

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD**  
**MINUTES**  
**July 14, 2010**

**A. ROLL CALL**

David Gussman – Chair  
John Hughes  
Larry Waltrip  
Richard Mason - Alternate

**ABSENT**

Terence Elkins  
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 June 9, 2010 Board Meeting minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. CBE-10-082 – Wysocki – 113 Ridge Crossing**

Mike Woolson, Senior Watershed Planner presented the following case:

**Project Summary and Description**

Joseph and Patricia Wysocki applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the construction of a patio at the rear of their dwelling at the above referenced lot in Ford's Colony. The patio will create approximately 289 square feet of impervious cover in the RPA. The Chesapeake Bay Board upheld an appeal for this parcel at the June 9, 2010 meeting. Work had started on the patio without all proper authorizations and had been stopped. The RPA adjacent to the pond had been disturbed as well but it was determined by staff that no 'substantial' plant material had been removed by the applicant. The area in question had been converted by the previous homeowner(s).

The lot is 0.49 acres in size and is located adjacent to a stormwater management pond that ultimately drains to Powhatan Creek. The RPA buffer located on the lot encompasses 0.33 acres or approximately 67% of the lot. There is an existing residence on the lot that encroaches into the 100-foot RPA buffer. No mature vegetation will be removed from the lot to allow for the placement of the proposed patio.

A detailed RPA mitigation planting plan (plan) has been provided with this exception request that proposes to mitigate for the 289 square feet of impervious area by planting (2) native canopy tree, (3) native understory trees and (81) native shrubs in planting beds to filter runoff from the impervious areas. The applicant is also proposing many hundreds of native bunch grasses, perennials, and wetland plants. This plan exceeds the standard mitigation requirements of the County.

Staff offers the following recommendations and guidance to the Board:

1. The proposed patio is not attached to the residence and therefore cannot be considered part of the principal structure.
2. Staff considers the size and layout of the proposed patio to be appropriate for the surrounding neighborhood.
3. The applicant has submitted an RPA mitigation planting plan that exceeds the County's typical planting requirements.
4. Staff evaluated the adverse impacts caused by the additional 289 square feet of impervious area to be moderate.

### **Background**

The lot was recorded prior to the re-adoption of the Ordinance in 2004. There was no RPA present on the lot at recordation. However, effective January 1, 2004, the revised Ordinance went into effect establishing 100-foot RPA buffers around all water bodies with perennial flow. It has been determined that this pond had perennial flow entering into it, therefore an RPA buffer was placed on the lot. This 100 foot RPA buffer encompasses about 67% of the lot.

The applicant has applied for a patio totaling 289 square feet to be constructed on a single family residence located on the lot. The proposed 289 square feet of impervious area created by the patio is within the landward 50 foot RPA buffer.

According to the provisions in the Ordinance, when application of the buffer would result in the loss of a buildable area on a lot or parcel recorded between August 6, 1990 and January 1, 2004, encroachments into the buffer may be allowed through an administrative process in accordance with the following criteria:

1. The lot or parcel was created as a result of a legal process conducted in conformity with the County's subdivision regulations; and
2. Conditions or mitigation measures imposed through a previously approved exception shall be met; and
3. If the use of a BMP was previously required, the BMP shall be evaluated to determine if it continues to function effectively and, if necessary, the BMP shall be reestablished or repaired and maintained as required; and
4. Encroachments into the buffer shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities; and
5. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
6. The encroachment may not extend into the seaward 50 feet of the buffer area.

The patio is not considered to be part of the principal structure and is not considered to be a water dependant feature; therefore its location within the buffer precludes it from being approved administratively.

The issue for the Board's consideration is the 289 square feet of additional impervious area created by the patio within the RPA buffer.

### **Water Quality Impact Assessment**

Under Section 23-14 of the amended Ordinance, a water quality impact assessment (WQIA) must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPA. The applicant has submitted a WQIA for this project. The mitigation plan contained within the WQIA offsets the proposed impervious cover impacts by planting (2) native tree, (3) native understory tree, and (81) shrubs within the RPA buffer to help filter runoff. This vegetation will be located to the rear of the proposed residence.

The owners have submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The Board is to determine whether or not the proposed development is consistent with the spirit and intent of the Ordinance and make a finding based upon the following criteria, as outlined in Section 23-14(c) of the Chesapeake Bay Ordinance:

1. The exception request is the minimum necessary to afford relief;
2. Granting the exception will not confer upon the applicant any special privileges denied by this chapter to other property owners similarly situated in the vicinity;
3. The exception request will be in harmony with the purpose and intent of this chapter, and is not of substantial detriment to water quality;
4. The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels; and
5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality

### **Recommendations**

The Ordinance does not authorize staff to give administrative approval for the placement of this patio within the RPA buffer.

Staff has evaluated the adverse impacts associated with the proposed deck and has determined them to be moderate.

The Board has in the past granted similar exception requests.

Should the Board vote to approve the exception, Staff recommends the following conditions be applied:

1. Full implementation of the RPA mitigation planting plan submitted with the WQIA.
2. The size of the trees planted shall be a minimum of 1-1/2 inch caliper (six to eight feet tall) and the shrubs shall be 3 gallon size (or approved equal). All vegetation shall be native species approved by the Environmental Division.
3. This exception shall become null and void if construction of the patio and all required mitigation planting is not completed within 12 months from the date the exception or waiver is granted by the Board

All recommendations adopted by the Board must be incorporated into the site plans for the project, which then must be approved by the Environmental Division before construction can begin. If the Board grants the exception, the proposed mitigation plan is in accordance with the standard mitigation requirements for impervious surfaces.

Mr. Mason asked for clarification on the placement and number of mitigation plantings.

Mr. Woolson described the type and location of the plantings and stated that in his opinion they would adequately mitigate for the proposed impervious surface.

Mr. Gussman opened the public hearing.

**A.** Aaron Williams, Williams Landscaping, said staff did a good job of presenting the application and describing the mitigation. He added that from the beginning the intent was to improve the buffer.

**B.** Joseph Wysocki, owner, felt a disconnect between Ford's Colony ERC requirements and James City County requirements led to the project undertaking, prior to County approval.

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

All Board members agreed the mitigation plan was an improvement to the current conditions.

Mr. Hughes made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case number CBE-10-082 on tax parcels # 3720500035.

The motion was approved by a 4-0 vote.

**D. BOARD CONSIDERATIONS - none**

**E. MATTERS OF SPECIAL PRIVILEGE**

Scott J. Thomas, County Environmental Director and Administrator of the Chesapeake Bay Preservation Ordinance, presented the following information from the Annual Report to the Virginia Dept. of Conservation and Recreation (DCR), Chesapeake Bay Local Assistance (CBLA).

WETLANDS/CHESAPEAKE BAY PRESERVATION AREA PROGRAMS

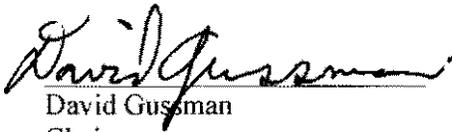
FISCAL YEAR 2010 (July 1, 2009 to June 30, 2010)  
WETLANDS BOARD CASES 8  
CHESAPEAKE BAY BOARD CASES 26  
ADMINISTRATIVE CASES 129

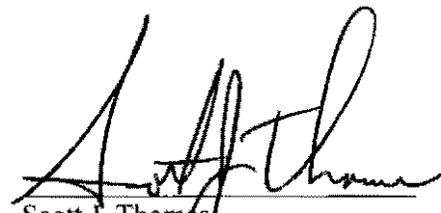
FISCAL YEAR 2009 (July 1, 2008 to June 30, 2009)  
WETLANDS BOARD 13  
CHESAPEAKE BAY BOARD CASES 21  
ADMINISTRATIVE CASES 125

Staff and the Board also discussed the reasons and methods for educating citizens and local home owner associations on the Chesapeake Bay Preservation Act and requirements of the County's Chesapeake Bay Preservation Ordinance.

**F. ADJOURNMENT**

The meeting adjourned at 7:30 PM.

  
David Gusman  
Chair

  
Scott J. Thomas  
Secretary to the Board