

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
June 13, 2012**

**A. ROLL CALL**

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

**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 May 9, 2012 Board Meeting minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. CBE-12-111 – AES/Monticello Woods Active Adult LLC – Settlement at Powhatan Creek Phase III**

Michael Woolson, Senior Watershed Planner presented the exception request for encroachment into the RPA for a sanitary sewer connection associated with the Settlement at Powhatan Creek, Phase III project located at 4101 Monticello Avenue, JCC Parcel No 3740100010. The applicant was unable to complete an adequate mitigation plan in time for this meeting and was therefore requesting a deferral to the next meeting on July 12, 2012. Staff concurred with this request.

Mr. Gussman opened the public hearing.

Mr. Hughes made a motion to defer the Board's decision on this case and continue the public hearing to July 12, 2012 meeting.

The motion was approved by a 5-0 vote.

**2. CBE-12-116 – Carville Landscape/Jacobson – 217 Bucher Court**

Tina Creech, Senior Inspector presented the case for the exception request from Mr. Chris McClaning with Carville Landscape Company, on behalf of property owners, Michael and Lori Jacobson. The request was for encroachment into the landward 50 foot Resource Protection Area (RPA) buffer for approximately 2000 square feet of impervious cover associated with the replacement of three retaining walls, and a patio and walkway using of pervious pavers. The project is located at 217 Burtcher Court in the Kingsmill subdivision, Parcel No. 5130300040.

Staff recommended approval of the exception request with conditions specified in the Resolution to Grant the Exception.

Mr. Roadley asked for clarification on the locations of the proposed walls.

Staff and the applicant explained the upper wall would be 6 feet in the center tapering to zero on the ends and the lower wall would be 4 feet at the center tapering to zero on the ends to match existing grade.

Mr. Gussman opened the public hearing.

A. Mr. Chris McClaning, Carville Landscape Company stated that no existing vegetation would be removed and they would be replacing existing, failing walls in the same place.

Mr. Schmidt asked how the wall would impact an existing tree shown in the photographs of the site.

A. Mr. McClaning explained the 6 foot wall was actually behind the tree and the 4 foot wall in front would be level with the base of the tree.

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

Mr. Roadley made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case CBE-12-116 at 217 Burtcher Court, Parcel No. 5130300040.

The motion was approve by a 5-0 vote

### RESOLUTION

#### GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 5130300040

WHEREAS, Carville Landscaping Company on behalf of Michael and Lori Jacobson, (the "Applicants") has appeared before the Chesapeake Bay Board of James City County (the "Board") on June 13, 2012 to request an exception to the use of the Resource Protection Area (the "RPA") on a parcel of property identified as JCC RE Tax Parcel No. 5130300040 and further identified as 217 Burtcher Court in the Kingsmill subdivision (the "Property") as set forth in the application CBE-12-116 for the purpose of replacing three retaining walls, a patio and a walkway; and

WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record.

NOW, THEREFORE, following a public hearing, the Chesapeake Bay Board of James City County by a majority vote of its members FINDS that:

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 Chapter 23, Chesapeake Bay Preservation, of the James City County Code, to other property owners similarly situated in the vicinity.
3. The exception request will be in harmony with the purpose and intent of Chapter 23 of the James City County Code, 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.

5. Reasonable and appropriate conditions are hereby imposed, as set forth below, which will prevent the exception request from causing a degradation of water quality.
6. In granting this exception, the following conditions are hereby imposed to prevent this exception request from causing degradation of water quality:
  - 1) The Applicants must obtain all other necessary local permits as required for the project.
  - 2) The Applicants shall follow James City County's Pervious Paver Block System Guidelines and submit the design worksheet for the pervious pavers prior to paver installation.
  - 3) Full implementation of the submitted RPA Mitigation Plan 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), and provide a surety of \$2,000.00 in a form acceptable to the County Attorney's Office.
  - 4) This exception request approval shall become null and void if construction has not begun by June 13, 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.

#### **D. BOARD CONSIDERATIONS**

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

Michael Woolson, Senior Watershed Planner presented the following email request from the applicant for an additional extension to an exception granted on May 9, 2007, for encroachment into the RPA to construct a single family home. The applicant was twice granted two year extensions.

Mr. Thomas

Thank you for your email concerning a Chesapeake Bay Exception to our property, identified as 108 Seven Oaks, Fords Colony and JCC Tax Parcel GPIN3130900038. The previous two year extension was provided June 9, 2010 and required building to commence on the property by June 11, 2012.

Circumstances are such that we require another extension. In priority order request either of these approvals:

1) A complete removal of our lot from the RPA requirement negating any restrictions. "Grandfathering" is the justification, since we purchased the lot years before the RPA restrictions. Also the lot is on a lake formed as a BMP further negating the requirement for an RPA.

2) A 5-year extension since that is the horizon that the economy will settle down.

3) A 2-year extension similar to that already provided.

Thank you in advance for your handling of this request. Should you require any additional information please contact us accordingly.

Ronald and Lois Nervitt

Mr. Woolson explained the RPA was deemed to exist around the lake (BMP) that Mr. Nervitt referenced after adoption of the 2004 revision to the Chesapeake Bay Preservation Act and advised the Board there are no provisions in the Ordinance that allow for a lot to be excluded from the RPA. Staff recommended granting an additional two-year extension with all conditions stipulated within the original exception.

Mr. Gussman asked if the Chesapeake Bay Board had legal authority to consider removing a property from the RPA.

Mr. Roadley thought the only way a parcel could be excluded from the RPA would be if the physical characteristics of the property and/or adjoining waters changed. Although he was not opposed to it, he also thought that by Ordinance, exceptions were granted for 12 months and asked how the 2-year extensions were permitted.

Lola Perkins, Assistant County Attorney, said the request for exclusion from the RPA was researched by the County Attorney's office and they did not find any authority under which the Chesapeake Bay Board could consider this option. Therefore only the extension request could be considered. She responded to Mr. Roadley's concern stating the 12 months applied to administrative waivers and was used as guidance for exceptions but did not prohibit the Board from granting longer extensions should conditions warrant.

Mr. Apperson said he remembered the original case and asked for the total square footage of encroachment into the RPA and if it included a swimming pool.

Scott Thomas, Director of the County Engineering and Resource Protection Division advised the Board the original application was for 7000 square feet of encroachment that included a swimming pool which was denied by the Board. In May of 2007 a one-year exception was granted for only the single family residence with an attached deck. The two subsequent extensions were granted for 2-years each.

Mr. Gussman was concerned with setting precedence for granting multiple and long term extensions given the potential for changes to laws and regulations. He did not want applicants requesting exceptions and then "grandfathering" them through extensions for property they wanted to develop at an undefined future time. He might agree a 2-year extension at this time but would be reluctant to granting any future extension requests.

Mr. Apperson said he did not question Mr. Nervitt's intent to build a residence and did not have a problem with granting a 5-year extension given the current state of the economy.

Mr. Hughes stated he was agreeable to another 2-year extension as recommended by staff and consistent with what was previously granted.

Mr. Schmidt made a motion to adopt the resolution granting a 2-year extension to the exception for Chesapeake Bay Board case #CBE-07-015 at 108 Seven Oaks, Parcel No. 3130900038.

## RESOLUTION

### GRANTING AN EXTENSION OF AN EXCEPTION ON JCC RE TAX PARCEL NO. 3130900038

WHEREAS, Ronald A. Nervitt, (the "Applicant") has requested an extension of the exception granted by the Chesapeake Bay Board of James City County (the "Board") on May 9, 2007, extended for two (2) years on June 11, 2008 and extended again for two (2) years on June 9, 2010. The exception request is for encroachment into the Resource Protection Area (RPA), on property identified as JCC RE Tax Parcel No. 3130900038 and further identified as 108 Seven Oaks in the Ford's Colony subdivision (the "Property") as set forth in the application CBE-07-015, for constructing a single family residence and;

WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record.

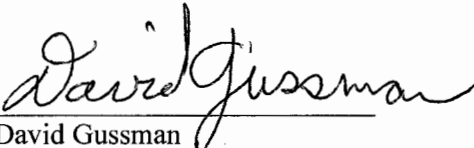
NOW, THEREFORE, having conducted a public hearing on May 9, 2007, and pursuant to the extensions granted on June 11, 2008 and June 9, 2010, and the current request for an additional extension, the Chesapeake Bay Board of James City County by a majority vote of its members FINDS that:

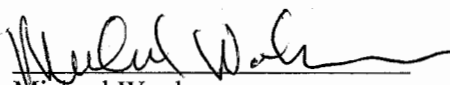
1. The exception request is the minimum necessary to afford relief.
2. Granting the exception will not confer upon the Applicant any special privileges denied by Chapter 23, Chesapeake Bay Preservation, of the James City County Code, to other property owners similarly situated in the vicinity.
3. The exception request will be in harmony with the purpose and intent of Chapter 23 of the James City County Code, 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.
5. Reasonable and appropriate conditions are hereby imposed, as set forth below, which will prevent the exception request from causing a degradation of water quality.
6. In granting this exception, the following conditions are hereby imposed to prevent this exception request from causing degradation of water quality:
  - Full implementation of the RPA mitigation landscape plan submitted with the WQIA or if field conditions prevent the full implementation, an alternate plan along with a contribution paid into a County approved environmental fund may substituted. The amount paid into the fund shall equal \$100.00 times the number of required trees and shrubs not able to be planted on the property.
  - 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. All vegetation shall be native species approved by the Environmental Division.
  - The deck shall have 3 inches of gravel on filter fabric installed underneath.
  - Implementation of the mitigation plan shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3)d and 23-17(c) where installation of the plant material is required prior to the certificate of occupancy or through a surety instrument satisfactory to the county attorney.
  - This exception request approval shall become null and void if construction has not begun by June 13, 2014.
  - Written requests for an extension to this exception must be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

**E. MATTERS OF SPECIAL PRIVILEGE - None**

**F. ADJOURNMENT**

The meeting adjourned at 7:45 p.m.

  
David Gussman  
Chair

  
Michael Woolson  
Secretary to the Board