

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

**A. ROLL CALL**

David Gussman – Chair  
William Apperson  
Larry Waltrip  
Charles Roadley

**ABSENT**  
John Hughes

**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 November 10, 2010 Board Meeting minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. CBE-11-052 – Hilstrom – 105 Godspeed Lane- patio**

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

**Existing Site Data & Information**

Applicant:	Charles H. Hilstrom, Sr.
Land Owner:	105 Godspeed Lane
Parcel:	Lot 29, Section 1, Powhatan Shores
Parcel Id:	4730500029
Lot Size:	0.452 acres
RPA Area on Lot:	0.221 acres or 48.9% of the lot
Watershed:	Powhatan Creek, Tidal Mainstem (HUC Code JL31)
Proposed Activity:	Installation of a patio

**Proposed Impacts**

Impervious Area:	225 square feet
RPA Encroachment:	Landward 50 foot RPA Buffer

**Brief Summary and Description of Activities**

Mr. Charles H. Hilstrom, Sr. of 105 Godspeed Lane in Section 1 of Powhatan Shores applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer for the construction of a patio approximately 225 square feet in size. The proposed patio is approximately 15 ft. x 15 ft. and is situated just behind an existing wooden deck on the back (south) portion of the existing home. The entire proposed patio is situated within the landward 50 ft. 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 tree and three (3) native shrubs in the vicinity of the proposed patio. The amount of plantings proposed meets the standard mitigation planting requirements of the County for impervious cover impacts.

The application provided no specific details about surface materials or construction methods proposed for the patio; however, in subsequent discussions with the applicant, the intent is to use gray-colored textured concrete. The patio is considered as impervious cover by staff.

### **Staff Recommendations**

The issue before the Board is the addition of 225 square feet of impervious area within the landward RPA buffer for construction of a patio. 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 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. 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.
4. This exception request approval shall become null and void if construction has not begun by December 8, 2011 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.

### **Background**

Based on staff review of County records, the lot was recorded prior to the adoption of the Chesapeake Bay Preservation Ordinance and the house was built around 1984. In 1990, the Ordinance was adopted and established a 100 foot RPA buffer on the lot. As the proposed patio is considered 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 patio approximately 225 square feet in size.

For the Board's information, an administrative waiver was granted for reconstruction of the existing deck situated near the proposed patio. The administrative waiver was granted on November 3<sup>rd</sup> 2010 under Chesapeake Bay Exception case CBE-11-053. As the original house and deck was constructed prior to 1990, they are considered non-complying structures subject to the provisions of Section 23-12 of the Ordinance. Waivers for non-complying structures can be reviewed and approved through an administrative process which permits the continued use, alteration or the expansion of any structure in existence prior to 1990. Deck reconstruction honored the previous historical footprint and was not expanded.

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

Under Sections 23-11 and 23-14 of the County's Chesapeake Bay Preservation ordinance, a water quality impact assessment (WQIA) must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPAs.

The applicant has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant has submitted a *County Sensitive Area Activity Application* and a required mitigation plan, both of which are included in the case report packet. The WQIA map shows features of the proposal along with a mitigation plan for native plantings.

**Consideration by the Chesapeake Bay Board**

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County’s Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-11-052 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-11-052 are included for the Board’s use and decision.

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

Mr. Waltrip indicated the Board had previously granted exceptions for similar RPA encroachments in this subdivision.

All Board members agreed the application was straight forward and they did not have any concerns.

Mr. Apperson made a motion to adopt the resolution to grant the exception on case CBE-11-052 at 105 Godspeed Lane, tax parcel no. 4730500029,

The motion was approved by a 4-0 vote.

**2. CBE-11-050 – 6616 Cranston’s Mill Pond - rehabilitation**

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

**Existing Site Data & Information**

Applicant:	Paul F. Hinson, PE Koontz-Bryant, PC 1703 North Parham Road, Suite 100 Richmond, Virginia 23229
Land Owner:	Toano Hunt and Fish Club
Location:	6616 Cranston’s Mill Pond Road
Parcel Id:	2230100044 (partial)
Lot Size:	153.48 ac (entire parcel) 59.33 ac (proposed parcel)
RPA Area on Lot:	56 ac +/- or 96% of the proposed parcel
Watershed:	Yarmouth Creek, Non-Tidal Mainstem (HUC Code JL28)
Proposed Activity:	Rehabilitation of Cranston’s Mill Pond

**Proposed Impacts**

Impervious Area:	16,500 square feet (spillway and access/maintenance road)
RPA Encroachment:	Landward and Seaward 50 foot RPA Buffer

**Brief Summary and Description of Activities**

Mr. Paul F. Hinson, PE of Koontz-Bryant on behalf of Mr. Brent Fults, Cranston’s Mill Pond, LLC applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer for the rehabilitation of Cranston’s Mill Pond. The proposed work will disturb approximately 3.56 acres within the RPA and have a proposed impervious cover of approximately 16,500 sq ft.

There is no RPA replanting plan, outside of stabilizing the disturbed area, because the Virginia Department of Conservation and Recreation Dam Safety requires the embankment, a 25-foot zone downstream of the embankment, and the emergency spillway be kept free and clear of woody vegetation. The remainder of the

site, outside of the actual pond and wetland fringe of the pond, is heavily wooded with no opportunity for replanting. The applicant has proposed to install Class II riprap below each spillway, the use of erosion control type 2 matting, and turbidity curtains to help avoid and minimize sedimentation from the construction activities.

### **Staff Recommendations**

The issue before the Board is the rehabilitation of the dam structure. Due to the nature and extent of events that have happened since 2006, the dam is no longer considered a non-complying structure, but a new structure. Therefore, the new dam structure and rehabilitation must be heard and approved by this Board.

Staff has fully reviewed the application and exception request and has determined impacts associated with the proposal to be minimal. 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 federal, state, and local permits as required for the project.
2. The recordation of a Natural Open Space (NOS) easement or a Deed of Covenants over the entire proposed parcel.
3. The NOS easement or Deed of Covenants 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. The surety for the NOS easement or Deed of Covenants shall be \$5,000.
4. This exception request approval shall become null and void if construction has not begun by December 8, 2011 or all improvements including the required easement 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.

### **Background**

The original Cranston's Mill Pond was built over 70 years ago and clearly predated the Chesapeake Bay Preservation Ordinance. Therefore, operation and maintenance of this structure was grandfathered by Section 23-12 until such time as the structure lost its non-complying status. In 2006, tropical storm Ernesto damaged the structure. According to Section 24-634 of the Zoning Ordinance, the property owners has 12 months to start repairs and 24 months to complete the repairs of this structure before the structure lost its non-complying status. Due to the lapse of time involved, the structure lost its non-complying status and any repairs now have to go through the standard County process.

The applicant has recently received a Special Use Permit to allow for the rehabilitation of the dam from both the Planning Commission and Board of Supervisors. The applicant is going through a site plan approval process to gain County approvals for rehabilitating the dam. They are also undergoing a subdivision process to split the dam and pond area from the remaining property. The applicant either has, or will receive, approval from the Virginia Department of Conservation and Recreation, Dam Safety; The United States Corps of Engineers; and the Virginia Department of Environmental Quality for this project.

According to Section 23-7, Development Criteria for Resource Protection Areas, development within the RPA may be allowed if it is water dependent, and flood control and stormwater management facilities that drain multiple development projects or a significant portion of a watershed may be allowed in RPAs provided that they are consistent with a stormwater management program that has been approved by the Department of Conservation and Recreation, Chesapeake Bay Local Assistance as a Phase 1 modification to the County's program. As there is no Phase 1 modification to the county program, this request cannot be processed administratively.

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

Under Sections 23-11 and 23-14 of the County's Chesapeake Bay Preservation ordinance, a 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 site plan shows features of the proposal.

### **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-11-050 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-11-050 are included for the Board's use and decision.

Mr. Waltrip asked if the Board of Supervisors had approved this project.

Mr. Gussman asked if there was a permit from the Army Corps of Engineers (ACOE).

Mr. Woolson stated the Board of Supervisors had approved the use of the dam on the property and approved a special use permit, SUP-0023-2010 on November 9, 2010, for the restoration of a water impoundment in excess of 20 acres. He also stated the applicant had acquired a permit for the work from the ACOE. The applicant and his representatives were available to answer questions from the Board.

Mr. Gussman opened the public hearing.

A. Shannon Varner, Troutman Sanders, legal counsel for the applicant, stated the purpose of the project was to bring the dam back into conformance with the DCR dam safety regulations and requirements.

Mr. Apperson stated he was glad to see the improvement..

Mr. Roadley asked if DCR had certified the nutrient bank on this property.

A. Mr. Varner stated that both DCR and DEQ had certified it as a nutrient bank.

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

Mr. Roadley made a motion to adopt the resolution to grant the exception on case CBE-11-050 at 6646 Cranston's Mill Pond, tax parcel no. 2230100044.

The motion was approved by a 4-0 vote.

### **D. BOARD CONSIDERATIONS - None**

### **E. MATTERS OF SPECIAL PRIVILEGE**

1. Mr. Thomas presented the following information for the Board:

#### New Board Member and New Alternate

Although previous email notifications were sent out on this matter, staff wanted to provide this information to the Board(s) again. On August 18<sup>th</sup> 2010, Mr. Terence Elkins resigned his position on the Wetlands/Chesapeake Bay Board. On November 9, 2010 the County Board of Supervisors appointed Mr. Chuck Roadley to fill the unexpired term for the vacancy on the Wetlands/Chesapeake Bay Board. Mr. Roger Schmidt was appointed to fill the remaining term on the then vacant 2<sup>nd</sup> alternate position. Both these terms will expire on October 1, 2013.

New Liaison

On November 1<sup>st</sup> 2010, our Division was notified of a change to our local liaison for the Bay Act program with the Virginia Department of Conservation & Recreation, Division of Chesapeake Bay Local Assistance. Adrienne Kotula is no longer our representative. Ms. Shawn Smith will now serve this role. Her contact information is as follows:

Ms. Shawn Smith, Principal Environmental Planner  
DCR-CBLAD  
900 E. Main Street, 8th Floor  
Richmond, Virginia 23219  
Phone: 804-371-0609; email [Shawn.Smith@dcv.virginia.gov](mailto:Shawn.Smith@dcv.virginia.gov)

Bay Act Compliance Review

On October 19<sup>th</sup> 2010, the County was notified by letter from the Virginia Department of Conservation & Recreation of an impending Bay Act program compliance review. The purpose of the review is to evaluate how well local governments implement their local Bay Act programs. The last County compliance evaluation was in 2005. This review follows a 2010 annual assessment report which the County provided in July and the Phase III advisory review completed at the end of July. The advisory review was specific to a review of JCC ordinances for specific provisions to address limiting land disturbance and impervious cover and protecting indigenous vegetation and specific plan and plat notations required by the state Chesapeake Bay Preservation Area Designation & Management Regulations (9VAC10-20-10 et seq.). In advance of a kickoff meeting for the compliance review, tentatively scheduled for early January 2011, staff has received a "Required Elements List" from DCR-CBLAD to review and comment on in advance of the kick-off meeting. Staff will keep the Board posted as the compliance review activities.

Local CBPA Workshop

The fall workshop that staff mentioned in previous Board meetings is delayed and will now be a winter workshop in January or February 2011. Staff will keep the Board posted on progress.

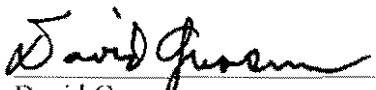
2. Mr. Thomas also provided the following FY11 Mid-year case information:

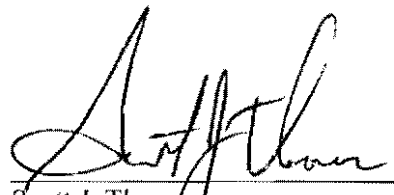
<b><u>FY 2011 (at Mid-Year)</u></b>	WETLANDS BOARD	4
	CHESAPEAKE BAY BOARD	21
	ADMINISTRATIVE	78
<b><u>FY 2010 (at Mid-Year)</u></b>	WETLANDS BOARD	4
	CHESAPEAKE BAY BOARD	14
	ADMINISTRATIVE	64

3. Mr. Woolson stated the Work Session with Bush Gardens discussed last month was confirmed for January 12, 2011 at 6:00 pm in the Building F Work Session Room.

**F. ADJOURNMENT**

The meeting adjourned at 7:29 PM.

  
David Gussman  
Chair

  
Scott J. Thomas  
Secretary to the Board