

Chesapeake Bay Board Building F

September 9, 2015 - 7 p.m.

A. Roll Call

B. Minutes

From August 12, 2015 Board Meeting

C. Public Hearings

1. CBE-15-058: Wolons – 5054 River Drive
2. CBE-16-014: Ramer/Structures Group - 112 Burwell Court
3. CBE-16-015: Wayne Harbin Builder – 219 Oakmere Park
4. CBE-16-022: Nagy/Delightful Gardens - 2941 Nathaniels Run

D. Board Considerations

1. CBV-16-001 APPEAL: Miller – 104 Archers Court
2. CBV-16-002 APPEAL: Moore – 2844 Castling Crossing

E. Matters of Special Privilege

F. Adjournment

MEMORANDUM

Date: September 9, 2015
To: The Chesapeake Bay Board
From: Michael D. Woolson, Senior Watershed Planner *M.D.W.*
Subject: Withdrawal – CBE-15-058
5054 River Drive

Mr. and Mrs. Wolons have requested that this case be withdrawn from Board consideration as they have decided to not go forward with the project. Staff concurs with this request. No further action by the Board is necessary.

Chesapeake Bay Exception CBE-16-014: 112 Burwell Court

Staff report for the September 9, 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: Michael Matthews, The Structures Group

Owner: Scott and Deborah Ramer

Location: 112 Burwell Court
Lot 92, Phase 2, Tazewell's Hundred, Kingsmill on the James

PIN: 5030400091

Lot Size/Zoning: 0.97 ac +/-; R4 Residential Planned Community

Area of Lot in RPA: 0.87 ac +/- (90%)

Watershed: College Creek (HUC Code JL34)

Proposed Activity: Retaining walls to stabilize the slope and house foundation, patio and detached deck

Impervious Cover: 1,290 sq. ft.

RPA Encroachment: 1,290 sq. ft. within landward 50 feet

Brief Summary and Description of Activities

Michael Matthews of The Structures Group, on behalf of Scott and Deborah Ramer, has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for 1,290 sq. ft. of impervious cover encroachment into the RPA buffer. The scope of the project includes a stone paver patio, wooden deck, stone paver access walk between the driveway and the patio at the rear of and adjacent to the existing structure, flagstone paver walkway from the front of the house to the patio and several retaining walls.

Mr. Matthews was hired to address the structural foundation issues that the existing house is experiencing. Mr. Matthews met with staff on site to discuss the issue. At that time, the Ramer's discussed additional work options in the yard that they were considering. Staff recommended that all proposed improvements be submitted for review by the Chesapeake Bay Board at one time, rather than a phased approval approach. The submitted site plan includes retaining walls that are

needed for house structural stability and safety, retaining walls that are needed for general slope stability, a replacement detached deck, a replacement paver patio, and two river stone drainage ways.

The Ramer's are proposing several planted rain garden/infiltration areas, gravel under the deck to prevent soil erosion, and a planting plan that is 2.3 times greater than the required planting mitigation. The required amount of planting mitigation for the proposed impervious cover would be 3 standard native planting units - 3 canopy trees, 6 understory trees, and 9 shrubs. The Ramer's are proposing 5 canopy trees, 1 understory tree and 67 shrubs.

The lot was platted in 1981 and the house built in 1982 prior to the adoption of the 1990 Chesapeake Bay Preservation Ordinance. The slope at the rear of the house has experienced several catastrophic weather events over the years that has left the slope mostly devoid of vegetation. The Ramer's are proposing to revegetate the remaining slope with native trees, shrubs, and grasses as part of the overall mitigation plan.

Staff Evaluation

Staff has evaluated the application and exception request for the work as described above. Staff finds that the application has met the conditions for submittal requirements consistent with Sections 23-11 and 23-14 of the Ordinance and that the application should be heard by the Board because the proposal includes several accessory structures. Therefore, the exception request must be considered by the Board following public hearing under the formal exception process, with the decision to approve or deny by resolution, for encroachment into the RPA buffer for the retaining walls, detached deck, patio, walkways and rivers stone drainage ways.

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 3 canopy trees, 6 understory trees and 9 shrubs. The mitigation plan provides for 5 canopy trees, 1 understory tree, 67 shrubs, additional ground cover and mulch, gravel under the deck, onlot rain garden/infiltration (runoff reduction and pollutant removal) practices, and two drainage ways to safely convey stormwater runoff down the slopes without erosion.

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-16-014 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-16-014 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 **major** 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:

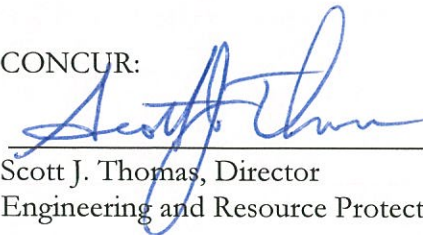
1. The applicant must obtain all other necessary federal, state, and local permits as required for the project, including a Land Disturbing Permit; and
2. Design and construction of the onlot runoff reduction/pollutant removal practices as proposed (rain garden/infiltration) shall generally follow micro-scale 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 practices shall be submitted to the Engineering and Resource Protection Division for review and approval prior to installation; and
3. A \$4,000 surety to guarantee the mitigation plan, including native plantings and proposed onlot runoff and pollutant reduction practices, 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 September 9, 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-16-015: 219 Oakmere Park

Staff report for the September 9, 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: Wayne Harbin Builder, Inc.

Agent: Doug Harbin

Location: 219 Oakmere Park
Lot 40, Section 12 Ford's Colony

PIN: 3233100040

Lot Size/Zoning: 0.528 ac +/-; R4 Residential Planned Community Zoning

Area of Lot in RPA: 0.517 ac +/- (98%)

Watershed: Powhatan Creek, subwatershed 207 (HUC Code JL31)

Proposed Activity: Single Family Home with deck

Impervious Cover: Approximately 4,620 sq. ft.

RPA Encroachment: Approximately 1,650 sq. ft. within seaward 50 feet
Approximately 2,970 sq. ft. within landward 50 feet

Brief Summary and Description of Activities

Doug Harbin of Wayne Harbin Builder, Inc. has applied for a Chesapeake Bay Preservation Ordinance exception to construct a new home with attached deck at 219 Oakmere Park, in the Ford's Colony subdivision. The lot was platted in 2003. The plat at that time did not recognize the new RPA definition. The plat also placed the wetland system into a conservation easement.

The required mitigation for this proposal is 11 units (11 canopy trees, 22 understory trees, and 33 shrubs). Mitigation proposed for this project is 9 canopy trees, 18 understory trees and 27 shrubs. Also discussed in the application are rain gardens and infiltration areas. Neither of these measures are shown on the mitigation plan nor have any sizing calculations been provided.

Staff Evaluation

Staff has evaluated the application and exception request for 219 Oakmere Park (CBE-16-015) 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 house is proposed within the RPA buffer and encroaches into the 50 foot seaward buffer. 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 a single family dwelling with attached deck.

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 11 canopy trees, 22 understory trees and 33 shrubs. Also proposed are rain gardens and infiltration practices. The mitigation plan provides for 9 canopy trees, 18 understory trees and 27 shrubs with no rain gardens or infiltration practices and is considered not 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-16-015 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-16-015 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 and that the required mitigation measures **do not meet** standard mitigation requirements. If the Chesapeake Bay Board approves this Chesapeake Bay Exception, staff recommends the following conditions:

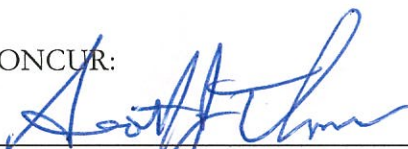
1. The applicant must obtain all other necessary federal, state and local permits as required for the project; and

2. The applicant provide an acceptable mitigation plan with the required mitigation of 11 canopy trees, 22 understory trees and 33 shrubs or a variation of the required plant material acceptable to staff; and
3. The applicant provide calculations for and show the locations of the rain gardens and infiltration practices stated in the submitted application; and
4. Prior to construction, a \$4,500 surety shall be submitted in a form acceptable to the County Attorney's office, to guarantee the mitigation; and
5. This exception request approval shall become null and void if construction has not begun by September 9, 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 D. Woolson
Senior Watershed Planner

CONCUR:


Scott J. Thomas, Director
Engineering and Resource Protection

Attachments: Water- Quality Impact Assessment Package

Chesapeake Bay Exception CBE-16-022: 2941 Nathaniel's Run

Staff report for the September 9, 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: George Nagy

Agent: Don Newson, Delightful Gardens

Location: 2941 Nathaniel's Run
Lot 7, Nathaniel's Run

PIN: 4410500007

Lot Size/Zoning: 0.638 ac +/-; R4 Residential Planned Community Zoning

Area of Lot in RPA: 0.240 ac +/- (38%)

Watershed: James River (HUC Code JL30)

Proposed Activity: Patio and access path

Impervious Cover: Patio approximately 900 sq. ft.
Path approximately 500 sq. ft.

RPA Encroachment: 1,400 sq. ft. within landward 50 feet

Brief Summary and Description of Activities

Don Newson of Delightful Gardens, on behalf of George Nagy, has applied for a Chesapeake Bay Preservation Ordinance exception to construct a patio with a seating wall and fire pit along with a pathway and pergola at 2941 Nathaniel's Run, in the Governor's Land at Two Rivers subdivision. The lot was platted in 1992 and had the 100 foot resource protection area buffer line as part of that plat. The house was built in 1995 with no impacts to the RPA proposed or realized.

Along with the impervious cover from the patio and walkway, part of this proposal is the removal of 1 damaged red maple and 11 sweet gum trees. To mitigate for the increase in impervious cover and the loss of canopy trees, the mitigation plan calls for twice the required mitigation. The required mitigation is 4 planting units (4 canopy trees, 8 understory trees, and 12 shrubs). The mitigation proposal is for 2 understory trees, 81 shrubs and over 4,500 sq. ft. of mulch and ground covers.

As the overarching goal of the Chesapeake Bay Preservation ordinance is improving water quality, mitigation requirements typically include some type of infiltration practice. When a patio is proposed, the patio is typically required to have an infiltration capability built into it. In the Governor's Land subdivision, the underlying soils are typically a hard, dense clay that is not conducive to infiltration. Further, the wetland system typically floods in high rainfall events, this proposal will neither increase nor decrease the flooding that typically occurs by any significant amount.

Staff Evaluation

Staff has evaluated the application and exception request for 2941 Nathaniel's Run (CBE-16-022) 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 patio is proposed within the RPA buffer and is an 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 a patio with a seating wall and fire pit along with a pathway and pergola.

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 4 canopy trees, 8 understory trees and 12 shrubs. The mitigation plan provides for 2 understory trees and 81 shrubs 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-16-022 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-16-022 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 **exceed** standard mitigation requirements. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

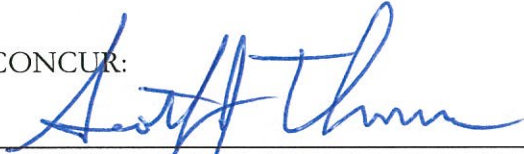
1. The applicant must obtain all other necessary federal, state and local permits as required for the project; and
2. Prior to construction, a \$3,000 surety shall be submitted in a form acceptable to the County Attorney's office, to guarantee the mitigation; and
3. This exception request approval shall become null and void if construction has not begun by September 9, 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

MEMORANDUM

DATE: September 9, 2015
TO: The Chesapeake Bay Board
FROM: Michael D. Woolson, Senior Watershed Planner *MDEW*
SUBJECT: Appeal of Notice of Violation – 104 Archers Court

Mr. Brink Miller, owner of 104 Archers Court and residing in Alpharetta, Georgia, has filed an appeal to the James City County Chesapeake Bay Board (Board) on July 31, 2015. Mr. Miller is appealing an administrative order to remove a patio from the resource protection area. As Mr. Miller is an absentee owner, Hertzler & George will be acting on his behalf.

Background Information

On or about July 8, 2015, staff became aware that a patio was under construction at the rear of the home at 104 Archers Court, within the Kingspoint subdivision. Staff has no record of any approvals being issued for this patio.

On July 14, 2015, staff issued a Notice of Violation (NOV) to Mr. Miller stating that there was no exception request on file at the Engineering and Resource Protection Division office for the patio currently under construction, that the patio was in violation of the Chesapeake Bay Preservation Ordinance and that the patio needed to be removed and the disturbed area restored with native trees and shrubs (Exhibit A).

On July 31, 2015, Mr. Miller submitted a written appeal of the NOV, meeting the 30 day deadline as stated in the Ordinance. In their appeal letter, Mr. Miller requests a review of the recent landscape improvements made and that he is working with Hertzler & George to propose some remediation in exchange for a variance (Exhibit B).

On or about May 13, 2009, LandTech Resources, Inc. recorded a boundary line adjustment plat of the property with a 100-foot RPA buffer on it, S-0015-2009 (Exhibit C).

On or about August 11, 2009, staff approved an administrative waiver for a single family home in the landward 50-foot RPA buffer, CBE-10-013 (Exhibit D).

On or about August 31, 2010, staff issued a Notice of Violation at 104 Archers Court to Mr. Brink Miller for a patio that had been built with the house construction without approval (Exhibit E).

On or about October 13, 2010, the Chesapeake Bay Board overturned the NOV issued on August 31, 2010 (Exhibit F).

On or about November 20, 2010, the Chesapeake Bay Board approved by resolution a patio, CBE-11-047 (Exhibit G).

Staff Guidance and Recommendations

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

- 1) Mr. Brink Miller is currently the owner of the property, 104 Archers Court, where a violation of the resource protection area has taken place.
- 2) Mr. Miller currently resides at 2830 GlenEagles Pointe, Alpharetta, Georgia.
- 3) Hertzler & George is working on Mr. Miller's behalf to come to a resolution of this situation.
- 4) In 2009, the property was replatted and the resource protection area shown (Exhibit C).

Section 23-17 (b) of the Ordinance gives guidance to the Board and states

“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 of 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 within the Kingspoint subdivision that have resource protection area 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. In this specific case, granting relief to the appellant resulting from the violation of the Ordinance may result in other, similar unauthorized actions by other property owners in the vicinity.
- 3) The appellant acquired the property in good faith but the hardship is self-inflicted.

Staff contends that the owner did know that there was resource protection area on the property through the replatting of the property in 2009 and the violation/appeal process in 2010 but may not have fully understood the Ordinance requirements for allowing accessory structures in the RPA. Staff believes that the patio should be removed and the area revegetated with native trees and shrubs, per the NOV. However, should the Board grant the appeal, the Board should direct the appellant to submit a 'remediation plan' for review and approval by this Board at a public hearing at the next available Chesapeake Bay Board meeting.

Attachments:

- Exhibit A – Miller NOV, July 14, 2015
- Exhibit B – Miller Appeal, July 31, 2015
- Exhibit C – Plat, S-0015-2009
- Exhibit D – Chesapeake Bay Administrative approval for house, CBE-10-013

Exhibit E – Miller NOV, August 31, 2010

Exhibit F – CBB Resolution, October 13, 2010

Exhibit G – CBB Exception, CBE-11-047, November 10, 2010

MEMORANDUM

DATE: September 9, 2015
TO: The Chesapeake Bay Board
FROM: Michael D. Woolson, Senior Watershed Planner *MW*
SUBJECT: Appeal of Notice of Violation – 2844 Castling Crossing

Mr. and Mrs. Alan and Julie Moore, residing at 2844 Castling Crossing in the Lake Powell Forest subdivision, have filed an appeal to the James City County Chesapeake Bay Board (Board) on August 19, 2015. The Moores are appealing an administrative order to remove a retaining wall and rebuild it in the location approved by the Board.

Background Information

On or about May 15, 2015, staff became aware that the approved retaining wall on CBE-13-077 was built in the wrong location on the property and on the adjacent property owned by the Lake Powell Forest Homeowners Association (HOA) (see Exhibit A). Also at issue is that the HOA property has a Natural Open Space Easement recorded on it, dedicated to the County (see Exhibit B).

On Friday, July 10, 2015, staff issued a Notice of Violation (NOV) to the HOA property management company, in care of Mr. Pierre Forget, notifying the HOA that they did not have permission from the County to build the retaining wall, disturbing the easement area and that they needed to remove the wall and restore the disturbed area of their property (see Exhibit C).

On Monday, July 13, 2015, staff issued a NOV to the builder of the home, notifying him that the wall was not built according to the plan approved by this Board under CBE-13-077. The NOV also outlined that the builder was to remove the wall, rebuild the wall in the approved location, remove all fill placed below the retaining wall and restore the area below the wall with shrubs (see Exhibit D).

On Tuesday, July 21, 2015, staff issued a NOV to the homeowner, after realizing that the Chesapeake Bay Preservation Ordinance (Ordinance) is specific in who can appeal a NOV. The Ordinance states, in Section 23-17 (a), "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." Staff wished to allow the Moores the opportunity to appeal if they chose to do so (see Exhibit E).

On August 19, 2015, the Moores submitted a written appeal of the NOV, meeting the 30 day deadline as stated in the Ordinance. In their appeal letter, they highlight reasons why they believe the appeal should be granted, including a property swap solution with the HOA (see Exhibit F). Subsequent to this, a meeting took place in Building E of the County Complex between Mr. Moore and Mr. Woolson where, among other items, it was discussed that if the Moores chose to appeal, staff would handle all three separate NOV's as one since they were the party most affected by the decision and that the deadline to appeal would be from the date of the latest NOV.

Staff Guidance and Recommendations

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

- 1) The Moores are currently the owner of the property, 2844 Castling Crossing, where a violation of the resource protection area has taken place.
- 2) The Moores had no knowledge that the retaining wall was in violation of the approved CBE-13-077 until staff discussed the issue with them and the NOV was issued.
- 3) The HOA had not given permission to have the retaining wall built on their property.
- 4) The HOA did not request, nor did the County approve, that the retaining wall be built within the Natural Open Space easement.
- 5) The Moores and the HOA are working towards a property line adjustment and a Deed of Exchange for Natural Open Space to have the entire retaining wall legally on the Moore's property.
- 6) The Deed of Easement for Natural Open Space was recorded on 22 January 2003 in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City as Document Number 030001976.
- 7) The Deed of Easement states that the "Grantor wishes to preserve land as natural open space for the scenic enjoyment of the general public and to protect the natural habitat of fish, wildlife and plants by improving the quality of storm water runoff from the property."
- 8) 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. Grantor and Grantee acknowledge that trails are required to be located on the Easement Property according to the Master Plan identified in Condition numbered 1 of SUP-27-96. Such trails shall be permitted on the Easement Property provided that the location, design and construction standards are approved in writing by 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 with the expressed written consent of the County Engineer. 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.

Section 23-17 (b) of the Ordinance gives guidance to the Board and states

“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 of 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 within the Lake Powell Forest subdivision that have resource protection area on them and the natural open space easement adjacent to them.
- 2) The granting of the appeal in this case will not adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity. In this specific case, granting relief to the appellant resulting from the violation of the Ordinance and Deed of Easement will not result in similar unauthorized actions by other property owners in the vicinity because the other properties have already been built upon. Although granting the appeal will be in direct conflict with the terms of the Deed of Easement, the appellant is currently working in good faith toward a solution with the HOA which will eliminate the Deed of Easement conflict.
- 3) The appellant acquired the property in good faith and the hardship is not self-inflicted.

Staff contends that to be consistent with the approval of CBE-13-077, the Board should deny the appeal. However, should the Board grant the appeal, staff suggests that the Board direct the appellant to complete and record the property line adjustment plat and the Deed of Exchange for Natural Open Space within 90 days or be subject to removing and rebuilding the wall per the approval granted for CBE-13-077.

Attachments:

- Exhibit A – Site Plan CBE-13-077
- Exhibit B – Natural Open Space Plat and Deed of Easement
- Exhibit C – HOA NOV
- Exhibit D – Duguay NOV
- Exhibit E – Moore NOV
- Exhibit F – Moore Appeal