

# **Chesapeake Bay Board**

**May 8, 2013**

## **A. Roll Call**

## **B. Minutes**

From April 10, 2013 – Board Meeting

## **C. Public Hearings**

1. CBE-13-095 – Moore & MacGillivray/Winall -164&166 The Maine: shoreline stabilization
2. CBE-13-087 – Snyder/Cason – 128 Nottinghamshire: SFD with deck and patio
3. CBE-13-094 – Young – 6312 Adams Hunt: Retaining wall

## **D. Board Considerations**

1. Robillard – 87 Kestrel Ct: Appeal administrative denial of structures in the conservation easement

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

## **F. Adjournment**

## Chesapeake Bay Exception CBE-13-095: 164 and 166 The Maine

Staff report for the May 8, 2013 Chesapeake Bay Board Public Hearing

This staff report is prepared by James City County Engineering and Resource Protection to provide information to the Chesapeake Bay Board to assist 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

Applicants: Mr. Jeffery Moore  
Mr. and Mrs. Rod and Patricia MacGillivray

Location: 164 (Moore) and 166 (MacGillivray) The Maine, First Colony

PIN: 4540200055 (Moore) and 4540200056 (MacGillivray)

Lot Size/Zoning: 1.16 ac +/-; R1 Limited Residential Zoning (Moore)  
0.93 ac +/-; R1 Limited Residential Zoning (MacGillivray)

Area of Lot in RPA: 0.42 ac +/- (36%) – Moore  
0.41 ac +/- (44%) - MacGillivray

Watershed: James River (HUC Code JL30)

Proposed Activity: slope stabilization

### Proposed Impacts

Impervious Cover: zero

RPA Encroachment: Approximately 20,000 square feet (Moore) and 900 square feet (MacGillivray)

### Brief Summary and Description of Activities

Mr. Jeffery Moore and Mr. and Mrs. MacGillivray have applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachments into the RPA buffer for slope stabilization in conjunction with a shoreline project under review at 164 The Maine, Mr. Moore's property. The lots were platted prior to the adoption of the 1990 Chesapeake Bay Preservation Ordinance and houses were built prior to 1990. At 164 The Maine, the original house structure was recently demolished and a new structure is proposed. This new structure will be built outside of the 100-foot resource protection area buffer.

This entire project contains both wetlands and upland components. The wetlands issues are outside of the Chesapeake Bay Board's jurisdiction and will not be discussed here. The project proposed reducing the slope from the unstable configuration that exists to a more stable configuration and revegetating the RPA with a mixture of appropriate native plant material. The existing condition is an approximate 25 foot high bluff that is eroding. The proposal reduces that slope to 4:1. In combination with the proposed breakwaters and beach nourishment, this slope will allow storm waves to run up the slope, reducing the wave energy and not erode the slope.

### **Staff Evaluation**

Staff has evaluated the application and exception request for all work as described above. The proposal is to reduce the existing slope to a more stable configuration and revegetate with appropriate native plant material. Staff finds that the applications have 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 because the grading of the slope to 4:1 to more than necessary to afford relief. Therefore, the exception request must be considered by the 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 above stated improvements.

### **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 applicants have 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 revegetation plan.

### **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-13-095 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-13-095 are included for the Board's use and decision.

**Staff Recommendations**

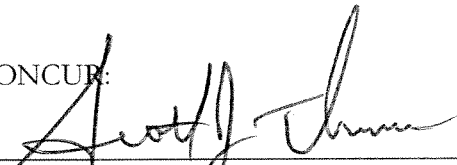
Staff has reviewed the application and exception request and has determined impacts associated with the proposal to be **severe** for the proposed development but that the mitigation measures exceed the standard mitigation requirements. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

1. The applicant must obtain all other necessary federal, state and local permits as required for the project; and
2. Additional erosion and sediment control measures may be required, at the Engineering and Resource Protection Division Director's discretion; and
3. Surety of \$5,000 will be required from the Moore's and a surety of \$500 from the MacGillivray's in a form acceptable to the County Attorney's office; and
4. This exception request approval shall become null and void if construction has not begun by May 8, 2014; and
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.

Staff Report prepared by:

  
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Michael Woolson  
Senior Watershed Planner

CONCUR:

  
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Scott J. Thomas, Director  
Engineering and Resource Protection

Attachments: Water Quality Impact Assessment Packages

## Chesapeake Bay Exception CBE-13-087: 128 Nottinghamshire

Staff report for the May 8, 2013 Chesapeake Bay Board Public Hearing

This staff report is prepared by James City County Engineering and Resource Protection to provide information to the Chesapeake Bay Board to assist 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: Richard E. and Margaret M. Snyder

Location: 128 Nottinghamshire, Lot 31 Section 12 Ford's Colony

PIN: 3233100031

Lot Size/Zoning: 0.46 ac +/-; R4 Planned Community Development

Area of Lot in RPA: 0.37 ac +/- (80%)

Watershed: Powhatan sub-watershed 207 (HUC Code JL31)

Proposed Activity: Construction of home, deck, and patio

### Proposed RPA Impacts

Impervious Cover: Approximately 3,078 square feet

RPA Encroachment: Approximately 2,991 square feet in the landward 50' buffer and 87 square feet in the seaward 50' buffer.

### Brief Summary and Description of Activities

Mr. and Mrs. Richard Snyder have applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachments into the RPA buffer for the construction of a single family home, deck, and patio. The lot was platted prior to the 2004 revisions to the Chesapeake Bay Preservation Ordinance.

The project entails the construction of a single family home, deck, and patio. The proposed impervious cover for this project is approximately 3,078 square feet. The nature of this project requires approval from the Chesapeake Bay Board.

## Staff Evaluation

Staff has evaluated the application and exception request for all work as described above. 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 because the upper level deck and ground level patio are proposed within the 50' RPA buffer. The patio is underneath the upper level deck. Therefore, the exception request must be considered by the 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 above stated improvements.

## 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. The required mitigation for this project would be 8 canopy trees, 16 understory trees and 24 shrubs.

## 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-13-087 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-13-087 are included for the Board's use and decision.

## Staff Recommendations

Staff has reviewed the application and exception request and has determined impacts associated with the proposal to be **moderate** for the proposed development and that the required mitigation measures meet standard mitigation requirements. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

1. The applicant must obtain all other necessary federal, state and local permits as required for the project; and
2. Applicant shall provide a planting plan for the proposed mitigation; and
3. Surety of \$3,000 will be required in a form acceptable to the County Attorney's office; and

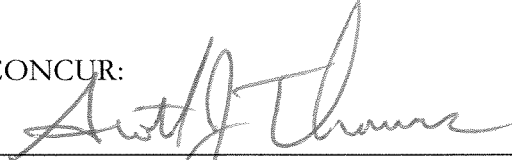
4. This exception request approval shall become null and void if construction has not begun by May 8, 2014; and
5. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 6 weeks prior to the expiration date.

Staff Report prepared by:



Amy Parker  
Environmental Inspector II

CONCUR:



Scott J. Thomas, Director  
Engineering and Resource Protection

Attachments: Water Quality Impact Assessment Package

# Chesapeake Bay Exception CBE-13-094: 6312 Adam's Hunt Drive

Staff report for the May 8, 2013 Chesapeake Bay Board Public Hearing

This staff report is prepared by James City County Engineering and Resource Protection to provide information to the Chesapeake Bay Board to assist 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: Patrick A. Young  
Location: 6312 Adam's Hunt Drive  
PIN: 3120400031  
Lot Size/Zoning: 0.579 ac +/-; R1 Limited Residential Zoning  
Area of Lot in RPA: 0.45 ac +/- (78%)  
Watershed: Powhatan Creek (HUC Code JL31)  
Proposed Activity: Retaining Wall

## Proposed Impacts

Impervious Cover: Approximately 150 square feet  
RPA Encroachment: Approximately 7,800 square feet (fill)

## Brief Summary and Description of Activities

Mr. Patrick Young has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachments into the RPA buffer for the installation of a retaining wall and associated backfill. The lot was platted prior to the 2004 revisions to the Chesapeake Bay Preservation Ordinance and the house built in 2003.

The project entails the construction of a retaining wall and associated backfill. The proposed impervious cover for this project is approximately 150 square feet. The homeowner is requesting this exception for the purpose of making a portion of the rear yard useable. Under existing conditions, the rear yard stays wet, especially as you approach the drainage facilities located on the rear of the lot. The nature of this project requires approval from the Chesapeake Bay Board. The proposed location of the wall is within the platted drainage easement and approximately 80 feet away from the house. Staff has asked the applicant multiple times to relocate the wall out of the



drainage easement and to provide details of the wall and backyard fill. The applicant has not responded to these requests.

### **Staff Evaluation**

Staff has evaluated the application and exception request for all work as described above. The proposal is for a retaining wall and associated backfill. 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 because the retaining wall is an accessory structure, not required for the structural integrity of the main house. Therefore, the exception request must be considered by the 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 above stated improvements.

### **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* but has not included the location of the mitigation plantings. The required mitigation for this project would be 1 tree and 3 shrubs.


### **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-13-094 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-13-094 are included for the Board's use and decision.

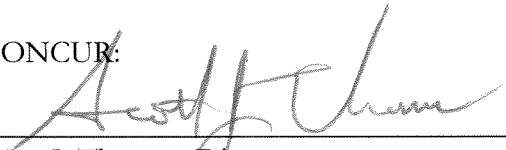
### **Staff Recommendations**

Staff has reviewed the application and exception request and cannot determine the limit of impact because the applicant has not responded to multiple requests for further information. Therefore, with no limits of fill and no details on how high the retaining wall will be, staff cannot recommend approval of this application. Staff recommends the Chesapeake Bay Board deny this Chesapeake Bay Exception.

Staff Report prepared by:


  
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Michael Woolson  
Senior Watershed Planner

CONCUR:

  
\_\_\_\_\_  
Scott J. Thomas, Director  
Engineering and Resource Protection

Attachments: Water Quality Impact Assessment Package  
Email correspondence with applicant

## MEMORANDUM

**DATE:** May 8, 2013  
**TO:** The Chesapeake Bay Board  
**FROM:** Michael D. Woolson, Senior Watershed Planner   
**SUBJECT:** Natural Open Space / Conservation Easement – 87 Kestrel Court

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Mr. John Robillard, residing at 87 Kestrel Court in the Season's Trace subdivision, has filed an appeal to the James City County Chesapeake Bay Board (Board) on April 12, 2013. Mr. Robillard is appealing a decision denying the placement of a play set and shed in the dedicated conservation easement on his property. The plat of subdivision was recorded on 23 January 1996 in Plat Book 63, Page 49 and the Deed of Easement for Natural Open Space was recorded on 23 January 1996 in Deed Book 771, pages 662, 663, 664, 665, and 666. The natural open space easement contains 3.07 acres of land that shall remain in its natural condition with respect to ground cover and woody vegetation as part of the subdivision's stormwater management practices. On March 31, 2013, via email correspondence, Mr. Robillard requested permission to install a play set and shed on a portion of his property that is within the natural open space easement. On April 9, 2013, staff responded that the structures were not a permissible use in the easement, per condition #1 of the easement.

### **Background Information**

On August 24, 2012, an anonymous complaint was filed with the Engineering and Resource Protection Division regarding the placement of "tons of dirt in the back part of the yard." Staff investigated the complaint from a potential land disturbing violation perspective and found that there had been no land disturbing violation. The homeowner was repairing minor erosion and drainage problems along the right side and the rear of the house. Staff did however determine at that visit that a violation of the natural open space easement and resource protection area had occurred sometime in the past. In other words, during the course of the repair work taking place in 2012, no woody vegetation or ground cover (other than turf grass) had been removed or disturbed. After further office investigation of County files, no record of written permission could be located approving the previous disturbance to the natural open space easement or resource protection area.

Subsequently, staff sent a Notice of Violation on January 17, 2013 as an official notification that the clearing that had taken place on the property within the limits of the resource protection area and natural open space easement was a violation of both the terms of the easement and of the Chesapeake Bay Preservation Ordinance ("Ordinance"). Mr. Robillard did contact staff within the 30 day time frame set forth by the Notice to schedule a time to meet and discuss the matter.

On February 20, 2013, a meeting took place between Mr. Robillard, Mr. Woolson and Mr. Thomas to discuss the issues. Mr. Robillard stated that he bought the house in 2009 with the rear yard already established. He also stated that he would be willing to interplant in the existing woods but would not be willing to lose any of his backyard. He went on to state that because the County had not acted upon this issue before he bought the property, a 'defacto' variance was granted permitting all of the clearing to remain. That meeting was adjourned with the understanding that Mr. Thomas and Mr. Woolson would schedule an on-site meeting later to discuss the issues with Mr. Robillard. That meeting never materialized.

As stated previously in the email sent on March 31, 2013 by Mr. Robillard, he stated he was planning on installing a play set and shed on his property. Mr. Woolson responded that these two items were not permissible uses in the conservation easement.

### **Rational for the Chesapeake Bay Board as the Appellant Body for Natural Open Space**

The Chesapeake Bay Preservation Ordinance ("Ordinance"), Section 23-9(b)(8) states that for any development, "stormwater runoff shall be controlled by the use of BMPs that are consistent with the water quality protection provision (4 VAC 3-20-71 et seq.) of the Virginia Stormwater Management Regulations (4 VAC 3-20). This consistency shall be demonstrated by compliance with the criteria and BMP facilities contained in the latest version of the James City County Guidelines for Design and Construction of Stormwater Management BMPs" ("County BMP Manual"). Furthermore, Section 23-10(a) of the Ordinance requires stormwater management plans for plans of development. Structural BMPs are required for certain plans of development and BMPs shall be designed and constructed in accordance with guidelines established by the manager, including the County BMP Manual.

In the latest version of the County BMP Manual, there are seven types of acceptable BMPs used in the County to treat stormwater runoff. The seventh one, Open Space, is allowed but must meet the conditions outlined in the manual to receive stormwater credit. These conditions are:

- 1) The area cannot be disturbed during project construction; and
- 2) Must be protected by limits of disturbance clearly shown on the construction drawings; and
- 3) Must be located within an acceptable conservation easement or other enforceable instrument that ensures perpetual protection of the proposed area, and the easement must clearly specify how the natural area vegetation shall be managed. Managed turf is not an acceptable form of vegetation management.

The developer of this subdivision used multiple types of BMPs to gain stormwater management compliance, including the intentional use of natural open space per the County BMP Manual. The natural open space was duly recorded in a Deed of Easement as previously noted. Therefore, the natural open space falls under Section 23-9(b)(8) performance standards and stormwater management plan criteria, Section 23-10(4), of the Ordinance.

Under Section 23-17 of the Ordinance, an owner of property subject to an administrative decision, order, or requirement under this chapter may appeal by submitting a written application for review to the board no later than 30 days from the rendering of such decision, order, or requirement. The board shall hear the appeal as soon as practical after receipt of the application.

### **Staff Guidance and Recommendations**

Staff has reviewed the appeal and violation documents and offers the following information for the Board's consideration.

- 1) Mr. John Robillard is currently the owner of the property, 87 Kestrel Court, where violations of the resource protection area and natural open space easement have taken place. In a statement submitted to the Board, Mr. Robillard offers the following information in support of the appeal:
  - a) He bought the property with the current yard dimensions and conditions; and

- b) Has done improvements to his property that enhances the RPA; and
  - c) Specifically purchased property because of the backyard and the structures within it; and
  - d) Removed structures in backyard because of poor condition with the intent to replace them; and
  - e) Any (required) mitigation has already been done (corrected erosion, added planted material in existing tree line, stop using pesticides and chemicals, removed trash from RPA, hired a lawn care company that abides by the Turf Love program).
- 2) The Deed of Easement for Natural Open Space was recorded on 23 January 1996 in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City in Deed Book 711, Pages 662, 663, 664, 665, and 666.
  - 3) The Deed of Easement states that the "Grantor wishes to preserve land as natural open space as part of the Grantor's efforts to improve the quality of stormwater runoff from the property."
  - 4) The restrictions outlined in the Deed of Easement and the restrictions which the Grantee (County of James City, Virginia) is hereby entitled to enforce, shall be as follows:
    - a) No building or structure shall be built or maintained on the Easement Property other than such building or structure approved by the County Engineer, in writing;
    - b) The Easement Property shall be kept free and clear of any junk, trash, rubbish or other unsightly or offensive material;
    - c) No new signs, billboards, outdoor advertising, road or utility lines shall be placed on the property without the expressed written consent of the County Engineer;
    - d) The Easement Property shall remain in its natural condition with respect to natural leaf litter or other ground covering vegetation, understory vegetation or shrub layer, and tree canopy. The activities of Grantor within the Easement Property shall be limited to those which do not remove or damage any vegetation or disturb any soil. Such activities include selective trimming and pruning which will not alter the natural character of the Easement Property. Grantor may install walk trails or remove dead, diseased, poisonous or invasive vegetation with the expressed written consent of the County Engineer;
    - e) Grantee and its representatives may enter upon the Easement Property from time to time for inspection, to enforce the terms of the Easement and to post a sign or marker identifying Grantee's interest in the Easement Property as natural open space;
    - f) In the event of a violation of the Easement, the Grantee shall have the right to seek all appropriate legal and equitable relief, including, but not limited to, the right to restore the Easement Property to its natural condition and assess the cost of such restoration as a lien against the Easement Property.
  - 5) No plan of development, RPA buffer or Natural Open Space easement modification plan was submitted to the County for review and approval as is required by the Ordinance and Deed of Easement.

Under Section 23-17(b) of the Ordinance, it states that "in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of this chapter. The Board shall not decide in favor to the appellant unless it finds:

- 1) The hardship is not generally shared by other properties in the vicinity;
- 2) The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
- 3) The appellant acquired the property in good faith and the hardship is not self-inflicted.”

Staff's guidance to the Board on deciding this matter is as follows:

- 1) The hardship is shared by other properties immediately adjacent to the appellant's property as well as numerous other properties within the Heron Run section of Season's Trace that have resource protection area and natural open space easements located on them.
- 2) The granting of the appeal in this case will adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity. Granting relief to the appellant resulting from a violation of the Ordinance and Deed of Easement could result in similar unauthorized actions by other property owners in the vicinity. In addition, granting the appeal will be in direct conflict with the terms of the Deed of Easement which will ensure that the subdivision is no longer in compliance with the approved stormwater management plan and will lead to a degradation of water quality in the tributaries to the Bay.
- 3) The appellant acquired the property in good faith and the hardship is not self-inflicted.

Staff contends that to be consistent with the purpose and intent of the Ordinance and the Deed of Easement, the Board should deny the appeal. The Board should also direct staff to pursue enforcement of restriction #6, which states “In the event of a violation of the Easement, the Grantee shall have the right to seek all appropriate legal and equitable relief, including, but not limited to, the right to restore the Easement Property to its natural condition and assess the cost of such restoration as a lien against the Easement Property”, if Mr. Robillard and staff cannot reach a resolution on restoration of the property within 60 days from the date of this meeting.

Attachments: Deed of Easement for Natural Open Space, Book 771 Pages 662-666  
Exhibit A (from Deed of Easement), Plat Book 63, Page 49