

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
March 10, 2010**

**A. ROLL CALL**

David Gussman –Chairman  
Terence Elkins  
John Hughes  
Larry Waltrip  
Richard Mason - Alternate

**ABSENT**

William Apperson

**OTHERS PRESENT**

County Staff (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 February 11, 2010 Board Meeting minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. CBE-10-058 – Moon – 219 St Cuthbert**

Pat Menichino, Compliance Specialist, presented the following case:

**Existing Site Data & Information**

Applicant: John and Joan Moon

Land Owner: (same)

Location: 219 St. Cuthbert, Ford's Colony, Williamsburg, Virginia

Parcel Identification: 3721000050

Lot Size: 0.33 acres

RPA Area on Lot: .22 acres or 80 % of the lot.

Watershed Powhatan Creek, non-tidal main stem, (HUC code JL31)

Proposed Activity: A 390 sqft encroachment into the RPA buffer to create additional turf area and the relocation of a proposed infiltration trench 10 feet seaward from its current approved location.

**Proposed Impacts**

Impervious Area: 0.0

RPA Encroachment : Seaward 50 foot RPA Buffer

### **Brief Description and Summary**

John and Joan Moon, 219 St. Cuthbert, Ford's Colony, Williamsburg, Virginia, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachment into the RPA buffer, to create 390 sqft of additional turf area and for the relocation of a proposed infiltration trench 10 feet seaward of its current approved location.

A detailed RPA Mitigation Planting Plan (Plan) has been provided along with the exception request. The Plan proposes to mitigate for the RPA impacts by planting (1) understory tree and (3) native shrubs, in mulch planting beds to help filter runoff. The amount of proposed plantings meets the standard mitigation planting requirements of the County for impervious impacts.

### **Background**

The lot was recorded after 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 feature adjacent to the lot was identified requiring that a 100 foot RPA buffer be established on the lot.

In this case, the exception request was for an expansion of turf area and for the relocation of a proposed infiltration trench within the seaward 50 foot buffer. In accordance with section 23-14 of the Ordinance, the exception must be processed by the Chesapeake Bay Board after a public hearing.

The owners of this property had previously been granted two other Chesapeake Bay Exceptions for RPA encroachments. CBE-09-095 was granted to allow for the construction of the residence and CBE-10-020 was granted to allow for an RPA buffer modification.

### **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 submitted a WQIA for this project and proposed to mitigate for the impacts to the RPA by planting (1) understory tree and (3) native shrubs, in mulch planting beds on the lot, to help filter nonpoint source pollution.

### **Staff Recommendations**

The Board was to determine whether or not the exception request 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.

Staff evaluated the potential adverse impacts of this proposal and determined them to be moderate. The revised location of the infiltration trench was 10 feet seaward and 1.5 feet lower in elevation, than its current proposed location. If the infiltration trench was relocated as requested, the bottom of the trench would be at elev. 48.5, which is just marginally higher than the adjacent wetlands elevation. Without the submission of an engineering analysis, staff was of the opinion the infiltration trench would not properly function at this revised location.

Staff did not recommend approval of this exception at this time.

If the Board voted to approve the exception request, staff recommended the following conditions be incorporated into the approval and the applicant must obtain all other permits required from agencies that may have regulatory authority over the proposed activities.

1. 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.
2. This exception request approval shall become null and void if construction has not begun by March 10, 2011, or all improvements including the required mitigation plantings and infiltration trench are not completed by that expiration date.

3. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

Mr. Waltrip asked if the type of grass to be used in the turf area had been specified or if the applicant had considered underlying construction methods to make the area more pervious.

Mr. Menichino stated the information provided to the County indicated it would be a lawn created with an unidentified species of turf grass and he assumed the subsoil would be what currently exists on the site. However, the contractor was present and could provide additional information to the Board.

Mr. Gussman asked for the depth of the proposed infiltration trench.

Mr. Mason asked if the main reason for the exception request was to create a larger back yard and if there was a problem with the originally proposed location of the infiltration trench.

Mr. Hughes wanted to know the purpose of moving the infiltration trench.

Mr. Menichino stated the depth of the proposed trench from the surface of the ground, was approximately 2 ½ feet. He referred to section 3A of the application which stated the encroachment was necessary to afford the homeowner a minimal back yard. He repeated that without submission of an engineering analysis, it was staff's opinion the infiltration trench would not properly function at the revised location. He responded to Mr. Hughes stating the purpose of the trench was to capture runoff from the turf areas as well as the impervious surfaces of the residence.

Mr. Gussman opened the public hearing.

A. Mr. Eddie Cason, Cason Custom Homes, contractor for the project, stated the infiltration trench was originally proposed in addition to the required mitigation on the original proposal, for a single family home. He explained the construction of the infiltration trench stating it would be filled with stone and grass would not be installed on top. He stated the trench was designed for erosion control to catch runoff from the gutter system of the residence and the lawn area and it would still function in the relocated position.

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

Mr. Gussman asked staff if the infiltration trench was a mitigation requirement on the original case.

Mr. Hughes asked if the mitigation plantings in the original case were sufficient to meet the mitigation requirements of the County, without the proposed trench.

Mr. Menichino stated he could not recall if the proposed plantings met the requirement but regardless, the infiltration trench was indicated in the original exception request and on the RPA Mitigation Plan submitted with that request, completion of which was required in the Board's resolution to grant that exception.

Mr. Elkins stated in his opinion the desire for a larger back yard did not justify further encroachment into the RPA buffer. He was also not convinced, in the absence of an expert evaluation that the infiltration trench would function as proposed.

Mr. Waltrip suggested the proposed trench and lawn could be reconfigured to lessen the impact to the buffer.

Mr. Menichino stated the applicant could request a deferral to address these issues.

A. Mr. Cason stated he was here as a courtesy to the property owner and he wanted to finish the project in the next few weeks. Therefore, he was leaving the exception request as it stood for a decision from the Board.

Mr. Mason made a motion to adopt the resolution denying the exception for Chesapeake Bay Board case number CBE-10-058 on tax parcel #3721000050

The motion to deny was approved by a 5-0 vote.

2. **CBE-10-060 – Weiner – 125 Mathews Grant**

Pat Menichino, Compliance Specialist, presented the following case:

**Existing Site Data & Information**

Applicant: Eric and Valerie Weiner  
Land Owner: (same)  
Location: 125 Mathew's Grant, Kingsmill, Williamsburg, Virginia  
Parcel Identification: 4940200056  
Lot Size: .71 acres  
RPA Area on Lot: .52 acres or 73 % of the lot.  
Watershed: College Creek, (HUC code JL34)  
Proposed Activity: Install 96 linear feet of segmental block retaining wall and a sand set permeable paver patio.

**Proposed Impacts**

Impervious Area: Total impervious area created by the wall and the patio will be 900 sf.  
RPA Encroachment: Both in the landward 100' and the seaward 50' RPA buffers.

**Brief Description and Summary**

Eric and Valerie Weiner of 125 Mathew's Grant, Kingsmill, Williamsburg, Virginia, have applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer to install a segmental block retaining wall 96 feet in length and a sand set permeable paver patio.

A detailed RPA Mitigation Planting Plan (Plan) has been provided along with the exception request for your review. The plan proposes the installation of more than 30 shrubs within the RPA buffer. The proposed amount of plantings exceeds the standard mitigation planting requirements of the County for impervious impacts.

**Background**

The lot was recorded prior to the adoption of the Ordinance, and no RPA existed on the lot at that time. Following the 1990 adoption of the Ordinance, Halfway Creek, which is adjacent to this property, was identified as a resource thereby requiring a 100 foot RPA buffer be established on the lot.

In this case the exception request is for the installation of a retaining wall and patio within both the landward' and seaward buffers. In accordance with section 23-14 of the Ordinance, an 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 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 installing more than 30 native shrubs in mulch planting beds on the lot to help filter nonpoint source pollution.

### **Staff Recommendations**

The issue before the Board is the addition of a retaining wall and patio 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.

Staff evaluated the potential adverse impacts of this proposal and determined them to be moderate. The proposed mitigation planting of 30 shrubs should offset the adverse impacts of the impervious areas.

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

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.

1. All proposed shrubs shall be a minimum of 3-5 gallon container size 18"- 36" tall.
2. 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.
3. This exception request approval shall become null and void if construction has not begun by March 10, 2011, or all improvements including the required mitigation plantings are not completed by that expiration date.
4. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

Mr. Elkins stated it appeared the pervious patio was replacing an existing turf area.

Mr. Waltrip asked if any trees would be removed.

Mr. Menichino stated the applicant ion indicated no trees would be removed.

Mr. Mason stated the plan listed approximately 120 feet of retaining wall instead of 96 feet in Staff's report and asked which figure was correct. He also asked if the fence would run along the inside or outside of the wall, how the play area would be constructed and if there would be an expansion of the turf area as this yard seemed to impact the majority of the RPA.

Mr. Menichino reminded the Board that the house and existing yard were created prior to adoption of the Ordinance.

Mr. Gussman opened the public hearing.

**A.** Jeff Gray, Landscaper for the project, stated the existing turf in the RPA would be reduced by the pervious paver patio and the play area which would be mulched. He stated only 1 oak tree that had fallen into the water would be removed and 3 diseased crepe myrtles would be removed and replaced with other trees. He stated the difference between the 96 and 100 feet of wall was because he included a small wall near the house and the fence was on top of the wall and then continued along the back yard up to the house. He stated in correcting the drainage they may consider extending the wall.

Mr. Mason asked how the play set would be installed.

**A.** Mr. Gray stated the area would be filled with sand, covered with mulch and no concrete structures would be installed. He also described the construction of the retaining wall.

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

Mr. Elkins stated there did not seem to be additional pervious area added to the buffer and there did seem to be an erosion problem that needed to be corrected.

Mr. Mason stated he was not sure there was enough retaining wall to correct the erosion problem and he was concerned with the extensive use of the RPA.

Mr. Hughes stated the house and existing yard were created before adoption of the Ordinance and the applicant has minimized the encroachment by reducing the high maintenance turf area.

Mr. Waltrip agreed with Mr. Hughes but stated he also thought the wall should be extended.

Mr. Hughes made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case number CBE-10-060 on tax parcel #4940200056.

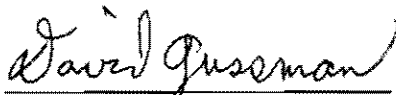
The motion was approved by a 4-1 vote (AYE: Gussman, Waltrip, Hughes, Elkins  
(NAY: Mason)

**D. BOARD CONSIDERATIONS - None**

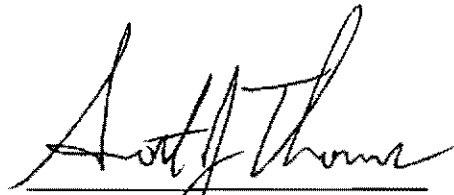
**E. MATTERS OF SPECIAL PRIVILEGE - None**

**F. ADJOURNMENT**

The meeting adjourned at 8:07 PM.



David Gussman  
Chairman



Scott J. Thomas  
Secretary to the Board