

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
May 11, 2011**

A. ROLL CALL

ABSENT

David Gussman – Chair
William Apperson
John Hughes
Larry Waltrip
Charles Roadley

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 April 13, 2011 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBE-11-100: Suttle – 25 Whitakers Mill

Michael Majdeski, Senior Inspector presented the following case information:

Existing Site Data & Information

Applicant:	Michael Suttle
Land Owner:	Michael Suttle
Location:	25 Whittaker's Mill
Parcel:	Lot 25, Whittaker's Mill, Kingsmill Subdivision
Parcel Identification:	5040300025
Lot Size:	1.21 acres
RPA Area on Lot:	0.59 acres or 48.7% of the lot
Watershed:	College Creek (HUC Code JL35)
Proposed Activity:	Installation of a new stone retaining wall

Proposed Impacts

Impervious Area:	Approximately 200 square feet
RPA Encroachment:	Seaward 50 foot RPA Buffer

Brief Summary and Description of Activities

Mr. Michael Suttle of 25 Whittaker's Mill of the Kingsmill Subdivision applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachment into the RPA buffer for the construction of a new stone retaining wall, approximately 200 square feet of disturbance. The proposed retaining wall is approximately forty and one half feet long and four and one half feet in height to be located on the western end of the property directly adjacent to the back of the existing residence. The entire proposed stone retaining wall will be situated within the seaward 50 ft. RPA buffer.

A detailed RPA Mitigation Planting Plan (Plan) has been provided along with the exception request for your review. The plan proposes to mitigate for the RPA impacts by planting one (1) native tree, fifteen (15) native shrubs, and a rain garden to be installed at the midpoint of the proposed retaining wall. The amount of plantings along with the proposed rain garden exceeds the standard mitigation planting requirements of the County for impervious cover impacts.

The application provided includes a detailed drawing of the cross-section of the proposed retaining wall. Staff considers the entire retaining wall to be impervious cover (approximately 50 sf). Access to the site will be provided from the left corner of the driveway and along the left side of the residence to the work area.

Staff Recommendations

The issue before the Board is the addition of approximately 50 square feet of impervious area within the seaward RPA buffer for construction of a new stone retaining wall. 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. There are five (5) review criteria within this section of the ordinance.

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be minimal and are adequately offset with implementation of the mitigation plan. If the Board favors the resolution to grant approval, staff recommends the incorporation of the following conditions into the approval:

1. The applicant must obtain all other necessary permits as required for the project.
2. A pre-construction meeting must be held on-site prior to the commencement of work.
3. All proposed mitigation plantings shall meet James City County standards of 1" caliper for the canopy and understory trees and proposed shrubs shall be minimum three gallon size.
4. Staff reserves the right to require erosion and sediment controls if field conditions warrant their use.
5. 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) which is providing 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 May 11, 2012 or all improvements including the required mitigation plantings are not completed by that expiration date.
7. 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.

Background

Based on staff review of County records, the lot was recorded prior to the adoption of the Chesapeake Bay Preservation Ordinance. In 1990, the Ordinance was adopted and established a 100 foot RPA buffer on the lot. The house was then constructed in 1993. As the proposed retaining wall is considered accessory in nature, it cannot be administratively reviewed and therefore in accordance with section 23-14 of the Ordinance, an exception request must be considered by the Chesapeake Bay Board following public hearing under the formal exception process. The exception request before the board, and decision to approve or deny by resolution, is for encroachment into the RPA buffer for the construction of a retaining wall approximately 200 square feet in size.

For the Board's information, the opposite retaining wall shown on the plan is a replacement in place of an existing timber retaining wall. The existing wall has been in place since the original construction of the home which pre-dates the adoption of the 2004 revised Chesapeake Bay Preservation Ordinance. As this is a replacement of the existing structure that was in place prior to the adoption of the 2004 CBPO revision, it will only require an administrative approval by the Division for its installation. The applicant has been informed and is aware of this requirement. It is the Staff's understanding that the applicant will undertake the construction of both walls simultaneously to minimize impacts to the RPA.

Water Quality Impact Assessment (WQIA)

Under Sections 23-11 and 23-14 of the County's Chesapeake Bay Preservation ordinance, a water quality impact assessment (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*. The applicant has submitted a *County Sensitive Area Activity Application* and a required mitigation plan, both of which are included in the case report packet.

Consideration by the Chesapeake Bay Board

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-11-100 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-11-100 are included for the Board's use and decision.

Mr. Gussman opened the public hearing.

A. Mr. Brian Gillespie, representative for the applicant, stated he would answer questions from the Board.

Mr. Gussman closed the public hearing as there were no questions from the Board and no one else wished to speak.

Mr. Roadley asked if there was a stormwater erosion problem on the property.

Mr. Majdeski stated there would be plantings inside and outside of the rain garden to mitigate for the added impervious surface and to treat any sheet flow on the property.

Mr. Hughes made a motion to adopt the resolution granting the exception request for Chesapeake Bay Board case #CBE-11-100 at 25 Whitakers Mill, Parcel ID #5040300025.

The motion was approved by a 5-0 vote.

2. CBE-11-101: Swietuchowski – 125 Braddock

Michael Majdeski, Senior Inspector presented the following case information:

Existing Site Data & Information

Applicant:	Piotr Swietuchowski
Land Owner:	Piotr Swietuchowski
Location:	125 Braddock Road
Parcel:	Lot 63, Marywood Subdivision
Parcel Identification:	4722600063
Lot Size:	0.36 acres
RPA Area on Lot:	0.07 acres or 19.4% of the lot
Watershed:	Mill Creek (HUC Code JL33)
Proposed Activity:	Installation of a storage shed

Proposed Impacts

Impervious Area: 150 square feet
RPA Encroachment: Landward 50 foot RPA Buffer

Brief Summary and Description of Activities

Mr. Piotr Swietuchowski of 125 Braddock Road in the Marywood Subdivision applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachment into the RPA buffer for the construction of a storage shed approximately 150 square feet in size. The proposed shed is approximately 15 ft. x 10 ft. and will be located at the rear of the property adjacent to a heavily wooded area. The proposed shed lies entirely within the landward 50 ft. RPA buffer. The location was chosen due to moderately steep slopes in the main backyard area that would inhibit a stable area to place the shed.

A RPA Mitigation Planting Plan (Plan) has been provided along with the exception request for your review. The plan proposes to mitigate for the RPA impacts by planting four (4) native canopy trees directly adjacent to the location of the proposed shed. The applicant has agreed in the mitigation plan, to allow Engineering and Resource Protection Division Staff to determine the type of native canopy trees to be used for the mitigation. The number of plantings proposed exceeds the standard mitigation planting requirements of the County for impervious cover impacts.

Staff Recommendations

The issue before the Board is the addition of 150 square feet of impervious area within the landward RPA buffer for construction of the shed. 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. There are five review criteria within this section of the ordinance.

Staff has fully reviewed the application and exception request and has determined impacts associated with the proposal to be minimal and are adequately offset with implementation of the mitigation plan. If the Board favors the resolution to grant approval, staff recommends the incorporation of the following conditions into the approval:

1. The applicant must obtain all other necessary permits as required for the project.
2. All proposed mitigation plantings shall meet James City County standards of 1" caliper for the canopy and understory trees and proposed shrubs shall be minimum three gallon size.
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) which is providing 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 May 11, 2012 or all improvements including the required mitigation plantings are not completed by that expiration date.
5. 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.

Background

Based on staff review of County records, the lot was recorded following the adoption of the Chesapeake Bay Preservation Ordinance and the house was built in 2008. As the proposed shed is considered accessory in nature, it cannot be administratively reviewed and therefore in accordance with section 23-14 of the Ordinance, an exception request must be considered by the Chesapeake Bay Board following public hearing under the formal exception process. The exception request before the board, and decision to approve or deny by resolution, is for encroachment into the RPA buffer for the construction of a storage shed approximately 150 square feet in size.

For the Board's information, a Chesapeake Bay Ordinance Notice of Violation was issued to the landowner on November 18, 2010 for unauthorized removal of trees in the RPA. The restoration agreement required that the landowner restore the RPA to its natural state, provide four new trees along the RPA line, and post surety to guarantee the new plantings. To date, the landowner has completely complied with the terms of the restoration agreement and the Division deems this violation resolution as complete.

Water Quality Impact Assessment (WQIA)

Under Sections 23-11 and 23-14 of the County's Chesapeake Bay Preservation ordinance, a water quality impact assessment (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*. The applicant has submitted a *County Sensitive Area Activity Application* and a required mitigation plan, both of which are included in the case report packet. The map provided shows features of the proposal along with a mitigation plan for native plantings.

Consideration by the Chesapeake Bay Board

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-11-101 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-11-101 are included for the Board's use and decision.

Mr. Roadley asked staff if there was a photograph that illustrated the slope on the property.

Staff displayed the appropriate photo of the property that was submitted with the application.

A. Mr. Piotr Swietuchowski, property owner, stated he would answer questions from the Board.

Mr. Gussman closed the public hearing as there were no questions from the Board and no one else wished to speak.

All Board members agreed this was the most suitable spot on the property for the shed and as other properties in the area has storage sheds, granting this exception would not confer any special privileges to this owner.

Mr. Hughes made a motion to adopt the resolution granting the exception request for Chesapeake Bay Board case #CBE-11-101 at 125 Braddock Road, Parcel ID #4722600063.

The motion was approved by a 5-0 vote.

D. BOARD CONSIDERATIONS - None

E. MATTERS OF SPECIAL PRIVILEGE

1. Clean the Bay Day, Saturday June 4, 2011

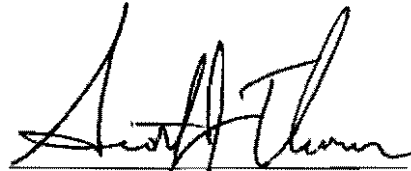
Scott J. Thomas, Director of Engineering and Resource Protection, provided information on 'Clean the Bay Day' on June 4, 2011, sponsored by the Chesapeake Bay Foundation as well as the shoreline planting project at Jamestown Beach on May 21, 2011 from 9 am to 12 Noon..

F. ADJOURNMENT

The meeting adjourned at 7:22 PM.



David Gusman
Chair


Scott J. Thomas
Secretary to the Board