

# YORK COUNTY CHESAPEAKE BAY BOARD

## Minutes of January 22, 2020

At a meeting of the York County Chesapeake Bay Board held on Wednesday, January 22, 2020, at 6:00 p.m. in the Multi-Purpose Room in the Public Works Administration Building, located at 105 Service Drive, Yorktown, Virginia, those present were:

### Board Members Present:

Michael Woolson, Chair  
Jerry Patterson  
Richard Wheat  
Stephen Farthing  
Brian Almond  
Bradley Berrane

### Staff Present:

Justin Atkins, Assistant County Attorney  
Kent Henkel, Environmental Specialist II  
Anna Drake, Stormwater Engineer II  
Barrett Nicks, Engineering Specialist I  
Jennifer Wilson, Administrative Assistant II

The meeting was called to order at 6:00 p.m. by the Chair, Michael Woolson

### PUBLIC COMMENT PERIOD

The Chair opened the Chesapeake Bay Board's public comment period; no one came forward; the public comment period was closed.

### APPROVAL OF THE MINUTES

The December 4, 2019 minutes were approved by consensus.

*Note: PowerPoint slides were shown throughout the public hearing.*

### CHESAPEAKE BAY EXCEPTIONS/APPEALS

- **Exception 2019- 343 for James C Moore Trust at 112 Dandy View Lane:** Request to construct a house, driveway, deck and steps in the RPA feature along the York River.

Kent Henkel, presented the application, the project history, photographs of the site and described what vegetative mitigation would be required should the Board approve the application. He stated the entire property is wetlands; however, a tidal wetlands permit will not be required as per the finding of the Wetlands Board at their meeting in October 2019. A permit from the ACOE/DEQ may be required for fill of non-tidal wetlands.

There was discussion about the retaining wall at the limits of fill. Staff conveyed they had requested the wall to minimize wetlands impacts and retain the fill. The Board asked if there were any other options for mitigation. It was discussed that mitigation could only be done in the filled area within the retaining wall and a waiver was needed for the remainder of the mitigation because there was no place outside of wetlands to plant. The front setback of the house was discussed, but the Board determined it was justified for parking since there is no on-street parking.

The Chair opened the public hearing.

Donald Davis of 3630 George Washington Memorial Highway, Yorktown came forward. He stated the property had been in the family for many years. Water and sewer fees have been paid and the family has been paying property taxes for a number of years and would like to finally develop it. He reiterated the property is non-tidal wetlands as per the Wetlands Board decision. The Board inquired about mitigation credits for the filled wetlands and were informed that because the fill is under a tenth of an acre, compensation is not required.

The public hearing was closed.

The Board discussed that the lot was platted in 1937 and the owners have been paying taxes on it. The Board believed the best project for this property has been designed considering the constraints.

A motion was made by Mr. Almond to adopt Resolution 2019-343 as submitted which includes reducing the amount of mitigation to 50% as proposed.

The motion was approved on the following roll call:

Bradley Berrane	Yes
Jerry Patterson	Yes
Richard Wheat	Yes
Stephen Farthing	Yes
Brian Almond	Yes
Michael Woolson, Chair	Yes

Mr. Woolson declared the Exception has been granted.

- **Exception 2019-345 for Rico and Terry Vega at 1011 Bay Tree Beach Road:** Request to construct a house, driveway, and walkway in the 100-foot RPA buffer along the Chesapeake Bay.

Kent Henkel, presented the application, the project history, photographs of the site and described what vegetative mitigation would be required should the Board approve the application. The entire property is non-tidal wetlands. A Land Disturbing Activity permit from York County and a fill permit from Army Corp of Engineers have already been issued. The area necessary to build the house and driveway have already been filled.

The Board requested further information about driveway and old garage that exists on the property. Staff clarified that the applicant wants the garage to remain on the property.

The Chair opened the Public Hearing.

Terry Vega, the applicant, came forward to explain that because there would only be four-feet on each side of house, they would like to put a flat roof on top of existing garage to use as deck area since they don't have a yard.

Joe Krause of 925 Bay Tree Beach Road came forward to ask Brian Almond to recuse himself since he is involved with the building and had requested information about the fill. Mr. Krause stated he doesn't have an issue with the actual structure, he just wants to make sure proper procedures are followed.

Kent Henkel answered questions about fill. He stated the Buffer Modification for the fill was submitted by Kevin Almond. In regards to the asphalt material that was placed, Mr. Henkel explained that when the County discovered it was being used, the County required it be removed and the proper fill material was put in place.

Melissa Krause of 925 Bay Tree Beach Road came forward to ask Mr. Almond to recuse himself because he was too closely related to the project and stated that it was inappropriate.

Carla Mutone of 1017 Bay Tree Beach Road came forward to request information about the mitigation waiver and express concerns about development. Staff and the Board explained that mitigation outside of the retaining wall would do more harm to the wetlands than good.

Mr. Farthing explained that property owners have the right to build on their residentially-zoned property that they were paying taxes on and that the Board must balance the property owner's rights against the impact on the Bay.

Ms. Mutone expressed concerns about the stormwater, about the Bay Tree Beach area not being protected, and roadside drainage.

Mr. Woolson informed Ms. Mutone that VDOT is responsible for the roads in York County and that any further concerns about stormwater and development projects should be brought to the Board of Supervisor's attention.

Justin Atkins, the Assistant County Attorney, explained Code 23.2, and stated the Chesapeake Bay Board did not have power over many of the expressed concerns.

Aylin Robertson of 915 Bay Tree Beach Road came forward. She highlighted the mission statement of the Chesapeake Bay Board. She asked when the last time an application on Bay Tree Beach Road was rejected and if the Board was concerned about erosion. She stated the volume of erosion was directly related to the development in the area. Ms. Robertson also asked Mr. Almond to recuse himself.

Mr. Woolson asked Mr. Atkins about Mr. Almond recusing himself.

Mr. Atkins outlined Code 2.2-3100 and read excerpts.

The public hearing was closed.

Mr. Woolson asked Mr. Almond if he would be interested in recusing himself.

Mr. Almond stated that based on the Code, he did not feel it would be required in this circumstance.

Mr. Farthing suggested Mr. Almond recuse himself based on the appearance of a conflict of interest.

Mr. Almond stated that all allegations were inaccurate and maintained he did not feel the need to recuse himself.

Mr. Woolson asked if the applicant had waived their right to continue the hearing to a different date.

Mr. Atkins said it could be moved without further filings or legal notices required.

The Board decided to move forward. Mr. Woolson again asked Mr. Almond to recuse himself, and Mr. Almond stated he did not feel that Code 2.2-3100 applied to his circumstance. Mr. Woolson suggested they move on with application.

Mr. Woolson expressed concern over the mitigation outside of the filled area, in the wetlands, knowing it will fail. Mr. Farthing expressed concern over the garage and felt it should be removed and the driveway should be gravel not concrete in order to reduce impervious cover. Mr. Patterson sympathized with the drainage issues; however, he stated that drainage is not under this Board's jurisdiction. The Board discussed the mitigation, the garage and the drainage issues.

A motion was made by Mr. Farthing to adopt Resolution 2019-345 as submitted with the following conditions

- to remove existing garage and return that area to pervious cover,
- the driveway is to be gravel with edging to contain gravel.
- property Owners are to work with staff on mitigation.

The motion was approved on the following roll call:

Bradley Berrane	Yes
Jerry Patterson	Yes
Richard Wheat	Yes
Stephen Farthing	Yes
Brian Almond	Yes as proposed
Michael Woolson, Chair	Yes

**NEW BUSINESS**

- Election of Officers

The Board is currently short two members, the Board of Supervisors wants representation from all districts. Staff informed the Board that this is Mr. Farthings last meeting due to his second term ending January 31, 2020. Mr. Wheat nominated Mr. Woolson for Chair, Mr. Almond seconded the motion, and the motion carried by consensus.

It was decided to table vice chair election to next meeting when more members were present.

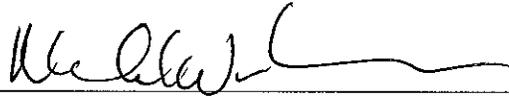
- There will not be a February Meeting

**OLD BUSINESS**

None

**ADJOURNMENT**

There being no further business to come before the Board, the meeting adjourned at 7:50 pm.



Michael Woolson, Chair

4/22/2020  
Date