

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
July 13, 2011**

**A. ROLL CALL**

David Gussman – Chair  
William Apperson  
John Hughes

**ABSENT**

Larry Waltrip  
Charles Roadley

**OTHERS PRESENT**

County Staff (Staff)

**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 8, 2011 Board Meeting minutes were approved as written.

County Attorney, Leo Rogers introduced Assistant County Attorney, Lola Perkins to the Board.

Mr. Rogers also provided the Board with an update on the status of the County's Wetlands, Chesapeake Bay and E&S violation cases against Walker Ware at 5004 River Drive.

**C. PUBLIC HEARINGS**

**1. CBE-11-129: Drygala – 3649 Bridgewater**

Michael Woolson, Senior Watershed Planner presented the following case information:

**Existing Site Data & Information**

Applicant:	Marcin Drygala
Land Owner:	Marcin Drygala and Agnieszka Adamska
Location:	3649 Bridgewater Drive
Parcel:	Lot 8, Section 6, Mill Creek Landing
Parcel Identification:	3841760008
Lot Size:	0.37 acres
RPA Area on Lot:	0.20 acres or 54% of the lot, 0.06 acres or 16.2% of the lot seaward 50 foot RPA
Watershed:	Mill Creek (HUC Code JL33)
Proposed Activity:	16' x 25' attached deck (administrative) Retaining wall (178 linear feet), clearing, filling, and grading for a backyard

**Proposed Impacts**

Impervious Area:	400 square feet from deck (administrative) 178 square feet from retaining walls
RPA Encroachment:	2,400 square feet to the seaward 50 foot RPA Buffer and 900 square feet to the landward 50 foot RPA Buffer, total RPA Buffer impact = 3,500 square feet

### **Brief Summary and Description of Activities**

Mr. Marcin Drygala applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for encroachment into the RPA buffer for the construction of an attached deck, retaining wall, clearing, filling, and grading of a back yard at 3649 Bridgewater Drive, in the Mill Creek Landing Subdivision. The lot was platted prior to the original Chesapeake Bay Preservation Ordinance. An RPA was determined to exist on this lot after the 2004 revision to the Ordinance. The house was approved administratively with RPA impacts under CBE-05-025 on June 7, 2005. The rear yard that was approved at that time is 30 feet deep and has a slight slope to it. The attached deck is considered a part of the principal structure and therefore an administrative process. The retaining walls are considered accessory structures and the majority of the clearing, filling, and grading of the rear yard is within the seaward 50 foot RPA buffer. According to Section 23-7 (c) (2), these activities do not qualify for an administrative exception.

### **Staff Recommendations**

The issue before the Board is the installation of three retaining walls and clearing, filling, and grading of a rear yard within the seaward RPA buffer. The existing rear yard is 30 feet deep from the rear door of the structure. This yard does have a slight slope to it, draining away from the house. The applicant wishes to expand the rear yard with a combination of retaining walls and clearing, filling and grading the yard to the entire extents of the rear yard. The original application had a cleared rear yard associated with the house. The additional clearing, filling and grading do not appear to be within the spirit and intent of the Ordinance, therefore staff cannot support the application as submitted. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14 (c) of the Ordinance. There are five review criteria within this section of the ordinance.

Staff has fully reviewed the application and exception request and has determined that none of the conditions outlined in Section 23-14 (c) have been met. There are several options available to the Board:

1. Approval of the application with the mitigation as outlined (12 canopy, 25 understory, and 20 shrubs), mitigation plan to be submitted within 15 days of the public hearing; or
2. Deferral; or
3. Denial.

If the Board should choose to approve this application, regardless of other requirements imposed by the Board, staff recommends the incorporation of the following conditions into the approval:

1. The applicant must obtain all other necessary local permits as required for the project.
2. All proposed mitigation plantings shall meet James City County standards of 1" caliper for the canopy and understory trees and proposed shrubs shall be minimum three gallon size.
3. An RPA Mitigation Plan submitted to the Division within 15 days of the approval. Full implementation of the approved RPA Mitigation Plan and any additional Board mitigation requirements shall be guaranteed through a form of surety satisfactory to the County Attorney and the provisions of the Ordinance contained in Sections 23-10(3) (d) and 23-17(c).
4. This exception request approval shall become null and void if construction has not begun by July 13, 2012.
5. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 2 weeks prior to the expiration date.

### **Water Quality Impact Assessment (WQIA)**

Under Sections 23-11 and 23-14 of the County's Chesapeake Bay Preservation ordinance, a water quality impact assessment (WQIA) must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPAs.

The applicant has submitted the majority of the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant has submitted a *County Sensitive Area Activity Application*. The required mitigation plan has not yet been submitted. Staff is comfortable with the mitigation plan being submitted later, if the application is approved.

### **Consideration by the Chesapeake Bay Board**

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-11-129 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-11-129 are included for the Board's use and decision.

Mr. Gussman asked if the entire property was in the RPA as stated in the application. He also asked for information regarding a previous case on this street.

Mr. Hughes asked if there was a backyard on the adjacent property and if other lots had been graded for a backyard.

Mr. Woolson stated the applicant meant his entire backyard was in the RPA. He explained there was a backyard on the property immediately adjacent to the subject parcel because it was developed prior to the 2004 revision to the Ordinance that established the RPA on these lots. The other properties in this area were developed after the Ordinance revision and are in compliance.

Scott J. Thomas, Director Engineering and Resource Protection, stated the previous case before the Board was an appeal of a violation for the unauthorized removal of vegetation on a parcel two lots to the right of the subject parcel. The appeal was denied by this Board, a restoration was ordered and a civil charge was issued by the Board of Supervisors but there was never an exception request before the Board.

Mr. Gussman opened the public hearing.

A. Mr. Marcin Drygala, property owner, said he wanted to create a level backyard for his children to play. He presented the Board with photos of his property showing runoff of sediment after recent storms (these photos are part of the case file). He also stated he was willing to plant more than the minimum mitigation requirements.

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

Mr. Gussman stated he was concerned with approving this request given the denial of the previous appeal case in this neighborhood and because of the email from an adjacent property owner objecting to this request. He stated the project as proposed, was not a minimum impact to the RPA.

Mr. Apperson stated he would like the case to be deferred until the applicant could provide more information regarding the structure of the wall and the proposed mitigation.

Mr. Hughes agreed with Mr. Apperson. He felt the current impacts to the RPA from runoff should be alleviated and he wanted to see a more detailed plan showing the mitigation and no clear cutting.

Mr. Gussman stated these were good points and he also wanted to see a plan scaled back to the minimum necessary with mitigation to address the current runoff and reduce the impact to water quality. He asked the applicant if he wished to defer.

A. Mr. Drygala stated he wanted to request a deferral.

Mr. Gussman reopened the public hearing.

Mr. Hughes made a motion to defer the decision and continue the public hearing for case CBE-11-129 at 3649 Bridgewater Drive to no later than October 12, 2011.

The motion was approved by a 3-0 vote.

## **2. CBE-11-134: Crawford/Adams – 132 Nottinghamshire**

Michael Woolson, Senior Watershed Planner presented the following case information:

### **Existing Site Data & Information**

Applicant:	Woody Crawford
Land Owner:	James Adams
Location:	132 Nottinghamshire
Parcel:	Lot 30, Section 12, Ford's Colony Subdivision
Parcel Identification:	3233100030
Lot Size:	0.43 acres
RPA Area on Lot:	0.35 acres or 81.4% of the lot (wetlands plus RPA), 0.26 acres or 60.4% of the lot (RPA only)
Watershed:	Powhatan Creek (HUC Code JL31)
Proposed Activity:	Clearing, filling, and grading for a backyard

### **Proposed Impacts**

Impervious Area:	0 square feet
RPA Encroachment:	6,000 square feet to the seaward 50 foot RPA Buffer

### **Brief Summary and Description of Activities**

Mr. Woody Crawford, agent for Mr. and Mrs. James Adams, applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer for the construction of a single family residence and clearing, filling and grading a backyard at 132 Nottinghamshire, in the Ford's Colony Subdivision. The lot was platted between 1990 and 2004 and an RPA was determined to exist after the 2004 revisions to the Chesapeake Bay Preservation Ordinance. As the single family residence is within the landward 50 foot RPA buffer, according to Section 23-7 (c) (2), it may be allowed through an administrative process. The clearing, filling, and grading of the backyard is within the seaward 50 foot RPA buffer and does not qualify for an administrative exception, according to the same section.

On or about May 26, 2011 an application was submitted for lot development. The application was for the principal structure (house and deck) and backyard area. At that time, staff reviewed the application and made decision that due to the backyard RPA seaward impacts that the entire application should go through the formal (Chesapeake Bay Board) process. On or about June 2, 2011, Mr. Crawford visited the County office to discuss with the Director of Engineering and Resource Protection, Mr. Scott Thomas, options available with this application in order to keep home construction from being delayed. The owner and owner representative had an option to either delay the case until the next available Chesapeake Bay Board hearing, or revise the application to avoid any impact to the 50 ft. seaward RPA buffer so that the principal structure and deck could be processed administratively and remaining accessory components could subsequently follow by the formal exception process. The applicant chose the latter. The limits of work on the site plan was revised to reflect this intent and signed and initialed by both the applicant and County Engineering and Resource Protection Division Director. In addition, conditional language was written into the administrative approval for the principal structure using the County standard Sensitive Area Activity Application (SAAA) form. Conditional approval on the SAAA form stated the following: *"Approval does not authorize work in the 50' RPA buffer zone, except for limited 10'+/- for principal structure construction. Encroachment into 50' RPA will be handled by subsequent Bay Board case. Surety for this application 7-14-21 will be handled in Bay Board case. Also authorize steep slope impact in revised limits of work."*

On or around June 20, 2011 County compliance inspection staff observed clearing activities on the entire lot, not just what was authorized under the administrative approval, and clearing was beyond the defined limits of work on the approval. At this time, the lot is entirely cleared, grubbed and the house construction has begun. This clearing activity came about after the original start of processing of the Chesapeake Bay Board case. As such, this formal exception case is now considered to be an "after-the-fact" exception application.

### **Staff Recommendations**

The original issue before the Board is the clearing, filling, and grading of a rear yard with zero square feet of impervious area within the seaward RPA buffer. An additional issue is now before the Board because of the advanced clearing, filling, and grading of the seaward 50' RPA buffer prior to approval. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14 (c) of the Ordinance. There are five review criteria within this section of the ordinance.

Staff has fully reviewed the application and exception request and has determined that none of the conditions outlined in Section 23-14 (c) have been met. There are several options available to the Board:

1. Approval of the application with the mitigation as outlined for the house construction (7 canopy, 14 understory, 21 shrubs) as adequate, mitigation plan to be submitted within 15 days of the public hearing; or
2. Approval of the application with double the mitigation as outlined for the house construction (14 canopy, 28 understory, 42 shrubs) as adequate, mitigation plan to be submitted within 15 days of the public hearing; or
3. Either option 1 or 2 above plus payment into the Chesapeake Bay Mitigation Fund of a dollar amount to be set by the Board. Staff suggests the Board use the matrix to determine the contribution amount; or
4. Either option 1 or 2 above plus direct staff to pursue a Chesapeake Bay Preservation Ordinance civil charge violation under Section 23-18 (b). Staff would suggest maximum fines because of the blatant nature of the violation and the impact to water quality; or
5. Direct staff to pursue a Chesapeake Bay Preservation Ordinance civil penalty violation under Section 23-18 (a) and full restoration of the seaward 50' RPA buffer with a mitigation plan to be submitted within 15 days of the public hearing; or
6. Denial of the application and full restoration of the seaward 50' RPA buffer, mitigation plan to be submitted within 15 days of the public hearing; or
7. Some other combination satisfactory to the Board.

If the Board should choose to approve this application, regardless of other requirements imposed by the Board, staff recommends the incorporation of the following conditions into the approval:

1. The applicant must obtain all other necessary local permits as required for the project.
2. All proposed mitigation plantings shall meet James City County standards of 1" caliper for the canopy and understory trees and proposed shrubs shall be minimum three gallon size.
3. An RPA Mitigation Plan submitted to the Division within 15 days of the approval. Full implementation of the approved RPA Mitigation Plan and 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.
4. This exception request approval shall become null and void if construction has not begun by July 13, 2012 or all improvements including the required mitigation plantings are not completed by that expiration date.
5. Written requests for an extension to an exception shall be submitted to the Engineering and Resource Protection Division no later than 2 weeks prior to the expiration date.

### **Background**

Based on staff review of County records, the lot was recorded following the adoption of the Chesapeake Bay Preservation Ordinance and the house is currently under construction. As the proposed backyard is within the seaward 50' RPA buffer, it cannot be administratively reviewed and therefore in accordance with section 23-14 of the Ordinance, an exception request must be considered by the Chesapeake Bay Board following public hearing under the formal exception process. The exception request before the board, and decision to approve or deny by resolution, is for encroachment into the RPA buffer for the establishment of a backyard 6,000 square feet in size.

### **Water Quality Impact Assessment (WQIA)**

Under Sections 23-11 and 23-14 of the County's Chesapeake Bay Preservation ordinance, a water quality impact assessment (WQIA) must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPAs.

The applicant has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant has submitted a *County Sensitive Area Activity Application* and a required mitigation plan, both of which are included in the case report packet. The map provided shows features of the proposal along with a mitigation plan for native plantings.

### **Consideration by the Chesapeake Bay Board**

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-11-134 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-11-134 are included for the Board's use and decision.

Mr. Gussman asked if the proposed mitigation plantings of 7 canopy trees, 14 understory trees, and 21 shrubs, were only for the principal structure.

Mr. Woolson stated they were and would be required regardless of the Board's action tonight because the house had already been approved administratively. The Board could request additional mitigation plantings to be installed for this exception.

Mr. Gussman opened the public hearing.

Mr. Hughes and Mr. Gussman asked the applicant if he understood he was not to clear into the 50' RPA without approval from this Board. They asked him to explain how the area was cleared and grubbed prior to this hearing and also why there was clearing outside the area in this exception request.

A. Mr. Elwood Crawford with Crawford Builders, the applicant, stated he did understand and agree to the limits of clearing depicted on the administrative approval for the house and he did not disagree with anything in Staff's presentation. He explained that he was permitted to clear up to 10 feet into the 50' RPA for construction of the house and he cleared an area on the right side of the property for the sewer hookup. He stated the clearing behind the limits on the other side and some old silt fence was already there. He also received a letter from JCSA advising him that they would be clearing the easement at the back of the property. He said the sub-contractor had unintentionally cleared straight across the back of the property, along this easement, instead of following the permitted limits. He also wanted the Board to know that the silt fence that was installed was holding the runoff from recent rains.

Mr. Apperson stated that JCSA only cleared for access and did not perform any grubbing. He also asked Mr. Crawford if he would consider restoration of the cleared area.

Mr. Crawford stated the owner would be willing to re-plant most of the area, as they did not wish to maintain a lot of grass.

Mr. Hughes and Mr. Gussman asked Mr. Crawford if he informed the County when he became aware the lot had been cleared beyond the approved limits.

A. Mr. Crawford stated the E&S controls and RPA signs were installed and he called the County for a clearing inspection. He said the clearing was approved allowing him to get the building permit.

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

Mr. Hughes said the immediate concern would be for restoring the area to protect the environment and then a possible sanction against the applicant for the excessive clearing without approval.

Mr. Apperson said the area could be fenced off and allowed to re-vegetate naturally.

Mr. Hughes felt the area needed to be stabilized and did not think it would re-vegetate quickly enough to prevent runoff.

Mr. Gussman said the Board needed a written restoration plan. He asked the other Board members how they felt about granting the after-the-fact exception request.

Mr. Apperson said the restoration plan should include an expected completion date for re-vegetation.

The Board asked Staff if the mitigation required for the house would be placed in the now cleared, 50' RPA buffer.

Mr. Woolson stated a mitigation plan had not yet been submitted and the Board could require the plantings be placed in the 50' RPA.

Mr. Gussman felt the Board needed to see where the mitigation plantings would be installed and how the area would be restored to protect water quality.

Mr. Hughes asked if the applicant would consider a deferment in order to design and present restoration and mitigation plans to the Board.

Mr. Crawford requested a deferment to the August meeting.

Mr. Woolson asked the Board to put a 15 day time limit for submission of the restoration and mitigation plans.

Mr. Gussman reopened the public hearing.

Mr. Hughes made a motion to defer the decision and continue the public hearing for case CBE-11-134 at 132 Nottinghamshire to August 10, 2011 with the condition the applicant submit a restoration and mitigation plan to the Engineering and Resource Protection Division within 15 days.

The motion was approved by a 3-0 vote.

## **D. BOARD CONSIDERATIONS**

### **1. CBE-10-038 Cooke's Gardens - permit extension**

Michael Woolson, Senior Watershed Planner, stated that Mr. Charlie Martino, Operation Manager with Cooke's Garden Center, was requesting an extension of the expiration date on Chesapeake Bay Board Exception CBE-10-038. The extension was requested due to financial reasons delaying the start of the project. All permit conditions required within CBE-10-038 shall apply to the permit extension. Staff concurred with this request and recommended the Board extend the expiration date to August 11, 2012.

Mr. Apperson made a motion to adopt the resolution granting the extension of the exception for Chesapeake Bay Board case #CBE-10-038, Cooke's Garden Center, to August 11, 2012.

The motion was approved by a 3-0 vote.

**At this time, as the public hearings had concluded, Mr. Apperson was excused from the remainder of the meeting to attend to a personal matter.**

## **E. MATTERS OF SPECIAL PRIVILEGE**

Scott J. Thomas, Director of Engineering and Resource Protection, presented the following information and updates to the Board:

### **1. Fiscal Year 2011 – Annual Report**

Administrative and Board Chesapeake Bay Ordinance Exceptions and Wetlands Board cases:

#### **FY 2011 (period July 1, 2010 to June 30, 2011)**

WETLANDS BOARD	7
CHESAPEAKE BAY BOARD	29
ADMINISTRATIVE	112

#### **FY 2010**

WETLANDS BOARD	8
CHESAPEAKE BAY BOARD	26
ADMINISTRATIVE	129

### **2. Clean-the-Bay-Day Summary**

James City County had 129 volunteers, collected about 1½ tons of trash and debris, and cleaned approximately 33 ½ miles of streams and shoreline. Our staff served as zone captain for the stormwater pond at Monticello and News Roads. We had 35 volunteers and picked up about ¼ ton of trash.

### **3. Chesapeake Bay Local Assistance Compliance Review**

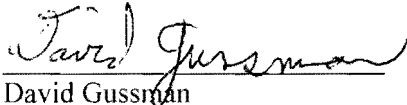
JCC got word on June 20, 2011 that the Chesapeake Bay Local Assistance Board adopted a resolution deeming the County's Bay Act program as compliant. This completed a 5 month program review process whereas all aspects of the County's Bay Act program were comprehensively reviewed including program administration, staff certifications, plan review, compliance inspections, and enforcement processes.

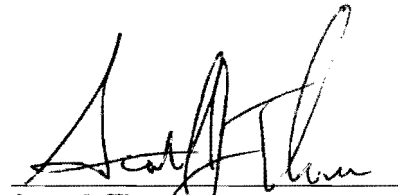
The Board thanked Staff for their efforts.



**F. ADJOURNMENT**

The meeting adjourned at 8:25 PM.

  
\_\_\_\_\_  
David Gussman  
Chair

  
\_\_\_\_\_  
Scott J. Thomas  
Secretary to the Board