

# Memorandum

**DATE:** September 8, 2003

**TO:** Board of Supervisors of James City County

**FROM:** Marc Bennett, Mark Rinaldi, Doug Beisch (members of the Chesapeake Bay Preservation Ordinance Update Committee)

**SUBJECT:** Chesapeake Bay Preservation Ordinance Update  
Separation of Structures from the RPA

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As members of the Committee, we believe the committee has been cordial and largely productive, with members of the James City County Staff, the environmental community and the engineering and environmental sciences community, working together for positive outcomes. Consensus has been reached on the several issues. However, the Committee, having met no fewer than four (4) times this year on the Ordinance update, has not been able to reach consensus on the matter of the Staff proposal to require a building separation (most recently, worded as "setback") from the RPA buffer line.

While we are sympathetic to the sometimes unpleasant encounters that Staff must endure in resolving Chesapeake Bay compliance issues, by Staff's own admission, the issue giving rise to their proposal for the separation/setback occurs in fewer than one case per week, on average. We feel, however, that the proposed remedy before you from the Staff will neither minimize unpleasant encounters, nor reduce Staff workload, nor reduce actual or potential infractions of the Ordinance. We believe the following key considerations should be included in your evaluation of this matter and we are prepared to address any questions you might have during your September 23, 2003, work session or subsequent public meetings and hearings in this matter.

The Staff recommends an additional 15-foot (formerly 25-foot) separation be established between the principal dwelling and the RPA Buffer. This separation would provide a construction zone for the principal dwelling erection, a rear yard for the principal dwelling, and an area for the possible future expansion of the principal dwelling. Staff believes the construction zone will:

- Reduce requests to the Staff to allow impacts within the RPA buffer to create yards or dwelling additions.
- Reduce the occurrence of unintentional violations of the RPA buffer, through lack of awareness, which require time and resource expenditures by Staff to enforce and resolve.

All Committee members appreciated the time and effort Staff currently employs in these matters. However, enforcement of an additional separation/setback would also require Staff resources. Essentially, the proposed ordinance amendment would shift the Staff workload from active enforcement to enforcement during the plan approval process. Yet, even the suggested provisions of the amended ordinance may not be completely effective in the reduction of violations.

Speaking not for the Committee as a whole or for Staff, but as three committee members out of five to six regular non-Staff participants, our conclusions are as follows:

- The building separation effectively reduces the buildable area of the lots. On pre-platted lots, adoption of the proposed changes as suggested by Staff will alter the building setbacks without the consent of the property owner. For lots with existing improvements, such a change could result in the creation of non-conforming structures, which if damaged by fire or other natural causes beyond a certain extent, might not be permitted to be re-built. In the absence of vesting provisions, this could become particularly onerous for some homeowners. The application of this requirement to previously platted lots would result in a greater workload for the Staff due to the additional review required for improvements within this 15-foot setback area. On lots to be created subsequent to the amendment, the changes will result in second owner or second applicant privileges not afforded to the original owner or applicant because a future expansion can be approved in instances where original construction cannot (i.e. within the 15-foot setback).
- The proposed building separation/setback does not recognize characteristics unique to the property, such as topography, the nature, extent and maturity of existing vegetation and current land condition or use. These characteristics of the property are strikingly important when considering impacts of construction on the RPA buffer, or even RPA “impacts” themselves. Temporary construction impacts to grassed RPA areas do not pose the same threat to water quality that construction impacts to mature shrubs and trees may pose. Proper erosion and sediment control can alleviate concerns with construction in grassed areas; mature shrubs and trees require years or decades to achieve equivalent environmental benefit of the pre-construction condition.
- “Compliance with the ordinance to the maximum extent practicable” is not a “grand fathering” provision nor does it ensure beneficial use of a platted buildable lot. The phrase does suggest that more active administration (more work load), and subjectivity, not objectivity, may be introduced into the process if Staff’s proposed changes are adopted.

We respectfully submit that greater compliance with this specific Chesapeake Bay Ordinance matter can more simply and cost-effectively be accomplished, and with greater personal accountability and less subjectivity, by:

- Increasing educational opportunities and awareness for the public at large (through the County’s Website, through FYI, Neighborhood Connections, mailings, and particularly, through targeted training of the Realtor community) so that citizens are specifically advised of and know what can and cannot be constructed or altered within the RPA buffer; and,
- Providing provisions in the amended ordinance for highlighting the intent and purpose of the established RPA Buffer, and the noted Staff concerns about construction immediately adjacent to the RPA, for all future property owners to realize, either during the platting of the lots, or at the issuance of the building permit.

We thank you for your consideration of our concerns. Please feel free to call on any of us should you have any questions.