

Chesapeake Bay Board Building F - 7 P.M.

July 13, 2011

A. Roll Call

B. Minutes

From June 8, 2011 – Board Meeting

C. Public Hearings

1. CBE-11-129. Drygala–3649 Bridgewater – retaining wall and clearing for back yard
2. CBE-11-134. Crawford/Adams–132 Nottinghamshire – clearing for back yard

D. Board Consideration

1. CBE-10-038. Cooke’s Gardens – Permit Extension

E. Matters of Special Privilege

1. FY 11 Annual Report
2. Clean-the-Bay-Day Summary
3. Chesapeake Bay Local Assistance Compliance Review

F. Adjournment

Chesapeake Bay Exception CBE-11-129: 3649 Bridgewater Drive - Drygala

Staff report for the July 13, 2011 Chesapeake Bay Board Public Hearing

This staff report is prepared by James City County Engineering and Resource Protection 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: Marcin Drygala

Land Owner: Marcin Drygala and Agnieszka Adamska

Location: 3649 Bridgewater Drive

Parcel: Lot 8, Section 6, Mill Creek Landing

Parcel Identification: 3841760008

Lot Size: 0.37 acres

RPA Area on Lot: 0.20 acres or 54% of the lot, 0.06 acres or 16.2% of the lot seaward 50 foot RPA

Watershed: Mill Creek (HUC Code JL33)

Proposed Activity: 16' x 25' attached deck (administrative)
Retaining wall (178 linear feet), clearing, filling, and grading for a backyard

Proposed Impacts

Impervious Area: 400 square feet from deck (administrative)
178 square feet from retaining walls

RPA Encroachment: 2,400 square feet to the seaward 50 foot RPA Buffer and 900 square feet to the landward 50 foot RPA Buffer, total RPA Buffer impact = 3,500 square feet

Brief Summary and Description of Activities

Mr. Marcin Drygala has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer for the construction of an attached deck, retaining wall, clearing, filling and grading of a back yard at 3649 Bridgewater Drive, in the Mill Creek Landing Subdivision. The lot was platted prior to the original Chesapeake Bay Preservation Ordinance. An RPA was determined to exist on this lot after the 2004 revision to the Ordinance. The house was approved administratively with RPA impacts under CBE-05-025 on June 7, 2005. The rear yard that was approved at that time is 30 feet deep and has a slight slope to it. The attached deck is considered a part of the principal structure and therefore an administrative process. The retaining walls are considered accessory structures and the majority of the clearing, filling, and grading of the rear yard is within the seaward 50

foot RPA buffer. According to Section 23-7 (c) (2), these activities do not qualify for an administrative exception.

Staff Recommendations

The issue before the Board is the installation of three retaining walls and clearing, filling, and grading of a rear yard within the seaward RPA buffer. The existing rear yard is 30 feet deep from the rear door of the structure. This yard does have a slight slope to it, draining away from the house. The applicant wishes to expand the rear yard with a combination of retaining walls and clearing, filling and grading the yard to the entire extents of the rear yard. The original application had a cleared rear yard associated with the house. The additional clearing, filling and grading do not appear to be within the spirit and intent of the Ordinance, therefore staff cannot support the application as submitted. 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 review criteria within this section of the ordinance.

Staff has fully reviewed the application and exception request and has determined that none of the conditions outlined in Section 23-14 (c) have been met. There are several options available to the Board:

1. Approval of the application with the mitigation as outlined (12 canopy, 25 understory, and 20 shrubs), mitigation plan to be submitted within 15 days of the public hearing; or
2. Deferral; or
3. Denial.

If the Board should choose to approve this application, regardless of other requirements imposed by the Board, 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. An RPA Mitigation Plan submitted to the Division within 15 days of the approval. Full implementation of the approved RPA Mitigation Plan and any additional Board mitigation requirements shall be guaranteed through a form of surety satisfactory to the County Attorney and the provisions of the Ordinance contained in Sections 23-10(3) (d) and 23-17(c).
4. This exception request approval shall become null and void if construction has not begun by July 13, 2012.
5. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 2 weeks prior to the expiration date.

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 majority of 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*. The required mitigation plan has not yet been submitted. Staff is comfortable with the mitigation plan being submitted later, if the application is approved.

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-11-129 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-11-129 are included for the Board’s use and decision.

Staff Report prepared by:

Michael D. Woolson
Senior Watershed Planner

CONCUR:

Scott J. Thomas
Secretary to the Board

Attachments: Sensitive Area Activity Application

Chesapeake Bay Exception CBE-11-134: 132 Nottinghamshire - Adams

Staff report for the July 13, 2011 Chesapeake Bay Board Public Hearing

This staff report is prepared by James City County Engineering and Resource Protection 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: Woody Crawford

Land Owner: James Adams

Location: 132 Nottinghamshire

Parcel: Lot 30, Section 12, Ford's Colony Subdivision

Parcel Identification: 3233100030

Lot Size: 0.43 acres

RPA Area on Lot: 0.35 acres or 81.4% of the lot (wetlands plus RPA), 0.26 acres or 60.4% of the lot (RPA only)

Watershed: Powhatan Creek (HUC Code JL31)

Proposed Activity: Clearing, filling, and grading for a backyard

Proposed Impacts

Impervious Area: 0 square feet

RPA Encroachment: 6,000 square feet to the seaward 50 foot RPA Buffer

Brief Summary and Description of Activities

Mr. Woody Crawford, agent for Mr. and Mrs. James Adams, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer for the construction of a single family residence and clearing, filling and grading a backyard at 132 Nottinghamshire, in the Ford's Colony Subdivision. The lot was platted between 1990 and 2004 and an RPA was determined to exist after the 2004 revisions to the Chesapeake Bay Preservation Ordinance. As the single family residence is within the landward 50 foot RPA buffer, according to Section 23-7 (c) (2), it may be allowed through an administrative process. The clearing, filling, and grading of the backyard is within the seaward 50 foot RPA buffer and does not qualify for an administrative exception, according to the same section.

On or about May 26, 2011 an application was submitted for lot development. The application was for the principal structure (house and deck) and backyard area. At that time, staff reviewed the application and made decision that due to the backyard RPA seaward impacts that the entire application should go through the formal (Chesapeake Bay Board) process. On or about June 2, 2011, Mr. Crawford visited the County office to discuss with the Director of Engineering and Resource Protection, Mr. Scott Thomas, options available with this application in order to keep home construction from being delayed. The owner and owner representative had an option to either delay the case until the next available Chesapeake Bay Board hearing, or revise the application to avoid any impact to the 50 ft. seaward RPA buffer so that the principal structure and deck could be processed administratively and remaining accessory components could subsequently follow by the formal exception process. The applicant chose the latter. The limits of work on the site plan was revised to reflect this intent and signed and initialed by both the applicant and County Engineering and Resource Protection Division Director. In addition, conditional language was written into the administrative approval for the principal structure using the County standard Sensitive Area Activity Application (SAAA) form. Conditional approval on the SAAA form stated the following: *“Approval does not authorize work in the 50’ RPA buffer zone, except for limited 10’ +/- for principal structure construction. Encroachment into 50’ RPA will be handled by subsequent Bay Board case. Surety for this application 7-14-21 will be handled in Bay Board case. Also authorize steep slope impact in revised limits of work.”*

On or around June 20, 2011 County compliance inspection staff observed clearing activities on the entire lot, not just what was authorized under the administrative approval, and clearing was beyond the defined limits of work on the approval. At this time, the lot is entirely cleared, grubbed and the house construction has begun. This clearing activity came about after the original start of processing of the Chesapeake Bay Board case. As such, this formal exception case is now considered to be an “after-the-fact” exception application.

Staff Recommendations

The original issue before the Board is the clearing, filling, and grading of a rear yard with zero square feet of impervious area within the seaward RPA buffer. An additional issue is now before the Board because of the advanced clearing, filling, and grading of the seaward 50’ RPA buffer prior to approval. 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 review criteria within this section of the ordinance.

Staff has fully reviewed the application and exception request and has determined that none of the conditions outlined in Section 23-14 (c) have been met. There are several options available to the Board:

1. Approval of the application with the mitigation as outlined for the house construction (7 canopy, 14 understory, 21 shrubs) as adequate, mitigation plan to be submitted within 15 days of the public hearing; or
2. Approval of the application with double the mitigation as outlined for the house construction (14 canopy, 28 understory, 42 shrubs) as adequate, mitigation plan to be submitted within 15 days of the public hearing; or
3. Either option 1 or 2 above plus payment into the Chesapeake Bay Mitigation Fund of a dollar amount to be set by the Board. Staff suggests the Board use the matrix to determine the contribution amount; or
4. Either option 1 or 2 above plus direct staff to pursue a Chesapeake Bay Preservation Ordinance civil charge violation under Section 23-18 (b). Staff would suggest maximum fines because of the blatant nature of the violation and the impact to water quality; or

5. Direct staff to pursue a Chesapeake Bay Preservation Ordinance civil penalty violation under Section 23-18 (a) and full restoration of the seaward 50' RPA buffer with a mitigation plan to be submitted within 15 days of the public hearing; or
6. Denial of the application and full restoration of the seaward 50' RPA buffer, mitigation plan to be submitted within 15 days of the public hearing; or
7. Some other combination satisfactory to the Board.

If the Board should choose to approve this application, regardless of other requirements imposed by the Board, 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. An RPA Mitigation Plan submitted to the Division within 15 days of the approval. Full implementation of the approved 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) which is providing a form of surety satisfactory to the County Attorney.
4. This exception request approval shall become null and void if construction has not begun by July 13, 2012 or all improvements including the required mitigation plantings are not completed by that expiration date.
5. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 2 weeks prior to the expiration date.

Background

Based on staff review of County records, the lot was recorded following the adoption of the Chesapeake Bay Preservation Ordinance and the house is currently under construction. As the proposed backyard is within the seaward 50' RPA buffer, 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 establishment of a backyard 6,000 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* and a required mitigation plan, both of which are included in the case report packet. The map provided shows features of the proposal along with a mitigation plan for native plantings.

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-11-134 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-11-134 are included for the Board’s use and decision.

Staff Report prepared by:

Michael D. Woolson
Senior Watershed Planner

CONCUR:

Scott J. Thomas
Secretary to the Board

Attachments: Sensitive Area Activity Application
Mitigation Plan

RESOLUTION

GRANTING AN EXCEPTION ON JCC RE TAX PARCEL NOS. 4730100002, 30100005, and 4730100003

WHEREAS, **Mr. Charlie Martino, operations manager, on behalf of Cooke's Garden Center** (the "Applicant") has requested and extension of the exception granted by the Chesapeake Bay Board of James City County (the "Board") on **August 11, 2010** for use of the Resource Protection Area (the "RPA") on parcels of property identified as JCC RE Tax Parcel Nos. **4730100002, 4730100005, and 4730100003** and further identified as **229 Sandy Bay Road, 1820 & 1826 Jamestown Road** (the "Property") as set forth in the application **CBE-10-038** for **6,273 square feet of RPA buffer impacts for walkways, display and storage of nursery container stock, and a portion of the stormwater management facility for this retail plant and garden supply sales operation** and;

WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record.

NOW, THEREFORE, following a public hearing, the Chesapeake Bay Board of James City County by a majority vote of its members FINDS that:

1. The exception request is the minimum necessary to afford relief.
2. Granting the exception will not confer upon the Applicant any special privileges denied by Chapter 23, Chesapeake Bay Preservation, of the James City County Code, to other property owners similarly situated in the vicinity.
3. The exception request will be in harmony with the purpose and intent of Chapter 23 of the James City County Code, and is not of substantial detriment to water quality.
4. The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.
5. Reasonable and appropriate conditions are hereby imposed, as set forth below, which will prevent the exception request from causing a degradation of water quality.
6. In granting this exception, the following conditions are hereby imposed to prevent this exception request from causing degradation of water quality:
 - **The applicant must obtain all other necessary federal, state, and local permits as required for the project.**

- The removal of 8,364 square feet of RPA buffer impacts caused by the existing gravel.
- Full implementation of the mitigation measures submitted with the WQIA and site plan plus 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.
- This exception request approval shall become null and void if construction has not begun by August 11, 2012 or all improvements including the required mitigation measures are not completed by August 11, 2013.
- Written requests for an extension to this exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

David Gussman
Chair, Chesapeake Bay Board

ATTEST:

Scott J. Thomas
Secretary to the Board

Adopted by the Chesapeake Bay Board of James City County, Virginia, this 13th day of July 2011.

GrantExcTemp.res

Douglas W. Domenech
Secretary of Natural Resources



David A. Johnson
Director

COMMONWEALTH of VIRGINIA
DEPARTMENT OF CONSERVATION AND RECREATION

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Environmental Division

JUN 29 2011

June 27, 2011

Mr. Robert C. Middaugh
County Administrator
James City County
Post Office Box 8784
Williamsburg, Virginia 23187

RECEIVED

Dear Mr. Middaugh:

On June 20, 2011, the Chesapeake Bay Local Assistance Board conducted a compliance evaluation review for James City County for consistency with the Chesapeake Bay Preservation Act and Regulations. The Board's Resolution, reflecting the action taken, is attached.

On behalf of the Board and myself, I want to congratulate you and the County for implementing a program that is compliant with the Act and Regulations.

We look forward to continuing to work with you and the County in the future. As always, if you have any questions or if we can be of any assistance, please contact your liaison, Ms. Shawn Smith or Mrs. Joan Salvati, Acting Regulatory Program Manager.

Sincerely,

A handwritten signature in cursive script that reads "David A. Johnson".

David A. Johnson

Enclosure

- c: ✓ Mr. Scott Thomas, Engineering and Resource Protection Division Director, James City County
Mrs. Joan Salvati, Acting Manager, Regulatory Programs, DCR
Mr. David Sacks, Acting Local Implementation Program Manager, DCR
Ms. Shawn Smith, Principal Environmental Planner, DCR

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD
June 20, 2011

RESOLUTION

LOCAL PROGRAM COMPLIANCE EVALUATION
JAMES CITY COUNTY

Local Compliance Evaluation – Compliant

WHEREAS § 10.1-2103 of the Chesapeake Bay Preservation Act states that the Chesapeake Bay Local Assistance Board shall take administrative and legal steps to ensure compliance by counties, cities and towns with the provisions of the Chesapeake Bay Preservation Act, including the proper enforcement and implementation of, and continual compliance with the Act; and

WHEREAS § 9 VAC 10-20-250 1 b of the Regulations required the Board to develop a compliance evaluation process for evaluating local Bay Act compliance; and

WHEREAS the Chesapeake Bay Local Assistance Board adopted a compliance evaluation process on June 18, 2008, for the purposes of reviewing local Bay Act compliance; and

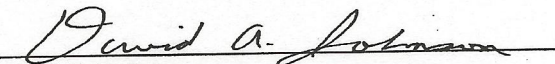
WHEREAS the Chesapeake Bay Local Assistance Board approved Compliance Evaluation Review Elements on June 21, 2010; and

WHEREAS in the Winter of 2010 through Spring of 2011, the Department of Conservation and Recreation conducted a compliance evaluation of James City County's Chesapeake Bay Preservation Act program in accordance with the adopted compliance evaluation process and approved review elements; and

WHEREAS after considering and evaluating the information presented on this date, the Board agrees with the recommendation in the staff report; now

THEREFORE BE IT RESOLVED that the Chesapeake Bay Local Assistance Board finds the implementation of James City County's Chesapeake Bay Preservation Act program to be in compliance with §§ 10.1-2109 and 2111 of the Act and §§ 9 VAC 10-20-231 and 250 of the Regulations.

The Director of the Department of Conservation and Recreation certifies that this resolution was adopted in open session on June 20, 2011, by the Chesapeake Bay Local Assistance Board.


David A. Johnson
Director
Department of Conservation and Recreation