

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES**

Wednesday July 9, 2014

A. ROLL CALL

David Gussman
John Hughes
Larry Waltrip
Roger Schmidt – Alternate

ABSENT

Charles Roadley
William Apperson

OTHERS PRESENT

County Staff:

Michael Woolson, Senior Watershed Planner
Melanie Davis, Secretary to the Board

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 June 11, 2014 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBE-14-090: Gilden/Newsom – 1584 Harbor Road

Michael Woolson, Senior Watershed Planner presented the exception request from Mr. Don Newsom of Delightful Gardens on behalf of Ron and Gail Gilden for construction of a deck impacting approximately 500 square feet of the seaward RPA buffer at 1584 Harbor Road in the Governor's Land subdivision, Parcel #4310200020. He advised the Board that the impacted area was also a dedicated conservation easement that required and received approval from the James City County Planning Commission. He described the existing conditions and structures on the lot, the proposed construction in the RPA buffer and the restoration of the conservation and RPA area with the proposed mitigation plantings which exceeded the minimum requirements. Staff determined impacts to be moderate and recommended approval of the exception request with the conditions outlined in the Resolution to Grant the Exception.

Mr. Gussman requested and Mr. Woolson clarified the location of the existing deck and the proposed new deck.

Mr. Gussman then asked staff to specify the voting requirements.

As per the Chesapeake Bay Board bylaws, three affirmative votes are required for approval of an exception.

Mr. Gussman opened the public hearing.

Mr. Schmidt asked what material would be used in construction of the deck.

Mr. Waltrip asked if the walkway to the dock would be pervious pavers.

- A.** Mr. Don Newsom from Delightful Gardens responded that the framing would be pressure treated pine and the decking would be a composite material with gaps for drainage and stone and filter cloth would be placed underneath to stabilize the soil. He explained that most of the existing walkway would be covered by the new deck and the remaining steps would just be replaced as the existing wooden framing was rotting out.
- B.** Lee Thoet, 1568 Harbor Rd spoke against the exception due to the change in aesthetics of the marina.
- C.** Dottie Nichols, 1612 Harbor Rd spoke against the exception because of the impact to the James River from cumulative changes to the marina properties.
- D.** Boyd McKelvain, 1600 Harbor Rd spoke against the exception because of the impact to the stormwater management system that was installed when the marina was built. A diagram of this stormwater system was displayed and Mr. McKelvain described it as a swale and berm that ran along the 17 properties on Harbor Rd directing the stormwater runoff through yard grates and underground pipes, away from the bulkhead into the wetlands on the opposite side of Harbor Rd.

Mr. Hughes asked if the swale was located the same distance from all the houses. He also asked where the displayed diagram came from.

Mr. Waltrip asked if the swale system was still in place across all of the properties.

- D.** Mr. McKelvain said the distance from each house to the swale depended on how much of the setback was used when each house was built. The diagram was an interpretation from the AES plan created when the marina was constructed. Mr. McKelvain created this diagram in 2005 to be used for yearly maintenance of the swale and drainage system and to protect the bulkhead from concentrated runoff. He stated that although some of the swales and berms had been altered over the years the majority of the runoff was draining as designed.

Mr. Waltrip and Mr. Schmidt asked and Mr. McKelvain confirmed his main concern was that the proposed construction would interrupt the flow of runoff to the drainage pipes.

Mr. Gussman asked if there were photographs of the existing swale and berm on this property.

Mr. Woolson redisplayed photographs from the presentation that showed the swale and berm slightly manipulated over the years but still directing flow laterally. He explained the proposal was to place the deck over the swale and not alter it. He also believed there were catch basins on both property corners. He stated the project was similar to the case at 1592 Harbor Rd, previously approved by this Board.

Mr. Schmidt asked how the drainage flowed off the existing walkway and how it would flow off the reconstructed walkway.

Mr. Hughes asked how the water would flow through the swale if it was filled with stone and filter cloth as proposed. He also asked if this swale and berm were a condition of the original design and if it was still effective in controlling runoff.

Mr. Woolson said staff believed the water from walkway would continue to flow toward the bulkhead however, the elevation of the swale would be below the berm and the remaining runoff would continue to flow laterally. He explained the berm and swale were part of the original plan approved in 1994 for the marina.

Mr. Waltrip was concerned that after 20 years this swale system might not function as originally designed.

Mr. Woolson stated the maintenance of the swale was an issue for the Governor's Land Foundation.

- D. Mr. McKelvain stated there were places that needed repair were but as a whole the system was still largely effective and Governor's Land Foundation maintained the drainage pipes.
- E. Elaine Pierson, 1572 Harbor Rd spoke against the exception and asked the Board to carefully consider the impact to the environment and natural resources.
- F. Tom Wilkinson, 1580 Harbor Rd spoke against the exception because of the controversy over the project at 1592 Harbor Rd and because of cumulative impacts to the environment and property values when exceptions are granted.
- G. Betsy McKelvain, 1600 Harbor Rd spoke against the exception due to the change in aesthetics and the impact to the bulkhead.
- A. Mr. Newsom stated the controversy at 1592 Harbor Rd was over the installation of a fence that was approved by the Governor's Land Architectural Review Board. He stated the existing berm and swale on this project would not be altered and because there were catch basins on both sides of the property the water did not need to drain across the walkway and most of the existing walk would be removed. Also, the Two Rivers Country Club (TRCC) who is responsible for the harbor and the bulkhead reviewed and approved this plan.

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

Mr. Gussman stated for the record that the Board's decision had to be based on the environmental issues and impacts to the Chesapeake Bay and its tributaries.

Mr. Hughes understood the citizen's opposition to the project however; aesthetics were not under the purview of this Board. His concern was in maintaining the swale and the original design for the stormwater runoff. As long as the County will conduct inspections to ensure the integrity of this system, he would not oppose the project. In addition removal of some of the turf grass and restoration of the buffer was a positive change for water quality.

Mr. Hughes made a motion to re-open the public hearing for a citizen requesting to make additional comments.

Mr. Gussman re-opened the public hearing.

- G. Betsy McKelvain state that in the past no one was allowed to place anything in the first fifty feet from the water and now it was being allowed. She referenced the project at 1592 Harbor Rd where the Governor's Land Foundation allowed an exception without considering how others had abided by this rule.

Mr. Gussman again closed the public hearing. He then stated he felt the RPA and the conservation easement were in place for a purpose and this proposed encroachment did not conform to that purpose.

Mr. Hughes said he did not think manicured lawns were allowed in a conservation easement.

Mr. Woolson advised that, as per the conditions specified in the recorded conservation easement, the Planning Commission had given approval for both this project and the project at 1592 Harbor Rd. He added that the conservation easement specified the natural condition and plantings were to have remained in this easement therefore; all of the existing manicured lawns were violations.

Mr. Hughes made a motion to adopt the Resolution to Grant the Exception for Chesapeake Bay Board case CBE-14-090 at 1584 Harbor Rd, Parcel ID 4310200020 with the stipulation the swale was not to be altered.

The vote on the motion was by a 2-2 (Aye: Mr. Hughes and Mr. Schmidt)
(Nay: Mr. Waltrip and Mr. Gussman)

According to Article VI, Section 3 of the Chesapeake Bay Board Bylaws if an application received less than three affirmative votes the permit shall be denied.

Mr. Woolson remarked that the applicant could resubmit the same proposal after one year or alter the proposal and submit a new application.

2. CBE-14-096: Trimbath – 106 Godspeed Lane

Michael Woolson, Senior Watershed Planner presented the case for approximately 1,100 sqft of encroachment into the Resource Protection Area (RPA) for installation of an above ground pool, deck and a shed at 106 Godspeed Lane. He explained that all structures, if approved, would need to meet the new floodplain regulations and building code requirements. The proposed alternate location for the shed, further away from the canal, would require relief from the Board of Zoning Appeals, as it did not meet the current setback requirements. Mr. Woolson described the current conditions of the site and the proposed structures and mitigation. Staff determined the impacts for the proposal to be moderate and recommended approval of the request with the conditions outlined in the Resolution to Grant the Exception.

Mr. Hughes asked if the area for the proposed shed was currently turf.

Mr. Schmidt asked what the problem was with the proposed location for the shed.

Mr. Woolson stated the area was turf but not well maintained and currently contained woody debris. He responded to Mr. Schmidt that this area was in the seaward fifty foot buffer.

Mr. Hughes asked if there had been a recent application for a pool in this subdivision.

Mr. Woolson stated there was an application in the past year but it was withdrawn.

A. Mr. Brett Trimbath, the property owner, stated the location of the shed was desirable because it backed up to the shed on the adjacent lot. The existing vegetation down to the canal would remain and some other areas would be restored to their natural state when he added the required mitigation plantings.

Mr. Schmidt asked what type of material would be used in constructing the deck.

Mr. Waltrip asked if the pool would be saltwater or chlorine.

A. Mr. Trimbath stated the deck would probably be a combination of pressure treated wood and composite but this would be determined when he hired a contractor. He responded to Mr. Waltrip that he preferred a chlorinated pool because the use of saltwater would void the warranty on an above ground pool.

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

Mr. Waltrip stated that placing the shed next to the one on the adjacent property was reasonable.

Mr. Gussman agreed and because of the existing treed buffer behind the shed, the proposed location was acceptable.

Mr. Waltrip made a motion to adopt the Resolution Granting the Exception on case CBE-14-096 at 106 Godspeed Lane, Parcel ID 4730500051.

The motion was approved by a 4-0 vote.

RESOLUTION
GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 4730500051

WHEREAS, Mr. Brett Trimbath (the "Applicant") has applied to the Chesapeake Bay Board of James City County (the "Board") on July 9, 2014 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. 4730500051 and further identified as 106 Godspeed Lane in the Powhatan Shores subdivision (the "Property") as set forth in the application CBE-14-096 for the purpose of installing an above ground pool, deck and shed; 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 must coordinate with the James City County Building Safety and Permits Division to ensure that the construction of the shed and pool meet current floodplain requirements.
 - 3) Surety of \$500 will be required in a form satisfactory to the County Attorney's office to guarantee the mitigation (plants and gravel).
 - 4) This exception request approval shall become null and void if construction has not begun by July 9, 2015.
 - 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.

D. BOARD CONSIDERATIONS

1. CBE-10-038 Extension Request: Cooke's Garden Center

Michael Woolson, Senior Watershed Planner presented the request submitted by the applicant for an extension of the current exception for RPA buffer impacts associated with walkways, display and storage of nursery container stock, and a portion of the stormwater management facility. He explained that the project started with interior renovations and the garden center outdoor improvements will follow. Staff concurs with the extension request and recommended the Board grant the extension with all conditions outlined in the Resolution to Grant the Extension of the Exception.

Mr. Hughes made a motion to grant the Extension of the Exception on Chesapeake Bay Board case CBE-10-038 at 229 Sandy Bay Road, and 1820 and 1826 Jamestown Road, Parcel ID 4730100002, 4730100003 and 4730100005.

The motion was approved by a 4-0 vote.

RESOLUTION

GRANTING AN EXTENSION OF AN EXCEPTION ON JCC RE TAX PARCELS 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 and for 2 years on August 8, 2012. 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 extensions granted on July 13, 2011 and August 8, 2012, 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.
 - 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, 2016.
 - Written requests for an extension to this exception must be submitted to the Engineering and Resource Protection Division no later than 6 weeks prior to the expiration date.

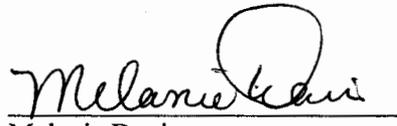
E. MATTERS OF SPECIAL PRIVILEGE - None

F. ADJOURNMENT

The meeting adjourned at 8:30 p.m.



David Gussman
Chesapeake Bay Board Chair



Melanie Davis
Secretary to the Board