

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES**

Wednesday August 13, 2014

A. ROLL CALL

David Gussman
John Hughes
William Apperson
Roger Schmidt – Alternate

ABSENT

Charles Roadley
Larry Waltrip

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 July 9, 2014 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

In the interest of the public in attendance, Chairman David Gussman changed the order of the public hearing cases from the posted agenda.

1. CBE-15-004: Gilden/Newsom – 1584 Harbor Road

Michael Woolson, Senior Watershed Planner advised the Board that the applicant, Ron and Gail Gilden, requested a deferral because they were unable to attend this meeting. He suggested the public hearing be opened, comments heard from the public, and if the Board approved the deferral request, continue the public hearing to September. Mr. Woolson then gave a brief presentation on the exception request for encroachment into the RPA for construction of a deck at 1584 Harbor Road. He described the changes from the exception request in July (case CBE-14-090), as replacing all of the existing turf grass with native plants and reestablishment of the drainage swale.

Mr. Schmidt asked if the deck was considered impervious.

Mr. Woolson said it was but would be constructed to allow water to run through the decking to the newly established drainage swale.

Mr. Gussman opened the public hearing.

A. Mr. Don Newsom from Delightful Gardens stated part of the existing sidewalk would be removed and the grade of the swale increased to improve the drainage.

- B.** Tom Wilkinson, 1580 Harbor Rd, objected to the exception request because he believed the proposed grill would require a foundation built into the swale obstructing the drainage and as the deck was considered impervious and constructed over the swale, the runoff would still be into the RPA.
- C.** Barbara McLennan, 1620 Harbor Rd, objected to the exception due to the cumulative impact to the RPA from granting exceptions and not protecting the environment.
- D.** Ken McLennan, 1620 Harbor Rd, said his objections had been stated by Barbara McLennan.
- E.** Kenneth Underwood, 1400 Two Rivers Rd, general manager of Two Rivers Country Club, objected to the exception due to the possibility of drainage into the harbor jeopardizing the integrity of the bulkhead.
- F.** Boyd McKelvain, 1600 Harbor Rd, objected to the exception because the amount of drainage off the deck is unclear and the recent trend towards allowing encroachment into the RPA.
- G.** Sharon Williams, 1604 Harbor Rd, also objected for the reasons stated by previous speakers.
- H.** Ross Ford, 1608 Harbor Rd, said he would withhold his comments for the future meeting and after discussing the project with the County staff.
- B.** Tom Wilkinson asked if notice would be sent out for the next meeting and if notices would be sent to all properties on Harbor Rd.

Melanie Davis, Board Secretary explained that unless directed otherwise by the Board, a newspaper advertisement and adjacent property owner (APO) notices would not be done for the continuation of a public hearing. APOs are only required for properties immediately adjacent to the subject property however, notices are also sent to the home owner associations of a subdivision.

Leo Rogers, County Attorney stated the required advertisement and adjacent property notices had already been done for this case. The public is now on notice to follow the case. No other legal notice is required by code and should the Board request additional notices for a deferral, it would be at a cost to the County.

Mr. Apperson felt that based on the current attendance the interested public was aware of the case proceedings.

Mr. Gussman said because the legal requirements had been met, he would not require additional notices and advised the public to inform their neighbors and contact the Engineering and Resource Protection Division if they had any questions or concerns regarding this case.

Mr. Hughes made a motion to defer case CBE-15-004 at 1584 Harbor Road and continue the public hearing to September 10, 2014.

The motion to defer was approved by a 4-0 vote.

Mr. Hughes and Mr. Gussman explained that anyone who spoke at tonight's meeting was welcome to attend and comment at the next meeting as additional information could be presented. Mr. Hughes asked Staff if the case could be deferred again next month.

Mr. Woolson explained the applicant could request another deferral and it would be up to the Board to grant or deny that request.

2. CBE-14-104: MacCloskey – 108 Jameswood

Michael Woolson, Senior Watershed Planner presented the case for an exception to the Chesapeake Bay Preservation ordinance (the Ordinance) requested by the property owner, Mr. Robert MacCloskey. The request was for approximately 462 square feet of encroachment into the Resource Protection Area (RPA) for installation of a combined detached garage and shed at 108 Jameswood in the Shellbank Woods subdivision. Mr. Woolson described the current conditions of the site, the proposed structures and mitigation which exceeded the standard mitigation requirements. Staff determined the impacts for the proposal to be slight and recommended approval of the request with the conditions outlined in the Resolution to Grant the Exception.

Mr. Gussman opened the public hearing.

A. Wesley Wigginton, owner of 110 Jameswood, stated he supported the proposed project and did not have any objections.

B. Mr. MacCloskey, the applicant, stated he was removing some of the existing driveway asphalt and moving the structure slightly forward thus reducing the impact to the RPA.

Mr. Woolson said staff would ensure the building permit application reflected the change described by Mr. MacCloskey.

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

Mr. Schmidt made a motion to adopt the Resolution Granting the Exception on case CBE-14-104 at 108 Jameswood, Parcel ID 4510400049.

The motion was approved by a 4-0 vote.

RESOLUTION **GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 4510400049**

WHEREAS, Mr. Robert MacCloskey (the "Applicant") has appeared before the Chesapeake Bay Board of James City County (the "Board") on August 13, 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. 4510400049 and further identified as 108 Jameswood in the Shellbank Woods subdivision (the "Property") as set forth in the application CBE-14-104 for the purpose of installing a detached garage 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) Surety of \$500 will be required in a form acceptable to the County Attorney's office to guarantee the mitigation plantings.
 - 3) This exception request approval shall become null and void if construction has not begun by August 13, 2015.
 - 4) Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than six weeks prior to the expiration date.

3. CBE-15-001: Beck/Newsom – 2404 Andre Esteve

Michael Woolson, Senior Watershed Planner presented the case for an exception to the Chesapeake Bay Preservation ordinance (the Ordinance) requested by Mr. Don Newsom with Delightful Gardens on behalf of the property owners Don and Susie Beck. The exception request was for approximately 400 sqft of encroachment into the Resource Protection Area (RPA) for installation of a patio at 2404 Andre Esteve in the Vineyard's at Jockey's Neck subdivision. Mr. Woolson described the current conditions of the site and the proposed pervious paver patio with a seating wall and built-in grill deck. The applicant will also be removing turf grass and has proposed mitigation that meets the County standards. Staff determined the impacts for the proposal to be slight and recommended approval of the request with the conditions outlined in the Resolution to Grant the Exception.

Mr. Schmidt asked what the grade of the slope would be after the turf was removed and the pavers were installed.

Mr. Woolson said the ground would be build up to allow for back fill of the stone. The patio would include a seating wall with the existing grade behind it.

Mr. Gussman opened the public hearing.

A. Mr. Don Newsom from Delightful Gardens responded to Mr. Schmidt stating the existing grade was excessive for a patio. There would be a slight slope on the patio and the seating wall would then function as a retaining wall. The soil level would be approximately one foot lower on the creek side of the wall. Because they would be using pervious pavers for the patio and a pervious block for the wall, the water would drain through the wall and patio.

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

Mr. Apperson made a motion to adopt the Resolution Granting the Exception on case CBE-15-001 at 2404 Andre Esteve, Parcel ID 4840200029.

The motion was approved by a 4-0 vote.

RESOLUTION
GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 4840200029

WHEREAS, Mr. Don Newsom of Delightful Gardens, on behalf of Don and Susie Beck, (the "Applicant") has appeared before the Chesapeake Bay Board of James City County (the "Board") on August 13, 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. 4840200029 and further identified as 2404 Andre Esteve in the Vineyard's at Jockey's Neck subdivision (the "Property") as set forth in the application CBE-15-001 for the purpose of installing a 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 follow the County's Pervious Paver Block System Guidelines for installation of the walkway paver system.
 - 3) Surety of \$500 will be required in a form acceptable to the County Attorney's office to guarantee the mitigation plantings.
 - 4) This exception request approval shall become null and void if construction has not begun by August 13, 2015.
 - 5) Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than six weeks prior to the expiration date.

D. BOARD CONSIDERATIONS

County Attorney Leo Rogers introduced the two new assistant county attorneys, Allison Kotula and Maxwell Hlavin. They will be working with the Chesapeake Bay Board and the Engineering and Resource Protection Division staff.

Mr. Gussman stated the Board would like staff to arrange a site visit to 1584 Harbor Road. He asked Mr. Rogers how they should proceed.

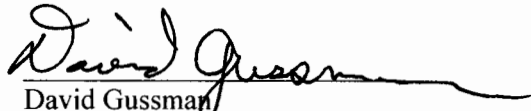
Mr. Rogers explained that if the Board could determine and announce a time and place at this meeting, they could adjourn to that time and place and staff would simply post a notice on the County office doors and an internet press release. If a time and place could not be determined until after this meeting, a special meeting would have to be announced and advertised and adjacent property owners notified.

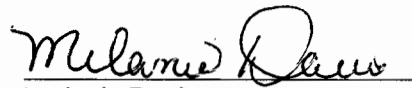
The Board decided on a site meeting Monday, August 18, 2014 at 2 pm and they suggested all Board members and alternates be notified.

E. MATTERS OF SPECIAL PRIVILEGE

F. ADJOURNMENT

The meeting adjourned at 7:45 pm to 2 pm Monday, August 18, 2014 at 1584 Harbor Road.


David Gussman
Chesapeake Bay Board Chair


Melanie Davis
Secretary to the Board