

Chesapeake Bay Board Building F

August 12, 2015 - 7 p.m.

A. Roll Call

B. Minutes

From July 8, 2015 Board Meeting

C. Public Hearings

1. CBE-15-105: Nervitt– 108 Seven Oaks – SFD and Terrace Pool
2. CBE-15-106: Duguay/Performance Contracting – 2836 Durfeys Mill - SFD
3. CBE-15-107: Sawin – 1588 Harbor Rd – Patio and Walkway
4. CBE-16-002: Hanson/Green Side Up – 113 Burnham – Patio, Walls, Pavers and Steps

D. Board Considerations

E. Matters of Special Privilege

F. Adjournment

Chesapeake Bay Exception CBE-15-105: 108 Seven Oaks

Staff report for the August 12, 2015 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 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

Land Owner: Ronald A. & Lois S. Nervitt

Applicant: Ronald A. Nervitt

Location: 108 Seven Oaks, Williamsburg, VA 23188

Parcel: Lot 38, Section 17, Ford's Colony

PIN: 3130900038

Lot Size: 0.591 acres

RPA Area on Lot: 0.55 acres +/- (93.1%)

Watershed: Powhatan Creek, subwatershed 203 (HUC Code JL 31)

Proposed Activity: Single family dwelling with a terrace pool

Proposed Impacts

Impervious Area: 7,356 square feet

RPA Encroachment: Seaward 50 foot RPA buffer - 1,475 square feet
Landward 50 foot RPA buffer - 5,881 square feet

Description of Activities

Mr. Ronald Nervitt, 101 Stone Bridge Drive, Williamsburg, VA has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer for construction of a single family dwelling with an accessory terrace pool in back. Proposed improvements are within the seaward 50 foot and landward 50 foot portions of the Resource Protection Area (RPA) buffer. Total impervious cover proposed within RPA on the lot is 7,356 square feet with 1,475 square feet of impervious cover (20% of total) within the seaward RPA side and 5,881 square feet of impervious cover (80% of total) within the landward RPA side.

A portion of the proposed principal structure (1,065 sq. ft.), driveway (70 sq. ft.), and the terrace pool accessory feature (250 sq. ft.) are proposed in the seaward 50 ft. RPA along the south RPA line on the lot. An even smaller portion of the proposed principal structure (70 sq. ft.) and a very small corner of the accessory terrace pool feature (20 sq. ft.) are proposed within the seaward 50 ft. RPA along the north RPA line on the lot. The remainder of proposed impervious cover (5,881 sq. ft.) is for the remaining bulk of the proposed principal structure (house, garage, and driveway) which impacts RPA in the landward side.

The lot was recorded in 1997/1998 after adoption of the Chesapeake Bay Preservation Ordinance (1990) but prior to the 2004 revisions to the Ordinance. This lot is one of only three undeveloped lots that remain lakeside subject to RPA in this Waterton road loop part of Section 17 of Ford's Colony. The undeveloped lot offers many challenges because of its unique shape, setback requirements, slopes, and topographical-elevation differences, and because it borders an existing lake feature. Like many other lake features in Ford's Colony and across the County, this lake has a perimeter RPA around it because of 2004 revisions to the ordinance (water body with perennial flow) and in accordance with state regulatory guidance for localities (Determinations of Water Bodies with Perennial Flow). There is a very narrow and lengthy corridor, only 30 ft. wide maximum and about 100 ft. long, available off of the Seven Oaks roadway cul-de-sac to access the main building envelope of the lot. Two existing homes are in very close proximity to this entrance location. A long and narrow topographical ridge (peninsula) exists through the lot in a west-east direction with the highest elevation on the lot approximately 12 feet in elevation difference above the lake normal pool elevation (El. 48). Steep slopes (15-25 percent) are present directly in the riparian area adjacent to the lake's waters edge.

The adjacent lake is known as Dam No. 1 (County BMP ID Code PC083). It is an existing, privately-owned stormwater management/Best Management Practice (BMP) facility which is part of the overall approved master stormwater management plan for Ford's Colony. This lake serves a drainage area of 102.3 acres. Normal pool elevation of the lake is at elevation. 48 and the design high water elevation for the 100-year design storm is at El. 50.45. In addition to the perimeter RPA around the lake, this stormwater management/BMP facility also has a concurrent 25 ft. pond buffer/setback zone from the 100-year design high water elevation. Soils on the lot are primarily map symbol 15E – Emporia complex, 15 to 25 percent slopes, based on the County Soil Survey. These soils typically exhibit severe erosion hazard, moderate permeability in the upper horizons and slow permeability in the lower horizons, and slopes are a limitation for building development.

Based on the total proposed impervious cover within the RPA (7,356 square feet), the required native plant mitigation is eighteen (18) County standard mitigation planting units (ie. one standard unit is 1 canopy tree, 2 understory trees, and 3 shrubs per every 400 sq. ft. unit of impervious cover). This would require, at a minimum, the planting of eighteen (18) canopy trees; thirty-six (36) understory trees; and fifty-four (54) shrubs; or alternatively common substitutions as allowed by the County. For example, 3:1 equivalent substitution of shrubs for canopy trees is allowed if the owner/applicant prefers smaller native species rather than large canopy (dominant) trees on the lot. The mitigation proposal for this request includes two (2) canopy trees; eight (8) understory trees; and 158 shrubs and ground cover plantings. Using County allowed equivalent substitutions, the mitigation plan falls of minimum required native plantings by sixteen (16) shrubs. Because of the high amount of plantings required sixteen (16) shrubs is only short of the County standard by about 9 percent. The full mitigation plan (Sheet 2 of 2) is provided with the application and water quality impact assessment.

Background of Parcel

The original lot was recorded in 1997/1998. The undeveloped lot was purchased by the current owner in 1999. The RPA on the lot, due to 2004 ordinance revisions, encompasses well over 90 percent of the lot area. A previous Chesapeake Bay Exception was granted to this applicant by the Board for RPA impacts associated with a single family principal dwelling structure back in May 2007. This was under County Case Number CBE-07-15. Following the original approval, multiple extensions were subsequently granted by the Board. No further extensions were granted by the Board following the meeting of June 11, 2014 and subsequently case CBE-07-15 is now closed.

Since that time Mr. Nervitt has worked very closely with County staff and his house and site plan consultants to reconfigure the desired principal and accessory structures within the confines of the RPA and other limitations of lot. The applicant had several meetings with County staff about the reconfigured house plan before it's formal submittal through the formal exception process. Based on County staff review of the application and information provided by the applicant in the *Sensitive Area Activity Application* and associated Water Quality Impact Assessment, site design considerations incorporated into this current proposal, to minimize impacts the RPA, included the following:

- Proposed house footprint is of similar size/scale to those in the Waterton loop road vicinity;
- This lot is one of three undeveloped lots remaining lakeside subject to RPA requirements;
- Situating the house on the high point on the lot to avoid steeper slopes adjacent to the lake;
- Pulling and rotating the house footprint as close to lot setbacks as possible;
- Turning the house for a better fit;
- Reduction of driveway width to reduce impervious;
- Presence of a 20 ft. wide JCSA sewer easement in the 50 ft. seaward RPA buffer between the proposed home buildable footprint and the lake edge incorporates additional challenges and limitations on the lot as traditionally no plantings are allowed in this easement because of maintenance activities required by the utility;
- Other onlot runoff reduction/pollutant removal practices were incorporated into the design;
- Limited room for mitigation plantings because of size of the lot, steeper slope adjacent to the lake, and the sewer easement.

This proposal includes encroachment for portions of the principal structure into the seaward 50 foot buffer portion of the RPA buffer and encroachment into the seaward 50 foot buffer portion of the RPA buffer for portions of the terrace-pool feature which is considered accessory in nature. These items cannot be approved administratively. In addition, the remaining majority of the accessory terrace-pool feature is within the landward 50 foot portion of the RPA buffer and cannot be approved administratively. Therefore, in accordance with section 23-14 of the Ordinance, an 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 a single family dwelling unit and accessory terrace pool feature.

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 applicant has submitted information about site design considerations performed in the current application, a native mitigation planting plan which nearly meets County minimum requirements which focuses on use of shrub and ground cover plantings many of which are in the riparian buffer and shoreline adjacent to the lake, and commitment to use an onlot runoff reduction practice (micro-scale rain garden at far east corner near the terrace pool).

Consideration by the Chesapeake Bay Board

The issue before the Board is for encroachment into the RPA buffer for the construction of a single family dwelling unit and accessory terrace-pool feature that will create 7,356 square feet of impervious area within the RPA of which 1,475 square feet is within the seaward RPA buffer and 5,881 square feet is within the landward RPA buffer. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the five (5) criteria outlined in Section 23-14 (c) of the Ordinance.

The board 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 Board is to fully consider Chesapeake Bay Exception CBE-15-105 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 denial of Chesapeake Bay Exception CBE-15-105 are included for the Board's use and decision.

Staff Recommendations

Staff has fully reviewed the application and exception request and has determined impacts associated with the proposal to be *moderate* for the proposed development and that the proposed mitigation measures, in combination, meet standard mitigation requirements especially with consideration of limitations of the lot, site design approaches, and the onlot runoff reduction/pollutant removal practice as proposed. 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. Design and construction of the onlot runoff reduction/pollutant removal practice proposed shall generally follow micro-scale specifications found in Virginia DEQ Stormwater Design Specifications No. 1 (Rooftop Disconnection), No. 8 (Infiltration), or No. 9 (Bioretention); or alternatively, an equivalent and acceptable published and agreed upon standard for onlot residential practices. Final design/construction information for the practice as labeled on the mitigation plan as "Proposed Rain Garden Area (To Be Designed)" shall be submitted to the Engineering and Resource Protection Division for review and approval prior to installation; and
3. At the time of building permit application for the single-family residence dwelling, if there is any encroachment into the 25 foot pond buffer/setback, defined as the zone 25 feet landward from the 100-year design high water elevation of the lake (Dam No. 1; County BMP ID Code: PC083; Normal Pool Elevation 48.0; DHW Elevation 50.45), a Pond Buffer/Setback waiver request will need to be submitted, reviewed, and approved by the County in accordance with those specific County program guidelines and procedures; and
4. A surety of \$4,000 will be required in a form acceptable to the County Attorney's office to guarantee the mitigation plan including canopy tree, understory trees and shrub/ground cover plantings and the onlot rain garden practice; and
5. This exception request approval shall become null and void if construction has not begun by August 12, 2016; and
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.

Staff Report prepared by:



Michael Woolson
Senior Watershed Planner

CONCUR:



Scott J. Thomas, Director
Engineering and Resource Protection

Attachments: Sensitive Area Activity Application
Applicant Letter Dated June 1, 2015
Development and Landscape Mitigation Plan (2 sheets)

Chesapeake Bay Exception CBE-15-106: 2836 Durfey's Mill Road

Staff report for the August 12, 2015 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: Jim Duguay, Performance Contracting

Owner: James Duguay Jr, Inc.

Location: 2836 Durfey's Mill Road
Lot 55, Phase 3, Lake Powell Pointe

PIN: 4741200055

Lot Size/Zoning: 0.853 ac +/-; R1 Limited Residential

Area of Lot in RPA: 0.685 ac +/- (80%)

Watershed: Mill Creek (HUC Code JL33)

Proposed Activity: Single Family Dwelling

Impervious Cover: 800 sq. ft.

RPA Encroachment: 800 sq. ft. within landward 50 feet

Brief Summary and Description of Activities

Mr. Jim Duguay, Performance Contracting, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an 800 sq. ft. impervious cover encroachment into the RPA buffer for the construction of a single family home and attached deck at 2836 Durfey's Mill Road within the Lake Powell Pointe subdivision. The lot was platted in October 1999, after the adoption of the 1990 Chesapeake Bay Preservation Ordinance but prior to the re-adoption of the Ordinance in 2004.

This subdivision was planned and developed around Lake Powell. Several times in the past 16 years, the Lake Powell dam was breached, the last time in October 2006. The owners of the lake have decided not to rebuild the embankment, turning the lake bed into a tidally-influenced vegetated wetland system adjacent to Lake Powell Pointe. A former owner of this lot requested from the Corps of Engineers in 2012 to have the wetlands on this lot re-delineated, as it was his contention

that the lack of a normal pool from the former Lake Powell would migrate the wetlands further away from the property towards the center of the old lake bed.

Wetland systems are not static and do respond to various input variables. The revised 2004 Ordinance recognizes this by stating that the RPA shall be based upon a “reliable, site specific evaluation” through any development or redevelopment exceeding 2,500 sq. ft. of land disturbance. Mr. Duguay had this wetland line re-evaluated by a professional wetland scientist, who arrived at the same conclusion as the Corps of Engineers.

The required mitigation for this amount of impervious cover would be 2 canopy trees, 4 understory trees and 6 shrubs as well as 3 inches of gravel under the deck to prevent soil erosion. Mr. Duguay has proposed 3 inches of gravel under the deck and 1 canopy trees, 5 understory trees and 16 shrubs in his application. This amount of mitigation exceeds the standard county requirements. However, the mitigation plan that was submitted with this proposal only shows 3 understory trees as mitigation within the RPA and is considered to be inadequate.

Staff Evaluation

Staff has evaluated the application and exception request for the single family home and deck described above. Staff finds that the application has met the conditions for submittal requirements consistent with Sections 23-11 and 23-14 of the Chesapeake Bay Preservation ordinance. Unless there are impacts to the seaward 50 foot RPA, of which there are none in this application, this exception request would be administratively processed because of the date of platting. However, because the County has received a significant amount of public comments about the case from citizens and the Lake Powell Point Architectural Review Board (ARB) and as it could not be determined by the manager if granting the exception would confer to this applicant special privileges denied to other property owners similarly situated in the vicinity, per Section 23-14(c)(2), the decision was made to process this exception request through the County’s Chesapeake Bay Board through the formal exception process in order to allow for public advertisement and comment of the subject case.

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 is 2 canopy trees, 4 understory trees and 6 shrubs. The mitigation plan provides for 3 understory trees and is considered unacceptable by 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-15-106 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-15-106 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 **minor** for the proposed development and that the required mitigation measures **do not meet** standard mitigation requirements. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

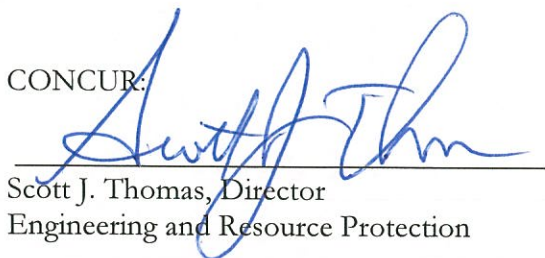
1. The applicant must obtain all other necessary federal, state and local permits as required for the project; and
2. The applicant resubmit an acceptable mitigation plan, encompassing 1 canopy tree, 5 understory trees and 16 shrubs as outlined in the application; and
3. A \$1,500 surety to guarantee the mitigation plantings 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 August 12, 2016; 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:



Michael D. Woolson
Senior Watershed Planner

CONCUR:



Scott J. Thomas, Director
Engineering and Resource Protection

Attachments: Water- Quality Impact Assessment Package

Chesapeake Bay Exception CBE-15-107: 1588 Harbor Road

Staff report for the August 12, 2015 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: John and Lisa Sawin

Owner: John and Lisa Sawin

Location: 1588 Harbor Road
Lot 21, The Harbor, The Governor's Land at Two Rivers

PIN: 4310200021

Lot Size/Zoning: 0.303 ac +/-; R4 Residential Planned Community

Area of Lot in RPA: 0.187 ac +/- (62%)

Watershed: James River (HUC Code JL29)

Proposed Activity: Patio Expansion

Impervious Cover: 140 sq. ft.

RPA Encroachment: 140 sq. ft. within landward 50 feet

Brief Summary and Description of Activities

Mr. and Mrs. John and Lisa Sawin have applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for 140 sq. ft. of impervious cover encroachment into the RPA buffer and conservation easement for the expansion of a patio at 1588 Harbor Road within the Governor's Land subdivision. The lot was platted in October 1994, after the adoption of the 1990 Chesapeake Bay Preservation Ordinance but prior to the re-adoption of the Ordinance in 2004. It should be noted that the 50 foot RPA line and the rear building setback line coincide.

The Sawins wish to expand the existing patio and make it more usable for small gatherings by adding 140 sq. ft. of impervious cover. The project also relocates an existing fence. The patio expansion requires Board action for approval. As the project is also within a conservation easement dedicated to the County, written approval will also be required to meet the terms of the easement. The required mitigation for this amount of impervious cover is 1 canopy tree and 3 shrubs. The Sawins are proposing 1 canopy tree, 10 shrubs, additional ground cover and mulch.

The drainage system that was proposed for the marina village when it was designed incorporates a small berm approximately 15 feet from the rear of the house to collect all impervious runoff from the house and immediate rear yard and directs this runoff via an underground network of pipes to a BMP across Harbor Road. The Sawins are not proposing any changes to this drainage system.

Staff Evaluation

Staff has evaluated the application and exception request for the expanded patio described above. Staff finds that the application has met the conditions for submittal requirements consistent with Sections 23-11 and 23-14 and that the application should be heard by the Board because the expanded patio is considered an accessory structure. 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 expansion of an existing patio.

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 is 1 canopy tree and 3 shrubs. The mitigation plan provides for 1 canopy tree, 10 shrubs, additional ground cover and mulch.

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-15-107 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-15-107 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 **minor** for the proposed development and that the required mitigation measures **exceed** 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. A \$500 surety to guarantee the mitigation plantings in a form acceptable to the County Attorney's Office; and
3. This exception request approval shall become null and void if construction has not begun by August 12, 2016; and
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.

Staff Report prepared by:



Michael D. Woolson
Senior Watershed Planner

CONCUR:



Scott J. Thomas, Director
Engineering and Resource Protection

Attachments: Water- Quality Impact Assessment Package

Chesapeake Bay Exception CBE-16-002: 113 Burnham

Staff report for the August 12, 2015 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: Gregg and Deborah Hanson

Agent: Jim Gallagher, Green Side Up Landscaping

Location: 113 Burnham
Lot 144, Section 6, Ford's Colony
PIN: 3720300144

Lot Size/Zoning: 0.434 ac +/-; R4 Residential Planned Community Zoning

Area of Lot in RPA: 0.365 ac +/- (84%)

Watershed: Powhatan Creek (HUC Code JL31)

Proposed Activity: Mitigation plan for CBE-14-084, including a patio and retaining walls

Impervious Cover: Original impervious cover (CBE-14-084) = 5,077 sq. ft.
Additional impervious cover = 320 sq. ft.

RPA Encroachment: 176 sq. ft. within seaward 50 feet
144 sq. ft. within landward 50 feet

Brief Summary and Description of Activities

The Chesapeake Bay Board approved CBE-14-084, new single family house construction at 113 Burnham with impacts to the resource protection area on June 11, 2014. As part of that approval, conditions were imposed to prevent degradation to water quality. Those conditions were:

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 \$7,000 will be required in a form acceptable to the County Attorney's office to ensure the mitigation; and
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 surety; and

5. This exception request approval shall become null and void if construction has not begun by May 14, 2015; and
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.

All conditions required by the Board have been met except for conditions 2 and 4. Before the Board tonight is the mitigation plan proposed, which will satisfy condition 2 if approved.

The required mitigation from the original application is 9 canopy trees, 11 understory trees and 72 shrubs. The proposed mitigation plan includes retaining walls and a patio that were not on the original application and must be approved by the Board as accessory structures. The additional mitigation required for this additional impervious cover is 1 canopy tree, 2 understory trees and 3 shrubs. This brings the total required mitigation to 10 canopy trees, 13 understory trees and 75 shrubs. The mitigation plan provides 1 canopy tree, 13 understory trees, 99 shrubs and 72 ferns. Allowing for substitutions of woody vegetation on a 2:1 basis, the 9 canopy trees would be substituted for 36 shrubs. However, there are only 24 shrubs provided over the required amount (75). The remaining shrubs have been substituted for ferns on a 6:1 basis. The mitigation plan provided has been determined by staff to be acceptable and meets the county requirements for the amount of impervious cover on this lot.

In summary, this project encompasses the original planting mitigation requirements for CBE-14-084 and the additional requirements in this proposal for the retaining walls patio. The inclusion of the retaining walls and the additional patio requires approval from the Chesapeake Bay Board as these are considered accessory structures.

Staff Evaluation

Staff has evaluated the application and exception request for the mitigation plan for CBE-14-084 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 retaining walls and patio are proposed within the RPA buffer are accessory structures. 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 mitigation plan for CBE-14-084, including the retaining walls and patio.

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 majority of 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 is 10 canopy trees, 13 understory trees

and 75 shrubs. The mitigation plan provides for 1 canopy tree, 13 understory trees, 99 shrubs and 72 ferns and is considered acceptable by 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-16-002 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-16-002 are included for the Board's use and decision.

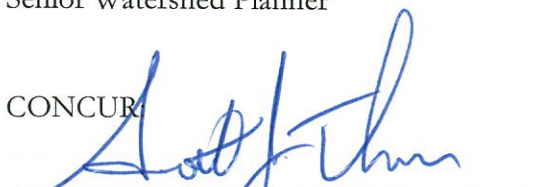
Staff Recommendations

Staff has reviewed the application and exception request and has determined impacts associated with the proposal to be **minor** 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. 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 surety; and
3. This exception request approval shall become null and void if construction has not begun by August 12, 2016; and
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.

Staff Report prepared by:


Michael D. Woolson
Senior Watershed Planner

CONCUR 
Scott J. Thomas, Director
Engineering and Resource Protection

Attachments: Water- Quality Impact Assessment Package