

**King & Queen County  
Planning Commission Minutes  
January 4, 2012**

The King & Queen County Planning Commission met on Wednesday, January 4, 2012, at 6:00 p.m. in the King & Queen County Courts and Administrations Building in the Court Room for their regular monthly meeting.

**Planning Commission Members Present:**

|                     |                     |
|---------------------|---------------------|
| John Roane          | James "Jimmy" Guess |
| Milton Watkins      | Hunter Richardson   |
| David Campbell      | William Herrin      |
| Robert "Bob" Taylor |                     |

**Also in Attendance:**

Thomas J. Swartzwelder, County Attorney  
Donna E. Sprouse, Assistant Zoning Administrator

**Call to Order**

Chairman, Robert Taylor, called the meeting to order.

**Roll Call/Determination of Quorum**

Mr. Campbell took roll call and determined that a quorum was present.

**Election of Officers for 2011**

Mr. Taylor stated that he would entertain a motion for Planning Commission Chair. A motion was made by Mr. Richardson, second by Mr. Herrin to elect Mr. Taylor as Chair.

Voting For: Watkins, Roane, Herrin, Guess, Richardson, Campbell  
Voting Against: None  
Abstain: Taylor

Mr. Taylor thanked the Planning Commission. He stated that he would entertain a motion for Planning Commission Vice Chair. A motion was made by Mr. Watkins, second by Mr. Roane to elect Mr. Richardson as Vice Chair.

Voting For: Watkins, Roane, Herrin, Guess, Taylor, Campbell  
Voting Against: None  
Abstain: Richardson

Mr. Taylor stated that he would entertain a motion for Planning Commission Secretary. A motion was made by Mr. Taylor, second by Mr. Watkins to elect Mr. Campbell as Secretary.

Voting For: Watkins, Roane, Herrin, Guess, Taylor, Richardson

Voting Against: None

Abstain: Campbell

Mr. Taylor noted that he is Chairman, Mr. Richardson is Vice Chair and Mr. Campbell is Secretary for the 2012 calendar year.

### **December 5, 2011 – Regular Meeting**

After brief review of the minutes, a motion was made by Mr. Watkins to approve the minutes as written, second by Mr. Guess.

Voting For: Watkins, Roane, Herrin, Guess, Taylor, Campbell, Richardson

Voting Against: None

Abstain: None

### **Citizens Comment Period**

Mr. Taylor opened the floor for public comment period, hearing no comments from the public, citizens comment period was closed.

### **New Business**

#### **A. Chesapeake Bay Preservation Area Exception, CBPA11-01, Shawn C. Tuthill**

Mr. Taylor asked Mrs. Sprouse to please review the first item under new business. Mrs. Sprouse stated that the Planning and Zoning Department received an initial application for the Planning Commission on May 5, 2011 (with payment) from Mr. Shawn C. Tuthill, requesting a Chesapeake Bay Exception from Zoning Ordinance, Article 12, Section 3-277, Exceptions. Approval of the Chesapeake Bay Exception is required in order for Mr. Tuthill to preserve the after the fact patio, retaining wall, driveway and walkway in RPA.

Mrs. Sprouse stated that the subject property is identified as County Tax Map Parcel #1624-31L-14D, a 1-acre parcel zoned Residential Single-Family (RS), located at 636 Grass Creek Trail, in the Stevensville Magisterial District. She noted that Mr. Tuthill has also submitted a Minor Water Quality Impact Assessment that has been reviewed and approved by King & Queen County Environmental Codes and Compliance Officer, Philip Thompson. Mrs. Sprouse noted as indicated on the site plan prepared by Blair Wilson, his retaining wall & patio encroachment is 75.91 feet into the RPA (24.09 feet to the resource feature); the sidewalk leading to the pier has an encroachment of 82.88 feet into the RPA (17.12 feet to the resource feature).

Mrs. Sprouse noted that in the Commission's packets, there was an email chain between Environmental Codes & Compliance Officer, Philip Thompson and Ms. Nancy Miller with DCR. She asked the Chairman if he would like for her to read the email aloud. Mr. Taylor stated that was not necessary and he hoped the Commission has already read the document.

Mrs. Sprouse also provided the following timeline for the Planning Commission to better inform them of the history of the said property.

- April 27, 1993 -- Shawn Tuthill Grantee, transfer of deed for 636 Grass Creek Trail

- June 15, 1997-- Construction of a pier requested
  - August 11, 1997-- Inspection report states, "No clearing or land disturbance is permitted within 100' Buffer
  - August 11, 1997 -- Boat House and pier, stairway permitted for construction
  - August 29, 1997—Application for single family home construction, allows construction in Landward 50 ft. of RPA for dwelling
- No documentation concerning applications/permitting of sidewalk, patio, nor retention walls.
- February 27, 2002—Zoning Permit Application for Home Addition
  - March 5, 2002—Ches. Bay Preservation Area Zoning Inspection by Mark Remsburg, require a WQIA for Sun Room Addition
  - April 5, 2002—David Billett, P.E., submits WQIA with Stormwater calculations ( no mention of sidewalk, patio or retaining walls as BMP's or impervious area/structure)
  - May 1, 2002—David Billett, P.E., submits additional information on Stormwater management of site, landscape BMP and plant mitigation
  - May 6, 2002—Building Permit issued for Sun Room Addition with plant mitigation
  - January 12, 2011—Shawn Tuthill, Randy Owen and Philip Thompson met at Mr. Tuthill's property, 636 Grass Creek Trail, to observe and discuss the structures, (retaining walls, paver patio and sidewalk in the RPA), and sheds on the pier on said property.
  - January 28, 2011—Resource Protection Area Violation Letter mailed to Mr. Tuthill concerning structures discussed on site at 636 Grass Creek Trail on January 12, 2011.
  - April 11, 2011—WQIA, After the Fact, submitted but no payments by Mr. Tuthill for structures in the RPA.
  - May 5, 2011—Payments for WQIA and completed WQIA resubmitted.
  - June 2-July 29, 2011-- Stormwater Calculations requested.
  - August 2, 2011—Stormwater Calculations submitted by Wilson Engineers, LLC. for Mr. Tuthill's property on 636 Grass Creek Trail.
  - September 2, 2011—I called Blair Wilson and requested core samples for the patio paver base.
  - October 14, 2011—Blair Wilson and I tested water runoff on the patio and he inspected several locations on the patio for the sand and gravel base underneath the patio pavers. Mr. Wilson determined that the paver patio was not pervious.
  - November 22, 2011—Mr. Tuthill delivered to the office the updated copies of the site plan information and color pictures of the property.

Mrs. Sprouse read the following section of Article 12 related to Buffer Area Performance Standards, *“When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be permitted through an administrative process in accordance with the requirements for a Plan of Development and the following criteria:*

- (1) Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;*
- (2) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment and is an area equal to the area encroaching the buffer area shall be established elsewhere on the lot or parcel; and*
- (3) The encroachment may not extend into the seaward 50 feet of the buffer area.”*

Mr. Taylor opened the public hearing and asked if anyone in the audience would like to speak regarding this exception request. Mr. Blair Wilson with Wilson Engineering approached the podium and reviewed Mr. Tuthill’s project. He noted that his client had the patio and retaining walls in place in 2000 and further noted that the structures were present during the time of the sunroom addition and were present while county inspections were being conducted on site for such addition. He stated that his client was not informed at that time that there was an issue with the patio and retaining wall in the RPA. Mr. Wilson read the following required findings:

- (1) Granting the exception will not confer upon the applicant any special privileges that are denied by this Article to other property owners in the Chesapeake Bay Preservation Area Overlay District;*
- (4) The exception request is not based upon 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;*
- (5) The exception request is the minimum necessary to afford relief;*
- (6) The exception request will be in harmony with the purpose and intent of the Chesapeake Bay Preservation Area Overlay District, and not injurious to the neighborhood or otherwise detrimental to the public welfare and is not of substantial detriment to water quality; and*
- (7) Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.*

Mr. Wilson stated that his client has met the previously noted findings and the project is actually an improvement to the property and water quality. He added that he is not aware of the email that was received from DCR, therefore he was not able to address any of information within the document.

Mr. Tuthill, owner of the property also approached the Commission and noted that he would like to add to Mr. Wilson's statement that when he obtained the permit to build his home, he did not know why he was allowed to build it within the 100' buffer. He said that no one told him that he should be outside of the 100' buffer. He stated that he was not required to provide a mitigation plan during the construction of his home. He stated that before the retaining walls were constructed, he had an erosion problem. He also noted that he has planted an extensive number of plants on the property and most within the RPA. Mr. Tuthill stated that if the retaining walls and sidewalk must be removed, he knows that there would be a huge erosion problem during that process.

Mr. Tuthill then stated that the addition was in 2002 and during that time, the patio and retaining walls were already in place since 2000. He noted that during that time Mr. Remsberg did not make any mention of such structures being in violation of the Bay Act. Mr. Herrin asked Mr. Tuthill when he learned of the Chesapeake Bay Act. Mr. Tuthill stated that he doesn't remember exactly he stated that he had read about it and heard about it. He also noted that he is a builder however had never completed construction on a RPA lot. Mr. Herrin asked when he purchased the property was he aware of the RPA requirements on the property. Mr. Tuthill stated he wasn't aware. Mr. Tuthill suggested that a reminder of some kind be sent to waterfront property owners of the requirements of the Bay Act to better inform the citizens of such.

Mrs. Sprouse stated that maybe she can help clarify some of the questions that Mr. Tuthill has raised. She noted that she had the tax map file with her at the hearing and while Mr. Tuthill was speaking, was able to find the zoning routing form back from when Mr. Tuthill applied for the construction of his new home. She noted that the first note from the then Zoning Administrator stated that the 100' RPA buffer must be maintained. She added then below that note, the Administrator stated that because the lot was platted before November of 1989, the home could be 50' from the shore. Mrs. Sprouse stated that she believes though that interpretation was made at that time, she believes the ordinance was misinterpreted. She added that what should have happened was if there was no other building area outside of the RPA, then such encroachment may have been permitted. Mrs. Sprouse also stated that at the time of the application submission for the construction of the sunroom addition, Mr. Remsberg stated in his letter to Zoning Administrator, Paul Koll that a WQIA would be required for the sunroom construction. Mrs. Sprouse stated that David L. Billett, PE with E-Com, LLC prepared the stormwater calculations for the WQIA. Based on the site plan and calculations provided by Mr. Billett on April 2002, the area of impervious cover was calculated by adding the square footage of the house, addition, driveway and shed on the property. Mrs. Sprouse stated that if the patio, sidewalk and retaining wall was in place before the construction of the sunroom as Mr. Tuthill states, why wasn't it included in the WQIA as impervious and/or shown on the site plan.

Mr. Taylor asked if Mr. Tuthill had any photos with dates. Mr. Tuthill stated he did not and didn't realize that he would have needed such.

Mr. Swartzwelder handed Mr. Wilson a copy of the email from DCR for his review. Mr. Wilson then approached the Commission and noted that he has now seen the email and is not surprised of the information provided by Nancy Miller with DCR. He said that this type of response has been the case for 20 years from DCR. Mr. Wilson stated that Mr. Tuthill's request is exactly why they allow for exceptions if they are done correctly.

Mr. Taylor stated that this is a difficult decision for the Planning Commission. He then closed the hearing and asked for comments or questions from the Commission members. Hearing no comments, he asked once again for discussion on the matter. Mr. Taylor informed the Commissions that they could either vote to approve the request, deny the request or table the matter for further review. A motion was made by Mr. Herrin to deny the request. With a lack of a second, Mr. Herrin's motion died. A motion was made by Mr. Taylor to table the request until their February meeting, seconded by Mr. Guess.

Voting For: Watkins, Roane, Guess, Taylor, Campbell

Voting Against: Herrin

Abstain: Richardson

Motion carried, the hearing request is tabled until February 6, 2012.

**B. Chesapeake Bay Preservation Area Exception, CBPA11-02, Mason P. & Mary K. Daniel, III**

Mr. Taylor asked Mrs. Sprouse to please review the second item under new business. Mrs. Sprouse noted that the Planning and Zoning Department received an initial application for the Planning Commission on September 9, 2011(with payment) from Mr. & Mrs. Daniel, requesting a Chesapeake Bay Exception from Zoning Ordinance, Article 12, Section 3-277, Exceptions for a 319 square foot deck constructed without permits located within the landward Resource Protection Area. Approval of the Chesapeake Bay Exception is required in order for Mr. & Mrs. Daniel to preserve their after the fact deck that was constructed in the RPA.

Mrs. Sprouse stated that the subject property is identified as County Tax Map Parcel #1624-53L-73C-15, a 1.75 acre parcel zoned residential single-family (RS), located at 246 River Bluff Lane, in the Stevensville Magisterial District. According to the measurements taken on site by Codes and Compliance Officer, Philip Thompson, along with their attorney, Alex Dillard, their deck encroachment is 11.3' feet into the RPA (88.7 feet to the resource feature) with the existing deck located in the RPA.

Mr. & Mrs. Daniel have also submitted a Minor Water Quality Impact Assessment that has been reviewed and approved by King & Queen County Environmental Codes and Compliance Officer, Philip Thompson.

Mrs. Sprouse read the following section of Article 12 related to Buffer Area Performance Standards, *"When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be permitted through an administrative process in accordance with the requirements for a Plan of Development and the following criteria:*

*(8) Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;*

(9) *Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment and is an area equal to the area encroaching the buffer area shall be established elsewhere on the lot or parcel; and*

(10) *The encroachment may not extend into the seaward 50 feet of the buffer area.”*

Mr. Taylor opened the public hearing and asked if there was anyone that wished to speak for or against the project. Mr. Dillard, attorney for Mr. & Mrs. Daniel approached the Commission and stated that his client was also permitted to construct their home within the landward RPA. He noted that when he and Codes Compliance Officer met on the property and measured the RPA, the RPA did not change from when the lot was platted 20 years ago. Mr. Dillard handed the Commission a copy of a foundation survey dated June of 1996.

Mr. Taylor asked Mrs. Sprouse if she could explain why this was the case. Mrs. Sprouse stated that she couldn't explain why a portion of the home was constructed within the RPA. She did note that years ago many folks measured the RPA incorrectly. She added that most folks assumed the RPA was measured from low tide. Mrs. Sprouse stated that when a parcel is surveyed, the surveyor will include mean low tide and it was assumed by many that the RPA started at the mean low water's edge. She assumed that this may be the case with Mr. & Mrs. Daniel's situation, because she did not find any evidence in their tax map file to state that some form of waiver was granted or some other form of an explanation provided. She also pointed out in the survey handed out by Mr. Dillard that the line that he is referencing on the survey as the RPA line, is actually a tie line and noted that the surveyor did not designate the tie line as the RPA.

Mr. Daniel, property owner approached the Commission and stated that he is aware that ignorance of the rules is no excuse however he had talked with his fellow neighbors and had been told that he did not need a building permit to construct a deck. He stated that if he had come in and obtained a permit, he would have known of the RPA requirements and it wouldn't have been an after the fact situation. He also noted that his brother whom is a builder constructed the deck. He stated that his brother is a builder in Chesterfield and that in Chesterfield, if the deck is free standing and is not connected to the house, a permit is not required.

Mr. Taylor asked if anyone else from the audience would like to speak for or against the project. Mr. Ralph White, neighbor to Mr. & Mrs. Daniel stated that he did not object to the exception request for his deck.

Mr. Taylor stated that he would entertain a motion to approve, deny or table Mr. & Mrs. Daniel's request if there are no further comments from the Commission.

A motion was made by Mr. Herrin to approve the request.

Mr. Richardson asked Mr. Herrin how he arrived at his decision to approve this Chesapeake Bay Exception request. Mr. Herrin replied that he believed that it was the minimum to afford relief and that because the deck doesn't intrude further into the RPA than the house presently. He also noted that this was only an 11' encroachment into the buffer and he believes that the owner was not aware of the requirements. Mr. Taylor stated that there was a motion on the table to approve the request; Mr. Taylor asked if there was a second. Mr. Watkins seconded Mr. Herrin's motion to approve with the steps removed and replaced on the side of the deck and not towards the river front.

Voting For: Watkins, Roane, Herrin, Guess, Taylor, Campbell, Richardson

Voting Against: None

Abstain: None

### **Unfinished Business**

Mrs. Sprouse stated that next month the Commission will continue with the tabled Chesapeake Bay Exception request and then continue with the Comprehensive Plan update/review during their February meeting.

### **Commissioner's Comments**

Mr. Herrin wished everyone a Happy New Year.

Mr. Roane had no comment.

Mr. Richardson stated that he felt that the previous exception request that Mr. C. Roy Taylor brought before the Commission a few years ago was a good example of why we have exceptions. Mr. Richardson stated that tabling Mr. Tuthill's request provides the Commission more time to decide what should be done with this request, rather than making a decision misinformed and quickly. He felt that a lot of information was provided by the engineer, property owner and staff that was not included in the packet for review.

Mr. Watkins had no comment.

Mr. Guess asked if there was anything that could be done to prevent this from happening again. He asked how staff could allow this to begin with. Mrs. Sprouse explained that it is complaint driven. She added that staff does not have the right to trespass onto someone else's property unless invited onto the property, the neighboring property or is visible from public access, such as the streets. She stated that in Daniel's situation, Mr. Thompson was visiting the neighboring property when he noticed the deck being constructed. In Mr. Tuthill's situation, there was a request for a wetlands board project to install rip rap on the property and Mr. Thompson was invited on the property and the violation was noticed during that time. Mrs. Sprouse stated that the county simply doesn't have the staff to police it, however when it is noticed, it is investigated and proper action is then taken. Mrs. Sprouse asked the Commission to please don't assume that staff is looking for violations, however noted that we all are just doing our jobs according to the ordinances approved by the Board of Supervisors.

Mr. Taylor noted that information had been placed in the personal property bills in the past and maybe it is time to consider doing so again. He also noted that staff should continue to do their job when they come across a violation.

Mr. Campbell had no comments.

### **Staff's Comments**

Staff had no further comments.

## **Adjournment**

There being no further business, a motion was made by Mr. Herrin to adjourn. Adjournment was ratified by all present members saying "Aye".

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Robert "Bob" Taylor, Chairman