

## **MINUTES**

# **Chesapeake Bay Preservation Area Board**

**January 18, 2017 – 6:00 PM**

Human Resources Training Room

**Call to Order:** Chair, Vickie Greene called the Chesapeake Bay Preservation Board meeting of January 18, 2017, to order at 6:00 p.m. in the Human Resources Training Room.

**Roll Call:**

**PRESENT**

Vickie Greene, Chair  
Henry Curling, Vice-Chair  
William Spaur, Member  
Stephen F. Nowak, Member  
Chris Wilson, Member  
Rusty Barath, Member  
John A. Sherman, Member  
John Klesch, Alternate Member

**PLANNING DEPARTMENT STAFF PRESENT**

Michael Anaya, CBPA Planner  
Jennifer Joseph, CBPA Recording Secretary

**CITY ATTORNEY STAFF PRESENT**

Meredith Jacobi, Assistant City Attorney

**APPROVAL OF MINUTES:**

The December 21, 2016 CBPA Board minutes were presented into the record for Board action.

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**CBPA BOARD ACTION:**

**MINUTES for the December 21, 2016 CBPA Board were APPROVED.**  
(6-0; Sherman excused)

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**CBPA BOARD VOTE:**

Mr. Wilson moved that the **MINUTES** for the **December 21, 2016 CBPA Board meeting** be **APPROVED**. Mr. Nowak seconded the motion. The motion was carried by a vote of 6 – 0.

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**CBPA APPLICATION:**

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1. **PLN-CBPA-2016-054**

**PROJECT/LOCATION:** Single Family Home/1776 Rockwood Drive

**APPLICANT/AGENT:** Trenton Walker/American Engineering Associates—  
Southeast PA

**PROPOSAL:** In accordance with Section 26-527 of the Chesapeake City Code, the applicant is seeking an **EXCEPTION** to construct a new single family home within the 50-foot landward and 50-foot seaward portions of the 100-foot RPA buffer. A total of 3,678 SF of new impervious area is proposed (3,678 SF within RPA).

**SUBDIVISION/LOT #:** Lot 16, Block 7, Park View Section 2

**WATERSHED:** Southern Branch of the Elizabeth River

**TAX MAP SECTION/PARCEL:** 0344002003750

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**CBPA BOARD ACTION:**

The CBPA Board **APPROVED PLN-CBPA-2016-054** for a period of two years with the following stipulations:

1. Please provide ten (10) large canopy trees and the bioretention planting bed within the RPA, as depicted on the plan, to mitigate the impact of the proposed development within the RPA. Per City of Chesapeake Code Sec. 26-520(b)(3), the RPA landscaping requirement is a minimum fifty (50) percent tree canopy coverage, calculated in accordance with the CBPA Specifications Manual. See Appendix A of the Chesapeake Landscape Specifications Manual for recommended tree species.
  2. The bioretention planting bed shall be continuously maintained and kept in proper functioning condition.
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Staff Presentation:

Mr. Anaya presented the application to the board with the CBPA Review Committee's recommendations. He presented pictures of the site 1776 Rockwood Drive. Mr. Anaya stated that applicant seeks an **EXCEPTION** to construct a new single-family home within the 50-foot landward and 50-foot seaward portions of the 100-foot RPA buffer. The total new impervious area: 3,678 SF, all of which is within RPA. The lot was

recorded in 1953, approximately a quarter of an acre on the Southern Branch of Elizabeth River.

He stated that the application was reviewed by the CBPA Review Committee on December 20, 2016. Based on the CBPA Review Committee's findings, it is recommended that the exception requested in application PLN-CBPA-2016-054 be **GRANTED** for a period of two years, with the following stipulation: Provide ten (10) large canopy trees and the bioretention planting bed within the RPA, as depicted on the plan, to mitigate the impact of the proposed development within the RPA. Per City of Chesapeake Code Sec. 26-520(b)(3), the RPA landscaping requirement is a minimum fifty (50) percent tree canopy coverage, calculated in accordance with the CBPA Specifications Manual. See Appendix A of the Chesapeake Landscape Specifications Manual for recommended tree species.

Proponent:

Trenton Walker, 1776 Rockwood Drive, Chesapeake, Virginia, appeared before the Board on behalf of PLN-CBPA-2016-054 representing himself. He has owned this property for 13 years and since a developer has come into the neighborhood, he is able to build on the lot and received sanitary sewer on it. Now, he is able to utilize his lot and attempting to build on this lot to start his home.

Tiesha Bracy, 1776 Rockwood Drive, Chesapeake, Virginia, appeared before the Board on behalf of PLN-CBPA-2016-054.

Pete Burkheimer, American Engineering, 448 Viking Drive, Suite 170, Virginia Beach, Virginia, appeared before the Board on behalf of PLN-CBPA-2016-054 agent representing the homeowner. This lot was platted in 1953. The reason of the high percentage of impervious area is because the area calculations exclude wetland areas. The bioretention planting bed is a standard state stormwater detail and is a widely accepted. Every BMP system requires maintenance and storm water programs have had successful pollutant removal efficiency. This a fairly tight lot and the tree spacing is drawn at about eight to 10 feet. Spacing can be adjusted if necessary.

Board Discussion:

Mr. Nowak asked if the trees on the drawing, is a reasonable approximation of what a large canopy tree will cover.

Mr. Anaya stated no, that they are probably drawn in smaller than full mature size, but they are labeled as large canopy trees.

Ms. Greene asked why the committee recommended approval.

Mr. Anaya stated that the CBPA Review Committee's stormwater engineers were

satisfied that the proposed tree canopy and bioretention bed would meet pollutant removal for residential use.

Mr. Spaur asked if anything has been done to the lot yet.

Mr. Anaya stated to his knowledge, nothing has been done to the lot.

Mr. Nowak asked Mr. Fox if the bioretention bed has the same importance as the trees.

Mr. Fox stated that it is a question of canopy coverage. Canopy coverage is specifically required under the ordinance, the bioretention bed would go toward mitigation with impact toward water quality. If it were a stipulation of approval it would be required to be maintained in perpetuity as mitigation.

Ms. Greene asked if it were a two story or one story home and noted that it would be difficult to gain CBPA approval for future additions or accessory structures.

Mr. Walker stated that it is a two story home and the deck is already included in the plan. Also, they understand that the lot is limited.

Mr. Fox stated that there is a chain of title as to what the regulatory state was when the lot was purchased. The CBPA Ordinance was established in 2003 and Mr. Walker purchased the lot in late 2002, which is relevant to property rights for protection.

Mr. Nowak asked if he is aware that the ten trees are required to be maintained and replaced on a one to one basis.

Mr. Walker answered yes, he is aware.

Mr. Spaur asked if the house was elevated and if they were prepared to have the house and lot frequently flooded.

Mr. Curling asked for the drawing of the bioretention plant bed and asked if there was sand or popcorn mulch in it. Also, he asked about the maintenance and if the method they are using are better than the pipes with popcorn.

Mr. Anaya stated it is on the back of the staff report on the upper right hand corner.

Mr. Burkheimer stated that the bioretention bed will be a mixture of sand and wood chip mulch. He stated yes, he believes it is better because the method they are using are similar to a French drain with biology and feels it would be better.

Ms. Green said she returned from a soil science class and she believes it would be better because the soil mixture with the organisms can be clean and beneficial.

Mr. Wilson explained the method and background of the bioretention bed.

Mr. Spaur asked if they were prepared to have the house and lot frequently flooded. He further explained the area flooding.

Mr. Walker stated that they did see the issues during the last storm, he has friends in the area as well and their houses were not damaged due to their elevation but access to leave and return from the neighborhood would be limited. He is aware of the flooding in the area and that he wants to continue with his dream and live on his property.

**CBPA BOARD VOTE:**

Mr. Nowak moved to **APPROVE PLN-CBPA-2016-054** with the following stipulations: Please provide ten (10) large canopy trees and the bioretention planting bed within the RPA, as depicted on the plan, to mitigate the impact of the proposed development within the RPA. The bioretention bed shall be continuously maintained and kept in proper functioning condition. Mr. Curling seconded the motion. The motion was carried by a vote of 4 – 2. Mr. Spaur and Mr. Barath opposed, Sherman was excused.

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**CBPA VIOLATION:**

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1. **CBPA-V-2016-05**  
**LOCATION:** 2229 Branch Drive  
**OWNER:** Richard Sullivan  
**VIOLATION:** Unauthorized expanded driveway, concrete patio, and retaining wall with associated backfill within the Resource Protection Area of the Chesapeake Bay Preservation Area  
**WATERSHED:** Western Branch of the Elizabeth River  
**TAX MAP SECTION/PARCELS:** 0161004000140

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**CBPA BOARD ACTION:**

**The CBPA Board moved to send CBPA-V-16-05 to the Chesapeake Circuit Court for consideration. (6 – 0; Greene/ Spaur, Sherman excused)**

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Board Discussion:

Mr. Anaya stated that he will let Mr. Fox update the Board.

Mr. Fox stated that he has had fairly regular contact with Ms. Shepelle Watkins-White, representing Mr. Sullivan and Ms. Rudiger's, recall motion to table until today's meeting so the owners can obtain a reliable survey for the property. Since the meeting, they took the position that they would only get a survey if they were allowed to keep what they had done. To move things forward, Mr. Fox asked Mr. Anaya to prepare an exhibit of RPA encroachment and has shared the results with Ms. White this afternoon. Mr. Sullivan and Ms. Rudiger are in their Winter abode, and not in the area. We have a better idea of what the encroachment looks like. It appears Mr. Sullivan is not cooperating

Ms. Greene asked if the entire matter was tabled or did the Board find them in violation. She also asked, since they are not consenting, if the next step is going to send the application to the courts.

Mr. Fox stated that they were found in violation and it was proposed as a consent order to resolve the issues.

Ms. Greene stated since the owners are not consenting and the CBPA Board does not want to accept the previous survey, the next step is to move to send this case to the Circuit Court for consideration. Ms. Greene moved to send this case to the Chesapeake Circuit Court.

Mr. Wilson asked if the 3-foot contour line is based on LIDAR data and the teal blue and green line is the 50 foot and 100 foot buffer and the pink section is the unauthorized encroachment.

Mr. Anaya confirmed that it is based on LIDAR data.

Mr. Spaur asked if the 3 feet contour line is reference to the tide. Mr. Anaya stated it is in reference to NAVD88. Based on being out on the site, and reviewing the aerial photos, the LIDAR data appears quite accurate.

Mr. Fox stated that we would obtain a survey during litigation.

**CBPA BOARD VOTE:**

Ms. Greene moved to **send the violation to the Circuit Court**. Mr. Spaur seconded the motion. The motion was carried by a vote of 6 – 0; Sherman was excused.

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**OTHER BUSINESS:**

Mr. Spaur presented a photograph that appears to show construction underway at 1804 Rockwood Drive. Mr. Spaur stated that he believes they have already started building on the lot to which they denied. Mr. Anaya stated that this is the first he has heard about this and will have to go into the field and look at it before any other action can be pursued.

Mr. Fox updated the Board that a lawsuit has been filed regarding the CBPA Board's Denial of application PLN-CBPA-2016-039 at 1804 Rockwood Drive, and the filed response was sent today.

Ms. Greene inquired about attendance requirements and an annual attendance report.

Mr. Anaya stated that the attendance requirements are in the CBPA Board By-Laws.

There was no other business discussed at the meeting.

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**Election of Officers:**

Chair: Vickie Greene

Vice-Chair: Stephen Nowak

The above nominated and elected officials agreed to serve for a period of one year.

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**ADJOURNMENT:**

With no further business, the meeting was adjourned at 6:56 P.M.

Sincerely,

Jennifer Joseph,  
Recording Secretary