

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES**

Thursday January 9, 2014

A. ROLL CALL

David Gussman
John Hughes
Larry Waltrip
Louis Bott (Alternate)

ABSENT

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 December 11, 2013 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBE-14-060: Ward/Williams Landscape – 516 Sir George Percy

Michael Woolson Senior Watershed Planner presented this case for an exception request submitted by Williams Landscape on behalf of the owners Patricia and Ronald Ward for encroachment into the Resource Protection Area (RPA) on their property at 516 Sir George Percy in the Kingsmill subdivision, Parcel 5031300003. The exception request was for approximately 45 square feet of encroachment into the landward RPA buffer for reconstruction of a retaining wall. Mr. Woolson explained that the wall had been started by the previous property owner without permit or approval and this exception request was to reconstruct the wall correctly and in the same location. He described the current conditions of the site and the proposed mitigation. Staff determined impact to be slight and recommended approval of the exception request with the conditions outlined in the Resolution to Grant the Exception.

Mr. Gussman opened the public hearing.

A. Ryan Linnekin and Trey Watford with Williams Landscape and Design, Inc. further described the need for reconstructing the wall and the use of native species in the proposed mitigation plantings.

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

Mr. Waltrip said it was clear the construction of the wall needed to be corrected.

Mr. Bott made a motion to adopt the Resolution to Grant the Exception for Chesapeake Bay Board case CBE-14-060 at 516 Sir George Percy, Parcel 5031300003.

Motion was approved by a 4-0 vote.

RESOLUTION
GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 5031300003

WHEREAS, Mr. Aaron Williams on behalf of Patricia and Ronald Ward, (the “Applicants”) has applied to the Chesapeake Bay Board of James City County (the “Board”) on January 9, 2014 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. 5031300003 and further identified as 516 Sir George Percy in the Kingsmill subdivision (the “Property”) as set forth in the application CBE-14-060 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; and
 - 2) A surety in the amount of \$500, in a form acceptable to the James City County Attorney’s office, be submitted prior to work commencing; and
 - 3) This exception request approval shall become null and void if construction has not begun by 9 January 2015; and
 - 4) 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.

2. CBE-14-061: Carpenter/Green Side Up Landscape – 5516 North Mallard Run

Michael Woolson Senior Watershed Planner presented this case for an exception request submitted by Greg and Joyce Carpenter for encroachment into the Resource Protection Area (RPA) on their property at 5516 North Mallard Run in the Warhill/Mallard Hill subdivision, Parcel 3120300038. The exception request was for approximately 80 square feet of encroachment into the seaward RPA buffer for construction of a retaining wall to prevent erosion. Mr. Woolson explained that because the lot is heavily wooded the applicant was given the option of paying into the Chesapeake Bay Mitigation Fund rather than providing a planting mitigation plan for 1 canopy tree and 3 shrubs. He described the current conditions of the site and the proposed encroachment. Staff determined impact to be slight and recommended approval of the exception request with conditions outlined in the Resolution to Grant the Exception.

Mr. Gussman opened the public hearing.

A. Joyce Carpenter, the applicant, asked the Board if they could substitute two understory trees for the 1 canopy tree required for mitigation.

Both Staff and the Board stated this substitution would be acceptable.

Mr. Hughes made a motion to adopt the Resolution to Grant the Exception for Chesapeake Bay Board case CBE-14-061 at 5516 North Mallard Run, Parcel 3120300038.

Lola Perkins, Assistant County Attorney asked the Board to specify the change of the mitigation condition in the Resolution.

The condition was changed from “1 canopy tree and 3 shrubs” to “a mitigation plan approved by Staff”.

Motion was approved by a 4-0 vote

RESOLUTION
GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 3120300038

WHEREAS, Greg and Joyce Carpenter, (the “Applicants”) have applied to the Chesapeake Bay Board of James City County (the “Board”) on January 9, 2014 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. 3120300038 and further identified as 5516 North Mallard Run in the Warhill (Mallard Hill) subdivision (the “Property”) as set forth in the application CBE-14-061 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; and
 - 2) A mitigation planting plan submitted and approved by the Engineering and Resource Protection staff prior to construction starting. and
 - 3) A surety in the amount of \$250, in a form acceptable to the James City County Attorney’s office, be submitted prior to work commencing; and

- 4) This exception request approval shall become null and void if construction has not begun by 9 January 2015; and
- 5) 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.

3. CBE-14-056: F E McEwen Development-221 Oxford

Michael Woolson Senior Watershed Planner presented this case for an exception request submitted by F E McEwen Development, for encroachment into the Resource Protection Area (RPA) at 221 Oxford Road in the Druid Hills subdivision, Parcel 4720700022. The exception request was for approximately 1,050 square feet of encroachment in the seaward RPA buffer for construction of a single family dwelling and approximately 50 square feet of encroachment in the landward RPA buffer for a retaining wall. He described the current conditions of the site, the proposed encroachment and the mitigation requirements. Staff determined impact to be moderate and recommended approval of the exception request with the conditions outlined in the Resolution to Grant the Exception.

Mr. Gussman opened the public hearing.

A. Mr. McEwen stated he tried to move the house as far as possible out of the seaward RPA. He also said he would be careful to maintain the required erosion control measures.

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

Mr. Bott made a motion to adopt the Resolution to Grant the Exception for Chesapeake Bay Board case CBE-14-056 at 221 Oxford Rd, Parcel 4720700022.

Motion was approved by a 4-0 vote.

RESOLUTION **GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 1910900011**

WHEREAS, McEwen Development Company, (the "Applicant") has applied to the Chesapeake Bay Board of James City County (the "Board") on January 9, 2014 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. 4720700022 and further identified as 221 Oxford Road in the Druid Hills subdivision (the "Property") as set forth in the application CBE-14-056 for the purpose of constructing a single family home 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; and
 - 2) A surety in the amount of \$1,000, in a form acceptable to the County attorney's office, be submitted prior to work commencing; and
 - 3) This exception request approval shall become null and void if construction has not begun by 9 January 2015; and
 - 4) 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. Change date of the November 2014 meeting.

Mr. Gussman made a motion to change the date of the November meeting from Wednesday November 12, 2014 to Thursday November 13, 2014 due to a conflict with the Board of Supervisors November meeting.

Motion was approved 4-0

E. MATTERS OF SPECIAL PRIVILEGE

Lola Perkins, Assistant County Attorney addressed the Board's concern regarding the enforceability of a resolution condition requiring that all improvements damaged by installation of a sanitary sewer line be replaced. She stated this was an enforceable condition for the Board to require in granting an exception and if not met would be treated as a violation the same as any condition in a Resolution to Grant an Exception.

F. ADJOURNMENT

The meeting adjourned at 7:37 p.m.



David Gussman
Chesapeake Bay Board Chair



Melanie Davis
Secretary to the Board