

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
February 11, 2009 – 7:00PM**

**A. ROLL CALL**

David Gussman, Vice Chair  
John Hughes  
Terence Elkins  
Charles Roadley - Alternate

**ABSENT**

William Apperson

**OTHERS PRESENT**

County Staff

**The responsibility of this Board is to carry out locally the Commonwealth policy to protect against and minimize pollution and deposition of sediment in wetlands, streams, and lakes in James City County, which are tributaries of the Chesapeake Bay.**

**B. MINUTES**

The December 10, 2008 Board Meeting minutes were approved as written.  
The January 28, 2009 Combined Work Session minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. CBE-09-058 – O'Connor – 106 Falling Creek**

Pat Menichino presented the following case:

**Project Summary and Description**

Mrs. Christal O'Conner, 106 Falling Creek Circle, Williamsburg, Virginia, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for approximately 140 sqft of encroachment into the landward 50-foot RPA buffer for the construction of a wood frame storage shed. The lot is located in the First Colony subdivision. The wood frame storage shed is considered an accessory structure and in accordance with section 23-14 of the Ordinance, the exception request must be processed by the Chesapeake Bay Board (Board) after a public hearing.

**Brief History**

The lot was recorded before the adoption of the Ordinance, and no RPA existed on the lot at that time. In 2004, the Ordinance requirements related to the determination of perennial flow were changed requiring that perennial water bodies be identified based on a field evaluation. A perennial water body at the rear of the lot was identified requiring that a 100-foot RPA buffer be established on the lot. This 100-foot RPA buffer encompasses about 42% of the lot.

**Water Quality Impact Assessment (WQIA)**

Under Section 23-14 of the amended Ordinance, a WQIA must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPA.

The applicant has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines* and proposes to mitigate for the impacts to the RPA by planting, (1) native canopy tree and (3) native shrubs in the RPA on the lot, to help filter nonpoint source pollution. The amount of plantings proposed meets the standard mitigation planting requirements of the County

### **Recommendations**

Staff evaluated the request for the wood frame storage shed, determined it to be an accessory structure and according to the Ordinance, it cannot be granted by administrative exception. To be consistent with the ordinance requirements, Staff cannot support the approval of this exception request for an accessory structure. However, Staff evaluated the potential adverse impacts of this proposal and determined them to be minimal.

The issue before the Board is the addition of the 140 sqft of impervious area created by the installation of the wood frame storage shed within the landward 50-foot 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 criteria outlined in Section 23-14(c) of the Ordinance.

In the past, the Board has granted exceptions for accessory structures within the RPA buffer.

If the Board votes to approve the exception request, Staff recommends the following conditions be incorporated into the approval:

1. The applicant must obtain all other permits required from agencies that may have regulatory authority over the proposed activities, including a James City County building permit if required.
2. Full implementation of the RPA Mitigation Plan submitted with the exception request and any additional Board mitigation requirements must be completed within 90 days following Board approval.
3. Implementation may be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c), and through a form of surety satisfactory to the County Attorney.
4. The size of the mitigation trees shall be 1" caliper 6'-7' tall, and the shrubs shall be 3-5 gallon size 15"-18" tall. All trees and shrubs shall be native species approved by the Environmental Division.

Mr. Waltrip asked if any vegetation would be removed.

Mr. Roadley asked why this specific location was selected.

Mr. Menichino stated the applicant was available for questions.

Mr. Gussman opened the public hearing.

A. Christal O'Conner, the applicant, stated the location of the proposed shed was selected because it was flat and would not require the removal of any vegetation.

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

Mr. Hughes made a motion to adopt the resolution granting the Chesapeake Bay Exception for case number CBE-09-058 on tax parcel #4520200229.

The motion was approved by a 5-0 vote.

**2. CBV-09-006 – APPEAL- Drummond – 165 Indian Circle cont from 12/10/08**

Mr. Menichino stated the appellant was present and wished to address the Board.

**A.** Mr. Drummond, the appellant, stated he had hired an engineer to design a mitigation plan that would be acceptable to the Board. He met with Mr. Menichino on Monday of this week however; the engineer had not had time to incorporate Mr. Menichino's suggestion into the plan. Therefore, he was requesting an additional 30-day deferral.

Mr. Menichino stated staff was not opposed to an additional deferral.

Mr. Roadly made a motion to defer the Board decision and continue the Appeal for case CBV-09-006 to March 11, 2009.

The motion was approved by a 5-0 vote.

**D. BOARD CONSIDERATIONS**

**1. CBE-07-112 McFarlin Park Driveway – Permit Extension**

Mr. Scott Thomas stated that Mr. Gregory R. Davis of Kaufmann & Canoles requested an extension for the McFarlin Park Boundary Line Extinguishment for a Minor Subdivision project. Staff supports this extension request. Because there was no Chesapeake Bay Board meeting in January, a temporary extension had been granted so the permit would not lapse. The new expiration date for this permit would be February 11, 2010. Mr. Thomas further explained that the Chesapeake Bay Board exception was for a driveway.

Mr. Hughes made a motion to grant the extension of the Chesapeake Bay Exception for case number CBE-07-112 to February 11, 2010.

The motion was approved by a 5-0 vote.

**E. MATTERS OF SPECIAL PRIVILEGE – none.**

**F. ADJOURNMENT**

The meeting adjourned at 7:52 PM.

  
David Gussman  
Vice-Chairman

  
Scott J. Thomas  
Secretary to the Board