

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
July 8, 2009 – 7:00PM**

**A. ROLL CALL**

William Apperson – Chair  
David Gussman  
Larry Waltrip  
John Hughes  
Terence Elkins

**ABSENT**

**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 June 10, 2009 Board Meeting minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. CBE-09-092 – Performance Contracting – 3633 Bridgewater**

Pat Menichino presented the following case:

**Project Summary and Description**

Mr. James T. Duguay, Performance Contracting, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachment into the RPA buffer for construction of a 90 LF, segmental stone block retaining wall, and for the placement of approximately 1000 sqft of fill/backfill. The lot is located in Mill Creek Landing subdivision, is 0.692 acres in size and the RPA buffer encompass approximately 78% of the lot or 0.546 acres. The proposed retaining wall and fill will encroach into the seaward 50 feet of the RPA buffer.

**Brief History**

The lot was recorded after the 1990 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 feature at the rear of the lot was identified requiring that a 100 foot RPA buffer be established on the lot.

The segmental stone block retaining wall is considered an accessory structure which does not qualify for an administrative waiver. In accordance with section 23-14 of the Ordinance, the exception request must be processed by the Chesapeake Bay Board after a public hearing.

**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 RPAs.

The applicant 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 (30) native shrubs in a 5 foot wide mulch planting bed to filter runoff. The amount of proposed plantings exceeds the standard mitigation planting requirements of the County.

## **Recommendations**

The issue before the Board was the 90 LF of wall and approximately 1000 sqft of fill within the RPA buffer. The Board was to determine whether or not this was 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.

To be consistent with the Ordinance requirements, staff could not support the approval of this exception request for an accessory structure but, offered the following information as guidance to the Board concerning the application.

1. The applicant applied for an exception to allow for 90 LF of segmental stone block retaining wall and approximately 1000 sqft of fill.
2. The applicant submitted an RPA mitigation planting plan that exceeded the standard mitigation planting requirements of the County.
3. Staff evaluated the potential adverse impacts of the proposal and determined them to be minimal.

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

If the Board voted to approve the exception request, staff recommended that 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. The plan should be revised to require the installation of filter cloth behind the wall and all stone backfill material shall be washed number 57 stone.
3. The RPA Mitigation Plan should be revised to include the installation of (2) native trees as replacement for the (1) 18" tree proposed for removal.
4. The (30) mitigation shrubs proposed shall be 3-5 gallon size, and 15"-18" tall minimum. The species of the shrubs shall be approved by the Environmental Division prior to installation.
5. Full implementation of the RPA Mitigation Plan and any additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c), a form of surety satisfactory to the County Attorney.
6. This exception request approval shall become null and void if construction has not begun by July 8, 2010.

Mr., Hughes asked if the property was currently washing into the wetlands.

Mr. Menichino stated the retaining wall would eliminate the slope and the runoff.

Mr. Apperson opened the public hearing and closed the public hearing as no one wished to speak.

Mr. Hughes stated and all Board members agreed, the request looked like an improvement to the property.

Mr. Hughes made a motion to adopt the resolution granting the Chesapeake Bay Exception for case number CBE-09-092 on tax parcel #3841770006.

The motion was approved by a 5-0 vote.

## **2. CBE-09-095 – Moon/ Cason's Home – 219 St Cuthbert**

Pat Menichino presented the following memo to the Board:

### **Project Summary and Description**

John C. and Joan M. Moon applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for approximately 3359 sqft of impervious encroachment into the RPA buffer, for construction of a new single family residence, attached deck, and patio. The lot is located in Fords Colony Subdivision. Following the Ordinance revisions in 2004, a perennial feature and wetlands adjacent to the rear of the property were identified thereby requiring a 100' RPA buffer.

### **Brief History**

The lot is 0.331 acres in size and was recorded after the 1990 adoption of the Ordinance. 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 feature at the rear of the lot was identified requiring establishment of a 100 foot RPA buffer that encompasses about 80% of the lot or .266 acres.

The exception request is for a single family residence that will encroach into the seaward 50' RPA buffer which according to the Ordinance does not qualify for an administrative exception. In accordance with section 23-14 of the Ordinance, the exception must be processed by the Chesapeake Bay Board after a public hearing.

#### **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 RPAs.

The applicant 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, (8) native canopy tree, and (16) native understory trees and (26) native shrubs, in the RPA on the lot to help filter nonpoint source pollution. The amount of native plantings proposed meets the standard mitigation planting requirements of the County. In addition, the applicant has proposed the installation of an infiltration trench BMP, 3' wide x 2' deep x 51' in length to capture runoff from the impervious areas.

#### **Recommendations**

Staff evaluated the potential adverse impacts of this proposal and determined them to be moderate and the proposed RPA mitigation should adequately mitigate any impacts.

The issue before the Board is the addition of the 3359 sqft of impervious area within the 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.

The Board has in the past reviewed and granted exceptions for single family residences within the 50' seaward 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. The mitigation trees shall be a minimum of 1" in caliper and 6'-7' tall, all mitigation shrubs shall be 3-5 gallon size, and 15"-18" tall minimum. The species of the shrubs shall be approved by the Environmental Division prior to installation.
3. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c), a form of surety satisfactory to the County Attorney.
4. This exception request approval shall become null and void if construction has not begun by July 8, 2010.

Mr. Gussman asked if the infiltration trench would require maintenance.

Mr. Waltrip asked if the runoff had to be directed to the inlets or would the entire trench function as a filtering device.

Mr. Menichino stated the proposed trench would require a minimal amount of maintenance around the drain. The trench was stone filled and if it filled up during a storm event, it would overflow. He reminded the Board that this proposed trench was in addition to the required mitigation.

Mr. Elkins asked if the large trees depicted on the site plan would be removed and if they would be replaced by the mitigation plantings.

Mr. Menichino stated the trees would be removed for the construction of the residence. The mitigation plantings are calculated on and required to filter runoff from impervious surfaces not as replacement for removed vegetation.

Mr. Apperson opened the public hearing.

A. Mr. Eddie Cason, Cason Custom Homes, stated the current delineation of the RPA was not identified when the owner purchased the property. The current RPA was discovered by his surveyor and confirmed by the County, requiring the exception request and mitigation.

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

Mr. Hughes stated the lot was platted prior to recognition of the RPA and the proposed plan appeared to be the best solution for construction of the residence.

Mr. Elkins stated it would be nice to save the large trees but obviously not practical on this lot.

Mr. Hughes made a motion to adopt the resolution granting the Chesapeake Bay Exception for case number CBE-09-095 on tax parcel #3721000050.

The motion was approved by a 5-0 vote.

**D. BOARD CONSIDERATIONS – none.**

**E. MATTERS OF SPECIAL PRIVILEGE**

**1. Comments from Environmental Director, Scott J. Thomas**

Mr. Thomas provided the Board with the following information, Wetlands and Chesapeake Bay Board Exceptions and Permits from Fiscal Year '09 (July 1, 2008 – June 30, 2009) and Fiscal Year '08 (July 1, 2007 – June 30, 2008)

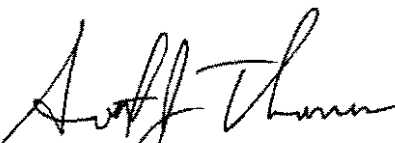
	<u>FYE '09</u>	<u>FYE '08</u>
Wetlands Board Cases Heard	13	7
Chesapeake Bay Board cases Heard	21	39
Administrative Chesapeake Bay Exceptions	125	113

The Board held brief discussions with staff regarding new development, BMP installations, and new stormwater regulations under consideration by the Department of Conservation and Recreation (DCR).

**F. ADJOURNMENT**

The meeting adjourned at 8:45 PM.

  
William Apperson  
Chairman

  
Scott J. Thomas  
Secretary to the Board