

# **Chesapeake Bay Board**

**September 8, 2010**

## **A. Roll Call**

## **B. Minutes**

1. From August 11, 2010 – Board Meeting

## **C. Public Hearings**

1. CBE-11-023. Casto – 142 Riverview Plantation Drive
2. CBE-11-015. McCarter/Mid Atlantic – 504 E Tazewell's Way
3. CBE-11-012. Overman & Privette – 7515 Oak Cove Road
4. CBE-11-009. Fisher – 7604 Uncles Neck
5. CBE-11-010. Hazelwood – 7596 & 7600 Uncles Neck

## **D. Board Considerations**

## **E. Matters of Special Privilege**

## **F. Adjournment**

## **Chesapeake Bay Exception CBE-11-023: 142 Riverview Plantation Drive**

Staff report for the September 8, 2010 Chesapeake Bay Board Public Hearing

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

### **Existing Site Data & Information**

Applicant: William G. Casto

Land Owner: William G. Casto  
142 Riverview Plantation Drive  
Williamsburg, VA 23188

Location: 142 Riverview Plantation Drive  
PIN: 1640600001

Parcel Size/Zoning: 0.43 +/- acres, R1 Limited Residential  
Percent of Parcel in RPA: 63% (0.27 +/- acres)

Watershed: York River (HUC – YO65)

### **Proposed Impacts**

Impervious Area: approximately 60 square feet

RPA Encroachment Landward and Seaward 50 foot RPA Buffer

### **Brief Summary and Description of Activities**

Mr. William G. Casto has applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for a two retaining walls. The proposed retaining walls will create approximately 60 square feet of impervious cover in the RPA buffer. The retaining walls are necessary to provide ingress/egress to a walkout basement without compromising the septic drainfields. The proposed mitigation measures will be 1 canopy tree and 3 shrubs in order to meet the County requirement based on the proposed impervious cover.

The lot was recorded before the 1990 adoption of the Chesapeake Bay Preservation Ordinance. In this case, the exception request is for retaining walls which will encroach into the RPA buffer. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing. Furthermore, staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

**Staff Recommendation**

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be minimal for the proposed construction and that the proposed mitigation measures are adequate. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

1. The applicant must obtain all other necessary local permits as required for the project.
2. A mitigation plan, meeting James City County requirements, shall be submitted and approved.
3. All proposed mitigation plantings shall meet James City County standards of 1” caliper for the canopy and understory trees and with the proposed shrubs being of three gallon size.
4. Full implementation of the 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) by providing a form of surety satisfactory to the County Attorney.
5. This exception request approval shall become null and void if mitigation plantings have not been completed by September 8, 2011.
6. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

**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-11-023 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-11-023 are included for the Board’s use and decision.

Staff Report prepared by:

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Michael D. Woolson  
Senior Watershed Planner

CONCUR:

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Scott J. Thomas  
Secretary to the Board

Attachments: Sensitive Area Activity Application

## **Chesapeake Bay Exception CBE-11-015: 504 East Tazewell's Way; Kingsmill**

Staff report for the September 8, 2010 Chesapeake Bay Board Public Hearing

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

### **Existing Site Data & Information**

Applicant: David Barglof, Mid Atlantic Enterprise, Inc.

Land Owner: T. Kerry and Elizabeth D. McCarter  
504 East Tazewell's Way  
Williamsburg, VA 23185

Location: 504 East Tazewell's Way  
PIN: 5030400079

Parcel Size/Zoning: 0.54 +/- acres, R4 Residential  
Percent of Parcel in RPA: 69% (0.37 +/- acres)

Watershed: College Creek (HUC - JL34)

### **Proposed Impacts**

Impervious Area: approximately 136 square feet

RPA Encroachment Seaward 50 foot RPA Buffer

### **Brief Summary and Description of Activities**

Mr. David Barglof of Mid Atlantic Enterprises, Inc. on behalf of Mr. and Mrs. McCarter has applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for a retaining wall replacement and extension.

The proposed retaining wall will create approximately 136 square feet of impervious cover in the RPA buffer. The existing wall is showing signs of failure and this replacement and extension of the retaining wall will protect the existing house and driveway. The proposed mitigation measures of 1 canopy tree and 3 shrubs meets the County requirement based on the proposed impervious cover.

The lot was recorded before the 1990 adoption of the Chesapeake Bay Preservation Ordinance. In this case, the exception request is for the replacement and extension of a retaining wall which will encroach into the 50' RPA buffer. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing. Furthermore, staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

**Staff Recommendation**

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be minimal for the proposed construction and that the proposed mitigation measures are adequate. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

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 with the proposed shrubs being of three gallon size.
3. A pre-construction meeting shall be held on-site prior to work commencing.
4. Full implementation of the 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) by providing a form of surety satisfactory to the County Attorney.
5. This exception request approval shall become null and void if construction has not been completed by September 8, 2011 including the required mitigation plantings.
6. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

**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-11-015 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-11-015 are included for the Board’s use and decision.

Staff Report prepared by:

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Michael D. Woolson  
Senior Watershed Planner

CONCUR:

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Scott J. Thomas  
Secretary to the Board

Attachments: Sensitive Area Activity Application  
GIS photo

## **Chesapeake Bay Exception CBE-11-012: 7515 Oak Cove Road**

Staff report for the September 8, 2010 Chesapeake Bay Board Public Hearing

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

### **Existing Site Data & Information**

Applicant: Jennifer Privette

Land Owner: Patricia R. Overman  
114 Leslie Drive  
Newport News, VA 23606

Location: 7515 Oak Cove Road  
PIN: 1910100013

Parcel Size/Zoning: 0.51 +/- acres, A1 General Agriculture  
Percent of Parcel in RPA: 90% (0.46 +/- acres)

Watershed: Chickahominy River (HUC – JL28)

### **Proposed Impacts**

Impervious Area: approximately 750 square feet

RPA Encroachment: Landward and Seaward 50 foot RPA Buffer

### **Brief Summary and Description of Activities**

Ms. Jennifer Privette on behalf of Ms. Patricia Overman has applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for a replacement retaining wall, a new retaining wall, and a brick paver patio. She has also applied for an administrative waiver for the replacement of a shed and brick paver walkway to the existing dock.

The proposed retaining walls and patio will create approximately 750 square feet of impervious cover in the RPA buffer. The existing wall is showing signs of failure. The new retaining wall will form a terrace in the backyard for the proposed patio. The applicant proposes to remove four trees during the construction process, three for the construction of the retaining walls/patio, and one as buffer modification request. The proposed mitigation measures should be 2 canopy trees, 4 understory trees, and 6 shrubs in order to meet the County requirement based on the proposed impervious cover.

The lot was recorded before the 1990 adoption of the Chesapeake Bay Preservation Ordinance. In this case, the exception request is for the replacement of a retaining wall, a new retaining wall, and a new brick paver patio will encroach into the RPA buffer. Therefore in accordance with section 23-14 of the

Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing. Furthermore, staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

**Staff Recommendation**

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be minimal for the proposed construction and that the proposed mitigation measures are adequate. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

1. The applicant must obtain all other necessary local permits as required for the project.
2. A mitigation plan, meeting James City County requirements, shall be submitted and approved prior to work commencing.
3. All proposed mitigation plantings shall meet James City County standards of 1” caliper for the canopy and understory trees and with the proposed shrubs being of three gallon size.
4. A pre-construction meeting shall be held on-site prior to work commencing.
5. Full implementation of the 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) by providing a form of surety satisfactory to the County Attorney.
6. This exception request approval shall become null and void if construction has not been completed by September 8, 2011 including the required mitigation plantings.
7. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

**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-11-012 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-11-012 are included for the Board’s use and decision.

Staff Report prepared by:

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Michael D. Woolson  
Senior Watershed Planner

CONCUR:

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Scott J. Thomas  
Secretary to the Board

Attachments: Sensitive Area Activity Application  
GIS photo

## **Chesapeake Bay Exception CBE-11-009: 7604 Uncle's Neck Road; River's Bend at Uncle's Neck**

Staff report for the September 8, 2010 Chesapeake Bay Board Public Hearing

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

### **Existing Site Data & Information**

Applicant: Karla Havens; Mid Atlantic Resource Consulting

Land Owner(s): Jeffrey Fisher  
8740 Merry Oaks Lane  
Toano, VA

Location: 7604 Uncle's Neck Road  
Pin: 2030200026: Jeffrey Fisher, owner

Parcel Size/Zoning: 3.25 +/- acres, A1 Agricultural  
Percent of Parcel in RPA: 14% (0.44 +/- acres)

Watershed: Chickahominy River (HUC Code JL 28)

### **Proposed Impacts**

Disturbed Area: 10,000 square feet total disturbance  
RPA Encroachment: Landward and Seaward 50 foot RPA Buffers

### **Brief Summary and Description of Activities**

Ms. Karla Havens of Mid Atlantic Consulting, Inc. on behalf of Jeffrey Fisher has applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for the re-grading of an existing slope and the subsequent stabilization and re-planting associated with the installation of a 200' stone revetment.

The re-grading of the existing bank along with the construction of the revetment will create a total of approximately 10,000 square feet of RPA impacts in both the landward and seaward buffer areas. Additionally, the applicant also proposes to remove nineteen trees during the construction process.

The applicant has also proposed to install wire reinforced silt fence at the toe of bank and a turbidity curtain during construction to minimize any sediment run-off to off-site areas.

Additionally, if the associated Wetlands Case is denied by the Wetlands Board, this case should be deferred to a later date as the proposed plan would be insufficient as the scope of the work will have changed.

### **Staff Recommendation**

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be High for the proposed construction and that the proposed mitigation measures may offset the impacts to the RPA. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

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 with all proposed shrubs being of three gallon size.
3. A pre-construction meeting shall be held on-site prior to commencing work.
4. Full implementation of the RPA Mitigation Plan submitted with the WQIA 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) by providing a form of surety satisfactory to the County Attorney.
5. This exception request approval shall become null and void if construction has not begun by September 8 2011 or all improvements including the required mitigation plantings are not completed by that expiration date.
6. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

### **Background**

The lot was recorded following both the 1990 adoption and the subsequent 2004 revision of the Chesapeake Bay Preservation Ordinance. In this case, the exception request is for the re-grading and stabilization an existing bank which will encroach into both the 100' and 50' RPA buffers. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

### **Staff Evaluation**

Staff has evaluated the application and exception request for all work as described above. The proposal is for the re-grading and stabilization of an existing bank. Staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

### **Water Quality Impact Assessment (WQIA)**

In accordance with Bay Act requirements and the Ordinance all land disturbance, development or redevelopment within the RPA requires a water quality impact assessment (WQIA). Water quality impact assessments shall identify impacts of proposed development on water quality and land in RPAs and recommended measures for mitigation of these impacts. Localities must review a WQIA prior to action on the exception request.

A WQIA was provided on July 23, 2010. Based on staff review, the WQIA proposes to mitigate for RPA impacts by:

- Re-planting the RPA with 250 shrubs and the placement of 7,000 square feet of hardwood mulch over erosion control matting type two.

Due to the proposed 2:1 slope and the inherent danger that during storm events that any new planted trees could be felled and compromise the slope itself, it is not advisable to install canopy and understory trees. The applicant has proposed to plant 250 shrubs which meets the alternate mitigation requirements and is satisfactory to staff.

**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-11-009 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-11-009 are included for the Board's use and decision.

Staff Report prepared by:

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Michael P. Majdeski  
Senior Environmental Inspector

CONCUR:

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Scott J. Thomas  
Secretary to the Board

Attachments: RPA Replanting Plan  
Board Photos

## **Chesapeake Bay Exception CBE-11-010: 7596 and 7600 Uncle's Neck Road; River's Bend at Uncle's Neck**

Staff report for the September 8, 2010 Chesapeake Bay Board Public Hearing

This staff report is prepared by the James City County Environmental Division to provide information to the Chesapeake Bay Board to assist them in making a recommendation on this assessment. It may be useful to members of the general public interested in this assessment.

### **Existing Site Data & Information**

Applicant: Karla Havens; Mid Atlantic Resource Consulting

Land Owner(s): Uncle's Neck LLC  
5300 Mercury Blvd  
Newport News, VA 23605

Location: 7596 and 7600 Uncle's Neck Road  
Lot 24; Pin: 2010200024: Uncle's Neck LLC, owner  
Lot 25; Pin: 2010200025: Uncle's Neck LLC, owner

Parcel Size/Zoning: Lot 24; 3.88 +/- acres, A1 Agricultural  
Lot 25; 3.60 +/- acres, A1 Agricultural

Percent of Parcel in RPA: Lot 24; 39% (1.54 +/- acres)  
Lot 25; 24% (0.87 +/- acres)

Watershed: Chickahominy River (HUC Code JL 28)

### **Proposed Impacts**

Total disturbed area: 6,000 square feet  
RPA Encroachment Landward and Seaward 50 foot RPA Buffers

### **Brief Summary and Description of Activities**

Ms. Karla Havens of Mid Atlantic Consulting, Inc. on behalf of Uncle's Neck LLC has applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for the re-grading of an existing slope and the subsequent stabilization and re-planting associated with the installation of a 258' stone revetment.

The re-grading of the existing bank along with the construction of the proposed revetment will create a total of approximately 6,000 square feet of RPA impacts in both the landward and seaward buffer areas. Additionally, the applicant also proposes to remove sixteen trees during the construction process.

The applicant has also proposed to install wire reinforced silt fence at the toe of bank and a turbidity curtain during construction to minimize any sediment run-off to off-site areas.

Additionally, if the associated Wetlands Case is denied by the Wetlands Board, this case should be deferred to a later date as the proposed plan would be insufficient as the scope of the work will have changed.

### **Staff Recommendation**

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be High for the proposed construction and that the proposed mitigation measures, once revised, may offset the impacts to the RPA. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

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 with all proposed shrubs being of three gallon size.
3. A pre-construction meeting shall be held on-site prior to work commencing.
4. Full implementation of the RPA Mitigation Plan submitted with the WQIA 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) by providing a form of surety satisfactory to the County Attorney.
5. This exception request approval shall become null and void if construction has not begun by September 8 2011 or all improvements including the required mitigation plantings are not completed by that expiration date.
6. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

### **Background**

The lot was recorded following both the 1990 adoption and the subsequent 2004 revision of the Chesapeake Bay Preservation Ordinance. In this case, the exception request is for the re-grading and stabilization an existing bank which will encroach into both the 100' and 50' RPA buffers. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

### **Staff Evaluation**

Staff has evaluated the application and exception request for all work as described above. The proposal is for the re-grading and stabilization of an existing bank. Staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

**Water Quality Impact Assessment (WQIA)**

In accordance with Bay Act requirements and the Ordinance all land disturbance, development or redevelopment within the RPA requires a water quality impact assessment (WQIA). Water quality impact assessments shall identify impacts of proposed development on water quality and land in RPAs and recommended measures for mitigation of these impacts. Localities must review a WQIA prior to action on the exception request.

A WQIA was provided on July 26, 2010. Based on staff review, the WQIA proposes to mitigate for RPA impacts by:

- Re-planting the RPA with 150 shrubs and 3,000 square feet of hardwood mulch over erosion control matting type two.

Due to the proposed 2:1 slope and the inherent danger that during storm events that any new planted trees could fall and compromise the graded slope, it is not advisable to install canopy and understory trees. The applicant has proposed to plant 150 shrubs which meets the alternate mitigation requirements and is satisfactory to staff.

**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-11-010 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-11-010 are included for the Board’s use and decision.

Staff Report prepared by:

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Michael P. Majdeski  
Senior Environmental Inspector

CONCUR:

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Scott J. Thomas  
Secretary to the Board

Attachments: RPA Re-Planting Plan  
Board Photos