

MINUTES

**Chesapeake Bay Preservation Area
Board**

May 16, 2018 – 6:00 PM

Human Resources Training Room

Call to Order: Chair Stephen Nowak called the Chesapeake Bay Preservation Board meeting of May 16, 2018, to order at 6:00 p.m. in the Human Resources Training Room.

Roll Call:

PRESENT

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

EXCUSED

Rusty Barath, Member

ABSENT

Kaite James, Alternate Member

PLANNING DEPARTMENT STAFF PRESENT

Michael Anaya, CBPA Planner
Rebecca Benz, Planning Administrator

CITY ATTORNEY STAFF PRESENT

Ellen Bergren, Assistant City Attorney

APPROVAL OF MINUTES:

The April 18, 2018 CBPA Board minutes were presented into the record for Board action.

CBPA BOARD ACTION:

MINUTES for the April 18, 2018 CBPA Board were **APPROVED** by unanimous consent as amended.

CBPA APPLICATION:

1. **PLN-CBPA-2018-010**

PROJECT/LOCATION: New Single-Family Home/1742 Rockwood Drive

APPLICANT/AGENT: Stephen Alexander Homes/American Engineering Associates – Southeast, PA

PROPOSAL: In accordance with Section 26-528 of the Chesapeake City Code, the applicant is seeking an **EXCEPTION** for authorization to demolish an existing single-family home and 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 2,233 SF of existing impervious area will be demolished and a total of 2,448 SF of new impervious area is proposed (2,448 SF within RPA).

SUBDIVISION/LOT #: 24 BLK 7 PARK VIEW SEC 2

WATERSHED: Southern Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0344002003830

CBPA BOARD ACTION:

The CBPA Board **APPROVED** (6-1; Curling/Greene; Spaur opposed) PLN-CBPA-2018-010 with the following stipulations:

1. **Provide eleven (11) large canopy trees and two (2) small canopy trees within the 100-foot RPA buffer to mitigate the impact of the new impervious area within the 100-foot RPA buffer. 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. City of Chesapeake Landscape Coordinator shall confirm that appropriate spacing is provided between proposed trees.

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 1742 Rockwood Drive. He stated that the applicant seeks an exception for authorization to demolish an existing single-family home and construct a new single-family home within the 50-foot landward and 50-foot seaward portions of the 100-foot RPA buffer. The application was reviewed by the CBPA Review Committee on April 3, 2018. It is recommended that the exception requested be granted for a period of two years, with the stipulation that the applicant provide eleven (11) large canopy trees and two (2) small canopy trees within the 100-foot RPA buffer, as proposed on the plan, to mitigate the impact of the new impervious area within the 100-foot RPA buffer.

Proponent:

Brad Martin, American Engineering Associates, 448 Viking Drive, Suite 170, Virginia Beach, Virginia, agent.

Board Discussion:

Mr. Wilson asked whether the existing impervious area shown on the exhibit is based on just the house or if it includes a driveway. Mr. Anaya responded that it was based only on the house, as there is no well-defined driveway on the site.

Ms. Green asked if the lot was recorded in 1953. Mr. Anaya confirmed that it was.

Mr. Nowak asked for clarification of what the blue lines on the aerial photo represent. Mr. Anaya explained that it is the 4' elevation contour.

Mr. Nowak asked for the amount of impervious area, both existing and proposed within RPA. Mr. Anaya replied that all existing and proposed development lies within the RPA buffer, as the entire lot is within the RPA.

Ms. Greene inquired when the existing home was built. Mr. Anaya responded that the current owner purchased in 1998, but he does not know the date of construction.

Mr. Martin introduced himself and thanked the Board members for serving on the Board. He noted that he has served on a CBPA Board and he appreciates their time. He explained that he is unsure of when the house was built, but knows it was before the CBPA ordinance was adopted. The project proposes demolition of the existing house and slight increase in impervious area through the new construction.

Mr. Anaya confirmed that the existing home was constructed in 1960 (Ms. Bergren researched this during the hearing).

Ms. Green inquired about a stand-alone portion of impervious area depicted on the proposed plan. Mr. Martin explained that it was the HVAC pad.

Mr. Wilson asked whether the driveway would be all concrete. Mr. Martin confirmed that it would be to allow access to the side-loading garage. He also asked about the structure coming off of the rear of the home, to which Mr. Martin responded that it would be a covered screened porch.

Mr. Wilson asked whether there was any discussion during design phases to match the existing impervious area on the site rather than increase it. Mr. Martin explained that there was not, as this plan was typical of the Steven Alexander Homes already being built in that area and was readily available.

Mr. Wilson asked Mr. Martin to explain the stormwater management methods on the site. Mr. Martin explained that they were implementing grass swale BMPs plus buffer restoration of 11 large canopy trees and 2 understory trees.

Mr. Wilson asked for clarification of whether the swales flow to the front of the property. Mr. Martin explained that the swales flow in both directions.

Mr. Sherman inquired about the distance from the porch to the water's edge. Mr. Martin responded that it was approximately 10 feet.

Mr. Spaur noted that the shoreline is presented as uniform riprap but it is not. That shoreline, as well as the shoreline in both directions for about a quarter of a mile is trashy riprap, concrete rubble, and cinderblocks. He also noted that in front of that house, the road has not been elevated by city paving, and it is only about 4' above mean low water. It is not a desirable piece of street in front of this house.

Mr. Wilson asked whether the current owner is just rebuilding on the property, or if they are selling their current house and the proposed home will go to a new buyer. Mr. Martin explained that the current owner has worked with Stephen Alexander Homes to build this home for them.

Mr. Nowak remarked that he liked some of the mitigation that was proposed. He questioned whether a more permeable material than concrete was considered for the driveway and sidewalk. Mr. Martin responded that pervious alternatives, such as pavers, would shift over time and make it difficult to walk on the sidewalk and/or driveway, and they are not practical in this application. He also explained that stormwater was being adequately managed in other ways on the site.

Ms. Greene asked whether they will be installing riprap along the shoreline as is depicted on the plan. Mr. Martin explained that there is an existing riprap shoreline on the site and that is not part of this application.

Mr. Wilson asked Mr. Anaya, since the Board doesn't often see applications where impervious exceeds that percent which is allowed in a given watershed, what requirements are triggered. Mr. Anaya explained that it triggers a Water Quality Impact Assessment which is then reviewed by our stormwater engineers. In this case, engineers determined that the vegetative mitigation and the drainage swales would adequately treat stormwater on the site.

Mr. Wilson asked for clarification as to whether the proposed swales be mowed or non-mowed. Mr. Martin responded that he expects that the home owner will mow them, but the swales will still provide appropriate mitigation.

Mr. Wilson noted that the Board recently reviewed an application with a strategy to handle stormwater with rain barrels, and asked whether that may be feasible for this home. Mr. Martin responded that the long-term management required for rain barrels to qualify as a SWM technique presents too much of a challenge, and they prefer less structured alternative.

Mr. Nowak noted that Mr. Martin had mentioned the challenges presented by pavers, then asked whether they had considered pervious concrete. Mr. Martin responded that the pervious concrete still results in an uneven surface. He also added that it costs approximately seven times as much as regular concrete.

Mr. Klesch suggested that a stipulation be added which prohibits the owner from filling in the swales. Ms. Greene explained that if they fill them in, it will be a violation. She also added that the Board hopes the builders, agents, and sales people will educate the buyers regarding development constraints associated with the RPA buffer.

Mr. Wilson asked whether the parcel boundary shown on the aerial photo is correct. Mr. Anaya explained that the boundary on the aerial photo is what shows up by default in the City's pictometry resources. He further explained that the calculations are based on the lot area above mean low water. Mr. Martin added that there is so little lot area above mean low water, that it is driving the percentage of impervious area on the lot up.

Mr. Sherman inquired about the foreseeable impact of the proposed tree roots on the porch as those trees grow and roots spread. Mr. Martin explained that with a solid concrete pad, they will likely be reaching toward the water.

Mr. Anaya asked what size canopy was depicted on the proposed trees on the plan. Mr. Martin responded that they were shown with a 12-foot diameter canopy.

Mr. Martin suggested that they could reconfigure the trees on site, if necessary, to allow more space between the proposed trees and proposed structure.

Ms. Greene noted that tree roots can grow up to 5 to 6 times the diameter of the tree's drip line, and roots are within the top 2 feet of soil for most species. She suggested that they choose trees whose root systems can tolerate the wet soil and will not damage the structure.

Mr. Wilson inquired what size trees should be shown on the plan. Mr. Anaya responded that a 30 to 40-foot diameter tree symbol would more accurately represent a large canopy tree on the plan. Mr. Wilson then questioned whether this quantity of large canopy trees can realistically fit on this site.

Mr. Martin explained how they arrived at the 12-foot diameter tree symbol shown on the plan by using the formula for the area of a circle.

Ms. Green suggested that the basic problem with this plan is that the calculations require 11 large canopy trees, and there is not space to accommodate them on site.

Mr. Wilson asked how much square footage each large canopy tree provides. Mr. Anaya explained that large canopy trees are assigned a value of 400 SF each, which is a standard that was established long ago. Mr. Anaya added that large canopy species grow larger than 12 feet, and they should be spaced adequately.

Mr. Martin explained the restoration requirements in the DCR Riparian Buffers Modification & Mitigation Guidance Manual and explained that he thinks they have programmed the landscape plan accurately based on the DCR guide.

Ms. Greene noted that there will be no grass, because there will be no sun in the rear yard. Mr. Martin agreed.

Mr. Nowak asked Mr. Anaya what happens if, after construction, it is found there is not enough room to plant enough trees as stipulated. Mr. Anaya responded that it is a function of the City's tree canopy standard, and there have not been issues with that before. Ms. Greene added that it will be a violation if they are not there. Ms. Bergren agreed that the stipulation must be met.

Mr. Martin assured the Board that they have over 5000 space of green space and pervious area available on the site, so they will be able to fit 11 trees into that area.

Mr. Wilson stated that he is hesitant to move forward with 6-foot radius tree symbols shown on the plan. He explained that the owners should be able to understand that almost the entire lot will be covered in trees. Mr. Martin asked Mr. Wilson for clarification whether he was hesitant to approve the plan due to the depiction of the trees on the plan, because the 11 trees are required based on the area calculations.

Ms. Greene summarized the proposed plan and noted that it would be only a slight increase in impervious area from the existing conditions, and that the location of the home would shift into the 50-foot seaward portion of the buffer in order to comply with zoning setback requirements.

Mr. Wilson explained that one particular violation case that the Board reviewed had an issue with the tree spacing when restoration plantings were installed. He explained further that he wants to make clear that appropriate spacing is an important consideration.

Ms. Greene stated that the owners should be told that it will be a shade covered lot, not a grass lawn. They are required to keep the trees or they will be found in violation.

Mr. Wilson asked whether the City specifies the spacing of trees. Mr. Anaya responded that, in the CBPA review process, it typically does not. He explained further that this plan has not even proposed specific species yet, and most of the time that is one of the determining factors of appropriate tree spacing.

Ms. Greene noted that the owners of the existing house are the ones having the new home built at the property.

Mr. Spaur stated that the grass behind house is very high, which creates a viable riparian buffer. He explained that his opinion is that the lot should be abandoned because it will not last long. Ms. Greene responded that the owner values the property and has invested in it. Mr. Spaur further explained that with erosion, encroaching water, and a low street, that the lot is not a good place for a home.

Mr. Nowak stated that the Board's role is to review applications in terms of water quality.

Ms. Greene suggested that the owner does have vested property rights, since the lot was recorded, and the existing home built prior to adoption of the CBPA ordinance.

Ms. Bergren explained that the date of lot recordation only affects the CBPA Application review process as far as whether the CBPA Review Committee or CBPA Board has authority to take action on an application.

Ms. Greene recounted her understanding of redevelopment of a site. She explained that she thought an existing building could be replaced within the same footprint, and it is only because this plan proposes to vary from the existing footprint that Board review is required. She noted that the increase in impervious area is approximately 200 SF, and the proposed home will be encroaching further into the buffer. Mr. Anaya noted that the further encroachment is in order to comply with zoning setback requirements.

Ms. Greene inquired as to whether the applicant has any vested property rights. Ms. Bergren responded that she would need to call a closed session to give legal advice on that.

Mr. Wilson noted that this is a standard Stephen Alexander Homes plan and asked whether there is another alternative that would not increase the square footage of impervious area on the site. Mr. Martin responded that there was not, and that this matched the square footage of the current house, if not a bit smaller. He added that the new impervious driveway is where the real increase comes from, as there is not currently a driveway on the site at all.

Mr. Curling motioned to approve the application with the conditions and stipulations recommended in the staff report. Ms. Greene seconded the motion.

Mr. Wilson asked to amend the motion to make clear that trees shall be spaced properly on the lot. Ms. Greene asked for clarification on which standards would be used to determine proper spacing of the trees. She suggested that the City Landscape Coordinator could be consulted to ensure appropriate tree spacing.

Ms. Bergren asked for clarification whether the Board will be requiring this stipulation for this particular application. Mr. Wilson confirmed that is how he intends his amendment to the motion.

Mr. Curling asked Mr. Martin what type of trees they would be planting. Mr. Martin responded that they have not yet selected tree species, but they would coordinate with the City Landscape Coordinator and use the City's recommended tree species list to determine appropriate trees for the site.

Mr. Wilson clarified that he is amending the motion to include a stipulation that tree selection and spacing be reviewed by City's Landscape Coordinator.

The Board voted on the amended motion.

Ms. Bergren asked Mr. Martin to clarify that he has no objection to the motion that passed. Mr. Martin stated that they have no objection to it.

Ms. Bergren asked whether Mr. Martin has power of attorney to speak for owner. Mr. Martin responded that he is a civil engineer, the agent on behalf of the applicant.

CBPA BOARD VOTE:

Mr. Curling moved to **APPROVE PLN-CBPA-2018-010** with the stipulation as listed in the agenda. Ms. Greene seconded the motion. Mr. Wilson amended the motion to include a second stipulation that the City of Chesapeake Landscape Coordinator shall confirm that appropriate spacing is provided between proposed trees. The motion was carried by a vote of 6 – 1, Spaur opposed.

OTHER BUSINESS:

Mr. Anaya introduced Ms. Bergren as the Meredith Jacobi's replacement as legal counsel for the CBPA Board.

Ms. Greene asked whether there are any updates on cases that have been appealed in the Circuit Court. Ms. Bergren explained that if there is a specific case in mind, and if it is not in negotiations, she would be able to provide an update at the next CBPA Board meeting.

Mr. Anaya introduced Ms. Benz as the interim Recording Secretary until the new hire begins.

Mr. Anaya suggested that the draft Meeting Rules & Procedures could be discussed or tabled until next meeting. Mr. Wilson asked whether the Board could discuss and act on the draft at this time, and was curious what issues, if any, that other Board members may have with them. Ms. Greene explained that she had concerns regarding the proposed time limit.

Mr. Nowak noted that when Ms. Jacobi initially mentioned the Meeting Rules & Procedures, she said she was doing this for various groups. Mr. Nowak asked for clarification of whether the Board would be able to tailor them to their needs.

Ms. Greene explained that City Council and Planning Commission have the same time limits, yet their agendas typically have many more items on them than CBPA Board agendas. She suggested that the proposed time limits did not allow enough time for speakers and that she does not feel a personal encumbrance of her time for only one night a month. She noted that there have been some times when people have talked excessively, so perhaps a 10-15 minute limit would be sufficient.

Mr. Wilson explained that his interpretation of the proposed time limit allows for a minimum time that one could speak, but the Board could allow them to speak as long as they felt necessary. Ms. Greene responded that the City Council and Planning Commission time limits do not work that way.

Mr. Anaya explained that he hasn't had time to review the proposed Meeting Rules & Procedures with anyone, but his interpretation is that the proposed time limit would give the Board the option to stop a speaker at 5 minutes if necessary.

Ms. Greene reiterated that she feels that the 3-5 minute time limit is inadequate and that there should be a 10-15 minute time limit.

Mr. Wilson explained that he agrees that the Board needs to implement time limits, but they should be rather short. Ms. Greene responded that Cowboy Carawan is the reason the speaking time limits are in place, and explained who he was and how his record of speaking for long amounts of time led to the implementation of time limits for speakers.

Mr. Spaur stated that it could be very threatening to establish a time limit, and tell somebody ahead of time that they have 5 minutes to state their case, especially when they have so much personal involvement in these applications. The personal, relatively loose exchange between Board members and citizens/agents is a good system.

Mr. Nowak stated that he thinks both points are good points, and that he thinks that is covered under paragraph 2, along with maintaining decorum.

Mr. Nowak suggested that the proposed Meeting Rules & Procedures be tabled until the next meeting, and called for Board members to submit suggestions for revisions in the

meantime. Mr. Anaya said that members can email edits to the group, that way, the draft can be revised for the next Board meeting and included in the package ahead of time.

Mr. Nowak asked whether there was any other business to discuss.

Ms. Greene stated that she noticed Alternate Kaitlyn James is absent again and asked whether she has been notified of attendance requirements per the bylaws.

Mr. Nowak asked who a letter regarding attendance should come from. Mr. Anaya responded that it would need to come from the Chair.

Mr. Wilson asked for clarification of repercussions for excessive absences. Mr. Anaya responded that the bylaws state that the Chairman may notify City Council and request that the member be removed from the Board. Mr. Wilson asked for clarification whether this is optional. Ms. Bergren explained that the bylaws read "may notify" and "request," which seems discretionary.

Ms. Greene noted that previous Board members have been dropped from the Board for lack of attendance. Some cases were due to mitigating circumstances. Ms. Greene recalled that Ms. James has only been to 2 meetings.

Ms. Bergren commented that this bylaw regarding attendance only speaks to members, as opposed to alternates. Ms. Greene responded that when she was an alternate, she was told that she was expected to attend.

Mr. Sherman stated that when he was sworn in as an alternate, it was made clear that he was only an alternate, not a member.

Ms. Bergren explained that it is clear that attendance requirements apply to members, and she can look into whether the same requirements apply to alternates.

Mr. Nowak stated that he wants to make sure whatever the Board decides to do is based on accurate information.

Ms. Greene explained that there is an important knowledge base built, and valuable experience developed by being present at the Board meetings.

Mr. Nowak explained that he put together a draft article with some ideas and sent them to Mr. Anaya, who made sure language is in accordance with the City Code. The article is going to The Clipper is aimed at landowners within the CBPA and is intended to help them understand tree requirements and their responsibility to maintain them.

Mr. Anaya confirmed that the writer for The Clipper followed up and intends to publish soon. He described the article as a brief overview of the intent of the CBPA district and some of the ways regulations may apply to properties within the district.

Several other options were discussed as to where else the article may be shared.

ADJOURNMENT:

With no further business, the meeting was adjourned at 7:15 P.M.

Sincerely,

Rebecca Benz
Recording Secretary

APPROVED: July 18, 2018