

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES**

**Wednesday June 11, 2014**

**A. ROLL CALL**

David Gussman  
William Apperson  
John Hughes  
Larry Waltrip  
Louis Bott – Alternate

**ABSENT**

Charles Roadley

**OTHERS PRESENT**

County Staff:

Michael Woolson, Senior Watershed Planner  
Scott J. Thomas, Director Engineering and Resource Protection  
Melanie Davis, 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 May 14, 2014 Board Meeting minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. CBE-14-084: Walk Wright/Hanson – 113 Burnham – continued from May 14, 2014**

Michael Woolson, Senior Watershed Planner presented the case for construction of a single family home, shed and patio impacting the seaward and landward RPA buffer. He described the existing conditions of the lot and stated the house has been located as far out of the RPA as possible. Staff determined impacts to be significant however; the application met the conditions of the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14. The applicant will be required to submit a mitigation planting plan with surety. Staff recommended approval of the exception request with the conditions outlined in the Resolution to Grant the Exception.

Mr. Gussman continued the public hearing.

Mr. Gussman asked the applicant if he had tried to redesign the house to move it out of the seaward 50 feet of the RPA. He and Mr. Bott suggested a repositioning and redesign of the house that might reduce the impact.

- A.** Mr. Larry Walk with Walk Wright Construction felt the suggested repositioning would not eliminate that much impact to the RPA and would require expanding the driveway for access to the garage. It would also create a front load garage which was not the aesthetic the owner desired.

Mr. Bott asked if the proposed patio and shed were being considered as accessory structures or part of the primary structure.

Mr. Woolson explained that because the proposed deck and room were over the patio and shed everything would be considered part of the primary structure. Although there would not be any infiltration for the deck, there would also not be any erosion.

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

Mr. Hughes felt that because the lot was created before adoption of the Chesapeake Bay Preservation Ordinance, the setback was similar to the house on the neighboring property and the required mitigation would alleviate the detriment to water quality, this exception request was reasonable. He didn't like the idea of building in the RPA buffer but did not feel it was worth causing a hardship to the owner by having the house redesigned.

Mr. Apperson also understood the concern for impact to the seaward RPA however he agreed with Mr. Hughes and he could not justify the hardship to the owner.

Mr. Waltrip also felt the proposed design of this house was in line with the other houses on the cul-de-sac. He also thought moving the garage would make access difficult. He asked if the patio could be moved to the side of the house

A. Mr. Walk explained the location of the patio was a walkout from the finished basement of the house and moving it to the side would require major modification to the house design. He added they were also stacking the deck and screened in porch over the patio and shed to reduce the impervious cover.

Mr. Gussman and Mr. Bott still felt there could be options for reducing the impact to the seaward RPA.

Mr. Bott made a motion to adopt the Resolution to Deny the Exception for case CBE-14-084 at 113 Burnham, Parcel ID #3720300144.

Mr. Waltrip asked if the applicant could come back to the Board at a later date if the Exception was denied.

Mr. Woolson explained that the applicant could present a revised plan to the Board at any time however a plan with the exact same footprint could not be submitted for at least one year.

Mr. Bott rescinded his motion to deny giving the applicant an option to request a deferral.

A. Mr. Walk explained that the owners were not able to be present at this meeting and they had already worked hard in designing this house to meet their needs and fit in with the other homes in the cul-de-sac therefore, he did not wish to request a deferral and asked the Board to consider the exception request as presented.

Mr. Bott made a motion to adopt the Resolution to Deny the Exception for case CBE-14-084 at 113 Burnham, Parcel ID #3720300144.

The motion to Deny was not approved by a 2-3 (Aye: Mr. Bott and Mr. Gussman)  
(Nay: Mr. Hughes, Mr. Apperson, and Mr. Waltrip)

Mr. Hughes made a motion to adopt the Resolution to Grant the Exception for case CBE-14-084 at 113 Burnham, Parcel ID #3720300144.

The motion to Grant the Exception was approved by a 3-2 (Aye: Mr. Hughes, Mr. Apperson, and Mr. Waltrip)  
(Nay: Mr. Bott and Mr. Gussman)

**RESOLUTION**  
**GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 3720300144**

WHEREAS, Larry Walk, Walk Wright Construction on behalf of Gregg and Deborah Hanson, (the "Applicant") has applied to the Chesapeake Bay Board of James City County (the "Board") 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 3720300144 and further identified as 113 Burnham in the Ford's Colony subdivision (the "Property") as set forth in the application CBE-14-084 for the purpose of constructing a new single family home, shed and 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 applicants must obtain all other necessary federal, state, and local permits as required for the project.
  - 2) The applicants shall provide a planting plan for the proposed mitigation.
  - 3) A surety of \$7,000, in a form acceptable to the County Attorney's office, must be submitted to guarantee the mitigation plantings.
  - 4) The Turf Love Program, or some other nutrient management program shall be used in the lawn areas and a copy of the plan submitted to staff prior to release of the surety.
  - 5) This exception request approval shall become null and void if construction has not begun by June 11, 2015.
  - 6) 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-14-088: Henderson – 102 Overlook**

Michael Woolson, Senior Watershed Planner presented the case for construction of a wooden, treated timber platform overlooking an existing pier. A mulched access path and steps to the pier were included in the application and by Ordinance would be considered administratively. He explained the construction and location of the proposed platform and stated that no trees would need to be removed. Staff determined impacts for the proposed platform to be minimal and recommended approval of the exception request with the conditions outlined in the Resolution to Grant the Exception.

Mr. Hughes asked if a retaining wall would be needed under the platform.

Mr. Waltrip asked if this was on a man-made lake.

Mr. Woolson stated the platform would be constructed on piers and this was a man-made lake in the Kingspoint subdivision being fed by a perennial stream.

Mr. Bott asked what the Ordinance stated regarding accessory structure in the seaward buffer.

Mr. Woolson explained the access path to the water could be considered administratively but the proposed platform was more than the minimum necessary for that path and was therefore considered an accessory structure. Accessory structures anywhere in the RPA buffer required approval from this Board after a public hearing.

Mr. Gussman opened the public hearing.

Mr. Waltrip asked the applicant if the size of the deck could be reduced.

**A.** Greg Henderson, the property owner stated the requested size was necessary to accommodate his family and guests.

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

Mr. Apperson made a motion to adopt the Resolution granting the exception on case CBE-14-088 at 102 Overlook, Parcel ID 4910250030.

The motion was approved by a 4-1 vote. (Aye: Mr. Hughes, Mr. Apperson, Mr. Waltrip and Mr. Gussman)  
(Nay: Mr. Bott)

**RESOLUTION**  
**GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 4910250030**

WHEREAS, Gregory and Lesley Henderson, (the “Applicants”) applied to the Chesapeake Bay Board of James City County (the “Board”) requesting an exception to the use of the Resource Protection Area (the “RPA”) on a parcel of property identified as JCC RE Tax Parcel 4910250030 and further identified as 102 Overlook Drive in the Kingspoint subdivision (the “Property”) as set forth in the application CBE-14-088 for the purpose of constructing a 12’ X 12’ platform; 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 applicants must obtain all other necessary federal, state, and local permits as required for the project.
  - 2) A Surety of \$250.00 will be required in a form acceptable to the County Attorney's office to guarantee the mitigation plantings.
  - 3) This exception request approval shall become null and void if construction has not begun by June 11, 2015.
  - 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-14-089: Southeastern Virginia Properties/Hallmark Builders – 117 Seminole**

Michael Woolson, Senior Watershed Planner presented the case for construction of a single family home in the Ford's Colony subdivision. The applicant worked with staff to portray accurate wetlands and RPA buffer limits and worked with the Ford's Colony Home Owners Association (FCHOA) to meet their requirements. Staff reviewed the application and determined the impacts to be severe. However, the request was not unreasonable for the location and the proposed mitigation measures met the standard mitigation requirements. Staff recommended approval of the exception request with the conditions outlined in the Resolution to Grant the Exception.

Mr. Hughes asked for clarification on the size of the house.

Mr. Woolson explained the total impervious cover in the RPA was approximately 4,100 square feet.

Mr. Gussman opened the public hearing.

**A.** Mike Carroll, Hallmark Builders stated it was a one story house and with the garage was approximately 2,800 square feet with a foot print of about 2,200 square feet.

Mr. Gussman asked if there was any way to move the house further away from the wetlands to minimize the impacts to the seaward RPA as much as possible.

**A.** Mr. Carroll stated he had several meetings with the FCHOA to meet their strict requirements and had to receive variances for the driveway and house orientation.

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

Mr. Hughes stated there were many lots platted prior to the Ordinance and in order to build a house comparable to others in the neighborhood, this type of encroachment was inevitable.

Mr. Apperson asked how many times Staff had visited the site.

Mr. Woolson stated he had probably been on site about 6 times this year and worked closing with Mr. Carroll to get the wetlands accurately portrayed.

Mr. Gussman agreed this was a difficult lot but the Board could not base their decisions on the requirements of the home owners associations. However unlike the previous case, he did not feel this house could be redesigned to reduce the impact to the RPA.

Mr. Bott did not agree and felt the house could still be reoriented to move it more than eight feet from the wetlands.

Mr. Hughes made a motion to adopt the Resolution granting the exception on case CBE-14-089 at 117 Seminole, Parcel ID 3720400099A.

The motion was approved by a 4-1 vote. (Aye: Mr. Hughes, Mr. Apperson, Mr. Waltrip and Mr. Gussman)  
(Nay: Mr. Bott)

**RESOLUTION**  
**GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 3720300144**

WHEREAS, Larry Walk, Walk Wright Construction on behalf of Gregg and Deborah Hanson, (the "Applicant") has applied to the Chesapeake Bay Board of James City County (the "Board") 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 3720300144 and further identified as 113 Burnham in the Ford's Colony subdivision (the "Property") as set forth in the application CBE-14-084 for the purpose of constructing a new single family home, shed and 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 applicants must obtain all other necessary federal, state, and local permits as required for the project.
  - 2) A surety of \$6,000, in a form acceptable to the County Attorney's office, must be submitted to guarantee the mitigation plantings.
  - 3) This exception request approval shall become null and void if construction has not begun by June 11, 2015.
  - 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.

## D. BOARD CONSIDERATIONS

### 1. CBE-07-015: Nervitt – 108 Seven Oaks – Extension of Exception for a single family home.

Michael Woolson, Senior Watershed Planner presented the request submitted by the applicant for an indefinite extension of the current exception and a reclassification of the RPA on his lot.

Mr. Woolson explained that the exception was originally granted on May 9, 2007. A two year extension was granted on June 11, 2008, June 9, 2010, and again on June 13, 2012. In addition, applicant did not have any plans for beginning construction in the foreseeable future. Mr. Woolson advised the Board that there was no guidance in the of the Chesapeake Bay Preservation ordinance (Ordinance) regarding the granting of exception requests and there were no provisions that allow for a parcel to be removed from consideration of the Ordinance. Therefore, Staff's recommendation was to grant no more than another two year extension with all conditions stipulated in the original exception.

Mr. Gussman stated this was a policy issue for the Board to consider with regard to granting multiple extensions.

Mr. Bott asked what the applicant's basis was for absolving this lot from the requirements of the Ordinance.

Mr. Woolson explained that Mr. Nervitt disagreed with the RPA delineation around the lake.

All Board members stated they were not open to an indefinite extension and this Board did not have the authority to remove a property from the requirements of the Ordinance.

Mr. Gussman and Mr. Bott stated they were opposed to granting another extension. Mr. Gussman suggested the applicant or future owner of the property apply for an exception when they were ready to construct and the new application would be considered on its merits.

Mr. Waltrip asked if this number of extensions or an indefinite extension had been granted before.

Mr. Woolson stated that an indefinite extension had never been issued and also did not believe more than three extension had ever been issued before.

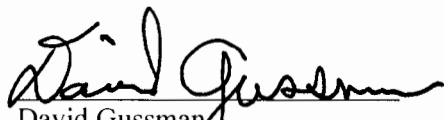
Mr. Hughes made a motion to deny the extension of the Exception on Chesapeake Bay Board case CBE-07-015 at 108 Seven Oaks Drive, Parcel ID 3130900038 and allow the Exception to expire on June 13, 2014.

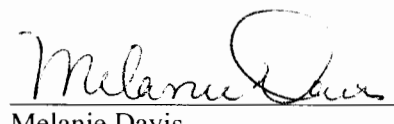
The motion to deny the extension was approved by a 5-0 vote.

## E. MATTERS OF SPECIAL PRIVILEGE - None

## F. ADJOURNMENT

The meeting adjourned at 8:15 p.m.

  
David Gussman  
Chesapeake Bay Board Chair

  
Melanie Davis  
Secretary to the Board