

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES**

**Wednesday March 12, 2014**

**A. ROLL CALL**

Williams Apperson  
John Hughes  
Charles Roadley  
Larry Waltrip  
Roger Schmidt (Alternate)

**ABSENT**

David Gussman

**OTHERS PRESENT**

County Staff:

Michael Woolson, Senior Watershed Planner  
Scott J. Thomas, Director Engineering and Resource Protection  
Lola Perkins, Assistant County Attorney  
Melanie Davis, Senior Engineering Assistant/Secretary to the Board

**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 January 9, 2014 Board Meeting minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. CBE-14-062: AES/Candle Development – Village at Candle Station 7551 Richmond Rd**

Michael Woolson, Senior Watershed Planner presented this case for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachment into the Resource Protection Area (RPA) associated with the installation of a gravity sanitary sewer and water main crossing. The project is for the proposed Village at Candle Station townhouse subdivision at 7551 Richmond Road; Parcel #2321100001D, County Plan #SP-0087-2012. Mr. Woolson briefly described the proposed project and impacts to the RPA and the required mitigation measures which includes recordation of a Natural Open Space Easement and payment into the Chesapeake Bay Mitigation Fund. Staff determined impacts to be moderate and recommended approval of the exception request with the conditions outlined in the Resolution to Grant the Exception.

Mr. Schmidt asked if the impacted stream was perennial.

Mr. Apperson thought the stream was runoff from the pond and not fed from the north side of the highway.

Mr. Woolson stated the stream was seep driven and met the technical requirements for perennial streams by the Department of Conservation and Recreation (DCR) and County standards.

Mr. Waltrip asked if the area under the crossing would be restored or would continue to erode.

Mr. Woolson stated the area was actually stable so there were no proposed impacts or restoration to the channel.

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

Mr. Apperson asked if there was any danger of falling trees breaking the sewer line.

Mr. Woolson said this issue had been raised before and Danny Poe, JCSA Chief Civil Engineer responded that although fallen trees will lean on utility lines there has never been a direct hit breaking a sewer pipe.

Mr. Hughes made a motion to adopt the Resolution to Grant the Exception for Chesapeake Bay Board case CBE-14-062 for the Village at Candle Station project located at 7551 Richmond Road, Parcel 2321100001D.

Motion was approved by a 5-0 vote.

**RESOLUTION**  
**GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 2321100001D**

WHEREAS, AES Consulting Engineers on behalf of Candle Development LLC (the "Applicant") has applied to the Chesapeake Bay Board of James City County (the "Board") on March 12, 2014 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 2321100001 D and further identified as 7551 Richmond Road (the "Property") as set forth in the application CBE-14-062 for the purpose of installing a gravity sanitary sewer line; 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 local, state, and federal permits as required for the project.
  - 2) A Natural Open Space Easement shall be recorded prior to or concurrent with recordation of the subdivision plat.
  - 3) Recordation of the Natural Open Space easement shall be guaranteed by a surety in the amount of \$5,000, in a form satisfactory to the County Attorney.
  - 4) The applicant shall make a payment into the Chesapeake Bay Mitigation Fund in the amount of \$3,920.
  - 5) This exception request approval shall become null and void if construction has not begun by March 12, 2015.
  - 6) Written requests for 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-14-073: AES/Monticello Woods Active Adult LLC – Settlement at Powhatan Creek Phase III**

Michael Woolson, Senior Watershed Planner presented this case for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachment into the Resource Protection Area (RPA) associated with the installation of a sanitary sewer connection related to the Phase III construction of the Settlement at Powhatan Creek Subdivision, County subdivision plan #S-0037-2012. Mr. Woolson explained this exception request was previously approved by the Board in 2012 but had expired. The applicant was re-submitting the same request for consideration. He briefly described the proposed project, impacts to the RPA and the required mitigation measures. Staff determined impacts to be minor and recommended approval of the exception request with the conditions outlined in the Resolution to Grant the Exception.

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

Mr. Roadley stated it was a minor but necessary encroachment and he appreciated the restoration of the road.

Mr. Roadley made a motion to adopt the Resolution to Grant the Exception for Chesapeake Bay Board case CBE-14-073 for the Settlement at Powhatan Creek Phase III at 4101 Monticello Ave, Parcel 3740100010.

Motion was approved by a 5-0 vote

**RESOLUTION**  
**GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 3740100010**

WHEREAS, AES Consulting Engineers on behalf of Monticello Woods Active Adult LLC, (the "Applicant") has applied to the Chesapeake Bay Board of James City County (the "Board") on March 12, 2014 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. 3740100010 and further identified as 4101 Monticello Avenue (the "Property") as set forth in the application CBE-14-073 for the purpose of installing a sanitary sewer connection related to the Phase III construction of the Settlement at Powhatan Creek Subdivision; 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; and
- 2) Use of super silt fence for areas to be disturbed within the RPA.
- 3) All proposed mitigation plantings shall meet James City County standards of 1" caliper for the canopy and understory trees and shrubs shall be minimum 3 gallon size.
- 4) Full implementation of the approved 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) which is providing a form of surety satisfactory to the County Attorney.
- 5) Use of EC-3 matting for slope stabilization on disturbed slopes that are 3H:1V or greater.
- 6) Construction shall be in accordance with the provisions of approved County subdivision plan no S-0037-2012.
- 7) This exception request approval shall become null and void if construction has not begun by March 12, 2015.
- 8) 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. Amendment to Chesapeake Bay Board Bylaws.**

Assistant County Attorney, Lola Perkins proposed the amendment to Article 6 of the Board bylaws to clarify and explain the purpose and procedure for the reconsideration of a vote.

Mr. Apperson made a motion to adopt the amendment to the bylaws.

Motion was approved by a 5-0 vote

##### **2. CBE-14-047: Carter – 4123 S Riverside Drive**

Michael Woolson Senior Watershed Planner explained that a motion to reconsider and vote on the December decision for this case would be required before the motion on the amended Resolution. He then read the following request from Mr. Carter:

“During the December 2013 meeting of the Chesapeake Commission, I requested and received permission to add a covered porch to my home at 4123 South Riverside Drive in Lanexa, Virginia. This approval was based on me providing an updated Elevation Certificate.

Based on the final approvals, the county issued the permits, the existing deck was removed and construction began. During this process, I provided the updated Elevation Certificate and the county noticed that the required heights were not adequate. Construction was suspended.

In the original permit request, I had provided the Elevation Certificate produced when the home was originally constructed in 2001. Not being in the construction industry, I thought the heights were based on sea levels and the new certificate would be the same as the certificate provided in 2001. I was not aware that the measuring standards had changed.

I am requesting that the Chesapeake Bay Commission approve construction of the project at the same level as the existing home floor. Under no circumstances will I attempt to convert the covered deck space to an enclosed living space. I also understand that any conversion to living space will require the finished floor level to be two feet above the base flood elevation and meet all zoning

requirements as set by James City County.

Raising the floor level of an unenclosed deck that has a .125" gap between the flooring boards above the floor level of the existing home would make the deck un-useable and allow rains to flow into the home thru the 2 doors on the deck.

I greatly appreciate your consideration of this request.”

Mr. Roadley asked about the datum change and why there was an issue in December.

Mr. Woolson stated the datum changed from NGVD 1929 to NGVD 1988 and the base flood elevations all adjusted down to 7.5 feet MSL. Staff wanted to make sure the applicant would not convert the deck to living space and adversely impact the County’s flood rating system by having an approved structure that did not meet the new requirements.

Mr. Thomas added that the freeboard elevation also changed since 2001 from 1 foot to 2 feet and this would now create a hardship for the applicant.

Mr. Hughes made a motion to reconsider case CBE-14-047.

Motion was approve by a 5-0 vote.

A. Mr. Carter apologized for his unawareness of the change in the flood plain elevation on the property and thanked the Board for their re-consideration.

Mr. Roadley made a motion to adopt the Resolution to Grant the Exception changing the conditions for Chesapeake Bay Board case CBE-14-047 at 4123 S Riverside Dr., Parcel 1910900011.

Motion was approved by a 5-0 vote.

**RESOLUTION**  
**GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 1910900011**

WHEREAS, Mr. Wayne Carter, (the “Applicant”) has appeared before the Chesapeake Bay Board of James City County (the “Board”) on March 12, 2014 requesting a revision to the conditions in the Resolution to Grant adopted by the Board on December 11, 2013 for an exception to the use of the Resource Protection Area (the “RPA”) on a parcel of property identified as JCC RE Tax Parcel 1910900011 and further identified as 4123 South Riverside Drive in the Chickahominy Haven subdivision (the “Property”) as set forth in the application CBE-14-047 for the purpose of installing a covered porch; and

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

NOW, THEREFORE, having conducted a public hearing on December 11, 2013, and pursuant to the current request for a revision to the conditions of the Resolution to Grant, 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) Surety of \$250 will be held in escrow by the Engineering and Resource Protection Division to guarantee the mitigation plantings.
  - 3) This exception request approval shall become null and void if construction has not begun by December 11, 2014.
  - 4) Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than six weeks prior to the expiration date.

**3. CBE-11-079: HHHunt – White Hall offsite Sewer – Extension of Exception**

Mr. Roadley announced he would be abstaining from this case because of his firms association with the project.

Michael Woolson Senior Watershed Planner stated the applicant was requesting an extension on a previously granted exception for installation of an offsite sanitary sewer. The project had not yet begun due to delays in acquiring the necessary easements. The applicant planned on construction during the summer of 2014.

There were no questions or comments.

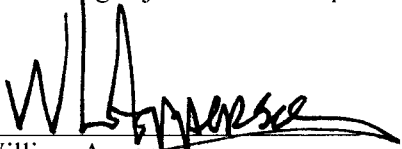
Mr. Schmidt made a motion to adopt the Resolution to Grant the Extension of the Exception on Chesapeake Bay Board case CBE-11-079 for the White Hall off site sewer project

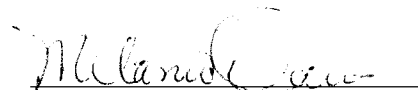
Motion was approved by a 4-0-1 vote. (Mr. Roadley abstained)

**E. MATTERS OF SPECIAL PRIVILEGE - None**

**F. ADJOURNMENT**

The meeting adjourned at 7:37 p.m.

  
William Appert  
Chesapeake Bay Board Vice-Chair

  
Melanie Davis  
Secretary to the Board