

The Chesapeake Bay Preservation Area Board
Planning Department
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MINUTES

**Chesapeake Bay Preservation Area
Board**

October 18, 2017 – 6:00 PM

Human Resources Training Room

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

Roll Call:

PRESENT

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

EXCUSED

John A. Sherman, Member
Kaite James, 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 September 20, 2017 CBPA Board minutes were presented into the record for Board action.

CBPA BOARD ACTION:

MINUTES for the September 20, 2017 CBPA Board were **APPROVED**.
(7-0; Nowak/Spaur; Sherman and James excused)

CBPA BOARD VOTE:

Mr. Nowak moved that the **MINUTES** for the **September 20, 2017 CBPA Board meeting** be **APPROVED**. Dr. Spaur seconded the motion. The motion was carried by a vote of 7 - 0. Mr. Sherman and Ms. James were excused.

CBPA APPLICATION:

1. **PLN-CBPA-2017-046**

PROJECT/LOCATION: Storage Shed/3119 Harvesttime Crescent

APPLICANT: Wayne Eugene Statzer

PROPOSAL: In accordance with Section 26-528 of the Chesapeake City Code, the applicant is seeking an EXCEPTION to remove an existing dilapidated 167 SF shed from within the RPA feature, and construct a new 192 SF shed within the 50-foot seaward portion of the 100-foot RPA buffer.

SUBDIVISION/LOT #: 33 TYRE NECK

WATERSHED: Western Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0052001000330

CBPA BOARD ACTION:

The CBPA Board APPROVED (7-0; Wilson/Nowak; Sherman excused) PLN-CBPA-2017-046, for a period of two years.

Staff Presentation:

Mr. Anaya presented the application to the Board, along with the CBPA Review Committee's findings and recommendations. He presented pictures of the site at 3119 Harvesttime Crescent. He stated that the applicant seeks an **EXCEPTION** to remove an existing dilapidated 167 SF shed from within the RPA feature, and construct a new 192 SF shed within the 50-foot seaward portion of the 100-foot RPA buffer. The application was reviewed by the CBPA Review Committee on September 5, 2017 and recommended that the exception be granted for a period of two years.

Proponent:

Wayne Statzer, 3119 Harvesttime Crescent, Chesapeake, Virginia, applicant. Mr. Statzer stated that he would like to move the shed closer to his wife's garden.

Board Discussion:

Mr. Wilson inquired about the drainage easement on the back of the property. Mr. Anaya stated that the drainage easement is located to the back of the lot. Mr. Statzer stated that there is a road behind the property and then the easement drains to the river.

Mr. Nowak asked if the wood fence is on the other side of the feature. Mr. Anaya confirmed that it is.

Mr. Wilson asked how often the shed floods and if it is used for storage. Mr. Statzer stated that the shed has only flooded a couple of times, but has been deteriorating over time due to the trees falling on it. He confirmed that the shed is currently being used for storage.

CBPA BOARD VOTE:

Mr. Wilson moved to **APPROVE** application **PLN-CBPA-2017-046**. Mr. Nowak seconded the motion. The motion was carried by a vote of 7 – 0, Sherman was excused.

Mr. Anaya read the application PLN-CBPA-2017-049 into the record. Ms. Greene stated that she has previously spoken to one of the residents at 805 Heritage Point concerning her position on recreational features within the 50-foot seaward buffer in the Chesapeake Bay Preservation Area district. Ms. Greene has no legal conflict and wanted to disclose the conversation, and state that she is able to participate in the transaction of application PLN-CBPA-2017-049 fairly, objectively, and in the public interest.

2. PLN-CBPA-2017-049

PROJECT/LOCATION: Above-ground Swimming Pool/805 Heritage Point

APPLICANT: Joseph G. Turner III

PROPOSAL: In accordance with Section 26-528 of the Chesapeake City Code, the applicant is seeking an **AFTER-THE-FACT-EXCEPTION** for installation of a 452 SF above-ground swimming pool in the place of an existing 100 SF concrete pad within the 50-foot landward and 50-foot seaward portions of the 100-foot RPA buffer, resulting in a net increase of 352 SF of impervious area within the 100-foot RPA buffer.

SUBDIVISION/LOT #: 51 SUB PLAT OF SEABROOKE LANDING SEC 2 PHASE 1

WATERSHED: Southern Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0473003000090

CBPA BOARD ACTION:

The CBPA Board **DENIED** the exception requested in **PLN-CBPA-2017-049 (4-3; Greene/Spaur; Wilson, Barath, and Klesch opposed; Sherman excused)** based on the following finding:

The requested exception is **NOT** in harmony with the purpose and intent of Chesapeake City Code Section 26, Article IX, and is of substantial detriment to water quality.

Staff Presentation:

Mr. Anaya presented the application to the Board, along with the CBPA Review Committee's findings and recommendations. He presented pictures of the site at 805 Heritage Point. He stated that the applicant seeks an AFTER-THE-FACT-EXCEPTION for removal of an existing 100 SF concrete pad within the 50-foot landward and 50-foot seaward portions of the 100-foot RPA buffer, and installation of a 452 SF above-ground swimming pool in its place. He stated that the Application was reviewed by the CBPA Review Committee on September 19, 2017. Based on the CBPA Review Committee's findings, it is recommended that the exception requested in application PLN-CBPA-2017-049 be GRANTED for a period of two years with the stipulation that the applicant provide one (1) large canopy tree within the RPA to mitigate the impact of the proposed pool within the RPA.

Proponent:

Joe Turner, 805 Heritage Point, Chesapeake, Virginia, applicant.

Brenda Williams, 805 Heritage Point, Chesapeake, Virginia, self.

Board Discussion:

Mr. Nowak asked if the existing trees have the perpetuity protection as the same tree being stipulated. Mr. Anaya explained that tree removal within the RPA requires CBPA authorization, but if someone does so without proper authorization then it will be investigated as a violation.

Ms. Greene asked if the application was a violation. Mr. Anaya stated explained that the project was initially reported as a violation, but since being contacted by the City, the applicant has submitted an after-the-fact exception application.

Mr. Wilson asked if the after-the-fact exception was completed through the Building Department as well. Mr. Anaya asked Mr. Turner if he has applied for his pool permit. Mr. Turner stated that he had submitted the building permit application and he has received the building permit.

Ms. Greene asked if Mr. Turner received his pool permit before putting in the CBPA after-the-fact exception application. Mr. Turner stated that he received it after.

Ms. Greene asked Mr. Turner if he knew he was in a CBPA district. Mr. Turner stated that he was aware he was in a CBPA district, but he asked the pool contractor if he needed a pool permit. The pool contractor told Mr. Turner that he did not need a pool permit, and completed the above ground pool installation in about three hours. He received a letter of violation and spoke with the City's representatives and submitted an after-the-fact exception application.

Ms. Greene asked Mr. Turner if he has done any research in the CBPA. Mr. Turner stated that he has not.

Ms. Greene asked if he has cut down any trees. Mr. Turner stated he has not cut down any trees.

Ms. Greene stated the conversation she had several years ago was with Ms. Williams and a pool was of interest. Ms. Greene stated that it was a CBPA property and a permit would be needed. Ms. Greene stated that she is opposed of the application because she believes recreational amenities should not be authorized within the buffer.

Mr. Wilson asked for clarification regarding why a pool is considered to be impervious surface, rather than pervious, and why the pool that will retain storm water is considered detrimental to the environment. Ms. Greene stated that the law states that the goal is to have a vegetated buffer and rainfall in a vegetated buffer percolates into the soil, thus improving the biology of the soil and improving the water quality.

Mr. Klesch asked whether the applicant will need to apply for another pool permit once the current pool reaches its life expectancy. Assistant City Attorney Meredith Jacobi responded that if the applicant wants to tear down the current pool and put in another pool, a new permit will be required.

CBPA BOARD VOTE:

Ms. Greene moved to **DENY** the application based on the finding that the requested exemption is not in harmony with the purpose and intent of City Code and is of substantial detriment to water quality. Mr. Spaur seconded the motion. The motion was carried by a vote of 4 – 3. Wilson, Barath, and Klesch opposed. Sherman was excused.

Ms. Williams wanted to speak after the vote was taken and filled out a late entry speaker card. Ms. Williams stated that one of the reasons for the pool was Mr. Turner's doctor wanted him to exercise and swimming is recommended. Mr. Anaya stated that he received a doctor's note recommending swimming as a form of exercise. Ms. Williams stated that they continue to grow lilies in the yard and give them away to other neighbors. Ms. Greene stated that her objection had nothing to do with the lilies and some trees were cut down by a previous resident's daughter, but her objection has been consistent for voting against recreational activities and recreational fixtures in the 50 foot seaward portion and strongly believes the Chesapeake Bay needs to have a vegetated buffer. Ms. Williams agrees with a vegetative border needed, but there was more to the application than recreation as it was recommended by a doctor. Ms. Jacobi interjected and ceased all discussion per the Chesapeake Bay Preservation Area Board by-laws per Article 5 Section 4. Mr. Turner asked the Board if there would be a motion to reconsider and discuss the application further. Ms. Greene thanked the applicants for attending the meeting, and the applicants left.

OTHER BUSINESS:

- Follow-up on CBPA inquiries
- Closed Session: 6:52 P.M. – 7:37 P.M.

ADJOURNMENT:

With no further business, the meeting was adjourned at 7:39 P.M.

Sincerely,

Jennifer Joseph,
Recording Secretary