

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
February 8, 2012**

A. ROLL CALL

David Gussman – Chair
William Apperson
John Hughes
Charles Roadley
Louis Bott – Alternate

ABSENT

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.

B. MINUTES

The January 11, 2012 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBE-11-129 - Drygala – 3649 Bridgewater – continued from 7/13, 10/12, and 12/14/11

Michael Woolson, Senior Watershed Planner informed the Board the applicant was requesting another 60 day deferral. Mr. Drygala is changing the scope of work originally proposed and needs additional time to work on his proposal. Staff concurs with his request.

Mr. Hughes made a motion to defer the decision and continue the public hearing another 60 days to April 11, 2012 for Chesapeake Bay Board case CBE-11-129 at 3649 Bridgewater, Parcel ID #384176008.

The motion was approved by a 5-0 vote.

2. CBE-12-032 – AES/NewTown Assoc – New Town, Sec 7, Phase 10

Mr. Roadley abstained from action on this case due to a professional relationship with the applicant.

Tina Creech, Senior Inspector presented the following case information:

Existing Site Data & Information

Applicant:	AES Consulting Engineers – Robert Cosby
Project Developer:	NewTown Associates LLC
Impact Location:	4400 Casey Boulevard Williamsburg, VA 23188 PIN: 3840100056: Newtown Associates LLC, owner
Project Size/Zoning:	15.68 ac +/-, MU Mixed Use w/proffers
Area of Project in RPA:	4.3 ac +/- (27% of Phase 10)
Watershed:	Powhatan Creek, subwatershed 208 (HUC Code JL31)
Proposed Activity:	Pedestrian/Sewer Bridge Construction and BMP Access
County Plan No:	S-25-11

Proposed RPA Impacts

Chesapeake Bay Preservation Ordinance - Board Consideration

Pedestrian/Sewer Bridge: 3,822 sq ft (.087 ac)

BMP Access Road: 0 sq ft - collocated within the JCSA easement

Chesapeake Bay Preservation Ordinance - Administrative Approval

BMP/SW outfalls encroachments: 1,624 square feet (0.037 ac)

Chesapeake Bay Preservation Ordinance - Exempt

Passive Recreation Trail: 0 sq. ft. - collocated in JCSA Easement

Brief Summary and Description of Activities

Mr. Robert Cosby of AES Consulting Engineers, on behalf of NewTown Associates LLC, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachments into the Resource Protection Area (RPA) buffer for the construction of a pedestrian/sewer bridge and BMP access road for New Town Section 7, Phase 10 project in James City County.

The proposed project falls under the regulations set forth within the Ordinance adopted in 1990 as well as the subsequent 2004 revisions to the Ordinance. The submitted Water Quality Impact Assessment contains information pertaining to administrative, exempt, and Board actions. The impacts associated with the proposed outfall for the BMP and stilling basin can be processed and approved administratively as they are considered water dependent features. The gravel trail located in the JCSA easement can be processed administratively as an exemption as it is utilized for passive recreation. Impacts associated with the pedestrian and sewer bridge requires Chesapeake Bay Board (Board) approval through the formal exception process since it does not qualify for administrative approval under the provisions of Section 23-7(a) of the Ordinance and 9VAC10-20-130 of the Chesapeake Bay Preservation Area Designation and Management Regulations.

Staff Evaluation

Staff has evaluated the application and exception request for all work as described above. The proposal is for a pedestrian/sewer bridge and BMP access road that will provide service to the New Town Section 7, Phase 10 project. Staff finds that the application has met the conditions in the Ordinance, Sections 23-11 and 23-14, and that the application should be considered by the Board.

Water Quality Impact Assessment (WQIA)

In accordance with Bay Act requirements and the Ordinance, any development or redevelopment exceeding 2,500 square feet of land disturbance in the Chesapeake Bay Preservation Area (CBPA) requires a plan of development and stormwater management plan, if applicable. All land disturbance, development, or redevelopment within the RPA also requires WQIA that shall identify impacts of proposed development on water quality and land in RPAs and recommended measures for mitigation of these impacts. Localities must review a WQIA prior to action on the exception request. James City County has established guidelines for submission of minor/major WQIAs.

A WQIA was submitted with the plan of development for the project (County subdivision plan No. S-25-11). The WQIA was provided on January 18, 2012. Based on staff review, the WQIA proposes to mitigate for RPA impacts by:

- Use of conservation seed mixture for revegetating cleared areas within the buffer; and
- Use of enhanced outlet protection (stilling basin) for the stormwater BMP outfall; and
- Use of two low impact development (LID) features adjacent to the RPA to intercept and treat runoff from rear lots;

Staff Recommendations

Staff has fully reviewed the application and exception request and has determined impacts associated with the proposal to be **low** for the proposed development and that the proposed mitigation measures are acceptable with conditions. Staff recommends the Board approve this Chesapeake Bay Exception with the following conditions:

1. The applicant must obtain all other necessary federal, state and local permits as required for the project; and
2. Use of silt fence for areas to be disturbed within the RPA; and
3. Construction shall be in accordance with the provisions of approved County subdivision plan no. S-25-11; and
4. Installation of enhanced outlet protection (stilling basin) for the stormwater BMP outfall; and
5. Written evidence from the James City Service Authority (JCSA) that the BMP access road and gravel trail are acceptable in their easement prior to land disturbance permit issuance; and
6. All natural open space and deed of easements for Phase 7 and 8, per the approved Stormwater Master Plan, must be recorded with the subdivision plan; and
7. Nutrient management plan requirements, per the approved proffers, shall be submitted and approved prior to subdivision recordation; and
8. The outfall pipe from low impact development (LID) #1 shall extend to the bottom of slope and have appropriately sized outlet protection; and
9. This exception request approval shall become null and void if construction has not begun by February 8, 2013.
10. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection 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 Ordinance. The Board is to fully consider Chesapeake Bay Exception CBE-12-032 as outlined and presented above and review the request for exception and the WQIA. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the Ordinance. Resolutions for granting approval or denying Chesapeake Bay Exception CBE-12-032 are included for the Board's use and decision.

Mr. Gussman opened the public hearing and then closed the public hearing as no one wished to speak.

All Board members agreed the proposal and presentation were reasonable and complete.

Mr. Apperson made a motion to adopt the resolution granting the exception on Chesapeake Bay Board Case #CBE-12-032 for New Town Section 7 Phase 10 at 400 Casey Blvd, Parcel ID #3840100056

The motion was approved by a 4-0-1 vote (Yea: Apperson, Bott, Hughes, Gussman)
(Nay: None) (Abstain: Roadley)

3. CBE-12-058 – Williams Landscape/Davis – 2266 West Island

Michael Majdeski, Senior Inspector presented the following case information:

Existing Site Data & Information

Applicant:	Aaron Williams
Land Owner:	Paul and Nancy Davis
Location:	2266 West Island
Parcel:	Lot 36, Governor's Land Subdivision
Parcel Identification:	4410200036
Lot Size:	0.60 acres
RPA Area on Lot:	0.18 acres or 30% of the lot (RPA only)
Watershed:	James River (HUC Code JL30)
Proposed Activity:	Installation of raised paver patio, stone walkway, and associated walls.

Proposed Impacts

Impervious Area: 600 square feet (approximate)
RPA Encroachment: 600 square feet to the landward 50 foot RPA Buffer

Brief Summary and Description of Activities

Mr. Aaron Williams on behalf of Mr. Paul and Nancy Davis applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the Resource Protection Area buffer (RPA) for the construction of a raised paver patio, flagstone walkway, and three associated retaining walls at 2266 West Landing within the Governor's Land Subdivision. The lot was platted following the 1990 adoption of the Ordinance but prior to the 2004 revisions to the Ordinance. The proposed improvements are within the landward 50 foot RPA buffer.

The proposed improvements will be located within the landward 50' RPA buffer in areas directly adjacent to the existing residence. The proposed flagstone walkway and its associated walls will be constructed along the rear side of the existing residence. The raised paver patio will be installed directly adjacent to the building itself and will connect the home to the proposed stone walkways. The stone that will be utilized for the patio consists of natural stone pavers set in a herring bone pattern that are to be dry-laid and not mortared. The proposed flagstone walkway is to be constructed in the same fashion as the patio area. The applicant also provides an extensive planting plan to enhance the proposed improvements with both native and non-native species vegetation. The area that lies directly to the east of the proposed improvements will remain in its natural state.

Staff Recommendations

The issue before the Chesapeake Bay Board (Board) is the installation of the paver patio, the stone walkways, and the associated stone walls creating 600 square feet of impervious area within the landward 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. There are five review criteria within this section of the ordinance.

Staff recommends approval of the application with the incorporation of the following conditions into the approval:

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 proposed shrubs shall be minimum three gallon size.
3. Full implementation of the approved RPA Mitigation Plan and any additional Board mitigation requirements shall be guaranteed through a form of surety satisfactory to the County Attorney and the provisions of the Ordinance contained in Sections 23-10(3) (d) and 23-17(c).
4. This exception request approval shall become null and void if construction has not begun by February 8, 2013.
5. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection 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 Ordinance. As the proposed accessory structures are located within the RPA buffer, they cannot be administratively reviewed and therefore in accordance with section 23-14 of the Chesapeake Bay Preservation Ordinance, an exception request must be considered by the 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 the paver patio, the retaining walls, and the stone paver walkways.

Water Quality Impact Assessment (WQIA)

Under Sections 23-11 and 23-14 of the 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 detailed mitigation plan, both of which are included in the case report packet.

The applicant proposes to provide three (3) native canopy and twenty-five (25) native shrubs to offset the impacts to the RPA. The proposed mitigation exceeds the mitigation standard requirements for the proposed impacts. The applicant also proposes to use pervious paver design techniques with the installation of the walkways and patio.

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 Ordinance. The Board is to fully consider Chesapeake Bay Exception CBE-12-058 as outlined and presented above and review the request for exception and the WQIA. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the Ordinance. Resolutions for granting approval or denying Chesapeake Bay Exception CBE-12-058 are included for the Board's use and decision.

Mr. Hughes asked if the property ended at the current turf area and if there was a problem with erosion that required the installation of retaining walls.

Mr. Majdeski stated there was not really a problem with erosion and the flagstone walls were mostly for aesthetic purposes along the walkway.

Mr. Roadley asked if the previous encroachment into the RPA for the house done with an exception request.

Mr. Woolson stated he believed the entire house was constructed prior to the 2004 revision to the Ordinance.

Mr. Gussman opened the public hearing.

A. Aaron Williams, Williams Landscape stated the proposal was to replace the turf with a more natural setting and to install the walkways to help maintain this setting. He described the construction of the pathway and walls and stated that the walls would help with some minor erosion on this sloped yard.

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

Mr. Roadley asked staff if the walkway was considered a permeable surface.

Mr. Majdeski stated it was not and this was the reason for the required mitigation.

Mr. Roadley felt that for consistency, he felt the Board should consider other applications where the Board was concerned with the encroachment into the RPA for a backyard area.

Mr. Gussman felt that considering the neighborhood, this exception request met the standard to not confer special privileges that were denied to other property owners similarly situated in the vicinity.

Mr. Hughes and Mr. Apperson felt that replacing the turf yard that was maintained with fertilizer would improve water quality.

Mr. Hughes made a motion to adopt the resolution granting the exception on Chesapeake Bay Board Case #CBE-12-058 at 2266 West Island, Parcel ID # 4410200036

The motion was approved by a 3-2 vote (Yea: Hughes, Apperson, and Gussman)
(Nay: Roadley and Bott)

4. CBE-12-069 – Pratt – 125 Mattaponi Tr

Michael Majdeski, Senior Inspector presented the following case information:

Existing Site Data & Information

Applicant: Norman J. Pratt
Land Owner: Norman J. Pratt
Location: 125 Mattaponi Trail
Parcel: Lot 17, Season's Trace Subdivision
Parcel Identification: 3232200017
Lot Size: 0.58 acres
RPA Area on Lot: 0.48 acres or 83% of the lot (RPA only)
Watershed: Powhatan Creek (HUC Code JL31)
Proposed Activity: Installation of wooden steps and landing to connect existing patio to backyard.

Proposed Impacts

Impervious Area: 72 square feet (approximate)
RPA Encroachment: 72 square feet to the landward 50 foot RPA Buffer

Brief Summary and Description of Activities

Mr. Norman J. Pratt has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the Resource Protection Area (RPA) buffer for the construction of a set of steps and an associated wooden landing to connect an existing deck and patio to the backyard of the property. The project is located at 125 Mattaponi Trail within the Season's Trace subdivision. The lot was platted following the 1990 adoption of the Ordinance but prior to the 2004 revisions to the Ordinance.

The proposed improvements will be located within the landward 50' RPA buffer in areas directly adjacent to the existing residence. The proposed steps and wooden landing will be located directly adjacent to the existing patio and deck to provide a safe access to the backyard area.

Staff Recommendations

The issue before the Chesapeake Bay Board (Board) is the installation of the steps and wooden landing that will create 72 square feet of impervious area within the landward 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. There are five review criteria within this section of the ordinance.

Staff recommends approval of the application with the incorporation of the following conditions into the approval:

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 proposed shrubs shall be minimum three gallon size.
3. Full implementation of the approved RPA Mitigation Plan and any additional Board mitigation requirements shall be guaranteed through a form of surety satisfactory to the County Attorney and the provisions of the Ordinance contained in Sections 23-10(3) (d) and 23-17(c).
4. This exception request approval shall become null and void if construction has not begun by February 8, 2013.
5. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection 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 Ordinance. As the proposed accessory structures are located within the RPA buffer, they cannot be administratively reviewed

and therefore in accordance with section 23-14 of the Ordinance, an exception request must be considered by the 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 the steps and wooden landing adjacent to the existing patio and deck.

Water Quality Impact Assessment (WQIA)

Under Sections 23-11 and 23-14 of the 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 detailed mitigation plan, both of which are included in the case report packet.

The applicant provided mitigation for impacts from a previous administratively approved exception request (CBE-12-045) to rebuild and expand the deck that was damaged during hurricane Irene. This mitigation consisted of six native shrubs or two native understory trees. The previously approved mitigation and surety is adequate to offset both project impacts and is acceptable to staff as proposed.

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 Ordinance. The Board is to fully consider Chesapeake Bay Exception CBE-12-069 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 Ordinance. Resolutions for granting approval or denial of Chesapeake Bay Exception CBE-12-069 are included for the Board's use and decision.

Mr. Hughes asked why the steps were not included with the exception request for the deck.

Mr. Roadley asked if the concrete patio was being undermined by erosion.

Mr. Majdeski did not know why the applicant had not requested the steps and landing with the deck rebuild.

Mr. Woolson informed the Board that this property had been severely impacted by hurricane Irene. There were 6 to 8 uprooted trees that probably caused the current erosion problem and the proposed mitigation plan addressed this erosion.

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

Mr. Bott made a motion to adopt the resolution granting the exception on Chesapeake Bay Board Case #CBE-12-069 at 125 Mattaponi Trail, Parcel ID # 3232200017.

The motion was approved by a 5-0 vote

D. BOARD CONSIDERATIONS

Mr. Roadley abstained from action on this case due to a professional relationship with the applicant.

Michael Woolson, Senior Watershed Planner presented the following request to the Board:

Mr. Hans Klinger of HHHunt Communities is requesting a one year extension to the approval of case # CBE-11-079 which authorized 9,040 sq of RPA encroachments for the installation of an offsite sanitary sewer. Due to the economic situation of the Country, the applicant did not build the sanitary sewer in the time frame

originally anticipated. They plan on building it during the summer of 2012. Staff concurs with his request and suggests that the Board reauthorize CBE-11-079 until March 9, 2013.

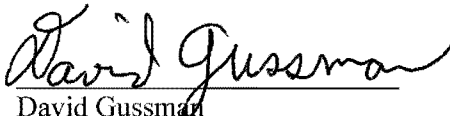
Mr. Hughes made a motion to adopt the resolution granting the extension on Chesapeake Bay Board Case #CBE-11-079 for the White Hall Offsite Sanitary Sewer Project.

The motion was approved by a 4-0-1 vote (Yea: Apperson, Bott, Hughes, Gussman)
(Nay: None) (Abstain: Roadley)


E. MATTERS OF SPECIAL PRIVILEGE - None

F. ADJOURNMENT

The meeting adjourned at 7:32 PM.



David Gussman
Chair



Michael Woolson
Secretary to the Board