

# **Chesapeake Bay Board**

**October 13, 2010**

## **A. Roll Call**

## **B. Minutes**

1. August 31, 2010 – Work Session
2. September 8, 2010 – Board Meeting

## **C. Public Hearings**

1. CBE- 11-022. McRickard – 6 Ensigne Spence
2. CBE-11-030. Crane – 733 E Tazewells Way
3. CBE-11-032. Usher/Ananthram – 4392 Landfall Drive
4. CBE-11-033. Switzer – 2697 Jockeys Neck Trail
5. CBV-11-006 APPEAL. J Lloyd Bldr/RJGC Equipment Leasing – 104 Archers Court

## **D. Board Considerations**

## **E. Matters of Special Privilege**

## **F. Adjournment**

## **Chesapeake Bay Exception CBE-11-022: 36 Ensigne Spence, Kingsmill**

Staff report for the October 13, 2010 Chesapeake Bay Board Public Hearing

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

### **Existing Site Data & Information**

Applicant: Susan Thomas, Wayne Harbin Builder

Land Owner: Francis and Kathleen McRickard  
36 Ensigne Spence  
Williamsburg, Virginia 23185

Location: 36 Ensigne Spence  
PIN: 5021100014

Parcel Size/Zoning: 1.1 +/- acres, R4 Residential Planned Community

Percent of Parcel in RPA: 45% (0.49 +/- acres)

Watershed: College Creek (HUC – JL34)

### **Proposed Impacts**

Impervious Area: approximately 255 square feet

RPA Encroachment: Landward 50 foot RPA Buffer

### **Brief Summary and Description of Activities**

Ms. Sharon Thomas, Wayne Harbin Builders, on behalf of Francis and Kathleen McRickard has applied for an exception to the Chesapeake Bay Ordinance for an encroachment into the RPA buffer for the purpose of constructing a detached garage. The proposed garage will create approximately 255 square feet of impervious cover in the RPA buffer. The applicant proposes to mitigate for this encroachment with 1 canopy tree and 3 shrubs, which meets the County requirements. The owners have also posted a surety guaranteeing the completion of the mitigation. The garage is requested because the existing structure does not have any garages. The owners have also minimized the impacts to the RPA by adjusting the location while still adhering to the zoning setbacks.

The lot was recorded before the 1990 adoption of the Chesapeake Bay Preservation Ordinance. In this case, the exception request is for the construction of a detached garage and will encroach into the RPA buffer. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing. Furthermore, staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

**Staff Recommendation**

Staff has reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be minimal for the proposed construction and that the proposed mitigation measures are adequate. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

1. The applicant must obtain all other necessary local permits as required for the project.
2. All proposed mitigation plantings shall meet James City County standards of 1” caliper for the canopy and understory trees and with the proposed shrubs being of three gallon size.
3. This exception request approval shall become null and void if construction has not been completed by October 13, 2011 including the required mitigation plantings.
4. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

**Consideration by the Chesapeake Bay Board**

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County’s Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-11-022 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County’s Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-11-022 are included for the Board’s use and decision.

Staff Report prepared by:

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Michael D. Woolson  
Senior Watershed Planner

CONCUR:

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Scott J. Thomas  
Secretary to the Board

Attachments: Sensitive Area Activity Application  
GIS photo

## **Chesapeake Bay Exception CBE-11-030: 733 East Tazewell's Way, Kingsmill**

Staff report for the October 13, 2010 Chesapeake Bay Board Public Hearing

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

### **Existing Site Data & Information**

Applicant: Matt Roth, Roth Environmental

Land Owner: Bradford and Anabel Crane  
733 East Tazewell's Way  
Williamsburg, VA 23185

Location: 733 East Tazewell's Way  
PIN: 5030400102

Parcel Size/Zoning: 0.43 +/- acres, R4 Residential  
Percent of Parcel in RPA: 79% (0.34 +/- acres)

Watershed: College Creek (HUC - JL34)

### **Proposed Impacts**

Impervious Area: approximately 230 square feet

RPA Encroachment Landward and seaward 50 foot RPA Buffer

### **Brief Summary and Description of Activities**

Mr. Matt Roth of Roth Environmental on behalf of Mr. and Mrs. Crane has applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for a retaining wall replacement/extension, patio reconstruction, and minor drainage outfalls.

The proposal will remove approximately 406 square feet of impervious cover (concrete driveway, landing, and wooden stairs) while the proposed retaining walls will add approximately 230 sq. ft. of impervious cover back into the RPA buffer. Therefore, there is a net reduction on approximately 176 sq. ft. of impervious cover within the RPA. The proposal will also remove 7 trees for the construction of the retaining walls. This proposal will prevent failure of the slopes and damage to the existing structures on the property. Proposed mitigation measures of 3 understory trees and 6 shrubs exceed the County requirement based on the proposed impervious cover. Staff discussed with the engineer for the project the idea of incorporating a rain garden concept planting plan into the wall design. This concept will not work well with the particular design due to the design characteristics of the wall.

The lot was recorded before the 1990 adoption of the Chesapeake Bay Preservation Ordinance. In this case, the exception request is for the replacement and extension of retaining walls, reconstruction of a

patio, and minor drainage outfalls, which will encroach into the 50' RPA buffer. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing. Furthermore, staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

### **Staff Recommendation**

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be minimal for the proposed construction and that the proposed mitigation measures exceed requirements. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

1. The applicant must obtain all other necessary local permits as required for the project.
2. All proposed mitigation plantings shall meet James City County standards of 1" caliper for the canopy and understory trees and with the proposed shrubs being of three gallon size.
3. A pre-construction meeting shall be held on-site prior to work commencing.
4. Full implementation of the RPA Mitigation Plan and any additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c) by providing a form of surety satisfactory to the County Attorney. Surety in this case shall be \$250.00.
5. All underdrains shall outlet at the edge of wetlands, not on steep slopes.
6. This exception request approval shall become null and void if construction has not been completed by October 13, 2011 including the required mitigation plantings.
7. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

### **Consideration by the Chesapeake Bay Board**

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-11-030 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-11-030 are included for the Board's use and decision.

Staff Report prepared by:

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Michael D. Woolson  
Senior Watershed Planner

CONCUR:

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Scott J. Thomas  
Secretary to the Board

Attachments: Sensitive Area Activity Application  
GIS photo

## **Chesapeake Bay Exception CBE-11-032: 4392 Landfall Drive, Landfall**

Staff report for the October 13, 2010 Chesapeake Bay Board Public Hearing

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

### **Existing Site Data & Information**

Applicant: Stuart Usher

Land Owner: Vasudev and Angelina Ananthram  
4392 Landfall Drive  
Williamsburg, VA 23185

Location: 4392 Landfall Drive  
PIN: 4732400083

Parcel Size/Zoning: 0.56 +/- acres, R2 General Residential  
Percent of Parcel in RPA: 61% (0.34 +/- acres)

Watershed: Powhatan Creek (HUC - JL31)

### **Proposed Impacts**

Impervious Area: approximately 668 square feet

RPA Encroachment: Landward and seaward 50 foot RPA Buffer

### **Brief Summary and Description of Activities**

Mr. Stuart Usher, on behalf of Mr. and Mrs. Ananthram, has applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for a patio. There is also a conservation easement overtop of the RPA on this property.

The proposal will add approximately 668 square feet of impervious cover in the RPA buffer. The proposal will not remove any trees within the RPA for the construction of the patio and rain garden. This proposal will extend the outdoor functionality of the backyard onto a two-tiered patio with a fire pit. Proposed mitigation measures of 13 understory trees does not meet the County requirement based on the proposed impervious cover. However, there are areas of undesignated planting areas within the RPA.

The lot was recorded between 1990 and 2004, between the original and revised adoptions of the Chesapeake Bay Preservation Ordinance. In this case, the exception request is for the placement of a patio, firepit, rain garden and minor drainage outfall, which will encroach into the RPA buffer. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing. Furthermore, staff finds that the application has met the conditions in

the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

Staff has worked with the property owner in the recent past and approved the following administratively: sight line (June 2010), staircase for water access (March 2010), and a buffer modification (June 2008).

### **Staff Recommendation**

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be minimal for the proposed construction and that the proposed mitigation measures exceed requirements. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

1. The applicant must obtain all other necessary local permits as required for the project.
2. All proposed mitigation plantings shall meet James City County standards of 1” caliper for the canopy and understory trees and with the proposed shrubs being of three gallon size.
3. A pre-construction meeting shall be held on-site prior to work commencing.
4. A RPA mitigation plan with 2 canopy trees, 4 understory trees and 6 shrubs shall be submitted and approved by the Environmental Division. Shrubs may be substituted for canopy trees at a 3:1 ratio or understory trees at a 2:1 ratio. Understory trees may be substituted for canopy trees at a 2:1 ratio.
5. Full implementation of the RPA Mitigation Plan and any additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c) by providing a form of surety satisfactory to the County Attorney. Surety in this case is \$1000.00.
6. All underdrains shall outlet at the edge of wetlands, not on steep slopes.
7. This exception request approval shall become null and void if construction has not been completed by October 13, 2011 including the required mitigation plantings.
8. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

### **Consideration by the Chesapeake Bay Board**

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County’s Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-11-032 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County’s Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-11-032 are included for the Board’s use and decision.

Staff Report prepared by:

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Michael D. Woolson  
Senior Watershed Planner

CONCUR:



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Scott J. Thomas  
Secretary to the Board

Attachments: Sensitive Area Activity Application  
GIS photo

**Chesapeake Bay Exception CBE-11-033: 2697 Jockeys Neck Trail**  
Staff report for the October 13, 2010 Chesapeake Bay Board Public Hearing

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

**Existing Site Data & Information**

Applicant: Daniel F. Switzer  
Land Owner: Daniel F. Switzer & Diana H. Skelton  
Location: 2697 Jockeys Neck Trail  
Parcel: Lot 19, Phase 2, Vineyards at Jockeys Neck  
Parcel Identification: 4840200019  
Lot Size: 0.73 acres  
RPA Area on Lot: 0.721 acres or 98.7% of the lot  
Watershed: College Creek (HUC Code JL34)  
Proposed Activity: Construction of a paver patio addition

**Proposed Impacts**

Impervious Area: 400 square feet  
RPA Encroachment Seaward 50 foot RPA Buffer

**Brief Summary and Description of Activities**

Mr. Daniel F. Switzer of 2697 Jockeys Neck Trail in the Vineyards at Jockeys Neck has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer for the construction of a paver patio addition approximately 400 square feet in size. The paver patio addition is approximately 20 ft. x 20 ft. in size and is situated off of the existing deck and screened porch on the west portion of the existing home. Because of the lot's setting between two fingers of existing Lake Ajacan, the entire patio is situated within the seaward 50 ft. RPA buffer. The patio will create 400 square feet of impervious area within the seaward RPA Buffer.

A detailed RPA Mitigation Planting Plan (Plan) has been provided along with the exception request for your review. The plan proposes to mitigate for the RPA impacts by planting one (1) native understory trees and three (3) native shrubs. The amount of plantings proposed meets the standard mitigation planting requirements of the County for impervious impacts. Following a meeting on September 15<sup>th</sup> 2010 between the applicant/owner, the landscape contractor, and County staff, the applicant has offered additional mitigation by installing a LID-IMP (low impact development – integrated management

practice) feature in the proposed mulched bed area directly adjacent (west) of the proposed patio footprint. This area is approximately 20 ft. long x 6 ft. wide. Initially this feature was proposed as a typical raised mulch bed with plantings. However, by examining drainage patterns and discussing the potential opportunities for an LID-IMP feature at this location, the mulched bed area is now proposed to directly treat runoff from new impervious cover for the patio in a source control manner. This area is not intended to be an infiltration or bio-retention type area; however by use of soil tilling (in a previously compacted yard soil area), placement of soil amendments (sand, organics, peat, etc.), grading to depress the area (rather than constructing a mulch berm), mulching and use of selective plantings the area will serve as a LID-IMP type feature.

As a note, the applicant provided specifications for the proposed paver patio addition. The paver blocks are proposed as concrete pavers with sand-filled joints on 1 to 1-1/2 inch thick sand bed placed on gravel stone. Geotextile fabric and compacted subgrade soils beneath the gravel may be necessary depending on encountered soil conditions. The patio will also have a cobbled slate border. Although paver block with sand-filled joints, the system is not considered by staff as a pervious system, but impervious cover. This is because the paver stones are not of a permeable nature and the only potential for runoff to enter subgrade is between the sand-filled joints, which in time will tend to consolidate and seal off any entry of water. Also, subgrade layers are not designed to act as an infiltration, treatment or containment (detention) areas and an underdrain is not proposed for the system to serve as a filtering device.

### **Staff Recommendations**

The issue before the Board is the addition of 400 square feet of impervious area within the seaward RPA buffer for a paver patio addition. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14(c) of the Ordinance. There are five (5) review criteria within this section of the ordinance.

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be minimal and impacts associated with the proposal are adequately offset with implementation of the mitigation plan. If the Board favors the resolution to grant approval, staff recommends the incorporation of the following conditions into the approval:

1. The applicant must obtain all other necessary local permits as required for the project.
2. All proposed mitigation plantings shall meet James City County standards of 1" caliper for the canopy and understory trees and proposed shrubs shall be minimum three gallon size.
3. The LID-IMP (low impact development – integrated management practice) feature, as shown and labeled on the mitigation plan as a “bio-retention area”, shall be constructed adjacent to the patio. This area shall be approximately 120 square feet in size and consist of a depressed (sunken) area with soil amendments, mulch and native plantings as approved by the Environmental Division.
4. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) (d) and 23-17(c) which is providing a form of surety satisfactory to the County Attorney.
5. This exception request approval shall become null and void if construction has not begun by October 13, 2011 or all improvements including the required mitigation plantings, including the infiltration area, are not completed by that expiration date.
6. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

## **Background**

The lot was recorded in 1991, after the adoption of the Chesapeake Bay Ordinance in 1990. There was no RPA present on the lot at recordation. However, effective January 1, 2004, the revised Ordinance went into effect establishing 100-foot RPA buffers around all water bodies with perennial flow. It has been determined that both the upper (Jochin) and lower (Ajacan) connected lake system in the Vineyards at Jockeys Neck have perennial flow entering into them. Therefore, an RPA buffer now exists around both ponds and RPA is present on this subject lot.

As the proposed feature is accessory in nature, it cannot be administratively reviewed and therefore in accordance with section 23-14 of the Ordinance, an exception request must be considered by the Chesapeake Bay Board following public hearing under the formal exception process.

The exception request before the board, and decision to approve or deny by resolution, is for encroachment into the RPA buffer for the construction of a paver patio addition approximately 400 square feet in size.

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

Under Sections 23-11 and 23-14 of the County's Chesapeake Bay Preservation ordinance, a water quality impact assessment (WQIA) must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPAs.

The applicant has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant has submitted a County *Sensitive Area Activity Application*, a mitigation plan and additional details and specifications. The WQIA map shows features of the proposal along with a mitigation plan for plantings and the general location of the soil amendment/planting area at the mulched bed area. This area is approximately 120 square feet in size and is identified on the scaled plan as "Proposed Bioretention Basin". This feature was described in detail in the staff report above and will help to intercept and treat runoff from the new impervious area and provide water conservation benefits.

## **Consideration by the Chesapeake Bay Board**

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-11-033 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-11-033 are included for the Board's use and decision.

Staff Report prepared by:

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Scott J. Thomas  
Secretary to the Board

Attachments: Sensitive Area Activity Application  
Mitigation Plan  
Incidental Details & Specifications

## MEMORANDUM

**DATE:** October 13, 2010  
**TO:** The Chesapeake Bay Board  
**FROM:** Michael D. Woolson, Senior Watershed Planner  
**SUBJECT:** CBV-11-006 – RJGC Equipment Leasing, 104 Archer's Court

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Mr. Jeremy L. Findlay, President, J. Lloyd Builder, Inc., on behalf of RJGC Equipment Leasing, has filed an appeal of the Chesapeake Bay Preservation Ordinance Notice of Violation requirements, dated August 31, 2010. The Notice of Violation required the execution of a Chesapeake Bay Restoration Agreement, the restoration of the RPA with native plantings, and removal of a patio.

On August 25, 2010, staff became aware of the unauthorized patio following a routine inspection at the residence. Staff initiated an investigation and as a result has documented a violation of the County's Chesapeake Bay Preservation Ordinance.

### Historical Background Information

On or about July 27, 2009 an Application for Building Permit was submitted for the building of a new single family residence. This lot (PIN 4930280017) has an RPA encroaching upon it from the adoption of the 2004 Chesapeake Bay Preservation Ordinance amendments from a perennial stream. At the time of the original Building Permit application, a Sensitive Area Activity Application form was submitted for the house construction. This application was processed administratively because of the time the lot was platted and the impacts to the RPA were in the landward 50 foot buffer. The exception request was granted for the building of this residence on August 11, 2009. The RPA mitigation plan was also approved at this time. On the permit application, there was no mention of a 6-foot x 12-foot patio to be constructed at the rear of the residence (walk-out basement location). Additionally, Board members have communicated to staff their general resistance to processing after-the-fact permits.

### Staff Guidance and Recommendations

Staff has reviewed the appeal and violation documents and offers the following information for the Board's consideration.

1. J. Lloyd Builder, Inc. is under contract to this residence for RJGC Equipment Leasing. The builder went through the building permit application for the construction of the primary residence, according to Ordinance requirements and Division guidelines. The builder was aware of the resource protection area on this lot. The builder takes full responsibility for the error in not obtaining proper approvals for this patio (see attached letter).
2. The Chesapeake Bay Preservation Ordinance Sections 23-7 and 23-10 require that authorization and a plan of development be reviewed and approved by the County prior to activities within RPA's.
3. 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; and
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's guidance to the Board on deciding this matter is as follows:

1. The hardship is shared by other properties immediately adjacent to the appellant's property as well as numerous other properties within Kingspoint that have RPA components located on them.
2. The granting of the appeal in this case may not adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity.
3. The hardship is self-inflicted, as the builder knew the lot was in the RPA and what the proper procedures were to go through the Chesapeake Bay Board for approval, as he did this for the main structure and detached garage.

Should this Board find in favor of staff, the Board should deny the appeal and allow the administrative order to remain in place.

Should the Board find in favor of the appellant, the Board should require that the retaining wall application come before them at the next regularly scheduled Chesapeake Bay Board meeting for review and discussion.

#### Attachments

1. Notice of Violation, dated August 31, 2010
2. Appeal letter, dated September 10, 2010
3. CBPO Sensitive Area Application Form, dated July 27, 2009, approved August 11, 2009
4. Building Permit application, dated August 11, 2009
5. RPA mitigation plan, approved August 11, 2009