

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
Wednesday November 13, 2013**

A. ROLL CALL

David Gussman
William Apperson
John Hughes
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.

A proposal to suspend Article V, Section 1 of the Chesapeake Bay Board bylaws was approved by a 5-0 vote in order to begin this meeting prior to adjournments of the Wetlands Board meeting.

B. MINUTES

The October 9, 2013 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBE-14-030: Zotto/Boyd Nurseries – 105 Mahogany Run

Michael Woolson Senior Watershed Planner presented this case for an exception request submitted by Boyd Nurseries on behalf of Anthony and Kathleen Zotto, for encroachment into the Resource Protection Area (RPA) on their property at 105 Mahogany Run in the Ford's Colony subdivision, Parcel No. 3131000011. The exception request was for approximately 126 square feet of encroachment into landward RPA buffer for construction of a patio. Mr. Woolson described the current conditions and the proposed construction as well as the mitigation requirements. Staff determined impact to be slight and recommended approval of the exception request with conditions outlined in the Resolution to Grant.

Mr. Gussman asked when the house was constructed and why the house was not moved more towards the street to avoid the RPA.

Mr. Woolson stated the house was already on the front setback line.

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

Board members agreed the impact was slight and the proposed mitigation was adequate.

Mr. Apperson made a motion to adopt the resolution to grant the exception for Chesapeake Bay Board case CBE-14-030 at 105 Mahogany Run, Parcel ID #3131000011.

Motion was approved by a 5-0 vote

RESOLUTION
GRANTING AN EXCEPTION ON JCC RE TAX PARCEL NO. 3131000011

WHEREAS, Boyd Nurseries on behalf of Anthony and Kathleen Zotto (the "Applicant") has appeared before the Chesapeake Bay Board of James City County (the "Board") on November 13, 2013 to request an exception to the use of the Resource Protection Area (the "RPA") on a parcel of property identified as JCC RE Tax Parcel No. 3131000011 and further identified as 105 Mahogany Run in the Ford's Colony subdivision (the "Property") as set forth in the application CBE-14-030 for the purpose of constructing a patio; and

WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record.

NOW, THEREFORE, following a public hearing, the Chesapeake Bay Board of James City County by a majority vote of its members FINDS that:

1. The exception request is the minimum necessary to afford relief.
2. Granting the exception will not confer upon the Applicant any special privileges denied by Chapter 23, Chesapeake Bay Preservation, of the James City County Code, to other property owners similarly situated in the vicinity.
3. The exception request will be in harmony with the purpose and intent of Chapter 23 of the James City County Code, and is not of substantial detriment to water quality.
4. The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.
5. Reasonable and appropriate conditions are hereby imposed, as set forth below, which will prevent the exception request from causing a degradation of water quality.
6. In granting this exception, the following conditions are hereby imposed to prevent this exception request from causing degradation of water quality:
 - 1) The applicant must obtain all other necessary federal, state, and local permits as required for the project.
 - 2) Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements shall be guaranteed through the provisions of Chapter 23 of the James City County Code contained in Sections 23-10(3) (d) and 23-17(c) providing a \$250 surety in a form satisfactory to the County Attorney.
 - 3) This exception request approval shall become null and void if construction has not begun by November 13, 2014.
 - 4) Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 6 weeks prior to the expiration date.

2. CBE-14-038: Flannery/Boyd Nurseries – 508 Sir George Percy

Michael Woolson Senior Watershed Planner presented this case for an exception request submitted by Boyd Nurseries on behalf of Joseph and Carey Flannery, for encroachment into the Resource Protection Area (RPA) on their property at 508 Sir George Percy in the Kingsmill subdivision, Parcel No5031300001. The exception request was for approximately 680 square feet of encroachment into landward RPA buffer for construction of a patio with pervious pavers. Mr. Woolson described the current conditions and the proposed construction as well as the mitigation requirements. Staff determined impact to be moderate and recommended approval of the exception request with the conditions outlined in the Resolution to Grant.

Mr. Roadley asked how the County rated the infiltration for pervious pavers.

Mr. Woolson responded that the County does not quantify the rate on a project this small but any infiltration is a good thing and the applicant has agreed to follow the County guidelines and specifications for pervious pavers.

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

Board members agreed the proposed mitigation was adequate.

Mr. Hughes made a motion to adopt the resolution to grant the exception for Chesapeake Bay Board case CBE-14-038 at 508 Sir George Percy Parcel ID #5031300001.

Motion was approved by a 5-0 vote

RESOLUTION
GRANTING AN EXCEPTION ON JCC RE TAX PARCEL NO. 5031300001

WHEREAS, Boyd Nurseries on behalf of Joseph and Carey Flannery (the "Applicant") has appeared before the Chesapeake Bay Board of James City County (the "Board") on November 13, 2013 to request an exception to the use of the Resource Protection Area (the "RPA") on a parcel of property identified as JCC RE Tax Parcel No. 5031300001 and further identified as 508 Sir George Percy in the Kingsmill subdivision (the "Property") as set forth in the application CBE-14-038 for the purpose of constructing a patio; and

WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record.

NOW, THEREFORE, following a public hearing, the Chesapeake Bay Board of James City County by a majority vote of its members FINDS that:

1. The exception request is the minimum necessary to afford relief.
2. Granting the exception will not confer upon the Applicant any special privileges denied by Chapter 23, Chesapeake Bay Preservation, of the James City County Code, to other property owners similarly situated in the vicinity.
3. The exception request will be in harmony with the purpose and intent of Chapter 23 of the James City County Code, and is not of substantial detriment to water quality.
4. The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.
5. Reasonable and appropriate conditions are hereby imposed, as set forth below, which will prevent the exception request from causing a degradation of water quality.
6. In granting this exception, the following conditions are hereby imposed to prevent this exception request from causing degradation of water quality:
 - 1) The applicant must obtain all other necessary federal, state, and local permits as required for the project.
 - 2) Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements shall be guaranteed through the provisions of Chapter 23 of the James City County Code contained in Sections 23-10(3) (d) and 23-17(c) providing a \$1,000 surety in a form satisfactory to the County Attorney.

- 3) This exception request approval shall become null and void if construction has not begun by November 13, 2014.
- 4) Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 6 weeks prior to the expiration date.

3. CBE-14-041: Kingsmill Riverwalk Project – Timmons Group/Xanterra LLC, boardwalk, hardscape path, timber steps, retaining walls and parking spaces

Mr. Gussman announced that this case was interconnected with case W-03-14 on the Wetlands Board Agenda. By a 5-0 vote, the Board agreed to hear and consider the cases concurrently.

Michael Woolson, Senior Watershed Planner presented this case concurrently with the Wetlands Board case for the same project.

Timmons Group, on behalf of Mr. Kevin Kolda of Xanterra Kingsmill, LLC applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for approximately 10,050 sqft of encroachment into the RPA and approximately 22,312 sqft of encroachment into the RPA buffer for installation of an asphalt and concrete multiuse path, wooden steps, retaining walls, gravel parking and a wooden boardwalk and pier. Mr. Woolson described the current conditions of the site, the associated impacts and the proposed mitigation which included the requirements for RPA impacts associated with the Cottages on the James project and the removal of the former par-3 golf course.

The stated purpose of the project is to develop passive recreational facilities along the waterfront. Staff considered this application to not be in compliance with Section 23-13 (c), Exemptions for Resource Protection Areas, because the activity is not passive recreation as defined in state guidance documents. The activity could be located further outside of the RPA, and there is excessive land disturbance and impervious cover. Staff finds that the application has met the conditions in Sections 23-11 and 23-14 and that the application should be heard by the Board because these items are accessory structures, do not fall under administrative exemptions for passive recreation and/or are excessive in nature. Staff determined impacts associated with the proposal to be severe and recommended the conditions outlined in the Resolution to Grant be required for approval.

Mr. Roadley announced that although his firm had dealings with Kingsmill Community Service Association (KCSA), he discussed this connection with the County Attorneys and was stating for the record that he could independently weigh the pros and cons of this case without prejudice and would be acting on this application.

Mr. Hughes asked why the exception was being considered if state guidance recommends not granting an exemption.

Mr. Woolson clarified that locality referred to Staff, meaning it must be considered by the Board at a public hearing.

Mr. Gussman opened the public hearing for the Chesapeake Bay Board.

A. Mr. Chris Dodson, with Timmons Group representing Xanterra Kingsmill LLC, gave a presentation on the project similar to staff's presentation. He explained the proposed boardwalk was to be constructed mostly in an area that was currently a low maintained bench with little non-native vegetation. Moving the boardwalk out of the RPA would require cutting into the slope causing more disturbance and grading. Space was also limited to the area away from the proposed cottages. He explained there was currently no defined water access in the project area and the 10 ft path and 12 ft boardwalk were required for ADA accessibility and passive activity for multiple guests at the resort. The width was also required so maintenance vehicles would not disturb the established vegetation. He also described the dry swale system and mitigation that would be used for water quality treatment.

Mr. Apperson asked for clarification on the location and size of the no-mow area for sedges and grasses and also asked if cypress trees could be planted along the river.

Mr. Roadley asked how the invasive grass would be eradicated.

A. Mr. Dodson stated the dry swales that were approximately 6/10 an acre and adjacent to the path, would be planted with a northeast riparian seed mix. He explained that due to the view scape in this location trees could not be planted and the shrubs would all be native species approved by Staff. He said the current invasive grass area would be sprayed, tilled and replanted.

Mr. Roadley and Mr. Gussman asked if alternative access and/or pervious pavers had been considered.

A. Mr. Dodson said multiple perpendicular access points were considered but the advantage of the proposal before the Board was it tied the areas together with access points at the east and west ends of the boardwalk as well as access from the Cottages. Pervious pavement would require much more disturbance than the proposed dry swales because the entire area is currently compacted clay soil that would have to be replaced and the entire paved area instead of just the swales would need to be under drained.

Mr. Hughes asked how the water infiltrated now.

B. Mr. Steven Quina also with the Timmons Group, explained how the proposed dry swales would improve water quality by capturing the runoff and filtering out the nutrients before they were released to the river. Currently the runoff sheet flowed off the surface into the river with little infiltration or treatment.

C. Mr. Michael McGurk on behalf of Preserve Carter's Grove Country Road and Kingsmill United, spoke against the exception request based on the necessity of the project. He gave a presentation stating there was currently public access to the marina, beach and river and he believed it was ADA compliant however, beginning January 1, 2014 Xanterra was limiting access including that created by this project, to club members and guests only. He described the proposed boardwalk as being excessive in length and a detriment to the natural, historical view shed. He referenced the 2007 Virginia Outdoor Plan by the Department of Conservation and Recreation (DCR) and the James City County 2009 Comprehensive Plan regarding the need for public not private access to recreational waters and future development or redevelopment away from shoreline areas to retain the waterfront area for community open space and piers. In conclusion he believed the project was detrimental to the environment and not in the spirit of the Chesapeake Bay Preservation Act.

D. Ms. Rubyjean Gould, 309 Archers Mead spoke in opposition to the project stating she agreed with the presentation by Mr. McGurk.

E. Mr. John Niland, 503 River Bluffs also agreed with Mr. McGurk's presentation in opposition to the project. He added the proposed 12 foot wide boardwalk and 6 foot wide pier were in excess of ADA compliance requirements.

Mr. Hughes asked for a count of the citizens present, those opposed and those in favor of the proposed permits. On a raise of hands he determined a count of approximately 15 opposed and 10 in favor.

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

Mr. Apperson and Mr. Roadley asked the applicant to address the citizens' concerns regarding public access.

F. Ms. Robin Carson, general manager of Kingsmill Resort, stated the resort has always been privately owned, operated and maintained. While the previous owners permitted public access the current owner, Xanterra, views the resort as open to resort members only.

Mr. Hughes stated his concern with the proposed project being for private financial gain and of no benefit to the general public. He felt if the state said a locality should not permit it then perhaps this local board should also not permit it.

Mr. Gussman stated the role of the Chesapeake Bay Board was to control deposition of sediment and pollution into the waterways. At first he was concerned with the proposed impact to the RPA however, given the existing condition of the area and the proposed construction and mitigation, his concerns were answered and he would not oppose this project.

Mr. Apperson and Mr. Roadley also agreed it was currently an artificial environment that offered no infiltration and the proposed treatments for runoff would improve the current conditions. Mr. Roadley advised the use of approved aquatic herbicides to eliminate the existing invasive grass.

Mr. Apperson made a motion to adopt the resolution to grant the exception for Chesapeake Bay Board case CBE-14-041 for the Kingsmill Riverwalk project at 1000 Kingsmill Road, Parcel ID #5040100001.

The motion was approved by a 3-2 vote: Aye (Roadley, Apperson, Gussman)
Nay (Bott, Hughes)

RESOLUTION
GRANTING AN EXCEPTION ON JCC RE TAX PARCEL NO. 5040100001

WHEREAS, Mr. Stephen Quina with the Timmons Group on behalf of Kevin Kolda with Xanterra Kingsmill, LLC (the "Applicant"), has appeared before the Chesapeake Bay Board of James City County (the "Board") on November 13, 2013 to request an exception to the use of the Resource Protection Area (the "RPA") on a parcel of property identified as JCC RE Tax Parcel No. 5040100001 and further identified as 1000 Kingsmill Road in the Kingsmill subdivision (the "Property") as set forth in the application CBE-14-041 for the purpose of installing an asphalt and concrete multiuse path, wooden steps, retaining walls, gravel parking , and a wooden boardwalk and pier; and

WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record.

NOW, THEREFORE, following a public hearing, the Chesapeake Bay Board of James City County by a majority vote of its members FINDS that:

1. The exception request is the minimum necessary to afford relief.
2. Granting the exception will not confer upon the Applicant any special privileges denied by Chapter 23, Chesapeake Bay Preservation, of the James City County Code, to other property owners similarly situated in the vicinity.
3. The exception request will be in harmony with the purpose and intent of Chapter 23 of the James City County Code, and is not of substantial detriment to water quality.
4. The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels.
5. Reasonable and appropriate conditions are hereby imposed, as set forth below, which will prevent the exception request from causing a degradation of water quality.
6. In granting this exception, the following conditions are hereby imposed to prevent this exception request from causing degradation of water quality:
 - 1) The applicant must obtain all other necessary federal, state, and local permits as required for the project.

- 2) Full implementation of siteplan SP-0086-2013, once approved by various County agencies.
- 3) A surety of \$50,000 will be required in a form acceptable to the County Attorney's office to guarantee the mitigation plantings.
- 4) This exception request approval shall become null and void if construction has not begun by November 13, 2014.
- 5) Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 6 weeks prior to the expiration date.

D. BOARD CONSIDERATIONS

1. Calendar Year 2014 Meeting Schedule

A motion was made to change the proposed January meeting date from Wednesday January 8, 2014 to Thursday January 9, 2014 due to a conflict with the Planning Commission. All Board members were in favor and agreed to adopt the 2014 Chesapeake Bay Board meeting schedule.

2. Election of Officers for 2014

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.
Melanie Davis was reappointed as Secretary. All members were in favor.


E. MATTERS OF SPECIAL PRIVILEGE - None

F. ADJOURNMENT

The meeting adjourned at 8:55 p.m.



David Gussman
Chesapeake Bay Board Vice-Chair



Melanie Davis
Secretary to the Board