

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD**

**MINUTES**

**Wednesday May 8, 2013**

**A. ROLL CALL**

**ABSENT**

David Gussman - Chair  
William Apperson  
John Hughes  
Larry Waltrip  
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 April 10, 2013 Board Meeting minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. CBE-13-095 – Moore & MacGillivray/Winnall – 164 & 166 The Maine**

Michael Woolson Senior Watershed Planner presented this case for an exception request submitted by Jeffrey Moore and Mr. and Mrs. MacGillivray (the applicants), for encroachment into the Resource Protection Area (RPA) at 164 and 166 The Maine Parcel Nos. 4540200055 and 4540200056 in the First Colony subdivision. The exception request was for slope stabilization in conjunction with the approved shoreline project on 164 The Maine. Mr. Woolson described the current conditions, the proposed project and mitigation measures that exceed the standard requirements. Staff has determined the impacts to be severe but recommended approval of the exception request with the conditions specified in the Resolution to Grant the Exception.

Mr. Gussman opened the public hearing.

**A.** Daniel Winall with Water's Edge Construction, contractor and agent for the project stated he had nothing to add to Staff's presentation and would answer any questions from the Board.

Mr. Gussman closed the public hearing as there were no questions for the applicant and no one else wished to speak.

Mr. Hughes and Mr. Waltrip stated the proposed project would be an improvement to the property and the water quality.

Mr. Hughes made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case CBE-13-095 at 164 and 166 The Maine, Parcel Nos. 4540200055 and 4540200056.

The motion was approved by a 5-0 vote.

## RESOLUTION

### GRANTING AN EXCEPTION ON JCC RE TAX PARCEL NOS. 4540200055 and 4540200056

WHEREAS, Mr. Jeffrey Moore and Mr. and Mrs. MacGillivray, (the “Applicants”) have applied to the Chesapeake Bay Board of James City County (the “Board”) on May 8, 2013 to request an exception to the use of the Resource Protection Area (the “RPA”) on parcels of property in the First Colony subdivision identified as 164 The Maine, JCC RE Tax Parcel No. 4540200055 and 166 The Maine, JCC RE Tax Parcel No. 4540200056 (the “Property”) as set forth in the application CBE-13-095 for the purpose of slope stabilization in conjunction with a proposed shoreline project at 164 The Maine; 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 federal, state, and local permits as required for the project.
  - 2) Additional erosion and sediment control measures may be required, at the Engineering and Resource Protection Division Director’s discretion.
  - 3) A surety of \$5,000 will be required from Mr. Moore and a surety of \$500 will be required from Mr. and Mrs. MacGillivray in a form acceptable to the County Attorney’s office, to guarantee the mitigation requirements as per 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 May 8, 2014.
  - 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.

#### **2. CBE-13-087 – Snyder/Cason – 128 Nottinghamshire**

Michael Woolson, Senior Watershed Planner presented this case for an exception request submitted by Mr. and Mrs. Richard Snyder(the applicants), for encroachment into the Resource Protection Area (RPA) associated with construction of a single family home, deck and patio at 128 Nottinghamshire, in the Ford’s Colony subdivision,

Parcel No. 3233100031. The exception request was for approximately 2,991 square feet of encroachment into the landward RPA buffer and 87 square feet of encroachment into the seaward RPA buffer. Mr. Woolson described the conditions of the site and the necessary configuration of the proposed house. He advised the Board that the condition in the staff report for submission of a mitigation planting plan had been met and the submitted plan met the standard requirements. Staff reviewed the application, determined the impact to be moderate and recommended approval of the exception request with the conditions specified in the Resolution to Grant the Exception.

Mr. Roadley asked if the applicant made any provision for treating stormwater runoff.

Mr. Gussman opened the public hearing.

A. Mr. Cason, builder and representative for the owners stated the down spouts would be buried and run to the back of the lot to eliminate slope erosion.

Mr. Roadley appreciated the elimination of slope runoff but his desire was have infiltration and treatment of runoff before it was released into the RPA.

Mr. Waltrip asked if the runoff could be treated at the end of the downspouts.

A. Mr. Cason stated he would place stone at the outfalls.

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

Mr. Hughes made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case CBE-13-087 at 128 Nottinghamshire, Parcel No. 3233100031 without condition #2 as the mitigation plan had already been submitted.

The motion was approved by a 5-0 vote

## RESOLUTION

### GRANTING AN EXCEPTION ON JCC RE TAX PARCEL NO. 3233100031

WHEREAS, Mr. and Mrs. Richard Snyder (the "Applicant") has applied to the Chesapeake Bay Board of James City County (the "Board") on May 8, 2013 requesting an exception to the use of the Resource Protection Area (the "RPA") on a parcel of property identified as JCC RE Tax Parcel No. 3233100031 and further identified as 128 Nottinghamshire in the Ford's Colony subdivision (the "Property") as set forth in the application CBE-13-087 for the purpose of constructing a single family home with a deck and patio; 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 applicant shall provide and RPA Planting Plan for the proposed mitigation.~~  
*Condition removed by Board – Plan has been submitted.*
  - 3) Full implementation of the RPA Planting 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) which is providing a form of surety satisfactory to the County Attorney in the amount of \$3,000.
  - 4) This exception request approval shall become null and void if construction has not begun by May 8, 2014.
  - 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.

### **3. CBE-13-094 – Young – 6312 Adams Hunt**

Michael Woolson, Senior Watershed Planner presented this case for an exception request submitted by Mr. Patrick Young (the applicant), for approximately 7,800 square feet of encroachment into the Resource Protection Area (RPA) associated with construction of approximately 150 square feet of retaining wall and associated backfill at 6312 Adam's Hunt Drive, in the Adam's Hunt subdivision, Parcel No. 3120400031.

Mr. Woolson advised the Board of revisions to the staff report stating that the proposed wall would be located approximately 70 feet away from the house and outside of the platted drainage easement. Mr. Young proposes to use riprap for the retaining wall, up to two feet tall so that he does not need to obtain a building permit. The proposed fill will be clean topsoil obtained offsite. That fill area will be planted with native plant material, quantities unspecified. To prevent soil from washing through the riprap, staff recommends that filter fabric be placed between the stone and the backfill. Mr. Young has previously requested to thin out some of the undergrowth, which was approved administratively as a buffer modification. He has no immediate plans to remove any large trees.

Staff reviewed the revised application, determined the associated impacts to be minimal and recommended approval of the exception request with the conditions specified in the Resolution to Grant the Exception.

Mr. Gussman opened the public hearing.

**A.** Mr. Patrick Young, the property owner stated the property had been previous neglected. He described the current conditions including the slope and potential for future erosion. His desire was to use the proposed wall, backfill, grass and the suggested plantings to prevent future erosion.

Mr. Roadley advised that the preference of this Board was to minimize the amount of grass in the RPA and recommended the use of natural vegetation.

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

Mr. Gussman made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case CBE-13-094 at 6312 Adam's Hunt Drive, Parcel No. 3120400031

The motion was approved by a 5-0 vote

## **RESOLUTION**

### **GRANTING AN EXCEPTION ON JCC RE TAX PARCEL NO. 3120400031**

WHEREAS, Mr. Patrick Young, (the "Applicant") has applied to the Chesapeake Bay Board of James City County (the "Board") on May 8, 2013 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. 3120400031 and further identified as 6312 Adam's Hunt Drive in the Adam's Hunt subdivision (the "Property") as set forth in the application CBE-13-094 for the purpose of constructing 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 Applicant shall provide a planting plan for the proposed mitigation (3 shrubs minimum).
  - 3) Filter fabric shall be used between the stone and proposed backfill
  - 4) Surety of \$250 will be required in a form acceptable to the County Attorney's office
  - 5) This exception request approval shall become null and void if construction has not begun by May 8, 2014.
  - 6) Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 6 weeks prior to the expiration date.

## **D. BOARD CONSIDERATIONS**

### **1. Robillard – 87 Kestrel Ct: Appeal administrative denial of structures in the conservation easement**

Michael Woolson, Senior Watershed Planner presented this appeal stating that Mr. John Robillard, residing at 87 Kestrel Court in the Season's Trace subdivision, filed an appeal to the James City County Chesapeake Bay Board (Board) on April 12, 2013. Mr. Robillard was appealing a Staff decision denying the placement of a play set and shed in the dedicated conservation easement on his property. The plat of subdivision was recorded on 23 January 1996 in Plat Book 63, Page 49 and the Deed of Easement for Natural Open Space was recorded on 23 January 1996 in Deed Book 771, pages 662, 663, 664, 665, and 666. The natural open space easement contains 3.07 acres of land that shall remain in its natural condition with respect to ground cover and woody vegetation as part of the subdivision's stormwater management compliance practices. On March 31, 2013, via email correspondence, Mr. Robillard requested permission to install a play set and shed on a portion of his property that is within the natural open space easement. On April 9, 2013, staff responded that the structures were not a permissible use in the easement, per condition #1 of the easement.

#### **Background Information**

On August 24, 2012, an anonymous complaint was filed with the Engineering and Resource Protection Division regarding the placement of "tons of dirt in the back part of the yard." Staff investigated the complaint from a potential land disturbing violation perspective and found that there had been no land disturbing violation. The homeowner was repairing minor erosion and drainage problems along the right side and the rear of the house. Staff did however determine at that visit that a violation of the natural open space easement and Resource Protection Area (RPA) had occurred sometime in the past. In other words, during the course of the repair work taking place in 2012, no woody vegetation or ground cover (other than turf grass) had been removed or disturbed. After further office investigation of County files, no record of written permission could be located approving the previous disturbance to the natural open space easement or RPA.

Subsequently, staff sent a Notice of Violation on January 17, 2013 as an official notification that the clearing that had taken place on the property within the limits of the RPA and natural open space easement was a violation of both the terms of the easement and of the Chesapeake Bay Preservation Ordinance ("Ordinance"). Mr. Robillard did contact staff within the 30 day time frame set forth by the Notice to schedule a time to meet and discuss the matter.

On February 20, 2013, a meeting took place between Mr. Robillard, Mr. Woolson and Mr. Thomas to discuss the issues. Mr. Robillard stated that he bought the house in 2009 with the rear yard already established. He also stated that he would be willing to interplant in the existing woods but would not be willing to lose any of his back yard. He went on to state that because the County had not acted upon this issue before he bought the property, a 'defacto' variance was granted permitting all of the clearing to remain. That meeting was adjourned with the understanding that Mr. Thomas and Mr. Woolson would schedule an on-site meeting later to discuss the issues with Mr. Robillard. That meeting never materialized.

As stated previously in the email sent on March 31, 2013 by Mr. Robillard, he stated he was planning on installing a play set and shed on his property. Mr. Woolson responded that these two items were not permissible uses in the conservation easement.

#### **Rational for the Chesapeake Bay Board as the Appellant Body for Natural Open Space**

The Chesapeake Bay Preservation Ordinance ("Ordinance"), Section 23-9(b)(8) states that for any development, "stormwater runoff shall be controlled by the use of BMPs that are consistent with the water quality protection provision (4 VAC 3-20-71 et seq.) of the Virginia Stormwater Management Regulations (4 VAC 3-20). This consistency shall be demonstrated by compliance with the criteria and BMP facilities contained in the latest version of the James City County Guidelines for Design and Construction of Stormwater Management BMPs" ("County BMP Manual"). Furthermore, Section 23-10(4) of the Ordinance requires stormwater management

plans for plans of development. Structural BMPs are required for certain plans of development and BMPs shall be designed and constructed in accordance with guidelines established by the manager, including the County BMP Manual.

In the latest version of the County BMP Manual, there are seven types of acceptable BMPs used in the County to treat stormwater runoff. The seventh one, Open Space, is allowed but must meet the conditions outlined in the manual to receive stormwater credit: These conditions are:

- 1) The area cannot be disturbed during project construction; and
- 2) Must be protected by limits of disturbance clearly shown on the construction drawings; and
- 3) Must be located within an acceptable conservation easement or other enforceable instrument that ensures perpetual protection of the proposed area, and the easement must clearly specify how the natural area vegetation shall be managed. Managed turf is not an acceptable form of vegetation management.

The developer of this subdivision used multiple types of BMPs to gain stormwater management compliance, including the intentional use of natural open space per the County BMP Manual. The natural open space was duly recorded in a Deed of Easement as previously noted. Therefore, the natural open space falls under Section 23-9(b)(8) performance standards and stormwater management plan criteria, Section 23-10(4), of the Ordinance.

Under Section 23-17 of the Ordinance, an owner of property subject to an administrative decision, order, or requirement under this chapter may appeal by submitting a written application for review to the board no later than 30 days from the rendering of such decision, order, or requirement. The board shall hear the appeal as soon as practical after receipt of the application.

#### **Staff Guidance and Recommendations**

Staff has reviewed the appeal and violation documents and offers the following information for the Board's consideration.

- 1) Mr. John Robillard is currently the owner of the property, 87 Kestrel Court, where violations of the Resource Protection Area and natural open space easement have taken place. In a statement submitted to the Board, Mr. Robillard offers the following information in support of the appeal:
  - a) He bought the property with the current yard dimensions and conditions; and
  - b) Has done improvements to his property that enhances the RPA; and
  - c) Specifically purchased property because of the backyard and the structures within it; and
  - d) Removed structures in backyard because of poor condition with the intent to replace them; and
  - e) Any (required) mitigation has already been done (corrected erosion, added plant material in existing tree line, stop using pesticides and chemicals, removed trash from RPA, hired a lawn care company that abides by the Turf Love program).
- 2) The Deed of Easement for Natural Open Space was recorded on 23 January 1996 in the Clerk's Office of the Circuit Court of the City of Williamsburg and County of James City in Deed Book 711, Pages 662, 663, 664, 665, and 666.
- 3) The Deed of Easement states that the "Grantor wishes to preserve land as natural open space as part of the Grantor's efforts to improve the quality of stormwater runoff from the property."
- 4) The restrictions outlined in the Deed of Easement and the restrictions which the Grantee (County of James City, Virginia) is hereby entitled to enforce, shall be as follows:
  - a) No building or structure shall be built or maintained on the Easement Property other than such building or structure approved by the County Engineer, in writing;
  - b) The Easement Property shall be kept free and clear of any junk, trash, rubbish or other unsightly or offensive material;
  - c) No new signs, billboards, outdoor advertising, road or utility lines shall be placed on the property without the expressed written consent of the County Engineer;
  - d) 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. The activities of

Grantor within the Easement Property shall be limited to those which do not remove or damage any vegetation or disturb any soil. Such activities include selective trimming and pruning which will not alter the natural character of the Easement Property. Grantor may install walk trails or remove dead, diseased, poisonous or invasive vegetation with the expressed written consent of the County Engineer;

- e) Grantee and its representatives may enter upon the Easement Property from time to time for inspection, to enforce the terms of the Easement and to post a sign or marker identifying Grantee's interest in the Easement Property as natural open space;
  - f) In the event of a violation of the Easement, the Grantee shall have the right to seek all appropriate legal and equitable relief, including, but not limited to, the right to restore the Easement Property to its natural condition and assess the cost of such restoration as a lien against the Easement Property.
- 5) No plan of development, RPA buffer or Natural Open Space easement modification plan was submitted to the County for review and approval as is required by the Ordinance and Deed of Easement.

Under Section 23-17(b) of the Ordinance, it states "in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of this chapter. The Board shall not decide in favor to the appellant unless it finds:

- 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 appellant acquired the property in good faith and the hardship is not self-inflicted."

Staff's guidance to the Board on deciding this matter is as follows:

- 1) The hardship is shared by other properties immediately adjacent to the appellant's property as well as numerous other properties within the Heron Run section of Season's Trace that have Resource Protection Area and natural open space easements located on them.
- 2) The granting of the appeal in this case will adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity. Granting relief to the appellant resulting from a violation of the Ordinance and Deed of Easement could result in similar unauthorized actions by other property owners in the vicinity. In addition, granting the appeal will be in direct conflict with the terms of the Deed of Easement which will ensure that the subdivision is no longer in compliance with the approved stormwater management plan and will lead to a degradation of water quality in the tributaries to the Chesapeake Bay.
- 3) The appellant acquired the property in good faith and the hardship is not self-inflicted.

Staff contends that to be consistent with the purpose and intent of the Ordinance and the Deed of Easement, the Board should deny the appeal. The Board should also direct staff to pursue enforcement of restriction #6, which states "In the event of a violation of the Easement, the Grantee shall have the right to seek all appropriate legal and equitable relief, including, but not limited to, the right to restore the Easement Property to its natural condition and assess the cost of such restoration as a lien against the Easement Property", if Mr. Robillard and staff cannot reach a resolution on restoration of the property within 60 days from the date of this meeting.

Mr. Hughes asked why this Board's direction was needed to enforce the restrictions specified in the terms of the Deed of Easement.

Mr. Apperson asked how any decision from the Chesapeake Bay Board could override the restrictions specified in a recorded Deed of Easement.

Mr. Woolson stated Staff would like the concurrence of this Board for the enforcement.



Lola Perkins, Assistant County Attorney stated that the role of this Board was to evaluate Staff's decision based on their interpretation of the Deed of Easement restrictions which was to deny the applicant's request to place a shed and play set in the easement.

Mr. Gussman asked if Mr. Robillard wished to address the Board.

A. Mr. Robillard stated they purchased the property in December of 2009 and one of the reasons was the existing back yard. His research showed the yard was expanded around April of 2004 and the original play set was placed there in 2005. As these occurred years before he purchased the house he felt the County should have pursued this violation at that time. Due to deterioration they removed the original play set with the intention of replacing it. He was appealing to the Board because he was issued a notice of violation for something previously on the lot.

Mr. Hughes and Mr. Gussman asked if a survey was done before he purchased the property or if he was advised of the easement at closing.

A. Mr. Robillard stated a formal survey was not done. He was not informed of the easement nor was it marked on the property. He asked if the County offered any training to realtors regarding the easements and restrictions.

Mr. Gussman said there was outreach from the County to realtors and Mr. Hughes said he thought the easement would have been recorded on the deed.

Lola Perkins, Assistant County Attorney stated there would be general language on a deed regarding easements and a title search and purchase of title insurance would reveal the specific easement because it is recorded in the land records of James City County.

Mr. Roadley asked Mr. Robillard if he understood Staff's recommendation was for restoration of the easement.

A. Mr. Robillard stated he would be willing to restore some of the back yard if he could keep an area for the shed and play set. He asked if this was the final Board he could appeal to.

Ms. Perkins stated he could appeal the decision of this Board to the Circuit Court.

Mr. Gussman stated that although he was sympathetic and understanding of Mr. Robillard's position there were reasons the conservation easements were established and setting a precedence of allowing exceptions in these areas could ultimately cause problems with stormwater runoff and flooding.

Mr. Hughes was also concerned with the Board having the authority to make an exception for a conservation easement.

Ms. Perkins advised the Board that the language in this Deed of Easement stated: "*No building or structure shall be built or maintained on the Easement Property other than such building or structure approved by the County Engineer, in writing*" thus providing a caveat for approval by the County Engineer. Staff has taken the position that the requested structures should not be allowed, as they would impact the purpose of the conservation easement and the RPA. The matter before this Board is the review of Staff's position, and if they conclude it was not reasonable, this Board has the authority to override Staff's decision.

Mr. Woolson explained that the easement was created for stormwater management purposes to intercept and treat the runoff through infiltration and a maintained yard functions more like an impervious surface.

Mr. Waltrip asked how large of an area needed to be restored. He asked if it could be worked out to restore a portion of the easement and allow for the requested structures to be placed in part of the easement.

Mr. Woolson stated the staff report specified a 60 day period before the restoration was enforced so an agreement could be reached by both parties. At this time, the County was looking for the restoration of an area between 1,700 and 2,400 sqft. This equated to approximately 4-6 canopy trees, 8-12 understory trees, and 12-16 shrubs.

Mr. Roadley said he thought that encroachments into the conservation easement had been addressed by this Board before.

Mr. Woolson stated there was a previous case in Governor's Land that was much the same as this one. The property was purchased with an existing violation and a patio expansion was requested. The resolution was an extensive restoration of the conservation easement in order to allow for a minor encroachment.

A. Mr. Robillard stated he would be willing to compromise and he thought he was also appealing the violation.

Ms. Perkins explained that the Notice of Violation (NOV) for encroachment into the conservation easement was issued in January of 2013 and the 30 day period for appeal of that had passed. The only appeal at this time was for placement of structures in the conservation easement. Although not required, Staff was also requesting the Board's support for pursuing the clearing violation.

Mr. Gussman asked if Mr. Robillard would be willing to omit the shed, only install a swing set and at the same time restore a portion of the conservation easement.

A. Mr. Robillard stated he would be agreeable to that and he had already planted some native shrubs.

Ms. Perkins advised the Board they could deny the appeal and Mr. Robillard could resubmit a request for just a swing set in the conservation easement. If Staff felt the proposed mitigation was sufficient they could approve the new request.

Mr. Woolson advised the Board that this area was also RPA and therefore any request for accessory structures would also be considered by this Board.

The Board members agreed they could deny the applicant's appeal of Staff's decision on the conservation easement with an understanding that within 60 days Mr. Robillard could request an exception to the Chesapeake Bay Preservation Ordinance for placement of only a play set in the RPA and conservation easement and that this application would include mitigation to restore part of the conservation easement.

Mr. Hughes made a motion to adopt the resolution to deny the appeal of Staff's decision to not allow a shed and play set in the conservation easement at 87 Kestral Court, Parcel ID 3220800015.

The motion to deny was approved by a 5-0 vote

## RESOLUTION

### DENYING AN APPEAL ON JCC RE TAX PARCEL NO. 3220800015

WHEREAS, Mr. Jon Robillard, (the "Applicant") has appeared before the Chesapeake Bay Board of James City County (the "Board") on May 8, 2013 appealing an administrative denial for placement of a play set and shed in the dedicated conservation easement on property identified as JCC RE Tax Parcel No. 3220800015 and further identified as 87 Kestrel Court in the Season's Trace subdivision 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 **NOT** 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 appellant acquired the property in good faith and the hardship is not self-inflicted.

THEREFORE, the Chesapeake Bay Board of James City County is denying the appeal filed by John Robillard on April 12, 2013, and upholds the denial for placement of a play set and shed in the dedicated conservation easement.

**E. MATTERS OF SPECIAL PRIVILEGE**

**F. ADJOURNMENT**

The meeting adjourned at 9:20 p.m.



David Gussman  
Chesapeake Bay Board Chair



Melanie Davis  
Secretary to the Board