

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
October 13, 2010**

A. ROLL CALL

David Gussman – Chair
John Hughes
Richard Mason - Alternate
Charles Roadley - Alternate

ABSENT

William Apperson
Larry Waltrip

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 31, 2010 Work Session minutes were approved as written.
The September 8, 2010 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBE-11-022 – McRickard – 36 Ensigne Spence

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

Existing Site Data & Information

Applicant: 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

Wayne Harbin Builders, on behalf of Francis and Kathleen McRickard 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.

Mr. Roadley asked if alternate locations for the garage had been discussed with the applicant.

Mr. Mason asked how the impervious area was calculated and asked about the location of the driveway and walk.

Mr. Woolson stated the proposed location for the garage seemed the most logical without additional removal of mature vegetation. Because the entire garage did not impact the RPA the impervious area was estimated at about half of its total square footage and the proposed driveway and walkway additions were outside of the RPA.

Mr. Gussman opened the public hearing.

A. Grant Harbin, Wayne Harbin Builders, project contractor, explained the need for a garage to enhance the property for resale and described the location as the most appropriate with the least impact on vegetation or slopes. He also provided the original site plan for the house which has been retained in the project file for this case.

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

Mr. Hughes made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case number CBE-11-0223 at 36 Ensigne Spence, tax parcel No. 5021100014.

The motion was approved by a 4-0 vote.

2. CBE-11-030 – Crane – 733 E Tazewells Way

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

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 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 seven (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 three (3) understory trees and six (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 under drains 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.

Mr. Woolson stated he had also discussed the possibility of a bio-retention area or rain garden between the walls and the engineer for this project could best explain why it was not incorporated into the design.

Mr. Mason asked for an explanation of the required temporary and permanent seeding. He also asked where the underdrains were located.

Mr. Woolson informed Mr. Mason that temporary seeding within 30 days was not for mitigation but was required under erosion and sediment control law and permanent stabilization would be required by the end of the project. He stated the location of the under drains would be determined at the pre-construction meeting if this exception was granted.

Mr. Gussman asked the cause of the slope failure.

Mr. Hughes asked if the house has existing gutters or french drains.

Mr. Woolson did not believe the house has gutters but indicated there is a drain at the bottom of the driveway and added that it may have contributed to the erosion and resulting slope failure, if it daylight near the existing timber wall.

Mr. Gussman opened the public hearing.

A. Matt Roth, Roth Environmental, representing the property owners, stated the purpose of the project was to prevent the catastrophic failure of the patio and residence by replacing and enhancing the existing timber retaining walls. He understood the reason for not installing the bio-retention area is because it would add additional weight on the wall and could jeopardize the stability of the structures. He also asked to modify the mitigation requirement for a canopy tree to an understory tree because a canopy tree on the slope could uproot in a storm.

B. Steve Stafford, Engineer with Cornerstone Design Group, further explained the design of the proposed walls and stated a rain garden could have an adverse impact have on their stability. He also briefly explained the location of the proposed drains.

Mr. Roadley asked what type of vegetation would be used for stabilization.

Mr. Hughes and Mr. Mason asked about the outfalls for the proposed drains.

B. Mr. Stafford stated they would probably use vinca minor for stabilization and the outfalls would be located at the toe of the slope.

Mr. Woolson added that the outfalls would be protected with stone or EC3 matting and would not directly impact the wetlands.

Mr. Roadley made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case number CBE-11-030 at 733 East Tazewell's Way, tax parcel No. 5030400102.

The motion was approved by a 4-0 vote.

3. CBE-11-032 – Usher Ananthram – 4392 Landfall

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

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, fire pit, 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 under drains 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.

Mr. Woolson read the specific requirements of the conservation easement for the Landfall Subdivision that affects this property.

Mr. Gussman asked Mr. Woolson to identify the location of the conservation easement and explain how the impervious area was calculated.

Mr. Roadley asked if any action had been taken on the encroachment into the conservation easement. He also asked if all runoff from the proposed structures would be directed to the rain garden.

Mr. Mason asked for a description of the outfall for the rain garden underdrain and Mr. Hughes asked if the outfall into the wetlands would require a permit.

Mr. Woolson explained that part of the proposed impervious area was outside of the RPA. He identified the conservation easement as coincidental with the RPA. He stated the rain garden was the suggested mitigation for encroachment into the conservation easement and applicant was advised to direct all runoff to this proposed rain garden however, the ultimate decision on the conservation easement would be made after the Board's action on this exception request. He responded to Mr. Mason and Mr. Hughes explaining that only the runoff not infiltrated by the rain garden would be handled by the backup underdrain which should have a negligible discharge at the edge of the wetlands.

Mr. Hughes asked if the Board had ever permitted an exception in an RPA that included a conservation easement. He thought the purpose of the conservation easement was to prohibit structures in the designated areas and added that the house was built with the conservation easement and RPA in existence.

Mr. Woolson could not recall a previous case of this nature and he has not granted an exception for this type of encroachment since he has been administrating the conservation easement. However, since this conservation easement was for stormwater runoff, he felt the proposed mitigation would offset the impact of the proposed impervious area.

Mr. Gussman opened the public hearing.

Mr. Gussman asked if the only reason for the exception request was, as stated on the application, that the existing deck was not useful because of the conservation easement.

A. Stuart Usher, contractor for this project, stated the home owners were told by the builder that the deck size was limited because of the RPA area marked by the signs posted on the property.

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

Mr. Gussman stated he was against approving encroachment into an RPA that was also a recorded conservation easement and because the home already has a deck, the proposal in for excessive encroachment into the RPA.

Mr. Mason agreed with Mr. Gussman's concerns.

Mr. Hughes stated the RPA was well marked and was in existence prior to the construction of the house and deck. He did not recall granting any other exceptions to property owners in this area, so he was not in favor of granting this applicant additional relief from the Ordinance.

Mr. Roadley asked if the County was in anyway deferring judgment on encroachment into the conservation easement to this Board.

Scott J. Thomas, Administrator of the County Chesapeake Bay Preservations Ordinance, stated it was not however, the conservation easement was worthy of discussion because the areas are related.

Mr. Mason made a motion to adopt the resolution denying the exception for Chesapeake Bay Board case number CBE-11-032 at 4392 Landfall Drive, tax parcel No. 4732400083.

The motion to deny the exception was approved by a 3-1 vote (Aye: Gussman, Hughes, Mason)
(Nay: Roadley)

4. CBE-11-033 - Switzer -2697 Jockeys Neck

Scott J. Thomas, Environmental Director, presented the following case:

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 15th 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 Bio-retention 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.

Mr. Gussman opened the public hearing.

A. Mr. Daniel Switzer, property owner, stated he would answer questions from the Board.

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

Mr. Gussman and Mr. Mason stated their concern in granting approval for an additional 400 square feet of impervious cover in the seaward RPA on a property that already had a porch and deck in the seaward RPA. They were specifically concerned with minimum amount of proposed mitigation plantings.

Mr. Hughes stated the property was plated prior to adoption of the Ordinance and the area in question was already not vegetated and therefore not filtering runoff from the existing impervious area.

Mr. Roadley thought the proposed mitigation would adequately filter the runoff from the proposed patio however he stated additional mitigation would be helpful.

A. Mr. Switzer, asked the Board to defer their decision so he could work with staff to enhance the proposed mitigation.

Mr. Gussman reopened the public hearing.

Mr. Hughes made a motion to defer the decision and continue the public hearing on case CBE-11-033 to November 10, 2010.

The motion to defer was granted by a 4-0 vote.

5. CBV-11-006 APPEAL – J LLOYD Bldr/RJGC Equipment Leasing – 104 Archer’s Court

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.

Mr. Hughes stated the hardship was shared by other properties in the area because of the steep slope and it appeared this was only a landing, not a patio. Therefore he felt the main consideration for the Board should be if the hardship is self-inflicted.

A. Mr. Finley, J. Lloyd Builder, Inc explained the challenges with building this house on this lot which required locating the garage at the front of the property and donating a portion of the land to a neighboring lot to increase the set back. He also argued that the landing at the door could be considered a customary structure attached to the primary residence for safety purposes.

Mr. Gussman asked Mr. Finley if he would submit the sensitive area application for review next month, if the Board granted this appeal.

A. Mr. Finley stated he would.

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

The Board briefly discussed the condition that the applicant submit a sensitive area application and reappear before the Board at the next meeting.

Mr. Hughes made a motion to adopt the resolution to grant the appeal on case CBV-006 at 104 Archers Court, tax parcel No. 4930280017.

The motion was approved by a 4-0 vote.

D. BOARD CONSIDERATIONS - none

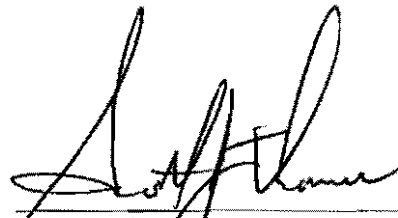
E. MATTERS OF SPECIAL PRIVILEGE - none

F. ADJOURNMENT

The meeting adjourned at 9:17 PM.



David Gussman
Chair



Scott J. Thomas
Secretary to the Board