

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
September 14, 2011**

A. ROLL CALL

David Gussman – Chair
John Hughes
William Apperson
Charles Roadley

ABSENT

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 10, 2011 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBV-12-001 APPEAL – Swann – 3833 Fox Run

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

Mr. Edward Swann, 3833 Fox Run in the Fox Ridge Subdivision, filed an appeal of the Chesapeake Bay Preservation Ordinance Notice of Violation requirements, dated August 9, 2011. 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 garage structure and a concrete driveway from the RPA.

On or about July 27, 2011, staff became aware of the unauthorized, partially completed, detached garage and driveway following a routine inspection at the residence. Staff initiated an investigation and as a result documented a violation of the County's Chesapeake Bay Preservation Ordinance.

Background Information

On or about July 14, 2011 an Application for Building Permit was submitted for the building of an attached garage to the existing structure. This lot (PIN 3110800042) has a RPA encroaching approximately 5,200 square feet onto the lot from the adoption of the 2004 Chesapeake Bay Preservation Ordinance amendments. The garage/driveway encroaches into the RPA approximately 80 square feet. At the time of the Building Permit application (July 14, 2011), a Sensitive Area Activity Application form was not submitted for the addition of the attached sunroom and garage until after the Notice of Violation was issued. Due to the discovery during an inspection on July 27, 2011 that work had begun within the RPA Buffer, a Notice of Violation was issued to the landowner. In further communication with the landowner, he advised Staff that he was not previously notified that a Resource Protection Area existed on the property or that he needed prior County approval before constructing any of the improvements. Mr. Swann has also stated that he is willing to remove the garage and attach it to the house but would like to retain the driveway.

Additional Information

In his appeal letter, Mr. Swann stated he will remove the garage from the current location. He has submitted another building permit application with the garage attached to the house. This new application will be handled administratively. In his appeal letter, Mr. Swann also states that he would like to keep the driveway in place to use as a vehicular turn around for his attached garage.

Staff Guidance and Recommendations

Staff has reviewed the appeal and violation documents and offers the following information for the Board's consideration.

1. 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.
2. 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 (RPA) **is shared** by other properties immediately adjacent to the appellant's property as well as numerous other properties within the Fox Ridge subdivision that have RPA components located on them.
2. The granting of the appeal in this case **will not** adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity, **if** appropriate mitigation measures are employed.
3. The hardship **is self-inflicted**, although the homeowner was not aware of the RPA on his property, or of any other County requirements for building.

Should the Board find in favor of the appellant, staff recommends to the Board that this application come back before them for the driveway and/or garage impacts at the next regularly scheduled Chesapeake Bay Board meeting for review and discussion.

Mr. Hughes asked if an application for administrative consideration of an attached sunroom and garage would include the driveway.

Mr. Woolson said the driveway would be included as it would be pertinent to the garage.

Mr. Roadley stated the lot appeared to already be cleared of trees.

Mr. Gussman asked what body of water this property drained into.

Mr. Woolson stated the lot was currently all turf grass with only one tree having been cleared prior to the 2004 change in the ordinance, and the property drained into an unnamed tributary in the Powhatan Creek watershed.

Mr. Gussman opened the public hearing.

A. Mr. Edward Swann, property owner, apologized to the Board for the encroachment. He stated he was willing to work with staff and his neighbors to resolve all issues.

B. Mr. Henry Albert, an adjacent property owner at 6005 Red Fox Circle, stated his only concern was that the driveway was not setback from his property as was required by code and asked that this portion of the driveway be removed.

Mr. Hughes advised Mr. Albert that his concerns would be noted however, the portion of the driveway that was not setback from his property was not in the RPA and therefore not the purview of this Board.

A. Mr. Swann stated he did not have a problem removing approximately 3 feet of the driveway near his neighbor's property.

Mr. Woolson stated the setback issue was being addressed by the County's Zoning Department.

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

Mr. Apperson said it appeared that all parties were making an effort to resolve this issue and he would support the request to keep the portion of the driveway that is in the RPA.

Mr. Hughes asked if the applicant would be required to complete an application and come back to the Board with mitigation for this portion of the driveway.

Mr. Woolson stated the Board could require this or they could direct staff to consider mitigation for the driveway with the application that has already been submitted for the attached structures in the RPA.

Mr. Apperson made a motion to adopt the resolution granting the appeal on case #CBV-12-001 at 3833 Fox Run, tax parcel Nc. 3110800042.

Mr. Hughes amended the motion to require removal of the free standing garage and to direct staff to include mitigation for the driveway in the application for the attached structures.

The motion as amended was approved by a 4-0 vote

D. BOARD CONSIDERATIONS - none

E. MATTERS OF SPECIAL PRIVILEGE

1. Assistant County Attorney, Lola Perkins

Ms. Perkins responded to the Board's previous request for information on how to report contractors who habitually violated the County's Chesapeake Bay Preservation Ordinance. The Department of Professional and Occupational Regulation (DPOR) has a formal complaint process that requires copies of contracts and payments so the Board does not have a standing for this type of complaint. The option for the Board would be to send a complaint letter to the Board of Contractor's.

Mr. Gussman stated the Board would review this information and advise Ms. Perkins at a later time.

2. Update on a previous case from Senior Inspector, Michael Majdeski

Mr. Majdeski gave a presentation of the work being performed at 7604 Uncles Neck, previous Chesapeake Bay Board case #CBE-11-009.

3. Scott J. Thomas, Chesapeake Bay Board Secretary

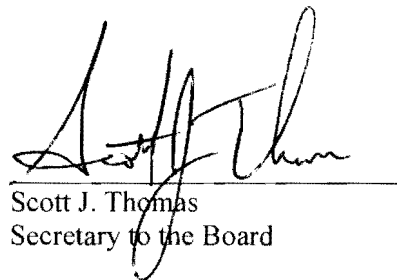
Mr. Thomas introduced the new alternate board member, Louis Bott. Mr. Bott was appointed by the Board of Supervisors on August 9, 2011 and was in the audience.

F. ADJOURNMENT

The meeting adjourned at 7:32 PM.



David Gussman
Chair



Scott J. Thomas
Secretary to the Board