

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
June 9, 2010**

A. ROLL CALL

David Gussman – Chair
William Apperson
Charles Roadley – Alternate
Richard Mason - Alternate

ABSENT

Terence Elkins
John Hughes
Larry Waltrip

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.

The Board amended the Agenda and moved the Board Considerations before the Public Hearings.

B. MINUTES

The May 12, 2010 Board Meeting minutes were approved as written.

D. BOARD CONSIDERATIONS

1. CBE-07-015 Extension – Nervitt – 108 Seven Oaks

Mike Woolson, Senior Watershed Planner presented the following information to the Board:

Mr. Ron Nervitt, owner 108 Seven Oaks, requested an extension of the expiration date for Chesapeake Bay Board Exception CBE-07-015, for an indefinite period of time or as a minimum of 5 years. In 2008, Mr. Nervitt requested an indefinite extension and the Board approved a two-year extension at that time.

The Board could consider Mr. Nervitt's request for an indefinite deferral and find that special circumstances or hardships exist that may warrant an exception extension period of more than 1 year.

Staff advised the Board that a precedent could be established with the Board's decision.

Staff recommended that this request be given a 1 year extension, consistent with Section 23-16 of the Chesapeake Bay Preservation Ordinance, which states "Waivers or exceptions granted will become null and void if building foundations are not completed within 12 months."

Mr. Mason stated the previous exception expired on May 9, 2010 and therefore this permit had expired. He felt it was incumbent upon the property owner to seek an extension in a timely matter.

Mr. Gussman stated he was concerned with setting a precedent for an indefinite extension.

Mr. Woolson explained that the applicant's request was postmarked by the expiration date and therefore considered within the valid time frame. He added that should an extension be granted the resolution would require than any additional extensions be requested at least 2 weeks prior to the expiration date.

A. Mr. Nervitt stated there was no RPA on his lot when it was platted. He stated current and recent economy had prevented him from moving forward with the construction of the residence on the lot approved by the original exception request.

Mr. Mason stated he was still concerned with granting an additional exception of any length when the Ordinance clearly stated the exception would be void if a foundation was not completed within 12 months.

Mr. Apperson stated he felt the Board should serve the citizens and consider the current state of the economy when considering an extension and would support a 5 year extension.

Mr. Roadley stated he would support another 2 year extension based on the previous action of the Board.

Mr. Roadley made a motion to adopt the resolution granting the permit extension on case CBE-07-015 to May 9, 2012.

Mr. Mason stated the expiration date should be based on tonight's meeting date.

The motion was amended to adopt the resolution granting the permit extension on case CBE-07-015 to June 9, 2012.

The motion was approved by a 3-1 vote (AYE: Gussman, Roadley, Apperson)
(NAY: Mason)

C. PUBLIC HEARINGS

1. CBV-10-007 APPEAL – Wysocki – 113 Ridge Crossing

Mike Woolson, Senior Watershed Planner presented the following case:

Mr. and Mrs. Joseph Wysocki, residing at 113 Ridge Crossing, Ford's Colony, filed an appeal of the Chesapeake Bay Preservation Ordinance Notice of Violation requirements, dated April 30, 2010. The Notice of Violation required the execution of a Chesapeake Bay Restoration Agreement, the restoration of the RPA with native plantings, and removal of a patio. Staff estimates the RPA impact from vegetation removal at approximately 3,900 sqft and the RPA impact for the patio and associated pathways at approximately 1,200 sqft.

On April 23, 2010 Staff became aware of the unauthorized clearing following a site inspection in the vicinity. Staff initiated an investigation and as a result documented a violation of the County's Chesapeake Bay Preservation Ordinance. Staff met with the owners and contractor regarding this issue after issuing a Notice of Violation on April 30, 2010 requiring the removal of the patio and restoration of the RPA.

Historical Background Information

On October 3, 2003 an Application for Building Permit was submitted for the building of a new single family residence. The Chesapeake Bay Preservation Ordinance was under revision at this time and this application was processed under the existing ordinance requirements, which did not designate the lake as an RPA feature. This designation was changed after the revised Ordinance was adopted by the BOS (effective date of January 1, 2004). Notices were sent out to all property owners affected by the change in the Ordinance on January 4, 2007.

There have been 13 RPA exceptions (administrative and Bay Board) granted around this particular lake. Five of these were for the construction of the primary residence, four were for other accessory structures (gazebo, decks, and patios), and the remaining were for buffer modifications.

The property has been sold twice since the residence was built: September 26, 2007 and December 21, 2009.

The buffer adjacent to the lake has been previously modified by other property owners.

The Wysocki's had a plan developed on February 16, 2010 by William's Landscape & Design, Inc. This plan showed the replanting of the area adjacent to the lake and the proposed patio. A copy of this plan was given to staff after violation proceedings were initiated. The plan has extensive wetland vegetation proposed. Existing vegetation is a combination of weeds, shrubs, and turf grasses. Board members have communicated to staff their general resistance to processing after-the-fact permits.

Staff Guidance and Recommendations

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

1. Mr. and Mrs. Wysocki are the current property owners. In a statement submitted to the Board, they offer the following information in support of the appeal:
 - a. They had no prior knowledge that a Chesapeake Bay Preservation Area was designated on the property.
 - b. They had approval of their plan from the Ford's Colony Environmental Control Committee.
 - c. That no disclosure was provided during the residential sale of the property.
2. The Chesapeake Bay Preservation Ordinance Sections 23-7 and 23-10 require that authorization and a plan of development be reviewed and approved by the County prior to activities within RPA's.
3. The Wysocki's are not challenging the following facts in this case:
 - a. No plan of development or RPA buffer modification plan was submitted to the County for review and approval as is required by the Ordinance.
 - b. No authorization for the clearing and removal of native vegetation from within the RPA was requested from the County by either the Owners or the Contractor.
 - c. That a violation of the County's Chesapeake Bay Ordinance resulted from the above referenced activities that occurred on the property.
4. Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance.

The Board shall not decide in favor to the appellant unless it finds:

1. The hardship is not generally shared by other properties in the vicinity; and
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 immediately adjacent to the appellant's property as well as numerous other properties within Ford's Colony that have RPA components located on them.
2. The granting of the appeal in this case may not adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity, once the proposed planting plan is implemented or possibly

expanded upon. As there is no natural RPA buffer remaining on the lot, even before this work was started, granting relief to the appellant in this particular case will not adversely affect the water quality in the tributaries to the Chesapeake Bay.

3. The appellant's contractor in fact caused the hardship through an unauthorized activity thereby the hardship is self imposed.

Should this Board find in favor of Staff, the Board should deny the appeal and allow the Chesapeake Bay Restoration Agreement process to proceed.

Should the Board find in favor of the appellant, the Board should require that a patio application come before them at the next regularly scheduled Chesapeake Bay Board meeting for review and discussion.

Mr. Gussman asked if the size of the patio was consistent with those on other properties in the area.

Mr. Mason asked if other patios had been approved and built in the area.

Mr. Roadley asked if the buffer had already been planted.

Mr. Woolson stated there were other patios of the same size, approved and built in the area. He stated the applicant asserted that the area had been planted and he intended to inspect the plantings as soon as possible.

Mr. Gussman opened the public hearing and asked that the letter received from an adjacent property be read into the record.

A. Robert and Kathleen Smith, owners of property adjacent to 113 Ridge Crossing, sent a letter opposing the appeal request and stated that in their opinion "there has been an indiscriminate and wanton abuse of the natural resources both in Ford's Colony and the properties surrounding in James City County; in particular, excess removal of trees during construction and encroachment on our remaining wetlands. Building a patio in the wetlands in violation of the ordinances does not present a hardship to the owner and, therefore, the decision to restore the property to its original state should be upheld and the appeal rejected."

B. Mr. and Mrs. Wysocki addressed the Board and reiterated the information they provided in their letter to the Board, stating they had not been aware of the RPA restrictions on their property and were not advised of it when they discussed the proposed project with Ford's Colony or the Landscape Companies.

C. Aaron Williams, Williams Landscaping, stated he also thought this lot was grandfathered from the RPA regulations because it had already been cleared and structures on the adjacent lots were much closer to the water. In addition he stated the proposed wetlands plantings were an improvement to the buffer on this lot.

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

Mr. Roadley asked Staff if the backyard of this property was actually classified as wetlands.

Mr. Woolson stated in his professional opinion it was not.

Mr. Mason stated he thought the owners should have further investigated the requirements for the RPA on their lot before commencing construction.

Mr. Apperson stated he understood the applicants misunderstanding given the condition of this and the adjacent properties.

Mr. Gussman stated if the application had come to the Board as an exception request it would probably have been approved and he did not feel this home owner should be significantly penalized in this situation.

Mr. Roadley stated given the alternatives for denial and since the applicant already had a landscaping plan that restored the buffer, he was in favor of granting the appeal.

Mr. Roadley made a motion to adopt the resolution granting the appeal for Chesapeake Bay Board case number CBV-10-007 on tax parcels # 3720500035 which included Staff's recommendation that an exception request for the patio be submitted and considered at a public hearing at the next regularly scheduled Chesapeake Bay Board meeting.

The motion was approved by a 4-0 vote.

At this time the Board took a 5 minute recess.

2. CBE-10-038 continued from 2/10/10 – Cooke's Garden Center

Mike Woolson, Senior Watershed Planner presented the following information to the Board:

Mr. Charlie Martino of Cooke's Garden Center has respectfully requested a continuance of Chesapeake Bay Board Case CBE-10-038 until the August 11, 2010 meeting of the Chesapeake Bay Board to allow time to finalize the requested site plans.

Staff concurs with this request and recommends the Board grant this extension.

Mr. Apperson made a motion to grant the deferral request and continue the public hearing for case number CBE-10-038 to August 11, 2010.

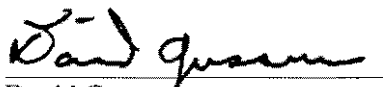
E. MATTERS OF SPECIAL PRIVILEGE

Mr. Gussman addressed staff and stated his concern that area landscapers and Ford's Colony Environmental Control Committee (ECC) might not be aware of the requirements under the Chesapeake Bay Act and the County's Chesapeake Bay Preservation Ordinance.

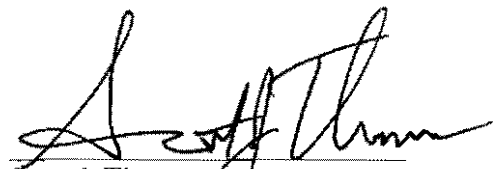
Scott J. Thomas, County Environmental Director and Administrator of the Chesapeake Bay Preservation Ordinance, stated there would be an RPA Workshop scheduled for this fall and the local landscapers would be invited. He advised the Board that Staff routinely works with the area Home Owner Associations on RPA education. In addition auxiliary programs such as Master Gardeners and Turf Love are working to educate citizens about the RPA.

F. ADJOURNMENT

The meeting adjourned at 8:05 PM.



David Gussman
Chair


Scott J. Thomas
Secretary to the Board