

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
November 18, 2009**

A. ROLL CALL

David Gussman – Vice Chair
Terence Elkins
John Hughes
Larry Waltrip
Charles Roadley - Alternate

ABSENT

William Apperson

OTHERS PRESENT

County Staff (Staff)

The responsibility of this Board is to carry out locally the Commonwealth policy to protect against and minimize pollution and deposition of sediment in wetlands, streams, and lakes in James City County, which are tributaries of the Chesapeake Bay.

B. MINUTES

The October 14, 2009 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBE-10-034 - Deane – 109 Longboat

Pat Menichino, Compliance Specialist, presented the following case:

Existing Site Data & Information

Applicant: Donald M. Deane
Land Owner: Donald M. Deane & Susanne M Curtis
Location: 109 Longboat, Ford's Colony, Williamsburg, Virginia
Parcel ID: 3130900033
Lot Size: .52 acres
RPA Area on Lot: .38 acres or 73 % of the lot.
Watershed: Powhatan Creek, Subwatershed 203
Proposed Activity: Installation of a Segmental Block Retaining Wall

Proposed Impacts

Impervious Area: 15 square feet
RPA Encroachment : Landward 50 foot RPA Buffer

Brief Description and Summary

Mr. Donald M. Deane, 4400 Kings James, Williamsburg applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the Resource Protection Area (RPA) buffer, for the construction of segmental block retaining wall totaling 23 LF in length, with 15 LF extending into the landward 50 foot RPA buffer. The wall will create 15 sqft of impervious area within the 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 canopy trees and three (3) native shrubs, in mulch planting beds to help filter runoff. The proposed plantings meet the standard mitigation planting requirements of the County for impervious impacts. The applicant has offered additional mitigation by reducing the amount of turf area onsite and replacing it with native plants. Therefore this proposal will reduce the current encroachment into the RPA.

Background

The lot was recorded after the 1990 adoption of the Ordinance, but no RPA existed on the lot at that time. In 2004 the Ordinance requirements related to the determination of perennial flow were changed requiring that perennial water bodies be identified based on a field evaluation. A perennial feature at the rear of the lot was identified requiring a 100 foot RPA buffer be established on the lot.

In this case, the exception request is for segmental block retaining wall, within the landward 50 foot buffer. This request does not qualify for an administrative waiver because it is for an accessory structure. In accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board (Board) after a public hearing.

Water Quality Impact Assessment (WQIA)

Under Section 23-14 of the amended Ordinance, a WQIA must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPA.

The applicant has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*.

Staff Recommendations

Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal.

If the Board votes to approve the exception request, staff recommends the following conditions be incorporated into the approval:

1. The applicant must obtain all other permits required from agencies that may have regulatory authority over the proposed activities, including a James City County building permit if required.
2. The size of the trees planted shall be a minimum of 1-1/2 inch caliper (six to eight feet tall) and the shrubs shall be 3 gallon size. All vegetation shall be native species approved by the Environmental Division.
3. 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), 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 November 12, 2010, 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 Environmental Division no later than 2 weeks prior to the expiration date.

The issue before the Board is the addition of the 15 sq ft of impervious area within the RPA buffer. 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.

Mr. Elkins asked when the wall was constructed.

Mr. Menichino stated after the application was submitted but prior to this public hearing.

Mr. Gussman opened the public hearing.

A. Mr. Deane, owner, apologized for the encroachment into the RPA before this meeting.

B. Doug Lockwood, Landscape designer with Southern Blue, stated the wall was extended into the RPA prior to approval, because of confusion over the exact location of the 100 foot RPA. He stated the additional mitigation was being offered for this oversight.

Mr. Gussman closed the public hearing as no one else wished to speak.

Mr. Waltrip stated it appeared many other property owners would be in the same situation, due to the topography of the area.

Mr. Elkins stated, he was greatly concerned with the construction of the wall prior to approval from this Board however, the exception was not an unreasonable request, and in this case, he would accept the applicant's apology and explanation of confusion over the RPA line, and approve the exception request.

Mr. Roadley stated he agreed with Mr. Elkins comments and commended the applicant for offering the additional mitigation.

Mr. Hughes made a motion to adopt the resolution granting the exception on Chesapeake Bay Board case number CBE-10-034 on tax parcel #3130900033.

The motion was approved by a 5-0 vote.

2. CBE-10-038 – Martino/Schell – Cooke's Gardens

Mike Woolson, Senior Watershed Planner presented the following case:

Existing Site Data & Information

Applicant:	Mr. Charlie Martino, Operations Manager Mr. Jeff Schell, Owner
Land Owner(s):	Mr. Jeff Schell
Location:	259 Sandy Bay Road, 1820 & 1826 Jamestown Road
Parcel Identification:	4730100002, 4730100005, and 4730100003
Parcel Size/Zoning:	Limited Business (LB) 2.8 acres – 259 Sandy Bay Road Limited Business (LB) 0.5 acres – 1826 Jamestown Road General Business (B1) 1.2 acres – 1820 Jamestown Road
Percent of Parcel in RPA:	50% (1.4 acres) of 259 Sandy Bay Road 0% of 1820 Jamestown Road 0% of 1826 Jamestown Road
Watershed:	Powhatan Creek, tidal mainstem subarea
Other:	Site plan for all future work, including building modification and up-to-date stormwater compliance has not yet been submitted.

Impacts

RPA Encroachments:	0.32 acres (13,900 sqft)
Impervious Cover Amount Existing within RPA:	0.32 acres
Disturbed Area Amount Proposed within RPA:	0.32 acres

Brief Summary and Description of Activities

Mr. Charlie Martino, operations manager, on behalf of Cooke's Garden Center applied for an exception to the Bay Act Program and Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the Resource Protection Area (RPA) buffer for the continued use of the RPA for the display and storage of nursery container stock. Through the redevelopment of the entire Garden Center site, stormwater and

impervious cover issues will be addressed. This portion of the project deals with impervious cover within the RPA and cannot be processed administratively. The applicant proposes to reduce the impervious cover within the RPA, while allowing for the continued use of a portion of the RPA for the commercial sale of plant material (containerized trees and/or shrubs). Over the course of many years, the outdoor display area has grown in size and now encroaches into the RPA. The applicant recognizes that this has occurred and is requesting that a portion of the impact be allowed to remain (4,500 sqft) while removing the remaining impervious cover (9,400 sqft) and restoring and improving the soil. The Garden Center is on the south side of Jamestown Road, generally across the road from the parking lot for the County's Powhatan Creek Park and Blueway (small boat/canoe launch).

Staff Evaluation

County Environmental Division staff (Staff) evaluated the application and exception request for all work as described above. The proposal is the continued use of the outdoor display area within the RPA, as modified (see Sheet C-3A), by removing 68% of the existing impervious cover. The applicant also proposes to create a walking trail within the seaward 50 foot RPA to demonstrate how native plants control erosion and clean stormwater. There will be educational links between this display area and the new proposed green roof and rainwater harvesting system that are proposed to be installed in the future.

Water Quality Impact Assessment (WQIA)

In accordance with Bay Act requirements and the Ordinance all land disturbance, development or redevelopment within RPA requires a WQIA. WQIAs shall identify impacts of proposed development on water quality and land in RPAs and recommended measures for mitigation of these impacts. Localities must review a WQIA prior to action on the exception request. James City County has established guidelines for submission of minor/major WQIAs.

A WQIA was submitted on October 8, 2009 and assigned Chesapeake Bay Exception CBE-10-038. Based on Staff review, the WQIA proposes to mitigate for RPA impacts by:

- The removal of 9,600 sqft of existing gravel and pavers, replacing with topsoil and mulch, including removing all impervious cover within the seaward 50 feet of the RPA.

Other Important Review Information

The following is additional information provided to the Chesapeake Bay Board (Board) by Staff. This additional information is deemed important relative to the review of this particular exception request.

- The parcel and portions of the project area are situated in Special Flood Hazard Area (SFHA), Zones AE and Zone X designations according to FEMA FIRM Panel 185, Map No. 51095C0185C, September 28, 2007)
- This is one portion of a project that will improve the overall site. The other features mentioned (green roof, rainwater harvesting, new/expanded BMP's, additional reduction of impervious cover) will be realized once the site plan comes in for review and the site work is accomplished.
- Because of the project's location in the Powhatan Creek watershed, the project will be subject to the County's Special Stormwater Criteria at the time of plan of development.

Staff Recommendation

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts now associated with the proposal to be minimal with the proposed mitigation measures. Staff recommends the Board approve this Chesapeake Bay Exception, CBE-10-038, with the proposed mitigation measures as outlined above as conditions. Furthermore, any approval should also be conditioned as follows:

1. The applicant must obtain all other necessary federal, state, and local permits and approvals as required for the project.
2. The removal of 9,600 sqft of existing gravel and pavers, replacing with topsoil and mulch, including removing all impervious cover within the seaward 50 feet of the RPA.
3. The applicant shall prepare and submit a pollution prevention plan at the time of site plan submittal. It shall include all necessary means and methods of handling the nursery stock within the RPA component of the site including watering and fertilizing schedule and may include the entire site if

desired. This plan may be included on the actual site plan or may be a stand-alone product. This plan does not need to be prepared by a licensed professional.

4. This exception request approval shall become null and void if construction has not begun by November 13, 2010.
5. 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 Ordinance. The Board is to fully consider Chesapeake Bay Exception CBE-10-038 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 Ordinance. Resolutions for granting approval or denial of this exception request are included for the Board's use and decision.

Mr. Gussman asked if the Landscape Plan referenced as L-1 under item #5 in the WQIA, was available for review.

Mr. Woolson stated the referenced plan was not submitted with the application for the Board and would defer this question to the applicant.

Mr. Elkins asked for a brief history of the previous development and RPA encroachment. He also asked why no site plan was provided for disturbance in excess of 2,500 sqft and stated there appeared to be ample room outside of the RPA for development.

Mr. Hughes stated it appeared the purpose of this application was to remove some impervious cover from the RPA and asked if it was also a request for an after-the-fact permit.

Mr. Roadley stated that his firm was no longer involved with this project and therefore had no conflict in commenting on this exception request. He asked when the nutrient management plan would be available for review.

Mr. Woolson stated the exception request was to allow continued use of the RPA for commercial purposes, for some existing impervious surfaces to remain, and for some to be removed. He stated the applicant would have to address the previous permitted and/or unpermitted activity on the property but pointed out that stormwater and Chesapeake Bay regulations had changed over the years. He stated the applicant was in the process of developing the site plan for submittal to the County and the nutrient management plan would likely be submitted with that site plan, in approximately 60 to 90 days. The applicant was seeking approval for the RPA encroachment, before finalizing and submitting the site plan.

Mr. Elkins asked about the location of the stormwater BMPs and the use of fertilizer.

Mr. Woolson stated the BMPs would have to be located outside of the 100 foot RPA or they would come before the Board for approval. He also pointed out the walkways could be permitted administratively and was confident they could be created without removal of trees or shrubs in the RPA. The nutrient management plan requirement was added to address the maintenance of the plants in the RPA.

Mr. Gussman opened the public hearing.

Mr. Gussman referenced the email from adjacent property owners, Robert and Paige Hewlett, opposing consideration of the exception request before the project plan and drainage consideration.

A. Jeff Schell, property owner, stated the desire was to be good stewards of the environment and to protect the land for years to come. He stated they were currently overcrowded and needed to expand for vehicles and inventory.

Mr. Roadley asked for a description of the material that would be placed in the RPA and asked if there would be additional safeguards in the nutrient management plan for this plant material.

Mr. Gussman asked if any of the plant material or walkway areas would be fertilized and if any bulk fertilizer was stored on the property.

A. Mr. Schell stated the area would be used for large 15 to 25 gallon trees. He stated that some of the plants contained a slow release fertilizer from the growers but no additional fertilizer was used on outdoor inventory. He also stated all of the fertilizer sold at the garden center was in sealed bags or containers.

B. Charlie Martino, Cooke's Gardens Operations Manager, stated they would be submitting the nutrient management plan with the site plan.

C. Steve Romeo, LandMark Design Group, concurred with the 60 to 90 day time frame for submittal of the site plan and it would include the normal provision for the stormwater pollution prevention requirements.

Mr. Hughes stated there was concern about the aesthetics of the property and also asked if the garden center would be stocking and selling native plants for use in RPA mitigation plans.

A. Mr. Schell stated one of the reasons for the proposed expansion was to clean up the property. He stated they hoped to be leaders in green roof design and rain water harvesting and both of these methods would be installed on the property.

D. Boots Johnson, 210 Red Oak Landing Road, spoke in opposition of the exception request receiving approval prior to review of a site plan.

Mr. Gussman closed the public hearing as no one else wished to speak.

Mr. Elkins stated he evaluated this request based on the criteria outlined in the Ordinance and found that all of the criteria had not been met. The request was not the minimum necessary to afford relief, granting the exception would confer special privileges upon the applicant, the request was a detriment to water quality, and the circumstances were self imposed. Based on this evaluation he opposed granting the exception.

Mr. Hughes stated he was concerned with the absence of a site plan for review of the proposed mitigation.

Mr. Roadley agreed with Mr. Hughes and stated the nutrient plan should also be submitted for review.

Mr. Waltrip stated the plan submitted to the Board seemed incomplete.

Mr. Gussman stated this was not a typical case however, he also wished to review a site plan before making a decision.

A. Jeff Schell requested a 90-day deferral for development of the site plan.

All Board members agreed to accept the applicant's request for a deferral and a continuance of the public hearing.

Mr. Gussman re-opened the public hearing for case #CBE-10-038 to be continued to February 10, 2010 at 7:00 PM.

3. CBE-10-041 – James City County – Ironbound Square BMP

Mr. Roadley recused himself from this case due to his involvement with the project.

Mike Woolson, Senior Watershed Planner, presented the following case:

Existing Site Data & Information

Applicant: Mr. Wayland Bass, Stormwater Division, James City County
Mr. Sanford Wanner, County Administrator, James City County

Land Owner(s): Chambrel
Location: 3800 Treyburn Drive, Williamsburg, Virginia, 23188
Parcel Identification: 3910900131
Parcel Size/Zoning: 54 acres, PUD Residential
Percent of Parcel in RPA: 20%
Watershed: College Creek
Other: Part of the Ironbound Square Redevelopment Project

Proposed Impacts

RPA Encroachments: 0.50 acres
Impervious Cover Amount Proposed within RPA: 0 sqft impervious cover
Disturbed Area Amount Proposed within RPA: 0.50 acres

Brief Summary and Description of Activities

Mr. Wayland Bass on behalf of Mr. Sanford Wanner, County Administrator of James City County, applied for an exception to the Bay Act Program and Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the Resource Protection Area (RPA) buffer for the installation of a regional stormwater BMP for the Ironbound Square Redevelopment Project. This application was previously before the Board as Chesapeake Bay Exception CBE-07-03 which expired and is now identified as CBE-10-041. RPA is situated on the parcel and is present due to the 2004 Ordinance revisions which required RPA determinations based on a reliable site-specific evaluation to be conducted to determine whether water bodies on or adjacent to development sites have perennial flow. Total impervious cover and disturbance within the RPA is listed above in the "Proposed Impacts" section. The redevelopment project involves the construction of 56 single family dwelling units and 67 multifamily housing units as approved by the Board of Supervisors under rezoning Z-002-05 and Z-009-06. The project is generally bounded by Ironbound Road to the west, Magazine Road to the north and east, and Chambrel to the east, and the City of Williamsburg to the south.

Staff Evaluation

Staff has evaluated the application and exception request for all work as described above. The proposal is a regional stormwater BMP that will receive stormwater from the Ironbound Road widening project, the Ironbound Square Redevelopment Project, Bay Aging, and part of New Town, and will provide treatment for previously untreated stormwater. Based on Bay Act requirements, the Ordinance and associated guidance materials as published by the Virginia Department of Conservation and Recreation (VA-DCR), stormwater management facilities may be processed administratively if certain conditions are met. Those conditions are listed in Section 23-7(a) (4) (a) through (f) and are listed below for clarification purposes:

- a. *The location within the RPA is the optimum location, meaning that it is the best place to locate the facility from an engineering and functionality consideration regardless of the presence of the RPA;*
- b. *The size of the facility is the minimum necessary to provide necessary flood control, stream channel protection, stormwater treatment, or all three;*
- c. *The facility must be consistent with a stormwater management program that has been approved by CBLAB as a Phase 1 modification to the county's program;*
- d. *All applicable permits for construction in state and federal waters must be obtained from the appropriate agencies;*
- e. *Approval must be received from the county prior to construction;*
- f. *Routine maintenance must be performed on the facility to assure that it continues to function as designed.*

This application fails the condition set forth in Section 23-7(a) (4) (c) because James City County does not have a Phase 1 modification to the stormwater management program in the College Creek watershed.

Therefore, this proposal must go through the formal exception process through the County's Chesapeake Bay Board.

Water Quality Impact Assessment (WQIA)

In accordance with Bay Act requirements and the Ordinance all land disturbance, development or redevelopment within RPA requires a WQIA. Water quality impact assessments shall identify impacts of proposed development on water quality and land in RPAs and recommended measures for mitigation of these impacts. Localities must review a WQIA prior to action on the exception request. James City County has established guidelines for submission of minor/major WQIAs.

A WQIA was provided with previous Chesapeake Bay Exception CBE-07-003. This CBE was approved by the Board on February 28, 2007 and a one year extension on February 12, 2008. Based on Environmental Division staff review, the WQIA proposes to mitigate for RPA impacts by:

- Installing erosion control blanket, (EC-2) on the downstream face of the BMP.
- Stabilization of the embankment faces with a conservation seed mix.
- Stabilization of a degraded stream channel within the Powhatan Creek watershed on the Warhill site. The ratio of restoration to impacts will be approximately 4:1, with a minimum of 280 linear feet of channel stabilization on the Warhill site.
- Preservation/enhancement of open space on the Warhill site. The ratio of preservation to impacts will be approximately 1.5 acres.
- A stilling basin at the outfall of the BMP to reduce turbulence and velocity.
- Treatment of approximately 20 acres of onsite and offsite stormwater runoff, the majority of which is currently uncontrolled stormwater runoff from previously developed areas.

Other Important Review Information

The following is additional information provided to the Chesapeake Bay Board by Environmental Division staff. This additional information is deemed important relative to the review of this particular exception request.

- This project is important to the overall stormwater masterplan for the Ironbound Square Redevelopment Project. This project has developed to the maximum extent possible with the other proposed stormwater features.

Staff Recommendation

County Environmental Division staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be minimal with the proposed mitigation measures. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception CBE-10-041 with the proposed mitigation measures as outlined above as conditions. Furthermore, any approval should also be conditioned as follows:

1. The applicant must obtain all other necessary federal, state, and local permits as required for the project.
2. This exception request approval shall become null and void if construction has not begun by November 13, 2010.
3. 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-10-041 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-10-041 are included for the Board's use and decision.

Mr. Hughes asked if the current exception request was the same as the one permitted in 2007.

Mr. Woolson stated it was and due to an oversight, the previous permit had expired in February 2009.

Mr. Gussman opened the public hearing.

A. Steven Goad, Manager of Government Relations for Cox Communications, owner of the cell tower on adjacent property, stated they had some concerns with the project that had not yet been resolved: the effect on the cell tower from overflow of the stormwater pond, possible flooding that may cause environmental contamination, and removal of a tree line that would expose the cell tower to the elements and possibly add to erosion problems in the area. He also stated that Cox Communication was confident these issues would soon be resolved.

B. Wayland Bass, Senior Stormwater Civil Engineer addressed the concerns explaining the contours of the property, the design based on a 100-year storm event and the provision of an emergency spillway. He stated that trees would permanently be removed for construction of the pond but those in question that would be removed for the temporary stockpile area, could be replanted.

Mr. Waltrip stated it appeared that based on the elevation around the tower, even if the dam washed out it would not reach the floor of the cell tower.

Mr. Gussman closed the public hearing as no one else wished to speak.

Mr. Elkins made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case number CBE-10-041 on tax parcel # 3910900131.

The motion was approved by a 4-0-1 vote: Aye – 4, Nay – 0, Abstain – 1 (Mr. Roadley)

D. BOARD CONSIDERATIONS

1. Calendar Year 2010 Meeting Schedule

All Board members agreed to adopt the 2010 Chesapeake Bay Board meeting schedule:

Provided there are cases to be considered the meetings will be at 7:00 PM on the 2nd Wednesday of each month.

E. ELECTION OF OFFICERS

Mr. Hughes moved that David Gussman be appointed as Chairman. All members were in favor.

Mr. Gussman moved that William Apperson be appointed as Vice-Chairman. All members were in favor.

Mr. Hughes moved that Scott J. Thomas be reappointed as Secretary. All members were in favor.

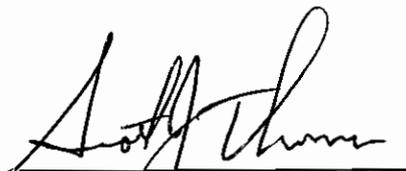
F. MATTERS OF SPECIAL PRIVILEGE - none

G. ADJOURNMENT

The meeting adjourned at 8:15 PM.



David Gussman
Vice Chairman



Scott J. Thomas
Secretary to the Board