

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
Wednesday November 14, 2012**

**A. ROLL CALL**

**ABSENT**

David Gussman - Chair  
John Hughes  
Larry Waltrip  
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 September 12, 2012 Board Meeting minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. CBE-13-023 – Davies/Williams Landscape & Design – 2517 Manion**

Michael Woolson, Senior Watershed Planner stated the Mr. Aaron Williams with Williams Landscape & Design requested a deferral on this case decision. The Board members had been given a copy of this email request prior to the meeting. Mr. Woolson stated that staff concurred with this request and advised the Board to open the public hearing and continue it to the December meeting.

Mr. Gussman opened the public hearing and asked if anyone wished to speak on this case.

A. Simon Davies, 2517 Manion representing the property owner, stated he was not aware of the deferral request and wished to have the matter decided if possible.

Mr. Woolson stated that due to several concerns with the application, Staff was recommending denial of the exception request and therefore Mr. Williams requested the deferral to work with staff and possibly amend the application, prior to consideration by the Board.

Mr. Roadley asked Mr. Davies if he understood the reason and now wished to concur with his agent's deferral request.

A. Mr. Davies agreed to the deferral request.

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

The motion was approved by a 5-0 vote

## **2. CBE-13-031 – Snow/Delightful Gardens – 1536 Harbor Rd**

Michael Woolson, Senior Watershed Planner presented this case for an exception request submitted by Don Newsom, Delightful Gardens Landscape Company on behalf of property owner Brenda Snow (the applicant), for encroachment into the Resource Protection Area (RPA) at 1536 Harbor Rd in the Governor's Land at Two Rivers subdivision, Parcel No. 4310200008. The exception request was for approximately 1,389 square feet of impervious cover associated with the installation of a patio, a two level deck and a pervious paver walkway to the beach. This project also lies in a conservation easement and requires approval from the County Engineer and the County Planning Commission. The applicant must also receive approval from the Governor's Land Foundation Architectural Review Board. Staff reviewed the application and considers the RPA impacts to be moderate. Although the submitted mitigation plan does not meet the current County requirements the applicant has agreed to modify it as necessary prior to construction. Staff recommended approval of this application with the conditions specified in the Resolution to Grant amended to include all required approvals for encroachment into the conservation easement.

Mr. Gussman asked if this Board had ever previously granted an exception when the area of encroachment was also a recorded conservation easement. He also asked if the conservation easement was from the master plan approval or added later by the Army Corp or the state.

Mr. Woolson replied that Staff had not thoroughly researched this but he believed the Board had previously considered cases that included conservation easements. He said this lot was platted in 1995 and it appears the conservation easement was done as part of the overall stormwater requirements in place at that time.

Mr. Roadley asked if the RPA depicted on the displayed plat was the current RPA location and if the mitigation area could be used as a stormwater management area or just for planting of vegetation.

Mr. Woolson responded that the RPA line was the recorded RPA based on the shoreline in 1994. After shoreline restoration work and from what is now considered tidal wetlands, the current RPA line is actually farther inland. He stated the mitigation was just vegetation as the soils and location are not conducive to an infiltration system.

Mr. Waltrip asked if this exception request was consistent with the work done on other properties along the James River.

Mr. Woolson responded that most of the requests from properties along the river were buffer modifications for tree removal and sightlines because except in older subdivisions that were platted prior to adoption of the Ordinance, the houses are set back farther and out of the RPA.

Mr. Hughes asked how long it would take for the Planning Commission to review this case for the encroachment into the conservation easement.

Mr. Woolson stated it would probably be December or January.

Mr. Gussman asked if there was a required order to the permissions or if one was dependent on another.

Lola Perkins, Assistant County Attorney, stated there was no preference for the order of the required approvals. If this Board adopts the resolution to grant this exception, it will include a condition requiring the other approvals.

Mr. Gussman opened the public hearing.

A. Don Newsom, Delightful Gardens Landscape Company said this project was comparable to the existing structures on the adjacent property which were more appropriate for the size of the house. He stated the proposed pervious paver walkway would replace an existing impervious walkway installed without approval

and pointed out the existing earthen berm on the property which served to slow the flow off the lot. He also described other methods he would use to ease the flow and stop erosion on the lot.

Mr. Hughes asked if the conservation easement meant the property was supposed to stay in a native state.

Mr. Woolson read the following condition from the recorded conservation easement:

5. The Easement Property shall remain in its natural condition with respect to natural leaf litter or other ground covering vegetation, understory vegetation or shrub layer, and tree canopy; provided, however, that the Grantor and its successors and assigns in the ownership of the Buffers may plant and maintain within the Buffers landscape material or as described in Exhibit "B" or as may otherwise be approved by the County Engineer. The activities of Grantor within the Easement Property shall be limited to those activities which do not remove or damage any significant amount of healthy vegetation or materially disturb any soil except as approved by the County Engineer. Conservation mix grasses within the Easement Property shall not be mowed. Grantor may remove dead, diseased, poisonous or invasive vegetation or the Grantor may use hand tools for selective trimming and pruning and the clearing of understory which would not alter the natural character of the Easement Property only in a location and manner approved by the County Engineer.

Mr. Hughes felt that condition had already been breached by the planting of the turf grass after the house was built.

Mr. Woolson stated he had no knowledge of how or if planting of the turf grass was approved.

Mr. Gussman was concerned with making a decision on the exception prior to proper consideration of the conservation easement encroachment. He asked if this Board could require establishment of an alternate conservation easement for 'no net loss', as a condition of approving the Chesapeake Bay Exception.

Ms. Perkins said requirements for the conservation easement were probably outside the purview of this Board.

Scott Thomas, Director of Engineering and Resource Protection said this issue was complex and he had never before seen a requirement for Planning Commission approval in a deed of easement. He therefore thought perhaps this easement was in response to a land use issue. He advised the Board they were making the decision for water quality impact and mitigation requirements and that their decision might be pertinent to the Planning Commission.

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

Mr. Hughes recalled this conservation easement being placed on these properties in response to issues with the Governor's Land Marina. He felt the Planning Commission needed to give their approval before this exception could be considered by this Board and he would not approve the exception at this time.

Mr. Roadley stated this Board used the Chesapeake Bay Preservation Ordinance as their guide and did not believe the conservation easement could be used as a reason for denying an exception.

Mr. Apperson and Mr. Waltrip thought action by this Board would be premature, as the Planning Commission first had to determine if the area was usable.

Mr. Gussman agreed that felt the County had to decide a proper procedure for dealing with RPA buffers in conservation easements and perhaps a deferral would be the best solution at this time.

Ms. Perkins advised the Board to defer to a specific date.

Mr. Gussman reopened the public hearing.

A. Mr. Newsom emphasized that it was economically important to have a project in place during the slow season to keep his workers employed. He was hoping for an approval from this Board before consideration by the Planning Commission but stated a deferral would be better than a denial.

Mr. Hughes made a motion to defer the Board's decision on this case and continue the public hearing to the January 9, 2013 meeting.

The motion was approved by a 5-0 vote

### **3. CBE-13-037 – Hartney/Olsen Fine Home Building – 160 Broadmoor**

Tina Creech, Senior Inspector presented the case for the exception request submitted by Beverly Olsen, Olsen Fine Home Building LLC on behalf of property owners Ardis and James Hartney (the applicant), for encroachment in to the Resource Protection Area (RPA) at 160 Broadmoor in the Ford's Colony subdivision, Parcel No. 3720700057. The exception request was for approximately 3,485 square feet of impervious cover associated with the installation of a single family home, patio and retaining wall in the RPA buffer. Staff recommended approval of the exception with the conditions listed in the Resolution to Grant the Exception.

Mr. Apperson asked where the recommendation for the Turf Love program came from.

Scott Thomas, Director of Engineering and Resource Protection stated the Turf Love program recommendation listed in the conditions for granting the exception on this and the previous case came from the Virginia Cooperative Extension.

Mr. Gussman opened the public hearing.

A. Beverly Olsen, Olsen Fine Home Builders asked the Board to consider reducing the \$9,000 surety requirement as Ford's Colony was also requiring a \$7,000 surety deposit.

Mr. Gussman asked if the house could be repositioned out of the seaward 50foot RPA buffer.

A. Ms Olsen said the positioning was due to the requirements of Ford's Colony and the required base line setbacks. In addition the original plat did not show the proposed house in the seaward RPA. Recent flagging moved the RPA line placing the back corner of the house in the seaward RPA. Changing the design at this point would put an additional financial burden on the owners. She stated the retaining was necessary to create the 3:1 slope and contain the runoff.

Mr. Hughes asked Staff how they determined the \$9,000 surety amount.

Mr. Woolson stated mitigation surety is a formula based on the planting units required for the amount of impervious surface and added that this mitigation was for the entire impact to the RPA both administrative and Board reviewed. However, Staff would not oppose a Board decision to reduce the surety amount.

Mr. Gussman opened the public hearing.

Mr. Gussman stated he still felt the house could be moved farther out of the RPA.

Mr. Hughes understood the RPA line was changed after the house was designed, the lot was approved for development and no matter how the house was oriented it would still be in the RPA.

Mr. Roadley also understood the reason for the location of the house. He was mostly concerned with the proposed mitigation plan. He stated supplemental plantings are fine but anything that can be done to infiltrate stormwater is important and should be incorporated into the mitigation plan.

Mr. Waltrip felt the proposed encroachment into the seaward 50' buffer was minimal and did not warrant the expense to the owner to redesign the house.

Mr. Apperson understood the principal of keeping structures out of the seaward buffer but agreed with Mr. Waltrip that the encroachment was minimal. He also felt that based on the Ford's Colony surety requirement the mitigation surety could be reduced to \$2,000.

Mr. Gussman stated the Ford's Colony surety would be released before the mitigation was complete leaving the County with insufficient funds to complete the mitigation if needed and the surety formula was developed to insure the completion of the required mitigation.

Lola Perkins concurred stating only the mitigation surety would be available to County should they need it.

Mr. Hughes made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case CBE-13-0037 at 160 Broadmoor, Parcel No. 3720700057.

The motion was approved by a 4-1 vote (Aye: Roadley, Waltrip, Hughes, Apperson)  
(Nay: Gussman)

## RESOLUTION

### GRANTING AN EXCEPTION ON JCC RE TAX PARCEL NO. 3720700057

WHEREAS, Ms. Beverly Olsen with Olsen Fine Home Building, LLC on behalf of property owners Ardist and James Hartney (the "Applicant") appeared before the Chesapeake Bay Board of James City County (the "Board") on November 14, 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. 3720700057 and further identified as 160 Broadmoor in the Ford's Colony subdivision (the "Property") as set forth in the application CBE-13-037 for the purpose of constructing a new single family home, a patio and a retaining wall: 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 applicant must obtain all other necessary federal, state and local permits as required for the project.
  - 2) The County must received from the Applicant a written copy of any approvals from the Ford's Colony HOA and/or ECC.
  - 3) A mitigation planting plan that meets County requirements must be received and approved prior to starting construction.
  - 4) Surety of \$9,000 will be required in a form acceptable to the County Attorney's office.
  - 5) The Applicant shall implement the Turf Love (or similar nutrient management plan) program and give a copy of all recommendations to the County.
  - 6) This exception request approval shall become null and void if construction has not begun by November 14, 2013.
  - 7) 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. Calendar Year 2013 Meeting Schedule**

All Board members agreed to adopt the 2013 Chesapeake Bay Board meeting schedule: Provided there are cases to be considered the meetings will be held at 7:00 PM on the 2<sup>nd</sup> Wednesday of each month immediately following the Wetlands Board meeting.

##### **2. Election of Officers for 2013**

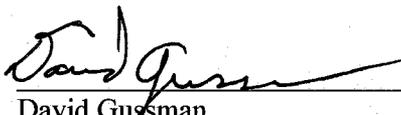
Mr. Apperson moved that David Gussman be reappointed as Chair. All members were in favor.  
Mr. Gussman moved that William Apperson be reappointed as Vice-Chair. All members were in favor.  
Melanie Davis was appointed as Secretary. All members were in favor.

#### **E. MATTERS OF SPECIAL PRIVILEGE**

Mr. Gussman asked Assistant County Attorney Lola Perkins to assist with him in drafting the appropriate letter to initiate a discussion on setting up procedures for handling the conservation easement issues.

#### **F. ADJOURNMENT**

The meeting adjourned at 8:35 p.m.

  
David Gussman  
Chair

  
Michael Woolson  
Secretary to the Board