

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
Wednesday August 8, 2012**

A. ROLL CALL

ABSENT

David Gussman – Chair
William Apperson
John Hughes
Charles Roadley
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 July 12, 2012 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBV-12-009 APPEAL – Benson – 328 Mill Stream Way

Michael Majdeski, Senior Inspector presented the appeal from property owners Mike and Mechelle Benson for the administrative order to remove a deck that was built in an area designated as a natural open space (NOS) easement and resource protection area (RPA). He advised the Board that this deck was constructed by the previous owners of the property.

Mr. Waltrip asked if the new owners were aware the deck was in the RPA when they purchased the home.

Mr. Roadley asked if the Staff knew when the deck was constructed.

Mr. Hughes asked if the deck was built to code and how Staff became aware of the violation.

Mr. Majdeski said he did not know when the deck was built as it was constructed without a building permit. The Bensons and the real estate agent approached the County to inspect the deck because of missing rails and it was then realized to be located in the NOS and RPA. With the addition of the missing rails, the County Building Safety and Permit office has determined the deck to now be compliant with current building codes.

Mr. Gussman opened the public hearing.

A. Mr. Mike Benson, current owner and appellant, said that before purchasing the house they asked to seller to install the railings and obtain the proper permits for the deck; however, just prior to closing they were informed this had not been done. Rather than delay the purchase, they decided to work with the County themselves to resolve the issues and acquire the proper permits.

Mr. Gussman asked Mr. Benson if he was agreeable to the Restoration Agreement and mitigation plantings.

A. Mr. Benson said he agreed to these conditions and thanked Staff for their assistance and the Board for their consideration.

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

Mr. Apperson stated and all other Board members agreed Mr. Benson had done everything he could to resolve this issue and was to be commended for his diligence in this situation.

Mr. Roadley asked Staff if the structure in the NOS compromised the overall stormwater benefits in the area.

Mr. Gussman asked if there were signs on the property indicating the NOS in this neighborhood.

Mr. Scott J. Thomas, Director Engineering and Resource Protection stated this encroachment was minimal to the overall open space in the Settler's Mill subdivision and although signs are required when lots are platted they are hit or miss on older lots.

Mr. Apperson made a motion to adopt the resolution granting the appeal for Chesapeake Bay Board case CBV-12-009 at 328 Mill Stream Way, Parcel No 4711900018.

The motion was approved by a 5-0 vote

RESOLUTION

GRANTING AN APPEAL ON JCC RE TAX PARCEL NO. 4711900018

WHEREAS, Mike and Mechelle Benson, property owners (the "Appellants") have appeared before the Chesapeake Bay Board of James City County (the "Board") on August 8, 2012 appealing Notices of Violation, Case No. CBV-12-009, dated May 18, 2012, ordering removal of the deck and restoration of the Resource Protection Area (RPA) and Natural Open Space (NOS) easement, on property identified as JCC RE Tax Parcel No. 4711900018 and further identified as 328 Mill Stream Way in the Settler's Mill subdivision (the "Property") 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 all of the following conditions have been met:

1. The hardship is not generally shared by other properties in the vicinity;
2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected: and
3. The Appellants acquired the property in good faith and the hardship is not self-inflicted.

THEREFORE, the Chesapeake Bay Board of James City County is granting the appeal filed by Mike and Mechelle Benson received on June 8, 2012 and overturning the May 18, 2012 Notices of Violation issued by James City County Engineering and Resource Protection Division.

In granting this appeal, the Appellants are required to enter into a Chesapeake Bay Restoration Agreement and mitigate the impervious area of the deck at a rate of twice the normal rate to ensure that water quality is not adversely affected. In this case, the plantings would be onsite and consist of 2 understory trees and 6 shrubs.

D. BOARD CONSIDERATIONS

1. CBE-10-038 – Cooke’s Gardens – 1826 Jamestown Rd – 2nd extension request

Michael Majdeski, Senior Inspector stated that Mr. Charlie Martino, Operation Manager with Cooke’s Garden Center, was requesting an additional extension of the expiration date on Chesapeake Bay Board Exception CBE-10-038. This extension requested was due to fiscal problems associated with funding for all improvements on the approved site plan. All permit conditions required within CBE-10-038 shall apply to the permit extension. Staff concurred with this request and recommended the Board extend the expiration date for one or two years at their discretion.

Mr. Roadley made a motion to adopt the resolution granting the extension of the exception for Chesapeake Bay Board case #CBE-10-038, Cooke’s Garden Center, for 2 years to to August 11, 2014.

The motion was approved by a 5-0 vote.

RESOLUTION

**GRANTING AN EXTENSION OF AN EXCEPTION
ON JCC RE TAX PARCEL NOS. 4730100002, 4730100003 and 4730100005**

WHEREAS, Mr. Charlie Martino, Operations Manager, on behalf of Cooke’s Garden Center, (the “Applicant”) has requested an extension of the exception granted by the Chesapeake Bay Board of James City County (the “Board”) on August 11, 2010 and previously extended for 1 year on July 13, 2011. The exception request is for encroachment into the Resource Protection Area (RPA), on property identified as JCC RE Tax Parcel Nos. 4730100002, 4730100003 and 4730100005 and further identified as 229 Sandy Bay Road, and 1820 and 1826 Jamestown Road (the “Property”) as set forth in the application CBE-10-038 for 6,273 square feet of RPA buffer impacts associated with walkways, display and storage of nursery container stock, and a portion of the stormwater management facility for this retail plant and garden supply sales operation 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 August 11, 2010, and pursuant to the extension granted on July 13, 2011 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 extension 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:

- The applicant must obtain all other necessary federal, state and local permits as required for the project
- He removal of 8,364 square feet of RPA buffer impacts caused by the existing gravel
- Full implementation of the mitigation measures submitted with the WQIA and site plan plus 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.
- This exception request approval shall become null and void if construction has not begun by August 11, 2014.
- Written requests for an extension to this exception must be submitted to the Engineering and Resource Protection Division no later than 2 weeks prior to the expiration date.

E. MATTERS OF SPECIAL PRIVILEGE

Scott J. Thomas, Director of Engineering and Resource Protection, presented the following information and updates to the Board:

1. Fiscal Year 2011 – Annual Report

Administrative and Board Chesapeake Bay Ordinance Exceptions and Wetlands Board cases:

FY 2012 (period July 1, 2011 to June 30, 2012)

WETLANDS BOARD	6
CHESAPEAKE BAY BOARD	27
ADMINISTRATIVE	170

FY 2011

WETLANDS BOARD	7
CHESAPEAKE BAY BOARD	29
ADMINISTRATIVE	112

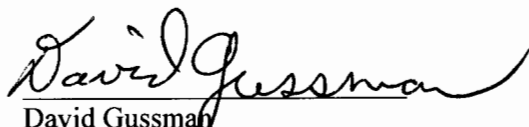
2. Recent Erosion and Sediment Control 5-Year Program Review


In January 2012, the County was notified by the Department of Conservation and Recreation (DCR) review staff that our local erosion and sediment control program had received a score of 395 out of a possible 400 and in March 2012 the Virginia Soil & Water Conservation Board deemed James City County's Erosion and Sediment Control Program compliant.

The Board thanked Staff for a job well done and emphasized the importance of this program for preserving the streams and waterways in the County. The Board also thanked staff for working with the citizens to achieve these goals.

F. ADJOURNMENT

The meeting adjourned at 7:25 p.m.


 David Gussman
 Chair


 Scott J. Thomas
 Director Engineering and Resource Protection