

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD**  
**MINUTES**  
**September 8, 2010**

**A. ROLL CALL**

William Apperson – Vice Chair  
John Hughes  
Larry Waltrip  
Richard Mason - Alternate  
Charles Roadley - Alternate

**ABSENT**

David Gussman

**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 August 11, 2010 Board Meeting minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. CBE-11-023 – Casto – 142 Riverview Plantation**

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

**Brief Summary and Description of Activities**

Mr. William G. Casto applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for a two retaining walls. The proposed retaining walls will create approximately 60 square feet of impervious cover in the RPA buffer. The retaining walls are necessary to provide ingress/egress to a walkout basement without compromising the septic drain fields. The proposed mitigation measures will be 1 canopy tree and 3 shrubs in order to meet the County requirement based on the proposed impervious cover.

The lot was recorded before the 1990 adoption of the Chesapeake Bay Preservation Ordinance. In this case, the exception request is for retaining walls 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 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 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. A mitigation plan, meeting James City County requirements, shall be submitted and approved.
3. 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.
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.
5. This exception request approval shall become null and void if mitigation plantings have not been completed by September 8, 2011.
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.

**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-11-023 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-11-023 are included for the Board's use and decision.

Mr. Apperson opened the public hearing.

A. William Casto, property owner, stated he would answer any questions from the Board.

Mr. Apperson closed the public hearing as the Board had no questions and no one else wished to speak.

Mr. Waltrip stated and all Board members agreed that due to the topography of the lot and the location of the septic drain fields, there was no objection to the walls encroaching into the RPA.

Mr. Hughes made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case number CBE-11-023 at 142 Riverview Plantation Drive, tax parcel No. 1640600001.

The motion was approved by a 5-0 vote.

**2. CBE-11-015 – McCarter/Mid Atlantic – 504 E Tazewells Way**

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

**Brief Summary and Description of Activities**

Mr. David Barglof of Mid Atlantic Enterprises, Inc. on behalf of Mr. and Mrs. McCarter applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for a retaining wall replacement and extension.

The proposed retaining wall will create approximately 136 square feet of impervious cover in the RPA buffer. The existing wall is showing signs of failure and this replacement and extension of the retaining wall will protect the existing house and driveway. The proposed mitigation measures of 1 canopy tree and 3 shrubs meets the County requirement based on the proposed impervious cover.

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 a retaining wall 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 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. 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.
5. This exception request approval shall become null and void if construction has not been completed by September 8, 2011 including the required mitigation plantings.
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.

**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-11-015 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-11-015 are included for the Board's use and decision.

Mr. Mason asked if the slope seaward of the replacement wall was stable and asked if this area would be graded.

Mr. Woolson stated there would be no grading between the downstream edge of the wall and the wetlands. He stated the area was stable except for slight erosion from a downspout off the end of the driveway which would be addressed with stone and extended further down to a flat area.

Mr. Waltrip stated the new wall would be stepped back and more stable than the existing vertical wall and that was the resulting encroachment into the RPA.

Mr. Roadley asked why the proposed extension of the wall was needed and asked if there was any discussion of incorporating infiltration to filter runoff.

Mr. Woolson stated even in dry conditions it was difficult to negotiate around the corner of the house, so if for no other reason the extension was warranted for safety. He also stated there was no discussion on infiltration.

Mr. Apperson said this repair looked like it was necessary to prevent the ultimate loss of the home.

Mr. Woolson said that was the opinion of the structural engineer.

Mr. Apperson opened the public hearing and as no one wished to speak, closed the public hearing.

All Board members agreed the repair was necessary.

Mr. Mason made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case number CBE-11-015 at 504 East Tazewell's Way, tax parcel No. 5030400079.

The motion was approved by a 5-0 vote.

### **3. CBE-11-012 – Overman & Privette – 7515 Oak Cove Road**

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

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

Ms. Jennifer Privette on behalf of Ms. Patricia Overman applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for a replacement retaining wall, a new retaining wall, and a brick paver patio. She has also applied for an administrative waiver for the replacement of a shed and brick paver walkway to the existing dock.

The proposed retaining walls and patio will create approximately 750 square feet of impervious cover in the RPA buffer. The existing wall is showing signs of failure. The new retaining wall will form a terrace in the backyard for the proposed patio. The applicant proposes to remove four trees during the construction process, three for the construction of the retaining walls/patio, and one as buffer modification request. The proposed mitigation measures should be 2 canopy trees, 4 understory trees, and 6 shrubs in order to meet the County requirement based on the proposed impervious cover.

The lot was recorded before the 1990 adoption of the Chesapeake Bay Preservation Ordinance. In this case, the exception request is for the replacement of a retaining wall, a new retaining wall, and a new brick paver patio 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 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 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. A mitigation plan, meeting James City County requirements, shall be submitted and approved prior to work commencing.
3. 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.
4. A pre-construction meeting shall be held on-site prior to work commencing.
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.
6. This exception request approval shall become null and void if construction has not been completed by September 8, 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-11-012 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-11-012 are included for the Board's use and decision.

Mr. Waltrip asked if the area would be graded when the existing wall was removed.

Mr. Woolson clarified that the existing wall would be replaced and a second was being added.

Mr. Mason asked if only two trees would be removed and how the replacement shed would be constructed.

Mr. Woolson stated there were two other trees that were being administratively considered for removal.

Mr. Hughes stated the replacement shed was not under consideration by the Board.

Mr. Apperson stated the two trees looked as if they were leaning and should be removed.

Mr. Apperson opened the public hearing.

A. Jennifer Privette on behalf of property owner, Patricia Overman, stated she would answer questions from the Board.

Mr. Apperson closed the public hearing as the Board had no questions and no one else wished to speak.

Mr. Roadley stated he thought this would be a perfect opportunity to build infiltration into the project.

Mr. Roadley made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case number CBE-11-012 at 7515 Oak Cove Road, tax parcel No. 1910100013.

The motion was approved by a 5-0 vote.

**At this time the James City County Wetlands Board was opened to consider the corresponding wetlands cases with the following two Chesapeake Bay Exception Requests.**

- 4. CBE-11-009 - Fisher -7604 Uncles Neck**
- 5. CBE-11-010 – Hazelwood/Uncle's Neck LLC – 7596 & 7600 Uncles Neck**

Michael Woolson, Senior Watershed Planner advised the Board the applicants were requesting deferral of these cases for 60 days. He stated that Staff concurred with this request.

Mr. Apperson opened the public hearings on Chesapeake Bay Board Case CBE-11-009 at 7604 Uncles Neck Road and Case CBE-11-010 at 7596 & 7600 Uncles Neck Road.

Mr. Hughes made a motion to grant the deferral requests and continue the public hearings for 60 days to November 10, 2010.

The motion was approved by a 5-0 vote.

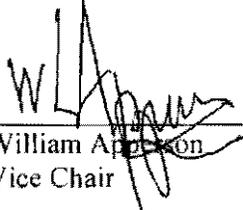
**D. BOARD CONSIDERATIONS - none**

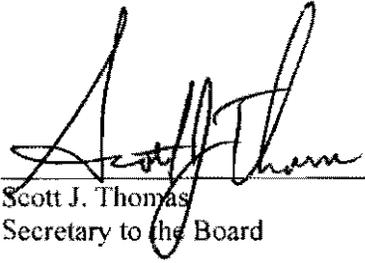
**E. MATTERS OF SPECIAL PRIVILEGE**

All Board and Staff discussed the incorporation of infiltration systems on future projects.

**F. ADJOURNMENT**

The meeting adjourned at 7:40 PM.

  
\_\_\_\_\_  
William Appleton  
Vice Chair

  
\_\_\_\_\_  
Scott J. Thomas  
Secretary to the Board