

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES**

Wednesday May 13, 2015

A. ROLL CALL

David Gussman - Chair
Charles Roadley
John Hughes
Larry Waltrip
Roger Schmidt - Alternate

ABSENT

William Apperson

OTHERS PRESENT

County Staff:

Michael Woolson, Senior Watershed Planner
Scott J. Thomas, Director Engineering and Resource Protection
Allison Kotula, Assistant County Attorney
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 April 8, 2015 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBE-15-079: Eckenfels – 6019 Tabiatha

Michael Woolson presented the exception request submitted by property owner Christopher Eckenfels for RPA encroachment to install a deck and patio at 6019 Tabiatha in the Chickahominy Haven subdivision, parcel #1910600023. These structures are replacing those installed by a previous owner without approval from this Board. The new deck and patio are approximately 640 sqft and would be less impervious cover than the previous structures which were approximately 800 sqft. Mr. Eckenfels also proposes mitigation plantings that exceeded the County minimum mitigation requirements and staff was also recommending that the homeowner participate in a turf nutrient management program. Mr. Woolson displayed photographs and described the current conditions of the property. Staff determined impacts to be minimal and recommended approval of the exception request with the conditions outlined in the Resolution to Grant the Exception.

Mr. Gussman asked if the azaleas and roses listed on the application as mitigation plants were acceptable to staff.

Mr. Woolson stated that although not all azaleas or roses are native to this area they would be acceptable in this case and he reiterated that the impacts were minimal and the proposal was a net reduction in impervious cover.

Mr. Gussman opened the public hearing.

A. Mr. Augie Dean, representing the applicant, stated that Mr. Eckenfels started the project because of the poor condition of the existing deck and patio and was not aware he needed Board approval. He added that Mr. Eckenfels would follow any mitigation plantings requirements from the Board.

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

All Board members agreed the impacts were minimal and adequately mitigated.

Mr. Hughes made a motion to adopt the resolution to grant the exception for Chesapeake Bay Board Case CBE-15-079 at 6019 Tabiatha Lane, Parcel #1910600023.

The motion was approved by a 5-0 vote

RESOLUTION
GRANTING AN EXCEPTION ON JCC RE TAX PARCEL NO. 1910600023

WHEREAS, Christopher Eckenfels, (the "Applicant") have applied to the Chesapeake Bay Board of James City County (the "Board") 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. 1910600023 and further identified as 6019 Tabiatha Lane in the Chickahominy Haven subdivision (the "Property") as set forth in the application CBE-15-079 for the purpose of installing an 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 on May 13, 2015, 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 permits as required for the project.
 - 2) Prior to construction, a \$250 surety shall be submitted in a form acceptable to the County Attorney's office, to guarantee the required mitigation.
 - 3) The Engineering and Resource Protection Division Director reserves the right to require additional erosion and sediment control measures for this project if field conditions warrant their use.
 - 4) This exception request approval shall become null and void if construction has not begun by May 13, 2016.
 - 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.

2. CBE-15-085: James/American Lawn and Landscape – 5120 West Grace Court

Michael Woolson presented the exception request submitted by property owners Mr. and Mrs. James, for RPA encroachment to install retaining wall and associated backfill to help reduce erosion on their property at 5120 West Grace Court in the Scotts Pond subdivision, Parcel #3221200038. The proposed mitigation exceeds the required mitigation for the proposed 75 square feet of impervious cover and although not requested staff suggests removal three trees that may be severely impacted by the proposed construction. Staff also recommends that the homeowner participate in a turf nutrient management program. Mr. Woolson displayed photographs, described the current conditions of the property and stated the wall would be no more than 3 ½ feet tall. Staff determined RPA impacts to be minimal and recommended approval of the exception request with the conditions outlined in the Resolution to Grant the Exception.

Mr. Roadley asked if the 3 ½ foot wall would be adequate to address the erosion and release of sediment into the RPA which was a good thing or if the purpose was only to create a usable yard in the RPA.

Mr. Woolson pointed out the area of erosion and explained the wall and backfill would eliminate the slope and reduce the erosion, however he understood Mr. Roadley's concern for creating a yard in the RPA.

Mr. Hughes felt this type of proposal was coming before this Board because so many houses were being constructed on lots with RPA and slopes that left no usable space for yards. He asked if the County was addressing this when lots are delineated or the houses constructed.

Mr. Woolson explained that staff reviewed the topography and clearing limits but did not address possible shading that might occur as it has on this lot, killing the existing vegetation resulting in the erosion.

Mr. Waltrip commented that this lot was created and the house constructed prior to the 2004 change in the Ordinance. He therefore felt the owner should be granted permission to improve his property.

Mr. Schmidt asked why the proposed wall did not extend to the property line.

Mr. Gussman opened the public hearing.

A. Mr. Jack Eckstein, president of American Lawn & Landscape explained that there was a drainage swale on that side of the property that they would not want to impact so the wall would turn prior to reaching that point.

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

Mr. Roadley although not concerned with this application, repeated his concern for creating lawns in the RPA.

Mr. Gussman stated that continually re-seeding and fertilizing lots that would then erode into the RPA was probably worse than constructing the wall if it would stop the erosion.

Mr. Hughes repeated his concern that lots were being created on steep slopes in or near the RPA allowing no room for usable yards.

Mr. Waltrip made a motion to adopt the resolution to grant the exception for Chesapeake Bay Board Case CBE-15-085 at 5120 West Grace Court, Parcel #3221200038.

The motion was approved by a 5-0 vote.

RESOLUTION
GRANTING AN EXCEPTION ON JCC RE TAX PARCEL NO. 3221200038

WHEREAS, David and Yvonne James, (the "Applicant") have applied to the Chesapeake Bay Board of James City County (the "Board") 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. 3221200038 and further identified as 5120 West Grace Court in the Scotts Pond subdivision (the "Property") as set forth in the application CBE-15-085 for the purpose of installing a retaining wall and associated backfill; 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 on May 13, 2015, 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 permits as required for the project.
 - 2) Prior to construction, a \$250 surety shall be submitted in a form acceptable to the County Attorney's office, to guarantee the required mitigation.
 - 3) The Engineering and Resource Protection Division reserves the right to require additional erosion and sediment control measures for this project if field conditions warrant their use.
 - 4) The surety will be held for a minimum of one growing season after planting.
 - 5) This exception request approval shall become null and void if construction has not begun by May 13, 2016.
 - 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.

Mr. Gussman made an adjustment to the posted agenda changing the sequence for cases 3 and 4.

4. CBE-15-087: Cherry – 18 Whittakers Mill

Scott Thomas presented the exception request submitted by Tom and Amy Cherry for RPA encroachment associated with installation of an at-grade 154 sqft deck adjacent to a bulkhead on Kingsmill Pond, on their property at 18 Whittakers Mill in the Kingsmill Subdivision, Parcel #5040300018. The applicant proposed removal of an existing 900 sqft bocce ball court installed by a previous owner was mitigation. Staff determined that removal of the bocce ball court and implementation of a nutrient-turf management plan were sufficient

mitigation for the proposed deck. Mr. Thomas described the history of the lot and the RPA as well as current conditions on the lot and construction of the proposed deck. Staff determined impacts to be minimal and recommended approval of the exception request with the conditions outlined in the Resolution to Grant the Exception.

Mr. Roadley stated the retaining walls in the photographs appeared to be new and asked if they were approved. He also appreciated the nutrient management plans being incorporated into the recommendations to the applicants.

Mr. Thomas stated repair and replacement of the walls was approved administratively on application CBE-15-063. He said the intent was to have applicants commit to the use of nutrient management plans as it benefited water quality as helped the applicants properly maintain the turf.

Mr. Gussman opened the public hearing.

A. Amy Cherry the applicant and owner stated all of the walls were repaired or replaced as required by the Kingsmill Homeowners Association (KCSA) as a condition of purchasing the property.

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

Mr. Roadley stated the encroachment with the stated mitigation requirements was minimal.

Mr. Schmidt made a motion to adopt the resolution to grant the exception for Chesapeake Bay Board Case CBE-15-087 at 18 Whittakers Mill, Parcel #5040300018.

The motion was approved by a 5-0 vote.

RESOLUTION
GRANTING AN EXCEPTION ON JCC RE TAX PARCEL NO. 5040300018

WHEREAS, Tom and Any Cherry, (the "Applicant") have applied to the Chesapeake Bay Board of James City County (the "Board") 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. 5040300018 and further identified as 18 Whittakers Mill in the Kingsmill subdivision (the "Property") as set forth in the application CBE-15-087 for the purpose of installing an at-grade deck adjacent to the bulkhead; 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 on May 13, 2015, 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 permits as required for the project.
 - 2) Prior to construction, a \$250 surety shall be submitted in a form acceptable to the County Attorney's office, to guarantee the required mitigation.
 - 3) The Engineering and Resource Protection Division Director reserves the right to require additional erosion and sediment control measures for the project if field conditions warrant their use.
 - 4) This exception request approval shall become null and void if construction has not begun by May 13, 2016.
 - 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-15-086: Noland Properties/AES – Drainage Amendment for Liberty Crossing at 6601 Richmond Rd

Michael Woolson presented the exception request submitted by Jason Grimes, AES Consulting Engineers, for a modification to a previously approved Chesapeake Bay Exception (CBE-06-003) for the Liberty Crossing subdivision located at 6601 Richmond Rd, Parcel #2430100035. The application was for installation of a new storm drainage conveyance system to collect stormwater at the back of 24 lots instead of allowing the runoff to be collected in a dry swale BMP with associated level spreader, as previously approved. Mr. Woolson explained the original proposal for RPA impact associated with the Liberty Crossing subdivision and the required mitigation which included the dry swale that was to be removed as part of this proposed modification. Staff determined the modification to the previously approved mitigation measures to be minimal and the proposed storm drainage conveyance system and Natural Open Space easement provide equivalent water quality measures therefore Staff recommended approval of the exception request with the conditions outlined in the Resolution to Grant the Exception.

Mr. Gussman asked for further explanation of the proposed stormwater drainage system.

Mr. Woolson stated that Mr. Grimes with AES could explain this but there would be a series of inlets behind the lots that would be graded to drain to the inlets. This pipe system would connected to the existing pipe system and then to the BMP.

Mr. Roadley recused himself from considering this application due to his firm's previous involvement with the case.

Mr. Hughes asked if the proposed method of piping stormwater to the BMP was a preferable to the original plan that sent runoff to the swale.

Mr. Woolson stated the longer stormwater is in contact with soil and vegetation the more filtering and nutrient removal occurs so piping to the BMP removes that interface. The preferred method is not to centralize the stormwater collection into a giant pond however, ultimately the runoff is being treated which is the mitigation requirement.

Mr. Gussman asked where the BMP discharged.

Mr. Schmidt asked about the change in the size of the collection area.

Mr. Woolson explained the BMP discharged to a stream channel, ran along the Colonial Heritage Development to Cranston's Mill Pond and then to the tidal portions of Yarmouth Creek. He explained that part of the change in the drainage area occurred because of the outlet mall development up stream.

Mr. Gussman opened the public hearing.

Mr. Hughes asked why the stormwater treatment method was being modified.

A. Jason Grimes, AES Consulting Engineers, explained that the desire was to keep the wooded buffer due to unsightly conditions on the adjacent property that would be exposed should the area be cleared for the swale. The goal was to receive the same water quality benefit without having to clear the existing vegetation. Also the original plan called for a level spreader at the end of the swale which would concentrate the runoff at the edge of the slope and RPA buffer. The proposed piping system might also prevent long term maintenance problems. He stated there would be a few small yard outlets but all of the gutter systems would be piped to the street.

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

Mr. Hughes stated he thought this proposal was better than the original drainage plan.

Mr. Gussman stated if the calculations determined the BMP could handle the runoff he also was not opposed to the proposal.

Mr. Hughes made a motion to adopt the resolution to grant the exception for Chesapeake Bay Board Case CBE-15-086 for the Liberty Crossing Drainage Amendment case SP-0020-2015 at 6601 Richmond Rd, Parcel #2430100035.

The motion was approved by a 4-0 vote.

RESOLUTION
GRANTING AN EXCEPTION ON JCC RE TAX PARCEL NO. 5040300018

WHEREAS, AES Consulting Engineers on behalf of Noland Properties Inc. (the "Applicant"), has applied to the Chesapeake Bay Board of James City County (the "Board") 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. 2430100035 and further identified as 6601 Richmond Road (the "Property") as set forth in the application CBE-15-086 for the purpose of modifying a previously approved Chesapeake Bay Exception CBE-006-003 for the Liberty Crossing subdivision as proposed in County Plan No. SP-0020-2015 ; 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 on May 13, 2015, 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 permits as required for the project.
 - 2) Prior to construction, evidence of coverage under a state VPDES Construction General Permit must be obtained.
 - 3) A Natural Open Space easement plat and deed for the former dry swale area be submitted for review and approval to the Engineering and Resource Protection Division, and once approved, be recorded at the James City County Courthouse
 - 4) Full implementation of plans and specifications per approved plan of development amendment, County Plan No. SP-0020-2015.
 - 5) This exception request approval shall become null and void if construction for SP-0020-2015 has not begun by May 13, 2016
 - 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.

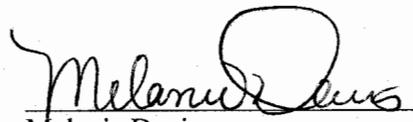
D. BOARD CONSIDERATIONS - None

E. MATTERS OF SPECIAL PRIVILEGE - None

F. ADJOURNMENT

The meeting adjourned at 8:26 p.m.


David Gussman
Chesapeake Bay Board Chair


Melanie Davis
Secretary to the Board