

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
August 10, 2011**

**A. ROLL CALL**

David Gussman – Chair  
John Hughes  
Larry Waltrip  
Roger Schmidt – Alternate

**ABSENT**

William Apperson  
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 July 13, 2011 Board Meeting minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. CBE-11-134: Crawford/Adams – 132 Nottinghamshire – continued from July 13, 2011**

Michael Woolson, Senior Watershed Planner presented the following case information:

Mr. Woody Crawford, agent for Jim and Judy Adams of 132 Nottinghamshire, requested a 60 day deferral for the restoration plan that he committed to provide within 15 days of the last Chesapeake Bay Board meeting (July 13, 2011). Staff met with Mr. Crawford on July 19, 2011 to discuss options available to his client.

A landscape plan was submitted to the County Engineering and Resource Protection office late Tuesday, August 9, 2011 and was available for the Board however; Staff had not yet reviewed it.

Mr. Gussman stated he preferred that Staff review the plan first and present it to the Board with their comments.

Mr. Hughes asked if the work currently in progress on the property needed to be addressed by the Board and asked if Staff could have the plan reviewed by the next Board meeting in September.

Mr. Woolson stated that since the landscape plan had been submitted and the area was stabilized, the Board did not need to take any further action other than a decision on the requested deferral. He informed them that Staff could have the plan reviewed by the September meeting.

Mr. Gussman did not feel the request for a 60 day deferral was unreasonable.

Mr. Hughes made a motion to defer the Board's decision and continue the public hearing on case CBE-11-134 at 132 Nottinghamshire, to no later than October 12, 2011.

The motion was approved by a 4-0 vote.

## **2. CBE-11-144: Schafrik/Wilson – 121 Stowe Nottinghamshire**

Michael Woolson, Senior Watershed Planner presented the following case information:

### **Summary Facts**

Applicant: Jonathan Blair Wilson, PE (Mitchell-Wilson Associates, P.C.)  
Land Owner: Robert E. & Mary L. Schafrik  
Location: 121 Stowe, Williamsburg, Virginia  
PIN 3720600043  
Parcel: Ford's Colony Section 13-B, Lot 43  
Parcel Size/Zoning: 0.54 +/- acres, R4 Residential Planned Community  
Percent of Parcel in RPA: 69% (0.37 +/- acres)  
Watershed: Powhatan Creek, nontidal mainstem (HUC Code JL31)

### **Proposed Impacts**

Impervious Area: - 1,800 square feet (sq ft), landward 50 ft RPA (principal structure), **approved** administratively under case number CBE-09-064  
- 121 sq ft, seaward 50 ft RPA (gazebo), **approved** by CBB under case number CBE-10-004  
- 1,065 sq ft, seaward 50 ft RPA actually built (944 sq ft not approved)  
- 640 sq ft, seaward 50 ft RPA proposed to remain (removal of 425 sq ft not approved)  
RPA Encroachment: 519 sq ft (640 – 121 = 519 sq ft), seaward 50 foot RPA

### **Brief Summary and Description of Activities**

Mr. Blair Wilson, on behalf of Mr. and Mrs. Schafrik, applied for an exception to the Chesapeake Bay Ordinance for the encroachment into the RPA buffer for concrete ground gutters, concrete walkway, brick paver walkway, and a wooden foot bridge to access a gazebo previously permitted under CBE-10-004. The encroachments for the walkways and footbridge provide for a stable, non-erodible access path to the permitted gazebo.

The principal structure started construction in 2009. An administrative exception was granted to construct the residence and sanitary sewer connection under CBE-09-064 on February 2, 2009. A second exception was granted by the Chesapeake Bay Board on August 12, 2009 for an after-the-fact approval for a gazebo under CBE-10-004. During a routine mitigation inspection in May 2010, it was noted by staff that there were unpermitted improvements within the RPA. A detailed letter of concern (in the case file) was issued by the Division director on June 25, 2010 regarding the various unpermitted items and unaddressed issues from case CBB-10-004.

The applicant proposes to remove 425 sq ft of existing 1,065 sq ft of unpermitted concrete impervious cover plus plant 3 canopy trees, 3 understory trees, and 15 shrubs. The proposed plant material is in addition to all previously approved mitigation plantings. In accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing is held. Furthermore, staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

### **Staff Recommendation**

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be moderate. Staff recommends denial of this Chesapeake Bay exception due to the unpermitted nature of the activities. However, if the Board decides to adopt the resolution to approve this Chesapeake Bay exception request, the following conditions are recommended:

1. The applicant must obtain all other necessary local 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 with the proposed shrubs being of three gallon size.
3. A pre-construction meeting shall be held on-site prior to work commencing.
4. Full implementation of the RPA Mitigation Plan, the removal of the existing concrete, 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) by providing a form of surety satisfactory to the County Attorney.
5. This exception request approval shall become null and void if the concrete removal and mitigation plantings have not been completed by August 10, 2012.
6. 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.

#### **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-11-144 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-11-144 are included for the Board's use and decision.

Mr. Waltrip asked how long the gazebo had been in place.

Mr. Woolson stated it was completed shortly after the exception was granted by this Board in August of 2009. However that exception did not include the accessory items that were now before the Board with this application.

Mr. Hughes asked who actually did the work and why this was an after-the-fact application. He also asked if a building permit was required for the foot bridge and if the structures in this application were discussed when the gazebo was before the Board.

Mr. Woolson stated the applicant was present to discuss the contracted work. Staff was waiting for the Board's action tonight before issuing a Notice of Violation because removal of the structures would leave the approved gazebo inaccessible. The minutes from the August 2009 Board meeting did not indicate and to the best of current Staff's knowledge, none of the structures in this application, were discussed during the August 2009 meeting. He also said he would check with the County Building Safety and Permits Division to see if a permit was required for the foot bridge.

Mr. Gussman opened the public hearing.

A. Mary Schafrik, the applicant and property owner, stated she and her husband were willing to follow any directions from the Board. She informed the Board that they lived out of state, this was the first time they had contracted to have a house built, and they relied completely on the builder, Warren Barnes, who was listed as an approved master builder by Ford's Colony. Until they received a notice from the County they were not aware the structures had not been approved or permitted. She displayed some overhead photographs that showed properties on the other side of the pond with concrete structures closer to the water than those on her property. She also displayed photographs of the structures on her property and stated they hired Mr. Blair Wilson to do a water quality impact study and assist with this exception request.

Mr. Schmidt asked if the slope was mulched all the way to the water.

A. Mary Schafrik displayed a photograph depicting about ten feet of vegetation from the edge of the pond and stated she had planted all native grasses on the recommendation of a Virginia gardening company.

B. Blair Wilson with Mitchell-Wilson Associates stated that had the builder requested permission for these structures with the gazebo, this situation could have been avoided. He mentioned the property was platted prior to the 2004 Ordinance revision that placed the RPA on this property and around the pond which was designed as a stormwater retention facility. He believed the 640 sqft of impervious surface in this application represented a minimal to moderate impact and the stabilization of the stream bed, the sediment forebay, and the emerging vegetation actually work to improve the water quality of the runoff from this property.

Mr. Hughes asked if it was necessary to have the brick pathway to the gazebo as opposed to a more pervious surface.

B. Blair Wilson stated the brick paver was open jointed making it partially pervious and due to the age of the occupants the more stable surface was preferred.

Mr. Hughes stated his dilemma was the gazebo probably would not have been approved if it had not already been started and if the gazebo was not built, there would be no need for a foot bridge or other access to the gazebo.

Mr. Waltrip asked if the 50 foot RPA buffer was indicated on the original site plan.

Mr. Schmidt asked when the RPA was placed around the stream.

B. Blair Wilson agreed the situation had been created by the builder however the result was still not a major impact to water quality. The site plan from the board package indicated the 50 foot buffer at that time the gazebo was constructed. Mr. Wilson stated the 50 foot buffer on the perennial stream was based on his visit to the property in June of this year.

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

Mr. Hughes felt this situation was caused by the builder. The property owners were now faced with the responsibility and expense of correcting it and he did not wish to add to their burden.

Mr. Gussman was concerned with two requests for after-the-fact exceptions on the same property. However he noted the impacts were minor in nature and he agreed with Mr. Hughes comments regarding the position of the property owners.

Mr. Hughes made a motion to adopt the resolution granting the exception request for Chesapeake Bay Board case CBE-11-144 at 121 Stowe, Parcel ID #3720600043.

The motion was approved by a 4-0 vote.

#### **D. BOARD CONSIDERATIONS - none**

**E. MATTERS OF SPECIAL PRIVILEGE**

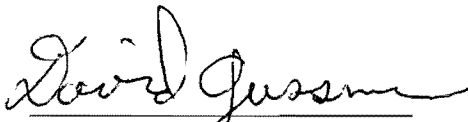
Mr. Hughes asked if there was a way to make sure the contractors who habitually violated the County Ordinances were held accountable for their actions.

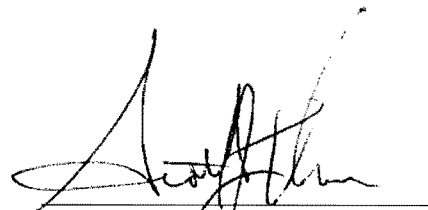
Mr. Gussman stated that contractors were licensed by the state and asked for guidance on how to proceed.

Lola Perkins, Assistant County Attorney, stated she would research this request and advise the Board on how they might appropriately relay their concerns to the state Department of Professional and Occupational Regulation (DPOR).

**F. ADJOURNMENT**

The meeting adjourned at 8:18 PM.

  
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David Gussman  
Chair

  
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Scott J. Thomas  
Secretary to the Board