

**MINUTES**  
**JAMES CITY COUNTY CHESAPEAKE BAY BOARD**  
**REGULAR MEETING**  
**County Government Center, Building F**  
**101 Mounts Bay Road, Williamsburg, Virginia 23185**  
**January 15, 2020**  
**5:00 PM**

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**A. CALL TO ORDER**

The Chesapeake Bay Board meeting for January 15, 2020, was called to order.

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. ROLL CALL**

**Board Members Present:**

David Gussman, Chair  
Charles Roadley  
Larry Waltrip  
John Hughes  
Robert Lukens

**Board Members Absent:**

William Apperson

**Other Staff Present:**

Michael Woolson, Senior Watershed Planner, Stormwater and Resource Protection  
Toni Small, Director, Stormwater and Resource Protection  
Liz Parman, Assistant County Attorney  
Trevor Long, Watershed Planner, Stormwater and Resource Protection

**C. MINUTES**

1. Minutes from December 11, 2019, Regular Meeting

A motion to Approve the minutes was made by Mr. Apperson. The minutes were approved on a voice vote.

**D. PUBLIC HEARINGS**

1. Case No. CBPA 19-0160 : 10010 Sycamore Landing Road

Mr. Michael Woolson, Senior Watershed Planner, presented the exception request submitted by Mr. Jeff Watkins, Shoreline Structures, LLC, on behalf of Mr. Deric and Mrs. Andrea Amason for encroachments into the Resource Protection Area (RPA) buffer for the grading of the bank on the property located at 10010 Sycamore Landing Road, within Stephens Tract No. 2 subdivision and the York River watershed. The property is further identified as James City County Tax Map Parcel No. 0720400001. The presentation described the current and proposed site conditions. If the Board approved the request, staff asked that the attached conditions be incorporated into the approval. The Board deliberated on the pros and cons of

this application.

Mr. Luken inquired about the suggested *Panicum virgatum*.

Mr. Woolson replied that it was native switchgrass that stays between 3 to 4 feet tall. Staff has seen good success at Uncles Neck and thought it would be appropriate here. The homeowner has options as long as the bank is revegetated.

Mr. Gussman opened the Public Hearing.

A. Mr. Jeff Watkins, Shoreline Structures, LLC, applicant and contractor, outlined the project to the Board.

Mr. Roadley voiced concern about the use of mulch on the bank.

A. Mr. Watkins answered that they would do what the Board requests. They were going to do temporary seeding and lay a straw blanket down with bermuda and rye grass for a quick cover. Mulching would be done as needed.

Mr. Roadley asked if the 3:1 slope was flat enough to get his equipment down the embankment.

A. Mr. Watkins replied that the the 3:1 slope is sufficient.

Mr. Roadley asked if a bench would be installed for future access.

A. Mr. Watkins confirmed that he would leave a bench at the top of the revetment along with a switchback walking path up the hill and commented no steps would be built.

Mr. Gussman closed the Public Hearing, as no one else wished to speak.

Mr. Roadley asked staff to give latitude for the revegetation plan to be implemented so that he does not have to come back before the Board.

Mr. Roadley made a motion to Adopt the resolution for Chesapeake Bay Board Case No. CBPA 19-0160 at 10010 Sycamore Landing Road.

A motion to Approve with Conditions was made by Mr. Roadley.

The motion result was: YES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 1  
AYES: Gussman, Hughes, Roadley, Waltrip, Lukens  
Absent: Apperson

## 2. Case No. CBPA 19-0141 : 2552 William Tankard Drive

Mr. Trevor Long, Watershed Planner, presented the exception request submitted by Mr. Robert Fetter for encroachments into the RPA buffer and Conservation Easement for the construction of a shed on property located at 2552 William Tankard Drive, within the Landfall Village subdivision and the Powhatan Creek watershed. The property is further identified as James City County Tax Map Parcel No. 4640800009. The presentation described the current and proposed site conditions. The case had been deferred from the December 11, 2019 meeting, to allow Board members to inspect the proposed location. If the Board approved the request, staff asked that the attached conditions be incorporated into the approval. The Board deliberated on the pros and cons of this application.

Mr. Hughes inquired about the location of the retaining wall in reference to the proposed shed.

Mr. Gussman inquired about the Conservation Easement.

Mr. Woolson responded that the Conservation Easement overlies the RPA area.

Mr. Hughes inquired about the flood plain area in relation to the proposed shed.

Mr. Long pointed out the location of the shed and the flood plain.

Mr. Lukens stated during the site visit he had some concern about access to the shed and the kind of equipment that might be stored in the shed, like a riding lawn mower, and the potential to cause a well-worn path. He inquired if further information was needed on the type of equipment to be stored.

Mr. Long replied that he would defer the answer to the applicant.

Mr. Gussman stated that the Public Hearing was still open and asked if anyone would like to speak on this matter.

**A.** Mr. Henry Singleton, 2557 William Tankard Drive, pointed out other options to the shed location that do not involve installing something in the RPA and potentially creating a well-worn path. He also expressed appreciation over the Board members on-site visit along with their time and consideration.

**B.** Mr. Robert Fetter, applicant, provided a handout to the Board. He further outlined the project to the Board. He stated the shed would be for small equipment. He will put in whatever screening the Board wants installed.

Mr. Gussman closed the Public Hearing, as no one else wished to speak.

Mr. Roadley stated that he did visit the site with staff and noted that it was not an ideal location for a structure but is outside the flood plain. He further stated it has a fairly minimal footprint of 10x10 feet and he is considering the concerns of the adjacent property owners as well.

Mr. Hughes stated he has issues with the aesthetics; however, he appreciates the best use of the property.

Mr. Hughes made a motion to Adopt the resolution for Chesapeake Bay Board Case No. CBPA 19-0141 at 2552 William Tankard Drive Drive.

A motion to Approve with Conditions was made by Mr. Hughes.

The motion result was: YES: 4 NAYS: 1 ABSTAIN: 0 ABSENT: 1

AYES: Gussman, Hughes, Waltrip, Lukens

Nays: Roadley

Absent: Apperson

3. Case No. CBPA 19-0159 : 3471 Westport

Mr. Michael Woolson, Watershed Planner, presented the exception request submitted by Mr. Jim Duguay, Performance Contracting, on behalf of Mr. Craig and Mrs. Cynthia Irwin for encroachments into the RPA buffer and the 15 foot building setback for the construction of a single-family dwelling on the property located at 3471 Westport, within the Westport at

Ford's Colony subdivision and within the Gordon Creek watershed. The property is further identified as James City County Tax Map Parcel No. 3610200022. The presentation described the current and proposed site conditions and the proposed mitigation. In addition to the plantings, they are proposing a bio-retention and Best Management Practice (BMP) between the structure and the remaining undisturbed RPA. The RPA line differs from a portion of the plat. If the Board approved the request, staff asked that the attached conditions be incorporated into the approval. The Board deliberated on the pros and cons of this application.

Mr. Hughes inquired about the site plan as approved by the County that showed the RPA. He also inquired when staff found out about an inaccuracy on the site plan.

Mr. Woolson responded that the engineer Mr. Dugay is using for the site plan, LandTech Resources, contacted him about a problem. In discussion with LandTech and the Director, there is no administrative relief staff could provide Mr. Dugay in this case because the plat was recorded in 2008.

Mr. Hughes stated that had the applicant or his agent not provided the information to County staff about the site plan inaccuracy, they could have continued building and County staff would have never known about the inaccuracy.

Mr. Woolson replied that was the likely scenario.

Mr. Lukens inquired about the clearing limits.

Mr. Woolson deferred to the applicant.

Discussion ensued concerning the septic drain field location.

Mr. Gussman responded it was outside the Primary Service Area (PSA).

Mr. Roadley required if the house location could be reconfigured to not encroach into the RPA.

Mr. Woolson responded that it was staff opinion that the house could be reconfigured. He further stated that he clarified with the Zoning Administrator about setbacks within Ford's Colony. Ford's Colony controls the setbacks in this subdivision and have a process to modify those setbacks as necessary.

Mr. Roadley inquired about the current configuration. It appears that it would fit elsewhere on the lot without encroaching into the RPA.

Mr. Woolson affirmatively answered.

Mr. Roadley asked if the proximity to the drain fields was a potential issue.

Discussion also ensued concerning the soils being conducive for a drain field.

Mr. Gussman opened the Public Hearing:

**A.** Mr. Jim Duguay, Performance Contracting, applicant and contractor, outlined the project to the Board.

Discussion ensued concerning the placement of the house and septic location in respect to the setbacks and code requirements.

Mr. Roadley inquired about the AES plat showing an approximate house location. This serves two purposes, showing that a structure can be built outside the RPA and the approximate location of the structure.

A. Mr. Duguay answered the issue concerning moving the house and explained his reasoning.

Mr. Waltrip inquired if Ford's Colony is okay with the layout.

A. Mr. Duguay replied affirmatively.

B. Mr. Tom Hitchens, 350 Thompson Lane, expressed his concern with building on the lot and the runoff into Gordon's Creek.

A. Mr. Duguay commented about the lot and stated that if restrictions need to be added, adding additional erosion and sediment control or stormwater measures would ensure that Gordon Creek is protected.

Board discussion ensued about the layout footprint and minimum size standards in Westport.

Mr. Gussman closed the Public Hearing, as no one else wished to speak.

Mr. Roadley asked if the comments that Mr. Hitchens read from the County subdivision plat were correctly interpreted.

Mr. Woolson replied that he did not have enough information to accurately answer yes or no. He stated he would need to see the recorded plat. He further stated that any variance to the front setback would also need to go to the County's Board of Zoning Appeals, regardless of the Ford's Colony HOA outcome.

Mr. Lukens asked if there was a precedent for requiring extraordinary erosion and sediment control and construction oversight.

Mr. Woolson answered that we could add a condition that is considered a super silt fence, which is a wire reinforced silt fence. Reference had been made by Mr. Duguay to using a small sediment trap.

There was discussion concerning the lot on the west with a Stormwater Management BMP for the subdivision on it.

Mr. Hughes referenced the mud and silt now showing in Gordons Creek and inquired where is it coming from.

Mr. Woolson replied to the best of our knowledge, it was coming from the residential development and construction within the Ford's Colony Westport subdivision.

Mr. Hughes inquired if the BMP was working properly.

Mr. Woolson responded that the single-family drainage does not go to that BMP for each of these lots. Westport had a condition where the impervious cover for the single-family house had to be covered by an on-lot BMP, which was installed after the lot was stabilized.

Mr. Roadley inquired of Mr. Woolson if the proposed BMP would do a better job than simply moving the house and not having a BMP.

Mr. Woolson replied that a BMP is required whether the house is in the RPA or outside the RPA. It is required by the Westport covenants.

Mr. Roadley inquired if it would be difficult to move all of the encroachment out of the RPA.

Mr. Woolson replied affirmatively and suggested that the infiltration BMP itself would have to encroach into the RPA.

Discussion ensued about the location of the sediment trap type facility.

Mr. Hughes referenced the silt fence and asked if another type of structure would work better.

Mr. Woolson replied that it is a combination of structural techniques.

Mr. Hughes inquired about the cost for the extra fencing. He also asked if this has been used in the County.

Mr. Woolson replied about the costs associated with bonding requirements.

Mr. Waltrip inquired if the house could be moved out of the RPA, according to the covenants and Ford's Colony requirements.

Mr. Woolson responded with that it would have to go before the Board of Zoning Appeals if the front setback was encroached upon.

Mr. Hughes stated the applicant bought the property thinking that the plat was correct. The applicant let us know that a mistake had been made and they wanted to fix it. Mr. Hughes presented potential scenarios, one of which is to accept the applicant's drawings and add additional sediment control as Mr. Woolson described.

Mr. Roadley expanded upon Mr. Hughes comment to clarify that the RPA encroachment cannot be completely eliminated.

Mr. Gussman commented that the homeowner is acting in good faith.

Mr. Roadley made a motion to Adopt the resolution for Chesapeake Bay Board Case No. CBPA 19-0159 at 3471 Westport with the stipulation for additional super silt fence be added to the erosion and sediment control plan and and strict adherence to the maintenance schedule for maintaining the sediment trap.

A motion to Approve with Conditions was made by Mr. Roadley.

The motion result was: YES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 1  
AYES: Gussman, Hughes, Roadley, Waltrip, Lukens  
Absent: Apperson

4. Case No. CBPA 19-0150 : 128 Four Mile Tree

Mr. Trevor Long, Watershed Planner, presented the exception request submitted by Mr. Brian and Mrs. Stacy Solano for encroachments into the RPA buffer for the construction of a single-family dwelling, detached garage, and retaining wall on property located at 128 Four Mile Tree, within the Riverview Plantation subdivision and within the Skimino Creek watershed. The property is further identified as James City County Tax Map Parcel No. 1640500013.

The presentation described the current and proposed site conditions and the proposed mitigation. If the Board approved the request, staff asked that the attached conditions be incorporated into the approval. The Board deliberated on the pros and cons of this application.

Mr. Gussman opened the Public Hearing:

A. Mr. Brian Solano, applicant, outlined the project to the Board.

Mr. Roadley inquired if there would be a living space above the garage.

A. Mr. Solano replied negatively.

Mr. Roadley asked if this house would be for Mr. Solano or his parents.

A. Mr. Solano responded that the house would be for his parents.

B. Mr. Gene Griffin, 12 Buford Road, Windsor Forest subdivision, voiced concerns and objections for construction on this lot because of an active wildlife habitat of bald eagles and other wildlife.

C. Mr. Bill Jaissle, 126 Four Mile Tree, expressed his concerns with disrupting the bald eagles that roost in the trees at the back of the proposed construction lot and drainage from roof to the back of the lot.

A. Mr. Solano responded to questions about the wildlife, trees, septic system, and drainage.

Mr. Gussman closed the Public Hearing, as no one else wished to speak.

Mr. Hughes made a motion to Adopt the resolution for Chesapeake Bay Board Case No. CBPA 19-0150 at 128 Four Mile Tree and added the condition that the roosting trees be maintained and the runoff from the house be diverted from the ravine.

A motion to Approve with Conditions was made by Mr. Hughes.

The motion result was: YES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 1  
AYES: Gussman, Hughes, Roadley, Waltrip, Lukens  
Absent: Apperson

5. Case No. CBPA 19-0148 : 1552 Harbor Road

Mr. Trevor Long, Watershed Planner, presented the exception request submitted by Mr. Ronald Mason, Davis Mason Builders, Inc., on behalf of Mr. Thomas and Mrs. Jennifer Eccles for encroachments into the RPA buffer for the construction of a retaining wall which would remove the existing structure from the VE Flood Zone on property located at 1552 Harbor Road, within the Governor's Land subdivision and James River watershed. The property is further identified as James City County Tax Map Parcel No. 4310200012. The presentation described the past, the current, and proposed site conditions and the proposed mitigation. If the Board approved the request, staff asked that the attached conditions be incorporated into the approval. The Board deliberated on the pros and cons of this application.

Mr. Roadley inquired about site access.

Mr. Long deferred to the applicant for answer.

Mr. Gussman opened the Public Hearing.

**A.** Mr. Ronald Mason, Davis Mason Builders, Inc., applicant, on behalf of Mr. Thomas and Mrs. Jennifer Eccles, outlined the project to the Board.

Mr. Waltrip inquired about the wave action.

**A.** Mr. Mason responded about the dynamics of the retaining wall and wave action interface.

Mr. Roadley asked if a letter of map revision was required.

**A.** Mr. Mason affirmatively replied.

**B.** Ms. Kimberly Smith, 1548 Harbor Road, expressed her concerns about their lot being lower and the retaining wall deflecting wave action in the VE Zone.

**C.** Ms. Laura Schultz, 1556 Harbor Road, voiced her concerns with wave action and the retaining wall.

Mr. Waltrip inquired about the wall elevations.

Mr. Roadley stated that we are not talking about finished floor elevation changes but the elevation of the ground surrounding the house.

**C.** Ms. Schultz asked if the shrubbery would be removed.

**A.** Mr. Mason replied that the shrubbery would remain and other potential mitigation needing to be done.

Mr. Waltrip inquired about the location of retaining wall and the neighboring properties.

**A.** Mr. Mason responded about the grade level across all of the homes.

Mr. Roadley asked about the likelihood of a wave event and the ramifications of this scenario.

**A.** Mr. Mason replied that a wave would hit the retaining wall and disperse.

Mr. Waltrip inquired how this would affect the neighbors property.

**A.** Mr. Mason replied that he did not know.

Mr. Roadley inquired if Mike Mathews, The Structures Group, was designing the wall.

Mr. Lukens inquired about the guttering systems on the roof and how the drainage would work.

**A.** Mr. Mason responded about how the ground gutters worked at this house.

Mr. Roadley suggested if the wall is backfilled with appropriately sized gravel, it might create a French drain scenario so the water infiltrates.

**D.** Mr. Tom Numbers, owner of 1544 Harbor Road, stated that he had the first house



under construction in the VE Zone since the new regulations were applied. He explained the building permit and FEMA process.

Mr. Gussman closed the Public Hearing, as no one else wished to speak.

Mr. Lukens made a motion to Adopt the resolution for Chesapeake Bay Board Case No. CBPA 19-0148 at 1552 Harbor Road.

A motion to Approve with Conditions was made by Mr. Lukens.

The motion result was: YES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 1  
AYES: Gussman, Hughes, Roadley, Waltrip, Lukens  
Absent: Apperson

6. Case No. CBPA 19-0149 : 4106 South Riverside Drive

Mr. Trevor Long, Watershed Planner, presented the exception request submitted by Mr. Benjamin Hamilton, T & B Homes, LLC, for encroachments into the RPA buffer for an after-the-fact exception request and permit for the construction of rear deck and front steps on property located at 4106 South Riverside Drive, within the Chickahominy Haven subdivision and the Yarmouth Creek watershed. The property is further identified as James City County Tax Map Parcel No. 1910900020. The presentation described the current and proposed site conditions and the proposed mitigation. If the Board approved the request, staff asked that the attached conditions be incorporated into the approval. The Board deliberated on the pros and cons of this application.

Mr. Gussman opened the Public Hearing:

A. Mr. Benjamin Hamilton, T & B Homes, LLC, outlined the project to the Board.

Mr. Gussman closed the Public Hearing, as no one else wished to speak.

Mr. Roadley made a motion to Adopt the resolution for Chesapeake Bay Board Case No. CBPA 19-0149 at 4106 South Riverside Drive.

A motion to Approve with Conditions was made by Mr. Roadley.

The motion result was: YES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 1  
AYES: Gussman, Hughes, Roadley, Waltrip, Lukens  
Absent: Apperson

7. Case No. CBPA 19-0153 : 3009 Willow Spring Court

Mr. Michael Woolson, Senior Watershed Planner, presented the exception request submitted by Mr. Carl Story, Williamsburg Landing, Inc., for encroachments into the RPA buffer for the construction of a deck on property located at 3009 Willow Spring Court, within the Williamsburg Landing subdivision and the College Creek watershed. The property is further identified as James City County Tax Map Parcel No. 4820100002. The presentation described the current and proposed site conditions and the proposed mitigation. If the Board approved the request, staff asked that the attached conditions be incorporated into the approval. The Board deliberated on the pros and cons of this application.

Mr. Roadley inquired if the gravel would be extended from the existing gravel base layer under existing deck to the area under the proposed new deck.

Mr. Woolson replied that would be the staff recommendation.

Mr. Gussman opened the Public Hearing:

A. Mr. Carl Story, Williamsburg Landing, Inc., outlined the project to the Board.

Mr. Roadley inquired if the existing gravel under the deck was to be extended.

A. Mr. Story replied affirmatively.

Mr. Lukens asked if they were going to leave the crepe myrtle tree.

A. Mr. Story replied affirmatively.

Mr. Gussman closed the Public Hearing, as no one else wished to speak.

Mr. Roadley made a motion to Adopt the resolution for Chesapeake Bay Board Case No. CBPA 19-0153 at 3009 Willow Spring Court.

A motion to Approve with Conditions was made by Mr. Roadley.

The motion result was: YES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 1  
AYES: Gussman, Hughes, Roadley, Waltrip, Lukens  
Absent: Apperson

8. Case No. CBPA 19-0157 : 4809 Canvas Back Run

Mr. Trevor Long, Watershed Planner, presented the exception request submitted by Mr. Don Newsom, Delightful Gardens Landscape, on behalf of Mr. Eric and Mrs. Dina Smith for encroachments into the RPA buffer for the rebuilding of a retaining wall on the property located at 4809 Canvas Back Run, within the Mallard Hill subdivision and the Powhatan Creek watershed. The property is further identified as James City County Tax Map Parcel No. 3140600018. The presentation described the current and proposed site conditions and the proposed mitigation. If the Board approved the request, staff asked that the attached conditions be incorporated into the approval. The Board deliberated on the pros and cons of this application.

Mr. Gussman opened the Public Hearing:

A. Mr. Ryan Newsom, Delightful Gardens Landscape, outlined the project to the Board.

Mr. Roadley inquired if a structural engineer had evaluated the proposed replacement wall.

A. Mr. Newsom negatively responded.

Mr. Roadley asked if Mr. Newsom was designing it.

A. Mr. Newsom affirmatively replied that they would follow County requirements.

Mr. Roadley inquired about the method of construction, since the existing wall was failing.

A. Mr. Newsom explained the method of construction.

Mr. Woolson stated that the existing wall was not built with any geotextile or tieback system

and the new wall will use them.

Mr. Gussman closed the Public Hearing, as no one else wished to speak.

Mr. Hughes made a motion to Adopt the resolution for Chesapeake Bay Board Case No. CBPA 19-0157 at 4809 Canvas Back Run.

A motion to Approve with Conditions was made by Mr. Hughes.

The motion result was: YES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 1  
AYES: Gussman, Hughes, Roadley, Waltrip, Lukens  
Absent: Apperson

**E. BOARD CONSIDERATIONS**

None

**F. MATTERS OF SPECIAL PRIVILEGE**

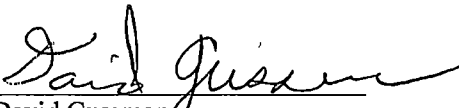
None

**G. ADJOURNMENT**

A motion to Adjourn was made by Mr. Apperson and approved on a voice vote.

The motion result was: AYES:5 NAYS: 0 ABSTAIN: 0 ABSENT: 1  
AYES: Gussman, Hughes, Roadley, Waltrip, Luken  
Absent: Apperson

The meeting adjourned at 7:52 p.m.

  
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David Gussman  
Chair, Chesapeake Bay Board

  
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Michael Woolson  
Secretary to the Board