

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
November 10, 2010**

**A. ROLL CALL**

David Gussman – Chair  
John Hughes  
William Apperson  
Larry Waltrip

**ABSENT**

Richard Mason

**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 13, 2010 Board Meeting minutes were approved as written.

**C. PUBLIC HEARINGS**

**I. CBE-11-033 – Switzer – 2697 Jockeys Neck Trail – continued from 10/13/10**

Scott Thomas, Environmental Director, presented the following case information:

On October 13, 2010 the County's Chesapeake Bay Board granted a motion, at the request of the applicant, to defer case CBE-11-033 until November 10, 2010. The applicant requested a Chesapeake Bay Exception for an encroachment into the RPA buffer for the construction of a paver patio addition 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.

Following the previous Chesapeake Bay Board meeting, staff met with the applicant on two occasions. The first meeting was on October 14, 2010. The purpose of this meeting was to discuss the previous proposal, ideas for mitigation changes, and information needed by the County upon re-submittal. The second meeting was on October 27, 2010. The purpose of this meeting was for the owner to present decisions made on the proposed mitigation plan and to provide necessary re-submittal materials. It should be noted that the size, configuration, and construction methods proposed for the paver patio addition remains unchanged from the previous Board meeting. The patio remains proposed at 400 square feet, paver blocks are concrete with sand-filled joints, and it is not designed as a permeable system.

However, the following improvements were made to the application since the last Board meeting:

- The applicant authorized their contract lawn care company to perform soil analyses on their back (southwest) yard-lawn area in order to determine proper and optimal application of yard fertilizer. This is considered as nutrient management planning by staff and is considered a benefit to water quality. As of the date of this memorandum, the results or recommendations of the soil analyses are not available.

- The applicant retained the services of a landscape designer to aid with developing a revised mitigation planting plan. The revised proposal is double the native mitigation plantings compared to the previous proposal. The current proposal is for two (2) understory trees and six (6) shrubs in better strategically placed locations. Previously, native mitigation plantings were one (1) understory tree and three (3) shrubs and the three shrubs were co-located in the soil amendment/planting area (ie. the LID-IMP, low impact development/integrated management practice feature, adjacent to the proposed patio).
- The applicant revised the mitigation planting plan so that native mitigation plantings are not co-located within the soil amendment/planting area (ie. the LID-IMP feature). The soil amendment/planting area size, configuration, and design remain unchanged from the previous proposal (20 ft. x 6 ft. wide; 120 square feet or 30 percent of the proposed impervious area).
- In the soil amendment/planting area (ie. LID-IMP feature), the applicant proposes an additional six (6) to ten (10) native perennial plants. The landscape designer will select perennials which adapt to soil and moisture conditions within the proposed soil amendment/planting area.
- The applicant revised the application to increase the application of mulch in the soil amendment/planting area (ie. LID-IMP feature) from 75 square feet to 120 square feet.
- The applicant will add a 50 gallon rain barrel at the existing downspout situated on the corner of the existing screen porch near the existing deck stairs and proposed patio.

Staff has fully reviewed the revised application and has determined, consistent with the previous recommendation, that impacts associated with the proposal are minimal and 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 (3) gallon size.
3. The LID-IMP (low impact development – integrated management practice) feature, as shown and labeled on the mitigation plan as the "soil amendment/planting 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 perennial 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 November 10, 2011 or all proposed improvements, including those plants and features required for mitigation, 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.

Mr. Gussman asked if the recommendation from the soils analysis would be binding.

Mr. Thomas indicated it would be part of condition #4 - Implementation of the RPA Mitigation Plan.

Mr. Apperson stated he was thought the nutrient management plan was a good idea.

Mr. Gussman continued the public hearing.

A. Mr. John Ribock, contractor for the project, stated he would answer questions from the Board.

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

All Board members agreed the mitigation plan was greatly improved.

Mr. Hughes made a motion to adopt the resolution to grant the exception on case CBE-11-033 at 2697 Jockeys Neck Trail, tax parcel no. 4840200019.

The motion was approved by a 4-0 vote.

## **2. CBE-11-047 – J Lloyd Bldr/RJGC Equipment Leasing – 104 Archers Court**

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

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

Applicant: Jeremy Findley  
Land Owner: RJGC Equipment Leasing  
1170 Tidwell Road  
Alpharetta, Virginia 30004  
Location: 104 Archer's Court, Kingspoint  
PIN: 4930280017  
Parcel Size/Zoning: 0.99 +/- acres, R1 Limited Residential  
Percent of Parcel in RPA: 78% (0.78 +/- acres)  
Watershed: College Creek (HUC – JL34)

### **Proposed Impacts**

Impervious Area: approximately 28 square feet  
RPA Encroachment: landward 50 foot RPA Buffer

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

Mr. Jeremy Findley, J. Lloyd Builder, applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for a concrete landing. The proposed landing will provide a safe means of ingress/egress for a walkout basement and will create approximately 84 square feet of impervious cover in the RPA buffer. Approximately 56 square feet of the landing is under previously approved impervious cover from the main structure and is subtracted from the total. This leaves a total of 28 square feet of additional impervious cover. The mitigation measures proposed for the original house construction are adequate to cover this additional impervious cover. Therefore, staff has not imposed any additional mitigation requirements upon this applicant. The Code Compliance Department was consulted about any requirements for safe ingress/egress from a basement. It was stated that the requirements generally are a 3 ft by 3 ft landing for this type of construction.

The lot was originally recorded prior to the 1990 adoption of the Chesapeake Bay Preservation Ordinance. In this case, the exception request is for a concrete landing area at the ingress/egress area for a walkout basement, which encroaches 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 is held. 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 construction and that the mitigation measures proposed for the original single family house construction is 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.

### **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-11-047 are included for the Board's use and decision.

Mr. Waltrip asked if the patio was already installed.

Mr. Gussman opened the public hearing.

A. Jeremy Findley, J. Lloyd Builder, answered Mr. Waltrip stating the patio was installed during construction as a customary installation for the structure, with no additional clearing but, as discussed last month, it had not received prior approval.

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

All Board members agreed the patio was necessary for egress at the doors.

Mr. Hughes made a motion to adopt the resolution to grant the exception on case CBE-11-047 at 104 Archer's Court, tax parcel no. 4930280017.

The motion was approved by a 4-0 vote.

### **3. CBE-11-041 – Harssema – 2705 Jockeys Neck**

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

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

Applicant:	Fred and Suzanne Harsemma
Land Owner:	Fred and Suzanne Harsemma 2705 Jockey's Neck Trail Williamsburg, VA 23185
Location:	2705 Jockey's Neck Trail PIN: 4840200010
Parcel Size/Zoning:	0.99 +/- acres, R1 Limited Residential
Percent of Parcel in RPA:	83% (0.82 +/- acres)
Watershed:	College Creek (HUC - JL34)

#### **Proposed Impacts**

Impervious Area:	approximately 950 square feet
RPA Encroachment:	landward and seaward 50 foot RPA Buffer

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

Mr. and Mrs. Harsemma applied for an exception to the Chesapeake Bay Ordinance (Ordinance) for the encroachment into the RPA buffer for a paver patio and walkway to existing driveway. Concurrently with this application, the Harsemma's are applying for an administrative exception for a buffer modification and for expansion of the main structure.

The issue for the Chesapeake Bay Board is the addition of approximately 950 square feet of impervious cover (paver patio and walkway) in the RPA buffer. The mitigation rate would be three (3) units for this amount of impervious cover (3 canopy/6 understory/9 shrubs). The proposed mitigation plan calls out 3 understory trees (red bud) and 38 shrubs (18 inkberry and 20 clethra). The mitigation plan also calls out several areas of bunch grasses, ferns, and perennials. This proposed planting plan exceeds County requirements for mitigation.

The lot was recorded after the 1990 adoption of the Chesapeake Bay Preservation Ordinance but prior to the Ordinance revisions of 2004. In this case, the exception request is for the addition of a paver patio and walkway 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 three gallon pots for the proposed shrubs.
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 \$1,000.00.
5. This exception request approval shall become null and void if construction has not been completed by November 10, 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-11-041 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-11-041 are included for the Board's use and decision.

Mr. Gussman asked how much of the impervious cover was in the seaward 50 ft RPA buffer and how much the proposed mitigation exceeded the County requirements.

Mr. Woolson stated only the proposed walkway was in the seaward buffer and the proposed mitigation exceeded requirements by approximately one unit not counting the ferns and grasses.

Mr. Gussman opened the public hearing.

Mr. Gussman asked if the applicant had considered using any pervious pavers in this project.

A. Jeff Gray with Outdoor Visions, contractor for the project, stated the applicant was agreeable to using pervious pavers in the portion of the walkway that was in the seaward 50 ft buffer.

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

All Board members agreed the plan was acceptable with the extra mitigation unit and pervious pavers.

Mr. Hughes made a motion to adopt the resolution to grant the exception on case CBE-11-041 at 2705 Jockey's Neck Road, tax parcel no. 4840200010, with the added condition of pervious pavers for the walkway in the seaward RPA buffer.

The motion was approved by a 4-0 vote.

#### **4. CBE-11-042 - Clark – 2035 Bush Neck**

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

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

Applicant:	Mary Lou Clark
Land Owner:	Mary Lou Clark 2035 Bush Neck Road Williamsburg, VA 23188
Location:	2035 Bush Neck Road PIN: 3420100008
Parcel Size/Zoning:	10.9 +/- acres, A1 General Agriculture
Percent of Parcel in RPA:	39% (4.30 +/- acres)
Watershed:	Chickahominy River (HUC – JL29)

##### **Proposed Impacts**

Impervious Area:	approximately 2,146 square feet
RPA Encroachment:	landward 50 foot RPA Buffer

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

Mary Lou Clark applied for an exception to the Chesapeake Bay Ordinance for an encroachment into the RPA buffer for a 3 car garage with workshop and exercise room. The location of the new structure avoids existing septic system components and avoids impacting the 50 foot seaward buffer, while allowing for relative close access to the home. The mitigation rate would be five (5) units for this amount of impervious cover (5 canopy trees/10 understory trees/15 shrubs). The applicant has not yet provided a mitigation plan, but has been advised of the requirements.

The lot was recorded after the 1990 adoption of the Chesapeake Bay Preservation Ordinance but prior to the Ordinance revisions of 2004. In this case, the exception request is for the building of a new 3 car garage with a workshop and exercise room. This will encroach into the landward 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 noteworthy for the proposed construction and that there is no proposed mitigation plan. 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 three gallon pots for the proposed shrubs.
3. A pre-construction meeting shall be held on-site prior to work commencing.
4. A RPA Mitigation Plan shall be submitted to, and approved by, the Environmental Division prior to the pre-construction meeting. The mitigation plan shall include at least 5 units.
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 shall be \$2,000.00.
6. This exception request approval shall become null and void if construction has not been completed by November 10, 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-11-042 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-11-042 are included for the Board's use and decision.

Mr. Woolson stated that because additional tree mitigation was not feasible on this lot, the mitigation requirement should be in the form of all shrubs and this was discussed with the applicant.

Mr. Gussman asked how the 2004 Ordinance changes affected this property and why the garage could not be located outside the RPA.

Mr. Woolson stated only the RPA associated with the Chickahominy River existed prior to 2004 and the RPA associated with the wetland feature in the center of the property, was adopted in 2004.

Mr. Gussman opened the public hearing.

A. Mary Lou Clark, property owner, stated the garage location was limited by the required setbacks from the property lines and the septic system as well as to limit the number of trees to be removed.

Mr. Gussman stated it was very difficult to understand the submitted plan or to see exactly where the proposed structure would be located. He asked if the size of the garage could be reduced and moved to the area outside of the RPA.

A. Ms. Clark submitted and displayed another plan drawn by the surveyor. Mr. Woolson notated the area of the lot that was outside of the RPA on this plan. Ms. Clark stated the location was also selected to enable a future breezeway between it and the existing house. She added that the proposed impervious cover was not only the garage but included the driveway and apron around the garage.

Mr. Hughes stated the proposed garage was about 1700 sqft. He also suggested the square footage of the shed to be removed, could be subtracted from the proposed impervious area.

Mr. Apperson stated the applicant had worked with all the applicable departments for acceptance of this proposal and he would approve the application.

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

Mr. Gussman stated he was concerned with the size of the project and the fact that the mitigation plan was not available for the Board to review. He asked where the area would drain.

Mr. Woolson stated it would drain into the marsh and staff would want to see the mitigation plantings in that area.

Mr. Waltrip stated it appeared the homeowner was caught by the 2004 change in the RPA and there was no other logical area for the structure.

Mr. Hughes stated the resolution already required the submittal of a mitigation plan acceptable to the Staff with a \$2,000 surety guarantee.

Mr. Hughes made a motion to adopt the resolution granting the exception on case CBE-11-042 at 2035 Bush Neck Road, tax parcel no. 3420100008.

The motion was approved by a 3-1 vote. (AYE: Apperson, Hughes, Waltrip) (NAY: Gussman)

**The next two cases were considered concurrently with the related Wetlands Board cases.**

#### **5. CBV-11-009 – Fisher – 7604 Uncles Neck**

Michael Majdeski, Senior Environmental Inspector, presented the following case information:

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

Applicant: Karla Havens; Mid Atlantic Resource Consulting  
Land Owner(s): Jeffrey Fisher  
8740 Merry Oaks Lane  
Toano, VA  
Location: 7604 Uncle's Neck Road  
Pin: 2030200026: Jeffrey Fisher, owner  
Parcel Size/Zoning: 3.25 +/- acres, A1 Agricultural  
Percent of Parcel in RPA: 14% (0.44 +/- acres)  
Watershed: Chickahominy River (HUC Code JL 28)

##### **Proposed Impacts**

Disturbed Area: 10,000 square feet total disturbance  
RPA Encroachment: Landward and Seaward 50 foot RPA Buffers

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

Ms. Karla Havens of Mid Atlantic Consulting, Inc. on behalf of Jeffrey Fisher applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for the re-grading of an existing slope and the subsequent stabilization and re-planting associated with the installation of a 200' stone revetment.

The re-grading of the existing bank along with the construction of the revetment will create a total of approximately 10,000 square feet of RPA impacts in both the landward and seaward buffer areas. Additionally, the applicant also proposes to remove nineteen trees during the construction process.



The applicant has also proposed to install wire reinforced silt fence at the toe of bank and a turbidity curtain during construction to minimize any sediment run-off to off-site areas.

Additionally, if the associated Wetlands Case is denied by the Wetlands Board, this case should be deferred to a later date, as the proposed plan would be unnecessary, as the scope of the work will have changed.

#### **Staff Recommendation**

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be moderate for the proposed construction and that the proposed mitigation measures may offset the impacts to the RPA. 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 with all proposed shrubs being of three gallon size.
3. A pre-construction meeting shall be held on-site prior to commencing work.
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) 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 begun by November 10, 2011 or all improvements including the required mitigation plantings 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 following both the 1990 adoption and the subsequent 2004 revision of the Chesapeake Bay Preservation Ordinance. In this case, the exception request is for the re-grading and stabilization an existing bank which will encroach into both the landward and seaward RPA buffers. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

#### **Staff Evaluation**

Staff has evaluated the application and exception request for all work as described above. The proposal is for the re-grading and stabilization of an existing bank. 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.

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

In accordance with Bay Act requirements and the Ordinance all land disturbance, development, or redevelopment within the RPA requires a water quality impact assessment (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.

A WQIA was provided on July 23, 2010. Based on staff review, the WQIA proposes to mitigate for RPA impacts by:

- Re-planting the RPA with 250 shrubs and the placement of 7,000 square feet of hardwood mulch over EC-2 erosion control matting.

Due to the proposed 2H:1V slope and the inherent danger that during storm events that any new planted trees could be felled and compromise the slope itself, it is not advisable to install canopy and understory trees. The applicant has proposed to plant 250 shrubs which meets the alternate mitigation requirements and is satisfactory to staff.

### **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-11-009 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-11-009 are included for the Board's use and decision.

### **6. CBV-11-010 – Hazelwood – 7596 & 7600 Uncles Neck**

Michael Majdeski, Senior Environmental Inspector, presented the following case information:

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

Applicant:	Karla Havens; Mid Atlantic Resource Consulting
Land Owner(s):	Uncle's Neck LLC 5300 Mercury Blvd Newport News, VA 23605
Location:	7596 and 7600 Uncle's Neck Road Lot 24; Pin: 2010200024: Uncle's Neck LLC, owner Lot 25; Pin: 2010200025: Uncle's Neck LLC, owner
Parcel Size/Zoning:	Lot 24; 3.88 +/- acres, A1 Agricultural Lot 25; 3.60 +/- acres, A1 Agricultural
Percent of Parcel in RPA:	Lot 24; 39% (1.54 +/- acres) Lot 25; 24% (0.87 +/- acres)
Watershed:	Chickahominy River (HUC Code JL 28)

#### **Proposed Impacts**

Total disturbed area:	6,000 square feet
RPA Encroachment	Landward and Seaward 50 foot RPA Buffers

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

Ms. Karla Havens of Mid Atlantic Consulting, Inc. on behalf of Uncle's Neck LLC has applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for the re-grading of an existing slope and the subsequent stabilization and re-planting associated with the installation of a 258' stone revetment.

The re-grading of the existing bank along with the construction of the proposed revetment will create a total of approximately 6,000 square feet of RPA impacts in both the landward and seaward buffer areas. Additionally, the applicant also proposes to remove sixteen (16) trees during the construction process.

The applicant has also proposed to install wire reinforced silt fence at the toe of bank and a turbidity curtain during construction to minimize any sediment run-off to off-site areas.

Additionally, if the associated Wetlands Case is denied by the Wetlands Board, this case should be deferred to a later date, as the proposed plan would be unnecessary, as the scope of the work will have changed.

### **Staff Recommendation**

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be moderate for the proposed construction and that the proposed mitigation measures may offset the impacts to the RPA. 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 with all 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 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) 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 begun by November 10, 2011 or all improvements including the required mitigation plantings 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 following both the 1990 adoption and the subsequent 2004 revision of the Chesapeake Bay Preservation Ordinance. In this case, the exception request is for the re-grading and stabilization an existing bank which will encroach into both the landward and seaward RPA buffers. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

### **Staff Evaluation**

Staff has evaluated the application and exception request for all work as described above. The proposal is for the re-grading and stabilization of an existing bank. 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.

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

In accordance with Bay Act requirements and the Ordinance all land disturbance, development, or redevelopment within the RPA requires a water quality impact assessment (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.

A WQIA was provided on July 26, 2010. Based on staff review, the WQIA proposes to mitigate for RPA impacts by:

- Re-planting the RPA with 150 shrubs and 3,000 square feet of hardwood mulch over EC-2 erosion control matting.

Due to the proposed 2H:1V slope and the inherent danger that during storm events that any new planted trees could fall and compromise the graded slope, it is not advisable to install canopy and understory trees. The applicant has proposed to plant 150 shrubs which meets the alternate mitigation requirements and is satisfactory to staff.

### **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-11-010 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-11-010 are included for the Board's use and decision.

Mr. Gussman continued the public hearing.

Mr. Apperson asked how the slope would be maintained.

A. Karla Havens, Mid-Atlantic Resource Consulting, stated the mitigation plans submitted for both projects showed complete restoration of the buffer.

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

Mr. Gussman stated it would have been interesting to review the entire subdivision prior to development of the individual lots.

Mr. Apperson made a motion to adopt the resolution granting the exception on case CBE-11-009 at 7604 Uncle's Neck Road, Tax Parcel #2030200026.

The motion was approved by a 4-0 vote.

Mr. Apperson made a motion to adopt the resolution granting the exception on case CBE-11-010 at 7596 and 7600 Uncle's Neck Road, Tax Parcels #2010200024 and #2010200025.

The motion was approved by a 4-0 vote.

## **D. BOARD CONSIDERATIONS**

### **1. Calendar Year 2011 Meeting Schedule**

All Board members agreed to adopt the 2011 Chesapeake Bay Board meeting schedule:  
Provided there are cases to be considered the meetings will be at 7:00 PM on the 2<sup>nd</sup> Wednesday of each month.

### **2. Request for a Work Session**

Mr. Woolson asked if the Board would schedule a work session at 6:00 pm prior to the Jan 12, 2011 regular meeting or if none was scheduled, prior to the February 9, 2011 regular meeting.

All Board Members agreed to the work session.

**E. ELECTION OF OFFICERS FOR 2011**

Mr. Apperson moved that David Gussman be reappointed as Chair. All members were in favor.  
Mr. Gussman moved that William Apperson be reappointed as Vice-Chair. All members were in favor.  
Mr. Gussman moved that Scott Thomas be reappointed as Secretary. All members were in favor.

**F. MATTERS OF SPECIAL PRIVILEGE**


Mr. Waltrip asked Staff if there was a size or height limit and a setback requirement for storage sheds near the water.

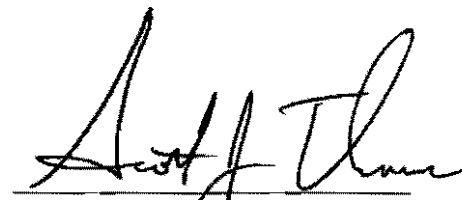
Mr. Woolson stated these restrictions were determined in the Zoning Ordinance by district. However, the placement of structures in the RPA would have to be considered by this Board.

Mr. Apperson suggested that on future cases Staff might consider recommending native species that were adaptable to the growing conditions of the specific sites.

**G. ADJOURNMENT**

The meeting adjourned at 9:05 PM.

  
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David Gussman  
Chair

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