

Chesapeake Bay Preservation Area Board

Public Hearing Minutes – June 19, 2019 Human Resources Training Room – 6:00 P.M.

Call to Order: Chairman Stephen F. Nowak called the Chesapeake Bay Preservation Board meeting of June 19, 2019, to order at 6:00 p.m. in the Human Resources Training Room.

Roll Call:

PRESENT

Stephen F. Nowak, Chair
Chris Wilson, Vice-Chair
Henry Curling, Member
Vickie Greene, Member
Kaite James, Member
John Klesch, Member
William Spaur, Member
Cristan Connito, Alternate Member
Karen Toida, Alternate Member

PLANNING DEPARTMENT STAFF PRESENT

Leslie Bonilla, CBPA Planner
Lewis Martinez, CBPA Recording Secretary

CITY ATTORNEY STAFF PRESENT

Meredith Jacobi, Assistant City Attorney

APPROVAL OF MINUTES:

The May 15, 2019 CBPA Board minutes were presented into the record for Board action.

Ms. Connito recommended a spelling change to page 9 of the May 15, 2019 CBPA Board minutes, her name was misspelled Conitto. The changes have been made to the May 15, 2019 CBPA Board Minutes.

CBPA BOARD ACTION:

MINUTES for the May 15, 2019 CBPA Board were APPROVED by majority vote with the change recommended.

CBPA APPLICATION:

- PLN-CBPA-2019-019**
PROJECT/LOCATION: New Single-Family Home/1718 Rockwood Drive
APPLICANT/AGENT: Jesse N. Walker/E. Rodney Flores
PROPOSAL: In accordance with Section 26-528 of the Chesapeake City Code, the applicant is seeking an **EXCEPTION** for authorization to construct a new single-family home within the 50-foot seaward portion of the 100-foot RPA buffer. A total of 1,129 SF of new impervious area is proposed (1,129 SF within the 100-foot RPA buffer).
SUBDIVISION/LOT #: PARK VIEW SEC 2/20 BLK 8
WATERSHED: Southern Branch of the Elizabeth River
TAX MAP SECTION/PARCEL: 0344002004060
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CBPA BOARD ACTION:

The CBPA Board DENIED THE EXCEPTION requested in PLN-CBPA-2019-019 due to the following finding:

Development of the property, as proposed, will cause degradation of water quality.

Staff Presentation:

Ms. Bonilla presented the application to the Board, along with the CBPA Review Committee's findings and recommendations. She presented pictures of the site at 1718 Rockwood Drive. She stated that the applicant is seeking an EXCEPTION for authorization to construct a new single-family home within the 50-foot seaward portion of

the 100-foot RPA buffer. A total of 1,129 SF of new impervious area is proposed (1,129 SF within the 100-foot RPA buffer). She stated the application had been previously brought before the board at the January 16, 2019 CBPA Board meeting and was Denied by a vote of 7 – 0. The lot was recorded in 1953. The CBPA Review Committee reviewed this application on May 7, 2019, and recommended approval with a vote of 6 - 1.

Proponent:

Rodney Flores, 445 Battlefield Blvd, Chesapeake, Virginia, agent. He stated he would be able to clear up many of the questions the Board had regarding percentages and other questions.

Richard Clair, 4700 East Beach Dr., Norfolk, Virginia, applicant. He stated that the lot had been in his family for over 50 years and has been gifted and passed down to different family members.

Board Discussion:

Ms. Greene requested clarification on the time limitations on submitting an application after a denial has been issued.

Ms. Jacobi stated that the time limitation is one year unless in the opinion of the City Manager's Designee an application is significantly or materially different than the previous application. She stated in this case City Staff determined that the application meets the standards to be re-submitted.

Mr. Wilson requested clarification on if the water area is included in the total impervious area calculations. He stated in the past it was not included in the calculation but in this application it appears to be included.

Ms. Bonilla stated the water was not included in the calculations for the application.

Ms. Greene questioned if the 9% calculation, in the presentation, for total impervious area is including the water on the property.

Ms. Bonilla stated the area is the entire lot above the water level not including the water.

Ms. Greene stated that in the previous application the whole lot is located within the seaward portion of the CBPA.

Dr. Spaur stated that he had walked the area of the lot and it was a swamp.

Mr. Nowak stated that if it is wetlands, it is outside of the Board's purview and would have to be determined by DEQ or the Army Corps of Engineers.

Mr. Flores stated that the new application has removed area of the building closest to the water, allowing 10 feet clearance. He stated they also reduced the width of the sidewalk

to 2 feet instead of 4 feet since there is not a City requirement to have the sidewalk 4 feet wide. He stated the City required 2 parking spaces which equal about 322 square feet (sf) which had been reduced from the original plan.

Mr. Flores noted that the entirety of the retaining wall will be a Level 2 Bio-Retention BMP to ensure that any surface drainage that comes off the lot will be fully treated by the BMP before it flows into the creek. He handed the Board print-outs of the designed BMP and site plans.

Mr. Flores clarified that the 6 findings required by the Code before an exception can be granted have been met. The first has been met by planning the house to be 750 sf which is 58% of the normal size of a normal house in the United States. The second has been met by building a reasonable single family home as compared to the area of the proposed building. The third has been met by installing the Level 2 Bio-Retention BMP, exceeding the state DEQ standard of water quality by 400%. The fourth finding has been met by the lot being recorded prior to the CBPA ordinance. The fifth has been met by reducing the footprint of the building closest to the water. The sixth has been met by landscaping stipulations to ensure that water quality is not damaged by the building of the house.

Mr. Flores stated that the houses in the area are between 2,700 to 3,000 sf. The house they are planning to build is 750 sf and they have gone above and beyond to minimize the impervious area.

Ms. Greene questioned if the bulkhead was currently existing around the lot.

Mr. Flores stated that the bulkhead would have to be built. The bulkhead would go around the yard.

Ms. Greene asked if there was approval from the Wetlands Board to build the bulkhead.

Mr. Flores stated that the Wetlands Board jurisdiction is over where the planned bulkhead would be built.

Ms. Greene questioned if the applicant had reviewed VIMS recommended protection of the shoreline.

Mr. Flores stated that they have not reviewed VIMS recommendations. A consultant had been hired to delineate the CBPA area. He stated construction methods utilized would minimize impact to the shoreline.

Ms. Greene questioned what the Level 2 Bio-Retention wall consisted of.

Mr. Flores stated that the Level 2 Bio-Retention consists of timber laid 2 feet before the wall in order to filter the water entering the creek.

Mr. Wilson questioned if when the lot was originally platted that the lot was a left over piece or intended as a buildable lot.

Mr. Flores stated that it was intended to be a buildable lot in accordance to the 1950's.

Mr. Wilson questioned how the large diameter trees, in accordance with the site plan, can be planted 7 feet on center.

Mr. Flores stated that any recommendation from the Board are welcome and that the trees would have to be planted in the back of the house.

Mr. Nowak questioned if the house could be brought forward on the property.

Mr. Wilson clarified that house is being built right along the setback line on the site plan.

Mr. Nowak questioned if the level of the lot will have to be raised before building on the lot.

Mr. Flores stated that the lot would have to be raised 3 feet of fill in the front and 1.5 feet in the back.

Mr. Nowak questioned the background of the lot, being in the applicant's family.

Mr. Clair stated that the lot record shows that it was gifted and transferred to different family members.

Ms. Greene clarified that the rights to develop in the CBPA ordinance do not get passed down to different family members.

Mr. Flores stated that since the lot lines are not being changed and the lot is not being subdivided the building rights would remain. He requested clarification from the City's Attorney concerning the grandfathering or the building rights.

Ms. Jacobi stated that the CBPA Board meeting is not the appropriate time to discuss that opinion, but would be willing to discuss at the appropriate setting.

Ms. Greene stated that there has not been approval of developments where the entirety of the lot is within the 50 foot seaward portion of the CBPA.

Mr. Klesch questioned if the applicant intended to live in the house being built.

Mr. Clair stated that a family member would be living in the house. He does not intend to live in the house, but is representing his family at the meeting.

Ms. Jacobi requested clarification to who Jesse Walker is as he is the record owner of the property.

Mr. Clair stated he is a cousin of the property owner.

Mr. Klesch questioned if the apron of the drive had to be concrete in accordance with the city code and the area closest to the house would be geo-textile.

Mr. Flores stated that the first part of the driveway is code required by zoning ordinance.

Mr. Klesch questioned if there was any consideration to requesting a rezoning to the lot because of the shape.

Ms. Jacobi stated that the request would have to be initiated by the applicant, not City Staff. She stated the City Attorney's Office would likely oppose the variance application.

Mr. Flores stated that they looked at three avenues to minimize the impact of the RPA. Rezoning to R10 would allow the setback to be placed 5 feet forward but this neighborhood is R15. An appeal to Board of Zoning Appeals was also recommended but would have likely been disapproved. Coming before the CBPA Board was likely the best chance to get approval to build the house.

Mr. Wilson questioned the trees calculated on the plan. He questioned if the tree canopy be six times as much as recommended on the site plan.

Mr. Flores stated that the area is closer to 12,000 sf and the lot will be very covered in trees to meet the recommendations.

Ms. Greene questioned what types of trees would be planted along with the phragmites.

Mr. Flores stated that they will coordinate with a landscape architect to ensure which trees will survive.

Dr. Spaur stated that the water level has risen a foot since the lot was platted and that should be taken in consideration.

Mr. Flores stated that under the ordinance if a lot is platted, an owner should be afforded the opportunity to build a reasonable house. He also stated that when there are many other permits needed to build on the lot and is the responsibility to seek those permits and all efforts to maintain the water quality will be taken.

Mr. Nowak questioned where the wetlands are located on the lot.

Mr. Flores stated that the wetlands are located about 10-15 feet beyond the retaining wall.

Mr. Klesch questioned if the water will drain to the street after the grading has been completed.

Mr. Flores stated that the water will drain away from the street, from the front of the property to the rear and the sides of the property.

Mr. Nowak questioned if the water is flowing to the water feature, will the BMP adequately be able to filter the water.

Mr. Flores stated that any findings that the Board finds appropriate will be taken. The BMP is not intended to treat a 10-25 year storm but a smaller storm. He stated that rain barrels and down spouts have been used in the past to control the flow of water.

Mr. Klesch questioned if the Board could request a continuance.

Ms. Jacobi stated that the Board could request a 60-day continuance.

Mr. Klesch clarified a continuance would be requested to clarify the impact on drainage with the impervious area built.

Mr. Flores stated that if any other BMP would be considered to approve the plan, a continuance would be requested.

Mr. Nowak stated that if a continuance is approved and the same decision is brought, then the continuance would just be avoiding the outcome.

CBPA BOARD VOTE:

Dr. Spaur moved to **DENY APPLICATION PLN-CBPA-2019-019** where the facts presented support the following finding: development of the property, as proposed, will cause degradation of water quality. Mr. Wilson seconded the motion. The motion was carried by a vote of 5 – 2; Curling and James opposed.

2. **PLN-CBPA-2019-022**
PROJECT/LOCATION: 25'x34' above-ground pool & associated deck/
1856 Rockwood Dr.
APPLICANT/AGENT: Chandra Made & Bruce Lemmon, Jr./Bruce
Lemmon, Jr.
PROPOSAL: In accordance with Section 26-528 of the Chesapeake City
Code, the applicant is seeking **EXCEPTION** for the authorization to
construct an 850 square foot (SF) deck and above-ground pool located
within the 50-foot landward portion of the 100-foot Resource Protection
Area (RPA) buffer. A total of 850 SF of new impervious area is proposed
(approximately 765 SF within the RPA buffer).
SUBDIVISION/LOT #: Parkview Section 2/Lot 1, Block 7
WATERSHED: Southern Branch of the Elizabeth River
TAX MAP SECTION/PARCEL: 0344002003600

CBPA BOARD ACTION:

The CBPA Board CONTINUED THE EXCEPTION for thirty (30) days to the July 17, 2019 CBPA Board meeting.

Board Discussion:

Mr. Nowak questioned if the application needs a vote for a continuance.

Ms. Bonilla stated the applicant has requested a continuance for 30-days until the July 17, 2019 CBPA Board Meeting, the applicant is not present.

CBPA BOARD VOTE:

Ms. Greene moved to **CONTINUE THE EXCEPTION for thirty (30) days to the July 17, 2019 CBPA Board meeting.** Ms. James seconded the motion. The motion was carried by a vote of 7 – 0.

OTHER BUSINESS:

- James McNamara, Current Planning Administrator, discussed the changing of the CBPA Board Meeting site to City Council Chambers
- Discussion of letter to send to City Council suggesting ordinance modification to allow Riparian Buffers without City Code Violation and how to proceed

ADJOURNMENT:

With no further business, the meeting was adjourned at 7:31 P.M.

Sincerely,

Lewis Martinez,
Recording Secretary

LM/lb