

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

A. ROLL CALL

David Gussman – Chair
John Hughes
William Apperson
Charles Roadley
Louis Bott - Alternate

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 October 12, 2011 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

The Board made a change in the order of public hearing cases on the agenda.

1. CBE-12-050: Kane – 218 The Maine

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

Existing Site Data & Information

Applicant:	John and Kathleen Kane
Land Owner:	John and Kathleen Kane
Location:	218 The Maine
Parcel:	Lot 82, First Colony Subdivision
Parcel Identification:	4540200082
Lot Size:	0.59 acres
RPA Area on Lot:	0.51 acres or 86% of the lot (RPA only)
Watershed:	James River (HUC Code JL30)
Proposed Activity:	Retaining wall and paver walkways

Proposed Impacts

Impervious Area:	442 square feet (approximate)
RPA Encroachment:	442 square feet to the landward 50 foot RPA Buffer

Brief Summary and Description of Activities

John and Kathleen Kane applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachment into the RPA buffer for construction of a retaining wall and two stone paver walkways at 218 The Maine within the First Colony Subdivision. The lot was platted prior to the 1990 adoption of the Chesapeake Bay Preservation Ordinance. The proposed improvements are within the landward 50 foot RPA buffer. In addition to the improvements detailed in this staff report, the applicant is proposing to construct an

attached deck, tree removal, and the installation of ground gutters which will be handled administratively. The proposed improvements will be located within the landward 50' RPA buffer in areas directly adjacent to the existing residence. The proposed segmental block retaining wall will be constructed at the northeast end of the residence with an associated paver walkway installed along the wall to replace an existing dirt path. The second proposed stone paver path is to be located at the southwest side of the home to provide access from the carport to the rear deck replacing an existing dirt path.

Staff Recommendations

The issue before the Board is the installation of the retaining wall and stone paver walkways with 442 square feet of impervious area within the landward RPA buffer. 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 review criteria within this section of the ordinance.

Staff recommends approval of the application with 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 approved RPA Mitigation Plan and any additional Board mitigation requirements shall be guaranteed through a form of surety satisfactory to the County Attorney and the provisions of the Ordinance contained in Sections 23-10(3) (d) and 23-17(c).
4. This exception request approval shall become null and void if construction has not begun by December 14, 2012.
5. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection 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. As the proposed accessory structures are located within the RPA buffer, they 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 the retaining wall and the stone paver walkways.

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 detailed mitigation plan, both of which are included in the case report packet.

The applicant proposes to provide one (1) canopy, four (4) understory, and seven (7) shrubs to offset the impacts to the RPA. The proposed mitigation exceeds the mitigation standard requirements for the proposed impacts.

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-12-050 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-12-050 are included for the Board's use and decision.

Mr. Roadley asked if there was surface erosion around the house.

Mr. Bott asked if the proposed mitigation was adequate for the proposed impervious area.

Mr. Woolson stated there was a worn path around the house that would be corrected by this project and the proposed mitigation exceeded the minimum requirements.

Mr. Gussman opened the public hearing.

A. Mr. Kane, property owner, stated his contractor was available to describe the project and answer any questions from the Board.

B. Joe Hertzler, Hertzler and George, contractor for the project stated he and the property owners were concerned with protecting the wetlands however there was severe erosion around the house and the area needed to be stabilized.

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

Mr. Apperson thought the plan was comprehensive, well engineered, and needed.

Mr. Roadley and other Board members agreed, the problems were evident and the proposed work justified.

Mr. Hughes made a motion to adopt the resolution granting the exception for Chesapeake Bay Board Case CBE-12-050 at 218 The Maine, Parcel ID #4540200082.

The motion was approved by a 5-0 vote.

2. CBE-11-129: Drygala – 3649 Bridgewater – continued from 7/13/11 and 10/12/11

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

Existing Site Data & Information

Applicant:	Marcin Drygala
Land Owner:	Marcin Drygala and Agnieszka Adamska
Location:	3649 Bridgewater Drive
Parcel:	Lot 8, Section 6, Mill Creek Landing
Parcel Identification:	3841760008
Lot Size:	0.37 acres
RPA Area on Lot:	0.20 acres or 54% of the lot, 0.06 acres or 16.2% of the lot seaward 50 foot RPA
Watershed:	Mill Creek (HUC Code JL33)
Proposed Activity:	16' x 25' attached deck (administrative); Removal of twenty (20) trees within the RPA Buffer, installation of concrete ground gutters and french drains to intercept stormwater run-off.

Proposed Impacts

Impervious Area:	400 square feet from deck (administrative);
RPA Encroachment:	2,400 square feet to the seaward 50 foot RPA Buffer and 900 square feet to the landward 50 foot RPA Buffer, total RPA Buffer impact = 3,500 square feet

Brief Summary and Description of Activities

Mr. Marcin Drygala applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer for the construction of an attached deck, the removal of seventeen (17) understory trees, the removal of three (3) canopy trees, the installation of two french drains and a concrete ground gutter at 3649 Bridgewater Drive, in the Mill Creek Landing Subdivision. The lot was platted prior to the original Chesapeake Bay Preservation Ordinance. An RPA was determined to exist on this lot after the 2004 revision to the Ordinance. The house was approved administratively with RPA impacts under CBE-05-025 on June 7, 2005. The rear yard that was approved at that time is 30 feet deep and has a slight slope to it.

The applicant proposes remove three (3) canopy and seventeen (17) understory trees as well as install two french drains and a ground gutter along the east side of the residence. The scope of the proposed work has been revised since the last meeting as the applicant has removed the request for the installation of retaining wall and the associated bank grading. In place of the previous request the applicant proposes to remove the aforementioned trees and install the drainage improvements to along with minor bank grading to create a more usable backyard space.

The tree removal and ground gutter installation is proposed to be offset by the installation of thirteen (13) canopy trees and nine (9) shrubs. The canopy trees will be installed along the side and rear property lines and will be buffered by an area of organic mulch to stabilize the area.

The french drains and concrete ground gutter will be used to intercept stormwater run-off and divert it to the drainage swale along the eastern property line. The applicant states that these proposed drainage improvements will prevent erosion of the backyard area.

Staff Recommendations

The issue before the Board is the removal of seventeen (17) understory trees, three (3) canopy trees, and the installation of the concrete gutter and associated french drains. The existing rear yard is 30 feet deep from the rear door of the structure. This yard does have a slight slope to it, draining away from the house. The applicant wishes to selectively clear the rear yard thereby expanding the usable area. The original application had a cleared rear yard associated with the house. The additional clearing proposed does not appear to be within the spirit and intent of the Ordinance, therefore staff cannot support the application as submitted. 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 review criteria within this section of the ordinance.

Staff has fully reviewed the application and exception request and has determined that none of the conditions outlined in Section 23-14 (c) have been met.

If the Board should choose to approve this application, regardless of other requirements imposed by the Board, 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 approved RPA Mitigation Plan and any additional Board mitigation requirements shall be guaranteed through a form of surety satisfactory to the County Attorney and the provisions of the Ordinance contained in Sections 23-10(3) (d) and 23-17(c).
4. This exception request approval shall become null and void if construction has not begun by ~~July 13, 2012~~ December 14, 2012.
5. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 2 weeks prior to the expiration date.

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 majority of 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*. The proposed mitigation plan includes the installation of thirteen (13) canopy trees and nine (9) shrubs to offset the impacts to the RPA.

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-11-129 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-11-129 are included for the Board's use and decision.

Mr. Bott asked if staff had suggested limiting the number of trees to be removed.

Mr. Woolson deferred to the applicant, Mr. Drygala.

Mr. Gussman continued the public hearing.

A. Marcin Drygala, property owner stated the reason for clearing was to create a play area in the back yard because the neighborhood association did not allow any structures visible from the street. He stated most of the understory trees to be removed were under 3" caliper and one of the canopy trees being removed was not healthy. He stated they would not add fill but only grade the side yard and add french drains.

Mr. Hughes asked why the area at the back of the property was marked as already cleared on the plan presented to the Board for consideration. He asked if the proposal was to clear back to this area.

Mr. Woolson responded this was a utility easement 10 ft on Mr. Drygala's property and 10 ft in the common HOA area.

A. Mr. Drygala stated the proposal was to install a fence at the property line and plant the mitigation trees in front of the utility easement.

Mr. Roadley stated the reason for the woody vegetation in the RPA buffer was for protection of water quality and all levels of vegetation including small understory trees served a purpose in the buffer.

A. Mr. Drygala said he understood the purpose of the buffer and his plan was to replace the trees that were removed. He reiterated his goal was to organize the backyard and make it more appealing and usable.

Mr. Bott said he was concerned with the proposed distribution of the mitigation trees and asked Mr. Drygala if he would consider preserving some of the trees and/or replanting on the right side of the property where the french drains would be installed.

Mr. Apperson suggested planting loblolly pines as an alternative to the proposed hemlock trees as they did not perform very well in this area. He asked if all the runoff from this property went into the easement.

Mr. Hughes was concerned that the proposed clearing was more than necessary to afford relief and felt the mitigation plan submitted to the Board was not accurate and did not represent a natural buffer replacement that included all levels of native plants more appropriate for the area.

Mr. Gussman advised Mr. Drygala that the Board had some problems with the proposal and would prefer to have a detailed, well drawn, accurate mitigation plan for consideration. He asked Mr. Drygala if he wished to request another 2-month continuance to work with staff on a new plan.

Mr. Drygala requested the continuance and said he would consider the Board recommendations.

Mr. Roadley made a motion to defer the decision and continue the public hearing to February 8, 2012 for Chesapeake Bay Board case CBE-11-129 at 3649 Bridgewater, Parcel ID #384176008.

The motion was approved by a 5-0 vote

3. CBE-11-134: Crawford/Adams – 132 Nottinghamshire – continued from 7/13, 8/10, and 10/12/11

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

Existing Site Data & Information

Applicant:	Woody Crawford
Land Owner:	James Adams
Location:	132 Nottinghamshire
Parcel:	Lot 30, Section 12, Ford's Colony Subdivision
Parcel Identification:	3233100030
Lot Size:	0.43 acres
RPA Area on Lot:	0.35 acres or 81.4% of the lot (wetlands plus RPA), 0.26 acres or 60.4% of the lot (RPA only)
Watershed:	Powhatan Creek (HUC Code JL31)
Proposed Activity:	Clearing, filling, and grading for a backyard

Proposed Impacts

Impervious Area:	0 square feet
RPA Encroachment:	6,000 square feet to the seaward 50 foot RPA Buffer

Brief Summary and Description of Activities

Mr. Woody Crawford, agent for Mr. and Mrs. James Adams, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer for the construction of a single family residence and clearing, filling and grading a backyard at 132 Nottinghamshire, in the Ford's Colony Subdivision. The lot was platted between 1990 and 2004 and an RPA was determined to exist after the 2004 revisions to the Chesapeake Bay Preservation Ordinance. As the single family residence is within the landward 50 foot RPA buffer, according to Section 23-7 (c) (2), it may be allowed through an administrative process. The clearing, filling, and grading of the backyard is within the seaward 50 foot RPA buffer and does not qualify for an administrative exception, according to the same section.

On or about May 26, 2011 an application was submitted for lot development. The application was for the principal structure (house and deck) and backyard area. At that time, staff reviewed the application and made decision that due to the backyard RPA seaward impacts that the entire application should go through the formal (Chesapeake Bay Board) process. On or about June 2, 2011, Mr. Crawford visited the County office to discuss with the Director of Engineering and Resource Protection, Mr. Scott Thomas, options available with this application in order to keep home construction from being delayed. The owner and owner representative had an option to either delay the case until the next available Chesapeake Bay Board hearing,

or revise the application to avoid any impact to the 50 ft. seaward RPA buffer so that the principal structure and deck could be processed administratively and remaining accessory components could subsequently follow by the formal exception process. The applicant chose the latter. The limits of work on the site plan was revised to reflect this intent and signed and initialed by both the applicant and County Engineering and Resource Protection Division Director. In addition, conditional language was written into the administrative approval for the principal structure using the County standard Sensitive Area Activity Application (SAAA) form. Conditional approval on the SAAA form stated the following: *"Approval does not authorize work in the 50' RPA buffer zone, except for limited 10'+/- for principal structure construction. Encroachment into 50' RPA will be handled by subsequent Bay Board case. Surety for this application 7-14-21 will be handled in Bay Board case. Also authorize steep slope impact in revised limits of work."*

On or around June 20, 2011 County compliance inspection staff observed clearing activities on the entire lot, not just what was authorized under the administrative approval, and clearing was beyond the defined limits of work on the approval. At this time, the lot is entirely cleared, grubbed and the house construction has begun. This clearing activity came about after the original start of processing of the Chesapeake Bay Board case. As such, this formal exception case is now considered to be an "after-the-fact" exception application.

The mitigation plan for the proposed impacts was submitted to Staff on September 29, 2011 and includes eleven canopy trees, twenty-one understory trees, and thirty-three shrubs. The mitigation proposal as submitted does not meet standard mitigation requirements for the impacts. The mitigation proposal is deficient two canopy trees, five understory trees, and six shrubs. As such the mitigation plan must be revised to meet the minimum standard.

In addition to the proposed mitigation plan, the applicant has demarcated the area where sod will be placed to reduce run-off velocity into the seaward 50' RPA buffer. An organic mulch (pine needles) are proposed to be placed in all other disturbed areas within the previously cleared seaward 50' RPA buffer.

Staff Recommendations

The original issue before the Board is the clearing, filling, and grading of a rear yard with zero square feet of impervious area within the seaward RPA buffer. An additional issue is now before the Board because of the advanced clearing, filling, and grading of the seaward 50' RPA buffer prior to approval. 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 review criteria within this section of the ordinance.

Staff has fully reviewed the application and exception request and has determined that none of the conditions outlined in Section 23-14 (c) have been met. There are several options available to the Board:

1. Approval of the application with the mitigation as outlined within the submitted mitigation plan with an additional condition requiring the applicant to meet the standard mitigation rate (13 canopy, 26 understory, 39 shrubs) as adequate, revised mitigation plan to be submitted within 15 days of the public hearing; or
2. Approval of the application with double the mitigation as outlined for the house construction (14 canopy, 28 understory, 42 shrubs) as adequate, revised mitigation plan to be submitted within 15 days of the public hearing; or
3. Either option 1 or 2 above plus payment into the Chesapeake Bay Mitigation Fund of a dollar amount to be set by the Board. Staff suggests using the matrix to determine the contribution amount; or
4. Either option 1 or 2 above plus direct staff to pursue a Chesapeake Bay Preservation Ordinance civil charge violation under Section 23-18 (b). Staff would suggest maximum fines because of the blatant nature of the violation and the impact to water quality; or
5. Direct staff to pursue a Chesapeake Bay Preservation Ordinance civil penalty violation under Section 23-18 (a) and full restoration of the seaward 50' RPA buffer with a mitigation plan to be submitted within 15 days of the public hearing; or

6. Denial of the application and full restoration of the seaward 50' RPA buffer, mitigation plan to be submitted within 15 days of the public hearing; or
7. Some other combination satisfactory to the Board.

If the Board should choose to approve this application, regardless of other requirements imposed by the Board, 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. The mitigation plan shall be amended to include a total of thirteen (13) native canopy trees, twenty-six (26) native understory trees, thirty-nine (39) native shrubs, and the placement of an organic mulch capable of reducing run-off velocity no less than four inches thick in the previously cleared 50' seaward buffer.
3. 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.
4. Mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) (d) and 23-17(c) satisfied through a surety of \$4,000 in a form satisfactory to the County Attorney.
5. This exception request approval shall become null and void if not completed by December 14, 2012.
6. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 2 weeks prior to the expiration date.

Background

Based on staff review of County records, the lot was recorded following the adoption of the Chesapeake Bay Preservation Ordinance and the house is currently under construction. As the proposed backyard is within the seaward 50' RPA buffer, 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 establishment of a backyard 6,000 square feet in size.

Recent Activity since Previous Board Hearing

Since the initial hearing of this case at the July 13, 2011 Board meeting, home, and deck construction has begun and progressed. Erosion and sediment controls are in place in compliance with State and Local regulations to minimize sediment run-off into adjacent areas. Within the previous cleared areas beyond the seaward 50' RPA buffer line volunteer vegetation has established itself, albeit sparse in nature. Photos of the current conditions are included within the Staff presentation to be displayed at the December 14, 2011 Chesapeake Bay Board Meeting.

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 map provided 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-11-134 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-11-134 are included for the Board's use and decision.

Mr. Bott asked if he was correct in understanding the action took place on the lot before the mitigation plan was submitted.

Mr. Woolson stated the administrative approval given for the house permitted some of the clearing but the clearing presented in this case was done prior to Board approval.

Mr. Hughes asked for clarification on the location of the James City County Service Authority (JCSA) utility easement.

Mr. Woolson displayed the site plan of the property and noted that although the lot extended beyond the JCSA easement into jurisdictional wetlands, no clearing was proposed in that area.

Mr. Gussman continued the public hearing.

Mr. Gussman asked if the owners were agreeable to the required additional mitigation noted in the staff report.

A. Mr. Woody Crawford stated he had discussed the mitigation requirements with the property owners and they would do what was necessary and required to use their backyard. He also stated they did not want alot of turf area. He again explained the misunderstanding that caused the additional clearing on the lot prior to Board approval.

Mr. Roadley asked if the wetland delineation on the lot had been verified.

A. Mr. Crawford stated the original survey did not depict the RPA. When the area was identified he moved the house as far forward as possible.

Mr. Hughes asked if any fill had been brought in.

A. Mr. Crawford stated that nothing further had been done other than maintaining the erosion and sediment controls.

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

Mr. Roadley asked if the Board should acknowledge receipt of the letter from the property owners, Jim and Judy Adams.

Mr. Gussman stated all Board members received a copy of the letter requesting approval and it is part of the permanent case file but did not need to be read into the record.

Mr. Roadley asked if only the clearing was to be considered on this case.

Mr. Woolson stated this case was just for the clearing, the accessory structures indicated on the plan were part of the next case.

Mr. Apperson stated that if the mitigation plan was revised and completed as specified in the staff report and resolution, he would be willing to approve this exception request.

Mr. Roadley was concerned with sending a message that this mitigation plan was an acceptable restoration of the buffer because it was not natural and indicated areas of sod in the seaward 50 ft buffer.

Mr. Bott asked if there had been any negative impact on the BMP behind this property.

Mr. Woolson said the BMP had not been inspected. He re-displayed the mitigation plan that showed the proposed turf area approximately 10 feet from the rear of the deck and the remaining area to the JCSEA easement would be pine needles.

Mr. Gussman wished to see this case resolved and the mitigation completed. He said that if the plan had come in prior to any clearing, he probably would have approved it.

Mr. Bott asked if there was any consideration for the option to require payment into the Chesapeake Bay Mitigation Fund.

Mr. Woolson said that was not a viable option. It was written by staff prior to consultation with the Assistant County Attorney.

Mr. Hughes made a motion to adopt the resolution granting the exception for Chesapeake Bay Board Case #CBE-11-134 at 132 Nottinghamshire, Parcel ID #3233100030.

The motion was approved by a 4-1 vote (Yea: Apperson, Bott, Hughes, Gussman)
(Nay: Roadley)

4. CBE-12-044: Crawford/Adams – 132 Nottinghamshire

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

Existing Site Data & Information

Applicant:	Woody Crawford
Land Owner:	James Adams
Location:	132 Nottinghamshire
Parcel:	Lot 30, Section 12, Ford's Colony Subdivision
Parcel Identification:	3233100030
Lot Size:	0.43 acres
RPA Area on Lot:	0.35 acres or 81.4% of the lot (wetlands plus RPA), 0.26 acres or 60.4% of the lot (RPA only)
Watershed:	Powhatan Creek (HUC Code JL31)
Proposed Activity:	Retaining walls, patio, and walkway installation

Proposed Impacts

Impervious Area:	530 square feet (approximate)
RPA Encroachment:	530 square feet to the landward 50 foot RPA Buffer

Brief Summary and Description of Activities

Mr. Woody Crawford, agent for Mr. and Mrs. James Adams, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer for the construction of three retaining walls, a paver patio, and a future gravel walkway at 132 Nottinghamshire, in the Ford's Colony Subdivision. This case relates to two previous cases CBE-11-134, which was heard before the Chesapeake Bay Board, and CBE-11-126 which was administratively processed. The lot was platted between 1990 and 2004 and an RPA was determined to exist after the 2004 revisions to the Chesapeake Bay Preservation Ordinance. The proposed improvements are within the landward 50 foot RPA buffer and do not qualify for

an administrative exception and must accordingly be heard by the Chesapeake Bay Board as stipulated under the Chesapeake Bay Ordinance Section 23-7 (c)(2).

The proposed improvements will be located within the landward 50' RPA buffer in areas directly adjacent to the existing residence. Two of the proposed retaining walls are to be constructed along the west side of the home while one retaining wall and the proposed gravel path will be installed along the east side.

A mitigation plan has been submitted to Staff to address impacts from the home construction (CBE-11-126), backyard clearing (CBE-11-134), and the installation of the improvements detailed in this case. If the previous exception request identified as CBE-11-134 is approved as proposed, the mitigation provided within that case will sufficiently address the impacts in the present case. If the previous exception request is denied the applicant should be required to provide a revised mitigation plan to address the impacts within the present case.

Staff Recommendations

The issue before the Board is the installation of the three retaining walls, paver patio, and path with 530 square feet of impervious area within the landward RPA buffer. 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 review criteria within this section of the ordinance.

If the Board should choose to approve this application, regardless of other requirements imposed by the Board, 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. The mitigation plan requirement is contingent on approval of case CBE-11-134. The mitigation plan provided under CBE-11-134 shall be implemented to address proposed impacts under CBE-12-044 upon approval of the previous request.
3. This exception request approval shall become null and void if construction has not begun by December 14, 2012 or all improvements including the required mitigation plantings are not completed by that expiration date.
4. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 2 weeks prior to the expiration date.

Background

Based on staff review of County records, the lot was recorded following the adoption of the Chesapeake Bay Preservation Ordinance and the house is currently under construction. As the proposed accessory structures are located within the RPA buffer, they 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 the retaining walls, paver patio, and walkway.

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 which displays the 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-12-044 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-12-044 are included for the Board's use and decision.

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

Mr. Apperson stated he had no issues with the exception request.

Mr. Gussman agreed indicating this was the normal type of exception request usually supported by the Board.

Mr. Hughes made a motion to adopt the resolution granting the exception for Chesapeake Bay Board Case CBE-12-044 at 132 Nottinghamshire, Parcel ID #3233100030.

The motion was approved by a 5-0 vote.

D. BOARD CONSIDERATIONS

1. Calendar Year 2012 Meeting Schedule

All Board members agreed to adopt the 2012 Chesapeake Bay Board meeting schedule:
Provided there are cases to be considered the meetings will be at 7:00 PM on the 2nd Wednesday of each month.

E. ELECTION OF OFFICERS FOR 2012

Mr. Hughes 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 Michael Woolson be appointed as Secretary. All members were in favor

F. MATTERS OF SPECIAL PRIVILEGE


The Board members had no questions or comments concerning the Board update memo in their packets.

G. ADJOURNMENT

The meeting adjourned at 8:45 PM.



David Gussman
Chair



Scott J. Thomas
Secretary