

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES**

Wednesday August 12, 2015

A. ROLL CALL

David Gussman - Chair
John Hughes
Charles Roadley
Louis Bott - Alternate
Roger Schmidt - Alternate

ABSENT

Larry Waltrip
William Apperson

OTHERS PRESENT

County Staff:

Michael Woolson, Senior Watershed Planner
Scott J. Thomas, Director Engineering and Resource Protection
Maxwell Hlaven, 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 July 8, 2015 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBE-15-105: Nervitt – 108 Seven Oaks

Scott J Thomas presented the exception request submitted by property owners Ronald and Lois Nervitt. The request was for encroachment into the seaward and landward RPA for construction of a single family dwelling with an accessory terrace pool at 108 Seven Oaks in the Ford's Colony subdivision, parcel #3130900038. Mr. Thomas explained the history of this lot and exception request including the approval for a principal structure on this lot, previously approved by this Board but never constructed. He described the current conditions of the lot including the existing utility easement thru the RPA that limited the available planting area. He described the proposed structures and the proposed mitigation that was about 9% short of the County standard. Staff determined impacts associated with this application to be moderate for the proposed development and recommended approval of the exception request with the conditions outlined in the Resolution to Grant.

Mr. Bott asked how the County Chesapeake Bay Preservation ordinance (Ordinance) regarded accessory structures in the RPA, specifically in the seaward buffer.

Mr. Thomas explained that accessory structures anywhere in the RPA required approval from this Board at a public hearing. The preference was they be included with the exception request for the principal structure so all impacts could be considered at one time as with this application.

Mr. Roadley asked if the previous application for the principal structure was comparable in size and impacts.

Mr. Thomas stated there was a small increase in the total impact however it was in the landward buffer and encroachment in the seaward buffer was reduced.

Mr. Schmidt asked if this lake adjacent to the parcel had perennial or intermittent flow.

Mr. Gussman asked if the County considered it a BMP (stormwater pond).

Mr. Thomas replied that it was considered a BMP but with perennial feed and therefore had the 100 foot buffer around it.

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

Mr. Roadley stated these cases were difficult with conditions created by the 2004 changes to the Ordinance. He felt that Mr. Nervitt had worked in good faith with the County to minimize the associated impacts to the RPA. However, he was somewhat concerned with an accessory structure in the seaward buffer.

Mr. Bott fully supported the principal structure in the RPA but had reservations about approving an accessory structure in the seaward buffer that could be considered self-imposed. He also was concerned that the proposed mitigation was slightly below the minimum requirement.

Mr. Hughes stated the lot was platted and purchased prior to the change in the Ordinance and felt that Mr. Nervitt had worked with Staff for a plan that would meet his needs and minimize impacts as much as possible. He felt the mitigation shortage was due to the utility easement on the lot and not the fault of the applicant.

Mr. Gussman felt that because it was a large BMP and not a tidal creek, the impacts would not be detrimental to water quality.

Mr. Hughes made a motion to adopt the resolution to grant the exception for Chesapeake Bay Board Case CBE-15-105 at 108 Seven Oaks, Parcel #3130900038.

The motion was approved by a 4-1 vote. (Aye: Hughes, Schmidt, Roadley, Gussman)
(Nay: Bott)

RESOLUTION
GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 3130900038

WHEREAS, Ronald A. and Lois S. Nervitt, 101 Stone Bridge Drive Williamsburg, VA (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 3130900038 and further identified as 108 Seven Oaks in the Ford's Colony subdivision (the "Property") as set forth in the application CBE-15-105 for the purpose of constructing a single family dwelling with a terrace pool; 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 August 12, 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 federal, state, and local permits as required for the project.
 - 2) Design and construction of the onlot runoff reduction/pollutant removal practice proposed shall generally follow micro-scale specifications found in Virginia DEQ Stormwater Design Specifications No. 1 (Rooftop Disconnection), No. 8 (Infiltration), or No. 9 (Bioretention); or alternatively, an equivalent and acceptable published and agreed upon standard for onlot residential practices. Final design/construction information for the practice as labeled on the mitigation plan as "Proposed Rain Garden Area (To Be Designed)" shall be submitted to the Engineering and Resource Protection Division for review and approval prior to installation.
 - 3) At the time of building permit application for the single-family residence dwelling, if there is any encroachment into the 25 foot pond buffer/setback, defined as the zone 25 feet landward from the 100-year design high water elevation of the lake (Dam No. 1; County BMP ID Code: PC083; Normal Pool Elevation 48.0; DHW Elevation 50.45), a Pond Buffer/Setback waiver request will need to be submitted, reviewed, and approved by the County in accordance with those specific County program guidelines and procedures.
 - 4) A surety of \$4,000 will be required in a form acceptable to the County Attorney's office to guarantee the mitigation plan including canopy tree, understory trees and shrub/ground cover plantings and the onlot rain garden practice.
 - 5) This exception request approval shall become null and void if construction has not begun by August 12, 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.

2. CBE-15-106: Duguay – 2836 Durfey's Mill Road

Michael Woolson presented the exception request submitted by the property owner, Mr. Jim Duguay with Performance Contracting. The request was for encroachment into the landward RPA associated with construction of a single family dwelling and attached deck at 2836 Durfey's Mill Road in the Lake Powell Pointe subdivision, parcel #4741200055. Mr. Woolson provided a history of the subdivision, the lake and the associated wetland delineation. He then described the proposed structures, associated impacts to the RPA and the proposed mitigation which exceeded the standard county requirements but were not adequately shown on the submitted plan. He explained that because this lot was platted prior to adoption of the Chesapeake Bay Preservation ordinance (Ordinance) and proposed impacts were only to the landward RPA, this exception request would normally be administratively processed. However, because the County received a significant amount of public comment from citizens and the Lake Powell Pointe Architectural Review Board (LPP ARB), the manager could not determine if granting the exception would confer to this applicant special privileges denied to other property owners similarly situated in the vicinity, and the decision was made to process this request through the Chesapeake Bay Board at a public hearing in order to allow for public advertisement and comment. Staff determined the impacts associated with the project to be minor for the proposed development and recommended approval of the exception request with the conditions outlined in the Resolution to Grant.

Mr. Gussman opened the public hearing.

A. Mr. Jim Duguay the applicant and owner, stated he submitted the application and plans for the new residence as required and would correct the mitigation plan as requested.

B. Mr. Stephen Pond, 2840 Durfey's Mill Rd, representing the LPP ARB, spoke on behalf of the other members of the LPP ARB and several Lake Powell Pointe residents, who were also in attendance. Mr. Pond presented the Board and Staff with written comments and diagrams for the project file. They were requesting that the Board defer action on this application for the following reasons:

- The Performance Contracting (Builder) plan before the Board was disapproved by the Lake Powell Pointe Architectural Review Board (LPP ARB) on July 3, 2015.
- The above-ground finished square footage was well below minimum requirement and a front entry garage was not accepted.
- Builder has submitted a new plan to the LPP ARB having a side entry garage and 1100 sq. ft. of finished second floor space.
- Builder's proposed new site plan shifts the house foundation to the right, and adds impervious driveway area in the Resource Protection Area (RPA), and shows a different grading design.
- Builder has not disclosed this new site plan to the JCC E&RP Staff for their review and assessment of the sufficiency of his mitigation plan in light of these changes.
- Defer action on CBE-15-106 until a full site plan proposal, approved by the LPP ARB, is reviewed by JCC staff.

Mr. Pond also felt that the location of the wetlands and RPA presented in the Staff presentation was incorrect and he questioned the standard for requiring minimum impact to the RPA. He felt the applicant could propose a plan that required less impervious area and less clearing in the RPA. Mr. Pond stated that if the applicant presented a plan to Staff that was approved by the LPP ARB they would not object to it being handled administratively.

Mr. Gussman advised Mr. Duguay that if the Board approved the exception request and plan as presented, he would have to adhere to this plan or he would be in violation of the approval. He suggested the changes be worked out before the Board voted on the exception request.

A. Mr. Duguay said the LPP ARB denied his plan for a front load garage and he has submitted a plan to them for a side load garage and driveway. The house has been moved 2 or 3 feet to the right however the house footprint and impact to the RPA has not changed.

Mr. Gussman thought there might be a substantial change in the plan and asked Mr. Woolson if he thought the change would alter the RPA impacts and mitigation requirements.

Mr. Hughes also thought the plan for a side load garage would increase the impervious cover. He asked if a plan was approved by the LPP ARB would staff review it administratively.

Mr. Woolson said he briefly looked at the documents submitted by Mr. Pond. At this time he agreed with the location of the wetland and RPA location on the site plan submitted by the applicant however, without further review of an actual revised plan he could not comment on whether or not a side load garage plan would change the impacts to the RPA or the mitigation requirements. He stated that a plan approved by the LPP ARB, with no objection by the neighbors, and only impacting the landward RPA, could be reviewed administratively.

Mr. Hughes advised Mr. Duguay that he could request a deferral to work out an acceptable plan with the LPP ARB.

A. Mr. Duguay said he was asking for approval on the plan as submitted. He said if the plan has to be revised he will resubmit it for administrative approval as Mr. Pond agreed to or for this Board's approval if necessary.

Mr. Woolson stated that any change in the RPA impacts would require new approval either administratively or by this Board.

B. Mr. Pond stated his concern was that if the Board approved this plan, the lot would be cleared without approval for a structure. In addition he felt the location of the RPA was incorrect.

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

Mr. Roadley stated he did not question the surveyed wetland delineation on the submitted plan however, he did feel the applicant was placing the Board in a difficult position of voting this plan up or down knowing it could not be constructed as presented.

Mr. Schmidt also stated he did not want to approve a plan that might not have correct RPA and knowing the impact might change.

Mr. Hughes stated the only thing for the Board to consider was the impact to the RPA as indicated on the plan presented to them.

Mr. Bott stated if the house and RPA impact shift, the applicant will have to reapply for an exception to the Ordinance.

Mr. Gussman repeated that if the Board approved this plan, this is the only thing that could be constructed. He directed Staff to closely monitor this project and issue a violation if there was any deviation from this plan without additional approvals.

Mr. Bott made a motion to adopt the resolution to grant the exception for Chesapeake Bay Board Case CBE-15-106 at 2836 Durfey's Mill, Parcel ID #4741200055.

The motion was approved by a 3-2 vote. (Aye: Bott, Hughes, Gussman)
(Nay: Schmidt, Roadley)

Mr. Gussman again directed staff to closely monitor this project.

RESOLUTION
GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 4741200055

WHEREAS, Mr. Jim Duguay, Performance Contracting (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 4741200055 and further identified as 2836 Durfey's Mill Road in the Lake Powell Pointe subdivision (the "Property") as set forth in the application CBE-15-106 for the purpose of constructing a single family home, and attached deck; 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 August 12, 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 federal, state, and local permits as required for the project.
 - 2) The applicant must resubmit an acceptable mitigation plan encompassing 1 canopy tree, 5 understory trees and 16 shrubs, as outlined in the application.
 - 3) Prior to construction, a \$1,500 surety to guarantee the mitigation plantings shall be submitted in a form acceptable to the County Attorney's office.
 - 4) This exception request approval shall become null and void if construction has not begun by August 12, 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-15-107: Sawin – 1588 Harbor Rd

Michael Woolson presented the exception request submitted by property owners John and Lisa Sawin for encroachment into the landward RPA associated with the expansion of a patio at 1588 Harbor Road within the Governor's Land subdivision, parcel #431020021. Mr. Woolson described the current conditions of the site, the proposed expansion and the proposed mitigation which exceeded the standard mitigation requirements. He advised the Board that the patio was also within a conservation easement dedicated to the County and would require his approval to meet the terms of this easement. He also described the drainage system for the marina village and stated this project did not propose any changes to this drainage system. Staff determined impacts associated with this proposal to be minor and recommended approval of the exception request with the conditions outlined in the Resolution to Grant.

Mr. Gussman asked for more information on the conservation easement.

Mr. Woolson stated the easement allowed for 15 feet of encroachment up to the berm that was constructed for the drainage of impervious cover and this proposal did not go beyond that berm or alter the drainage so his approval for the encroachment into the conservation easement would be given if this Board approved the encroachment into the RPA.

Mr. Roadley asked if the berm was located along the fence.

Mr. Woolson indicated the location of the drain inlet depicted on the submitted plan with notes that this area was not to be disturbed.

Mr. Schmidt asked what material would be used to construct the patio.

Mr. Woolson stated it was a brick paver set on a sand bed, not necessarily a pervious paver but it had a pervious nature.

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

Mr. Roadley noted that this case was different from other applications at the marina as there was minimal impact with no proposed alternation to drainage system.

Mr. Schmidt made a motion to adopt the resolution to grant the exception for Chesapeake Bay Board Case CBE-15-107 at 1588 Harbor Road, Parcel ID #4310200021.

The motion was approved by a 5-0 vote.

RESOLUTION
GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 4310200021

WHEREAS, John and Lisa Sawin, (the "Applicant") have applied to the Chesapeake Bay Board of James City County (the "Board") 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. 4310200021 and further identified as 1588 Harbor Road in the Governor's Land at Two Rivers subdivision (the "Property") as set forth in the application CBE-15-107 for the purpose of installing a patio expansion; 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 August 12, 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 federal, state and local permits as required for the project.
 - 2) A surety of \$500 will be required in a form acceptable to the James City 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 12, 2016.
 - 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.

4. CBE-16-002: Hanson/Green Side Up Landscaping – 113 Burnham

Michael Woolson presented the exception request submitted by Jim Gallagher, Green Side Up Landscaping, on behalf of property owners Gregg and Deborah Hanson, for encroachment into the RPA associated with installation of a patio and retaining walls as part of the mitigation plan for case CBE-14-084 for a single family dwelling, approved by this Board on June 11, 2014. The project is located at 113 Burnham in the Ford's Colony subdivision, parcel #3720300144. He explained that all conditions of the granting resolution for the house had been met except for this mitigation plan and the nutrient management program. He described the current conditions of the site and the location of the proposed patio, walls and turf. He also informed the Board that Staff was agreeable to the proposed use of ferns on a 6:1 basis as a substitute for some of the shrubs and therefore the plan met the standard mitigation requirements. Staff determined impacts associated with this proposal to be minor and recommended approval of the exception request with the conditions outlined in the Resolution to Grant.

Mr. Schmidt asked if a cross section plan has been submitted for the retaining walls.

Mr. Woolson said only a copy of a standard block wall which was included in the Board package.

Mr. Gussman opened the public hearing.

A. Jim Gallagher, Green Side Up Landscaping said he had not wanted to design a wall plan until he was sure this exception request would be approved. He said he would need to provide the design plan for the building permit.

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

Mr. Schmidt made a motion to adopt the resolution to grant the exception for Chesapeake Bay Board Case CBE-16-002 at 113 Burnham, Parcel ID #3720300144.

The motion was approved by a 5-0 vote.

RESOLUTION
GRANTING AN EXCEPTION ON JCC RE TAX PARCEL 3720300144

WHEREAS, Mr. Jim Gallagher, Green Side Up Landscaping on behalf of Gregg and Deborah Hanson, (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. 3720300144 and further identified as 113 Burnham in the Ford's Colony subdivision (the "Property") as set forth in the application CBE-16-002 for the purpose of installing the mitigation including retaining walls and a patio for the approved Chesapeake Bay exception CBE-14-084 at the same address.

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 August 12, 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 federal, state and local permits as required for the project.
 - 2) The Turf Love Program, or some other nutrient management program shall be used in the lawn areas and a copy of the plan submitted to the Engineering and Resource Protection Division staff, prior to release of surety posted for CBE-14-084.
 - 3) This exception request approval shall become null and void if construction has not begun by August 12, 2016.
 - 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 - None

E. MATTERS OF SPECIAL PRIVILEGE

1. Mr. Scott J Thomas, Director Engineering and Resource Protection said that he would provide a report on the past fiscal year in next month's board packages.
2. With regard to no particular case, he gave a brief presentation and explanation on the State Regulatory Guidance for RPA around Lakes/BMPs and agreed to send them a copy of the presentation.

F. ADJOURNMENT

The meeting adjourned at 9:25 p.m.


David Gussman
Chesapeake Bay Board Chair


Melanie Davis
Secretary to the Board