionally, the Ordinance is clear that it should lead to no increase in the flood plain and it does lead to an increase.

Mr. Kopchinsky stated under sub paragraph K of the Ordinance under 28-62 which is the Chesapeake Bay Resource Area Exemptions, K2 specifically says "exemptions for utilities and other service lines, construction installation and maintenance of water, etc., is exempt from the provision of the Chesapeake Bay Resource Protection Area regulations provided that to the degree possible the location of such utilities and facilities shall be outside CRPA to the degree possible. No more land should be disturbed than is necessary. All construction installation,

maintenance, etc. any land disturbance exceeding 2,500 erosion sediment controls”. He stated bottom line there is an exemption in here for utilities and I am not sure that if we say you have to comply with the CBA protection portion of the Ordinance, it would be said yes it is exempt. He stated conditions say you will comply with all rules and regulations and I don’t think they needed to come in here with a water quality impact assessment or anything else at this point. He stated that was his feeling based on reading the Ordinance.

**Vote:**

Motion carried 5-1-1 Abstained

Mr. Ingalls – Abstained

Mr. Kopchinsky – yes

Mr. Overbey – yes

Ms. Rutledge – yes

Mr. Beach – yes

Ms. Kirkman - no

Mr. Amador - yes

Mr. Kopchinsky stated the Board would take a ten-minute recess.

Mr. Kopchinsky reconvened the meeting.

Ms. Doherty reviewed the following case for the Board and Mike Zuraf, Planning & Community Development, presented the technical part of the staff report.

**V06-3/2600226 - MICHAEL THOMAS** - Request a variance from Stafford County Code, Section 28-62(f)(1), "Chesapeake Bay Preservation Area Overlay District", to allow a deck in the Chesapeake Bay Preservation Area Overlay District on Assessor's Parcel 19K-1H2-251. The property is zoned R-1, Suburban Residential, located at 3 St Mary's Way, St. Georges Estates Subdivision.

Mr. Beach asked if the mitigation plan makes the water quality better after the deck is built.

Mr. Zuraf stated yes, because currently right now they have grass and they would be putting in some trees, shrubs and plants, which have a better ability to remove pollutants and less likelihood of where someone would place fertilizer.

Mr. Beach asked how do you determine what makes it better?

Mr. Zuraf stated by the replanting requirements that are set by the State.

Mr. Beach stated is there a lot of erosion.

Mr. Zuraf stated he believes that was erodible soils, which is a general characteristic of soils in that area because it is in the back. He stated it is not saying there is erosion but the possibility.

Ms. Kirkman stated can you explain to me how this house got built in 2001 in the middle of the CRPA.

Mr. Zuraf stated back then they would have been able to build that house with a waiver.

Ms. Kirkman stated she did not see in the file where they got a waiver.

Mr. Zuraf stated it was not noted and would have to check that.

Mr. Beach stated would it also be safe to say you did not check to see if there was a building permit for the house to be built. He stated you can't just go back and follow-up on everything, right. He stated not for the deck but for the house when it was built.

Mr. Zuraf stated there was a building permit.

Ms. Rutledge stated why is this house not eligible for waiver if the one next door is, is it the location of the stream.

Mr. Zuraf stated that was correct. He stated the stream the way it bows closer to this property.

Mr. Overbey stated it appears the house sits further back.

Mr. Ingalls stated he assumes that most of those houses backed up to that stream must have received a waiver from the 100-foot RPA to be constructed.

Mr. Zuraf stated lot 252 received a waiver for their deck but lot 250 did not because there was a period of time that not all items were being reviewed for RPA. He stated there was a feeling that decks were not considered an impact within the RPA that would require a review, but they are being reviewed now.

Mr. Kopchinsky stated correct me if I am wrong, but I think what Mr. Ingalls is saying the basic house structures, the placement of the houses were waived in when they filed the site plan.

Mr. Zuraf stated it should have been.

Mr. Kopchinsky stated he noticed the side yard setback and it says R-1 and is it still R-1.

Mr. Zuraf stated yes.

Mr. Kopchinsky stated it seems they pushed the house back as much as they could to try to get

some side yard because the size of the lot.

Mr. Zuraf stated it is cluster.

Mr. Ingalls stated it is a fair statement from the first three or four pictures the houses there, the features that were there for RPA have been removed. He stated we would get something back to mitigate what has already been destroyed.

Ms. Kirkman stated why did the house on the other side need a waiver.

Mr. Zuraf stated because of the deck.

Ms. Kirkman stated when can you get back to me about confirming the waiver on this project and the left over issues on the previous case.

Mr. Zuraf stated he could contact her tomorrow.

Ms. Kirkman stated you are recommending denial because it is a self imposed condition and Mr. Zuraf stated that was correct.

Mr. Kopchinsky asked the applicant to come forward.

Mr. Thomas, the applicant; my wife and I wanted a deck when we originally purchased the property and the builder said it was an oversight in the paperwork the deck was not put on. He stated the steps of his deck would be along our house. He stated we had a friendly little beaver that disturbed the area. He stated they have pictures of the house and what they have done to the water line and a list of plants we put in.

Mr. Kopchinsky stated if you are willing to submit you would not get back for 30 days.

Mr. Thomas stated they have tried to be good stewards of the creek and cleaned it.

Mr. Ingalls stated are you going to redesign the steps on the deck.

Mr. Carlton the builder stated the design has been changed and the stairs do not protrude past the deck.

Mr. Amador asked if he could ask a question of the County. He stated the next door house

where they clearly built the deck and the stairs are even further than the deck and it was done afterward, wouldn't they have been required to have a permit for that.

Mr. Zuraf stated in the review it was discovered the environmental review was waived on that.

Mr. Kopchinsky stated we don't have that information and it happens all the time and there is no way for the County to know it.

Mr. Kopchinsky opened the Public Hearing for other comments.

**Opponents:** None

**Proponents:**

Ms. Thomas stated her husband did an excellent job on their yard and with the slopes of the yard without a deck it is almost useless.

Mr. Kopchinsky closed the Public Hearing.

**Motion:**

Ms. Rutledge made the motion to approve.

Mr. Ingalls seconded the motion if a condition was made not to allow a roof.

Ms. Rutledge stated she made the motion because it meets the standards and agrees with the modification Mr. Ingalls suggested.

Mr. Ingalls stated he agreed it meets the standards and not self-imposed.

Mr. Overbey stated he was going to support the motion based upon the information in the case and the applicant has done a great deal to mitigate the impact the CBA.

Mr. Beauch stated he was going to support the motion and agree with all that has been said and in favor of whatever can be done to improve that water quality.

Mr. Kopchinsky stated he works in the environmental arena and removal of the grass areas will also reduce chemicals from the stream. He stated the buffer area being re-established with beaver resistant foliage should help. He stated the deck is not impervious per say and asked the consideration of the motion maker to add the area under the deck not be covered with any impervious surface. He stated he did not want to see a patio built under there.

Ms. Rutledge agreed to add that to the conditions and Mr. Ingalls seconded.

Ms. Kirkman stated she was going to oppose the motion because she feels it clearly dose not meet the conditions for a variance. She stated it looks like there are a couple of issues in the neighborhood where that has been the case but in this one specifically they can still use their house. She stated it does point a need in our Ordinances that we need to assure there is

appropriate space between a house and the RPA so people are not miss guided into thinking they can build decks. She stated she thinks that is a real issue when builders build houses on or right up to the RPA.

**Vote:**

Motion carried 5-2

Mr. Ingalls – yes

Mr. Kopchinsky – yes

Mr. Overbey – yes

Ms. Rutledge – yes

Mr. Beauch – yes

Ms. Kirkman - no

Mr. Amador- no

The Board and Mr. Schardein discussed CBA, Buffers, Ordinance and issues concerning the last case. Mr. Kopchinsky stated he would like to address with the Board of Supervisors but it was not included in the Annual report. Mr. Schardein suggested Mr. Kopchinsky bring up during the verbal presentation of the report to the Board of Supervisors.

UNFINISHED BUSINESS

The Board and Mr. Schardein briefly discussed the availability of legal representation for the Board.

REPORT BY ZONING ADMINISTRATOR

None

ADOPTION OF MINUTES

January 24, 2005

**Motion:**

Ms. Rutledge made the motion to approve the minutes with modification.

Mr. Overbey seconded the motion

**Vote:**

Motion carried 4-0

Mr. Kopchinsky – yes  
Mr. Overbey – yes  
Ms. Rutledge – yes  
Mr. Amador- yes

February 28, 2006

**Motion:**

Mr. Overbey made the motion to approve.

Ms. Rutledge seconded the motion.

**Vote:**

Motion carried 5-0-1 Abstain

Mr. Ingalls - yes  
Mr. Kopchinsky – yes  
Mr. Overbey – yes  
Ms. Rutledge – yes  
Mr. Amador- Abstain  
Ms. Kirkman - yes

March 28, 2006

**Motion:**

Ms. Rutledge made the motion to approve.

Mr. Overbey seconded the motion

**Vote:**

Motion carried 5-0

Mr. Ingalls - yes  
Mr. Kopchinsky – yes  
Mr. Overbey – yes

Ms. Rutledge – yes  
Mr. Beauch - yes

OTHER BUSINESS

Ms. Rutledge stated she would like to formally thank Mr. Ingalls for all he has done for the BZA Board and Stafford County.

ADJOURNMENT

Ms. Rutledge made the motion to adjourn. Mr. Overbey seconded the motion.

**Vote:**

Motion carried 7-0

- Mr. Ingalls – yes
- Mr. Kopchinsky – yes
- Mr. Beauch – yes
- Ms. Rutledge – yes
- Mr. Overbey – yes
- Mr. Amador - yes
- Ms. Kirkman - yes

Meeting Adjourned at 9:40 p.m.

WLD

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Rachel T. Hudson, Deputy Zoning Administrator