

The Chesapeake Bay Preservation Area Board
Planning Department
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MINUTES

**Chesapeake Bay Preservation Area
Board**

March 15, 2017 – 6:00 PM

Human Resources Training Room

Call to Order: Chair Vickie Greene called the Chesapeake Bay Preservation Board meeting of March 15, 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 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 January 18, 2017 CBPA Board minutes were presented into the record for Board action.

CBPA BOARD ACTION:

MINUTES for the January 18, 2017 CBPA Board were APPROVED as corrected. (7-0; Nowak/Barath)

CBPA BOARD VOTE:

Mr. Nowak moved that the **MINUTES** for the **January 18, 2017 CBPA Board meeting** be **APPROVED as corrected**. Mr. Barath seconded the motion. The motion was carried by a vote of 7 - 0.

CBPA APPLICATION:

1. **PLN-CBPA-2016-025**

PROJECT/LOCATION: Sidewalk /1629 Jolliff Road

APPLICANT/AGENT: Stonebridge School/Land Planning Solutions, LC

PROPOSAL: In accordance with Section 26-527 of the Chesapeake City Code, the applicant seeks an **EXCEPTION** to construct a portion of a sidewalk within the 50-foot seaward portion of the 100-foot RPA buffer. A total of 22,522 SF of new impervious area is proposed (16,851 SF within RPA). This is a revision to a plan that was approved by the CBPA Review Committee on June 7, 2016.

SUBDIVISION/LOT #: Par C Sub Plat for Faith Baptist Ch Prop 8.875 AC

WATERSHED: Western Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0150000000532

CBPA BOARD ACTION:

The CBPA Board **APPROVED PLN-CBPA-2016-025 with the following stipulation:** (7 – 0, Wilson/Curling)

Provide one (1) large canopy tree within the RPA 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.

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 1629 Jolliff Road. The applicant seeks an **EXCEPTION** to construct a sidewalk within the 50-foot landward and 50-foot seaward portions of the 100-foot RPA buffer. This is a revision to the application that was approved by the CBPA Review Committee on June 7, 2016. The total new impervious area of the sidewalk is 807 SF, all of which lies within the RPA. This application was previously approved by the CBPA Review Committee because all impacts initially proposed were permissible with CBPA Review Committee authorization. The lot was recorded in 1995. The total lot area is nearly 9 acres which lies within the Western Branch of the Elizabeth River watershed. According to the CBPA canopy requirement calculations, the vegetative mitigation required for the proposed encroachment is 1 large canopy tree within the RPA. He stated that the CBPA Review Committee recommended that the application be **GRANTED**, for a period of two years, with the stipulation that they provide 1 large canopy tree within the RPA to mitigate the

impact of the proposed encroachment within RPA.

Proponent:

Jeff Huentelman, Land Planning Solutions, 1403 Greenbrier Parkway, Chesapeake, Virginia, appeared before the Board on behalf of PLN-CBPA-2016-025 representing the applicant. Mr. Huentelman added that another reason the sidewalk is proposed is to provide access for teachers to an existing entrance to the school as well as access to the playground.

Board Discussion:

Mr. Wilson inquired about a BMP, dry pond, or something similar proposed within the RPA buffer according to the staff report.

Mr. Anaya clarified that when the application was previously reviewed, the CBPA Review Committee approved a portion of a stormwater management outfall within the RPA buffer.

Mr. Sherman asked where the required large canopy tree will go.

Mr. Huentelman stated that it will probably go adjacent to the other tree near the proposed sidewalk.

CBPA BOARD VOTE:

Mr. Wilson moved to **APPROVE PLN-CBPA-2016-025** based on the findings contained in the Chesapeake Bay Preservation Act Review Committee staff report including the conditions and stipulations recommended by the Review Committee in the report. Mr. Curling seconded the motion. The motion was carried by a vote of 7 – 0.

2. PLN-CBPA-2016-058

PROJECT/LOCATION: Retaining Wall/3904 Parkway Road

APPLICANT: Kenneth Campbell

PROPOSAL: In accordance with Section 26-527 of the Chesapeake City Code, the applicant is seeking an **EXCEPTION** to construct a retaining wall within the 50-foot seaward portion of the 100-foot RPA buffer. No significant new impervious area is proposed with the new retaining wall.

SUBDIVISION/LOT #: 11 Joseph's Gardens, PT Triangular Piece & PT of ST

WATERSHED: Western Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0161010000110

CBPA BOARD ACTION:

The Board DENIED the request due to the following findings:

- 1. 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.**
 - 2. The exception request is based upon conditions or circumstances that are self-created or self-imposed.**
-

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 3904 Parkway Road. He stated the applicant seeks an **EXCEPTION** to construct a retaining wall within the 50-foot seaward portion of the 100-foot RPA buffer to prevent erosion due to increasingly high tides. There are 6,462 SF of existing impervious area on the site, all of which lies within the RPA. No significant new impervious area is proposed with the new retaining wall. There is a total of 6,462 SF of post-development impervious area proposed, all of which lies within the RPA. The lot was recorded in 1950. It is just under one acre and lies within the Western Branch of the Elizabeth River watershed.

A Joint Permit Application (JPA 2015-0939) was submitted for a rip rap revetment along the same stretch of shoreline on the property. In response to JPA 2015-0939, the Virginia Institute of Marine Science (VIMS) provided a Site Analysis on September 4, 2015 to assess the shoreline and the need for a rip rap revetment. According to the VIMS Site Analysis, the subject shoreline currently consists of rubble overgrown with saltbush and marsh grasses. The shoreline appears stable with little or no signs of erosion or bank failure in all but one location between the pier and southern property line. The VIMS Shoreline Management Recommendation dated May 13, 2016, reports that the site is low-energy, so the revetment initially requested in JPA 2015-0939 was not warranted. Erosion would be best alleviated by grading the upland bank (minimally and only as necessary) in select areas to achieve the gradual slope necessary to dissipate energy and allow waves to gently run up the bank rather than hit a vertical or unstable bank causing erosion. A gradual slope on the bank will facilitate the growth and establishment of vegetation that will provide stabilization for the bank. Since the proposed site for the retaining wall is low-energy, planting of vegetation is recommended along the shoreline and in the upland RPA buffer to provide stabilization and wave attenuation. Revetments sever the connection between the upland and intertidal areas, which interrupts or eliminates natural functions to the detriment of the shoreline ecosystem. Maintaining the connection between the upland and intertidal area on the site will allow natural processes and functions to occur, increasing the probability that tidal shoreline ecosystems will be sustained in the future.

The proposed retaining wall does not create any significant impervious area; therefore, per CBPA tree canopy requirements, no vegetative mitigation is required. The CBPA Review Committee recommended **DENIAL** of the application due to the following findings:

1. The requested exception to the criteria is **NOT** the minimum necessary to afford relief. The site is low-energy in terms of wave action; therefore, hardening of the shoreline is not warranted on this site. Erosion would be best alleviated by grading the upland bank (minimally and only as necessary) in select areas to achieve the gradual slope necessary to dissipate energy and allow waves to gently run up the bank and then planting vegetation along the shoreline and in the upland RPA buffer to provide stabilization and wave attenuation.
2. The requested exception to the criteria is **NOT** in harmony with the purpose and intent of this article. Revetments sever the connection between the upland and intertidal areas which interrupts or eliminates natural functions to the detriment of the shoreline ecosystem. Maintaining the connection between the upland and intertidal area on the site will allow natural processes and functions to occur, increasing the probability that tidal shoreline ecosystems will be sustained in the future.

Ms. Greene asked whether the grass in the lawn portion is Bermuda or some type of warm season grass. Mr. Anaya stated that he is not sure of the species; however, along the shoreline is marsh vegetation and upland you have turf grass.

Mr. Wilson asked what the fairly dark line going down the center of the creek was. Mr. Anaya stated that it is probably the small channel created by the trickle that flows out at low tide.

Mr. Wilson inquired about the status of the JPA. Mr. Anaya responded that the portion of the original JPA proposing a rip rap revetment along the subject shoreline was denied based on findings that a revetment was not warranted; however, the portion of that same JPA proposing removal of the point across the creek was approved. Mr. Anaya stated that the retaining wall has been proposed upland and out of the wetlands jurisdiction. Ms. Greene stated that they moved the retaining wall out of the wetlands and into the CBPA Board jurisdiction and that is why the Board is hearing the application.

Mr. Wilson asks what the retaining wall is made of. Mr. Anaya stated that it consists of a proposed vinyl sheet pile with tongue leads and weep holes for drainage.

Proponent:

Ken Campbell, 3904 Parkway Road, Chesapeake, Virginia, appeared before the CBPA Board on behalf of PLN-CBPA-2016-058 representing himself. Sediment had accumulated at the point; blocking navigational access to the creek. He was asked by the Army Corps of Engineers (ACOE) to provide 20 feet clearance from the pier to allow

neighbors to have navigational access during high tide. He had already suffered erosion on his side as his property sits at water level. Ms. Greene asked if erosion is occurring just beyond the revetment. Mr. Campbell answered yes, it is occurring at the water line and he does have some vegetation and saltbush on the shoreline as well. He also has a two-story dwelling, located about 11 feet off the water and is now losing land near that structure as well. Upon review of JPA 2015-0939 by ACOE, Virginia Marine Resource Commission (VMRC), and VIMS, a retaining wall was suggested landward of the upper limits of wetlands on the shoreline of his property on August 10, 2015. After reviewing the JPA, CBPA approval was granted for the proposed rip rap revetment along the shoreline. Mr. Anaya stated that such a water dependent activity is permitted by the CBPA Ordinance, but it is also subject to review by other agencies with jurisdiction over the wetlands. When CBPA staff receives JPAs, they are administratively reviewed to determine whether further CBPA review is required. Mr. Campbell is trying to preserve his property and does not see why he would be denied permission to protect his shoreline and property from washing away.

David Kledzik, Marine Engineering, 4212 Dougherty Court, Virginia Beach, Virginia is the engineer for the applicant. The inlet has now been widened in between the point and the pier. This area is a mud flat at low tide, but it will allow neighbors navigational access during high tide. There is a tremendous displacement effect of approximately ten percent when a boat travels the creek. Those regularly traveling the creek will try to establish a deeper channel by going at high speeds. The displacement will produce a wave at the elevation which is most vulnerable. The recommended shoreline management method is to abandon property and let it become a wetland through the process of erosion and sea level rise. The proposed bulkhead and backfill will be able to retain runoff within the backfill, which will slowly release into the river, preventing pollution from getting into the creek.

David Williamson, Dash Construction, 2725 Bridge Road, Suffolk, Virginia is the contractor.

Lisa Campbell, 3904 Parkway Road, Chesapeake, Virginia.

David Williamson, Jr., Dash Construction, 2725 Bridge Road, Suffolk, Virginia

Board Discussion:

Ms. Greene asked when the extra building was put on the property. Mr. Anaya stated that it was constructed in 2013.

Mr. Nowak asked when the point was opened up. Mr. Campbell stated it was completed about six months ago.

Ms. Greene asked what is currently growing on the shoreline, is there spartina or salt

bush. Mr. Campbell stated that Mr. Williams rounded off the point, sloped it, and moved it back from the pier. Mr. Williams stated that he removed the broken concrete around the point and Mr. Campbell is the only one who does not have broken concrete along his shoreline. Mr. Campbell stated that there was a wash down that caused the sediment accumulation at the point, and the erosion was caused by Nor'easters and tide changes. Fixing the point increased erosion on his property.

Mr. Spaur stated that it appears that the applicant's main concern is protecting his upland property. Mr. Campbell agreed. Mr. Spaur stated that it will not succeed with a 12-inch bulkhead. The upland property will erode, and it needs to be protected by vegetation.

Mr. Campbell asked how it will erode. Ms. Greene replied that once the bulkhead is installed, the wave action will splash against the bulkhead and wash the vegetation away and that is why the other agencies prefer the least intrusive way with vegetation, because over time the bulkhead will shift erosion rather than preventing it.

Mr. David Williams, Jr. stated that he put a bulkhead in Portsmouth with the wetlands in front of the river and it is doing well for over a year. He has seen other walls that appear to have been there for some time doing well and sometimes their success depends on the area.

Mr. Campbell asked whether installing vegetation would prevent erosion with boats traveling the creek. Ms. Greene stated that, in her personal experience, she has heavy vegetation along her shoreline and it is doing just fine. In her research, the preferred shoreline management method is to install less intrusive methods and suggests vegetative shoreline.

Ms. Greene asked Mr. Anaya to clarify the CBPA staff involvement in the JPA review process.

Mr. Anaya stated that he receives JPAs for review to determine whether additional CBPA review is required. Shoreline protection is a water-dependent activity permitted through the CBPA Ordinance. The approval letter Mr. Campbell received was in response to the JPA which proposed a rip rap revetment through the wetlands along the shoreline.

Ms. Greene asked if Mr. Campbell can put the rip rap in without coming to the CBPA.

Mr. Curling stated that it seems the wall will be the best way to go.

Mr. Anaya stated that yes we granted it; however, it was in the wetlands jurisdiction and they did not grant it.

Mr. Wilson asked for clarification of the retaining wall measurements whether the applicant is anticipating erosion seaward of the proposed wall. Because it is already eroding, it is going to turn into a seawall.

Mr. Kledzik says that is a generalized notion and it depends on vegetation, soil substrate, and a number of other factors. They are not constructing a revetment that will allow for loss of substrate seaward. Eight foot sheet piles are adequate, as problems with bulkheads usually result from short sheeting. The erosion is not occurring in the jurisdictional wetlands, but rather the uplands, which is what they are trying to save.

Mr. Williams stated that there is four to five feet from the proposed bulkhead to the edge of wetlands. There is a strip of grass, saltbush, spartina, and rip rap to the actual edge of the wetlands. The erosion would stop where spartina would grow and then fill in.

Ms. Greene asked what the plant material is at high tide. Mr. Campbell stated it was Bermuda grass and was previously installed.

Mr. Wilson clarified that it will erode at the bottom and become a channel and during high tide it will become a sea wall.

Ms. Greene stated that part of the issue is at high tide the vegetation is Bermuda grass, which is not a deep rooted plant. Deep rooted vegetation like perennials, shrubs, and trees it would resolve some erosion issues.

Mr. Spaur stated that Mr. Campbell has an opportunity for a riparian buffer with deeply rooted plants and the problems will only worsen with a bulkhead.

Mr. Nowak asked for clarification of which came first; the opening of the channel or the VIMS report. Mr. Campbell said they came at the same time. Senator Warner became involved, which led to ACOE requiring him to open the point or remove the pier.

Mr. Anaya clarified stating that they are in the same report; VIMS separated the items into two individual sites within the report.

Mrs. Campbell stated the VIMS report was done in early 2016 and the point was removed in November 2016. Boating season is approaching and he wants to take care of it before then to prevent further issues with erosion.

Mr. Wilson stated that a vegetative shoreline with integrated marsh and buffer vegetation is highly recommended.

Mr. Sherman asked if VIMS addressed the trees falling into the creek. Mr. Campbell said no, they contacted Roxanne Stonecypher and were informed that they needed to remove the trees.

Ms. Campbell stated the recommendations were prior to the point being opened. Now that the point is opened, there will be more erosion due to more activity.

Ms. Greene asked how wide the creek is. Mr. Klezdit stated that it is 40-50 feet wide and 1 ½ feet deep during high tide.

Mr. Nowak asked if they were approved for the rip rap revetment and whether it was installed. Mr. Campbell answered no. Mr. Anaya clarified that the rip rap revetment was granted CBPA approval by the City of Chesapeake, but VMRC denied the request.

Mr. Williams asked the clarification and limits between each organization. Ms. Greene informed him of all jurisdictions involvement.

CBPA BOARD VOTE:

Mr. Spaur moved to **DENY APPLICATION PLN-CBPA-2016-058** where the facts presented do not support the following findings: 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. The exception request is based upon conditions or circumstances that are self-created or self-imposed. Mr. Nowak seconded the motion. The motion was carried by a vote of 5 – 2, Curling and Sherman opposed.

3. PLN-CBPA-2017-008

PROJECT/LOCATION: New Single-Family Home/1828 Rockwood Drive

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

PROPOSAL: In accordance with Section 26-528 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 1,808 SF of post-development impervious area is proposed (1,808 SF within RPA).

SUBDIVISION/LOT #: Lot 8 Block 7 Park View Section 2

WATERSHED: Southern Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0344002003680

CBPA BOARD ACTION:

The CBPA Board **APPROVED PLN-CBPA-2017-008** with the following stipulation: (6-1; Curling opposed)

Please provide eleven (11) large canopy trees 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.

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 1828 Rockwood Drive. The 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 proposed post-development impervious area is 1,808 SF, all of which lies within the RPA. The lot was recorded in 1953. The lot has a total acreage of approximately a quarter of an acre in the Southern Branch of the Elizabeth River watershed. Eleven large canopy trees are required within the RPA. The applicant has proposed 11 large canopy trees. He stated that the CBPA Review Committee recommended the exception be granted, for a period of two years, with the stipulation that the applicant provide 11 large canopy trees within the RPA, as depicted on the plan.

Proponent:

Brad Martin, American Engineering, 448 Viking Drive, Virginia Beach, Virginia, appeared before the Board on behalf of PLN-CBPA-2017-008 representing the applicant. The legally platted residential lot is intended to be used for a single family dwelling. Almost the entire lot is within the 50 FT seaward buffer of RPA, and we believe we are doing a respectful job staying at 16.12% impervious cover and providing the required canopy cover. We are locating the house as far from the feature as possible.

Pete Burkheimer, American Engineering Associates, 448 Viking Drive, Suite 170, Virginia Beach, Virginia representing the applicant.

Board Discussion:

Ms. Greene asked when the lot was platted. Mr. Anaya stated lot was recorded in 1953.

Ms. Greene asked the width of the lot and if it is going to be a 3-story house. Mr. Martin stated the width and confirmed that it would be a 3-story house.

Mr. Wilson asked how many trees currently exist on the lot. Mr. Spaur confirmed the one tree.

Mr. Nowak asked for clarification of where the house will be located. Mr. Martin stated that the house will be located in the dark green area.

Ms. Greene asked if the rest of the properties have sold. Mr. Martin stated that there are people who want to live in the neighborhood due to the Dominion Boulevard Project and the efforts of our clients. The builder is improving the neighborhood and property values are increasing. He added that they would not be building houses if they were not selling.

Mr. Wilson asked if they were encroaching on the grassy area around the wetlands. Mr. Martin stated that they are about sixteen feet away from the feature.

Ms. Greene asked if they were including a deck. Mr. Martin stated that it is not on the plan, but a deck could be added and still be below the acceptable impervious area.

Mr. Novak inquired about tree spacing for large canopy trees. Mr. Wilson stated that the trees look to be drawn about 13 feet in diameter. Mr. Burkheimer stated they are drawn about eighty percent of mature size, but will be smaller at the time of planting.

Mr. Wilson stated that he has no problem with the plan because they are adding 11 trees to a lot that has one pine tree, and they are not impacting the feature.

Ms. Greene asked what is in the area next to the feature. Mr. Burkheimer stated he believes this is a drainage ditch which coincides with the pipe that crosses the road; which automatically creates a 200 feet buffer.

CBPA BOARD VOTE:

Mr. Wilson moved to **APPROVE PLN-CBPA-2017-008** based on the findings of the Chesapeake Bay Preservation Act Review Committee, including the conditions and stipulations recommended by the Review Committee in its staff report. Mr. Barath seconded the motion. The motion was carried by a vote of 6 – 1, Spaur opposed.

4. PLN-CBPA-2017-009

PROJECT/LOCATION: New Single-Family Home/1628 Burson Drive

APPLICANT/AGENT: Stephen Alexander Homes Two, LLC/American Engineering Associates-Southeast, PA

PROPOSAL: In accordance with Section 26-528 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 2,969 SF of post-development impervious area is proposed (2,969 SF within RPA).

SUBDIVISION/LOT #: Lot 12 Block 8 Park View Section 2

WATERSHED: Southern Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0344002003980

CBPA BOARD ACTION:

The CBPA Board **APPROVED PLN-CBPA-2017-009** with the following stipulation: (7 – 0)

Please provide seventeen (17) large canopy trees and one (1) small canopy tree 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.

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 1628 Burson Drive. The 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 proposed post-development impervious area is 2,969 SF, all of which is within RPA buffer. The lot was recorded in 1953. It is approximately one third of an acre in the Southern Branch of Elizabeth River watershed. Seventeen large canopy trees are required within the RPA. The CBPA Review Committee recommended the exception be granted for a period of two years, with the stipulation that the applicant provide 17 large canopy trees and 1 small canopy tree within the RPA, as depicted on the plan.

Proponent:

Brad Martin, American Engineering, 448 Viking Drive, Virginia Beach, Virginia, appeared before the Board for PLN-CBPA-2017-009 on behalf of the applicant. The subject lot is a beautiful peninsula lot. He feels they have proposed the driveway and house in the most environmentally sensitive location on the site.

Pete Burkheimer, American Engineering Associates, 448 Viking Drive, Suite 170, Virginia Beach, Virginia is the agent representing Stephen Alexander Homes LLC. He stated that they are generally not advocates of bulkheads, and the owner has not had an issues with trees falling along the shoreline. Stephen Alexander bought these lots at an increase in price, and the City believes this is a good area for homes. They are trying to develop the lots responsibly.

Board Discussion:

Ms. Greene asked when the lot was platted. Mr. Anaya stated it was platted in 1953.

Mr. Wilson asked how they will prevent the trees from falling into the water. Ms. Greene inquired whether, if the buyers purchase the home for the view, will they be educated about the requirements to maintain trees on the property.

Mr. Martin stated it is an education process and they will need to know about the buffer restoration that needs to be done. He addressed Mr. Wilson's concern from the prior application. These big, solid rooted trees are going to hold in place and there is protection on the north, so this waterway does not experience much natural wave action. Some

manmade wave action is expected, but they are confident that the shoreline will hold strong.

Ms. Greene asked if they will educate the folks to protect the trees through construction phases. Mr. Martin responded that there is not much on the northern waterfront edge of the property. There is a trapezoid that comes across by the drive way and will be removed, but the rest of the development touches the tree lines. We are hoping to preserve as much natural vegetation as possible. He asked whether credit existing trees may be preserved and counted toward the tree canopy requirement.

Mr. Anaya answered yes, that it is preferred. Existing trees may be preserved and counted toward the tree canopy requirement.

Mr. Nowak inquired if the water was brackish water and what trees will flourish in the area. Ms. Greene stated that it is in the lower range, and that bald cypress, black willows, red maples, or willow oaks would be appropriate for the area.

Mr. Klesch asked if the fact that these lot were platted in 1953, encumbered by the RPA, but because they were previously zoned R-15 that is the reason why they could build on the lots. Ms. Greene stated that they have had two attorneys with different perspectives, one saying yes, other saying maybe. There are property rights and apparently some are recognized as “grandfathered” that the City likes to respect. Some are concerned by these low lots with standing water.

Mr. Wilson stated that his interpretation is that they are there to protect the water quality. For this lot, he sees that there is nothing there but a couple of trees on the southern portion, so now that 17 trees will be added, the water quality of this lot will improve.

Mr. Klesch asked if the property owner can come back later and ask for a pier, and further down the road boats are coming in, and the surrounding area is building up and we will eventually have another hard case like the previous application. Ms. Greene stated that people request all kinds of things: decks, putting greens, shed, five car garages, but the realtors may not be educated on the matter thus do not inform the buyers.

Mr. Burkheimer stated that the lots are assessed by the City and they are increasing in value. There will be tidal water in streets and ditches, but the applicants are aware of the issues and that is why they are building the houses up and elevated.

CBPA BOARD VOTE:

Mr. Wilson moved to **APPROVE PLN-CBPA-2017-009** based on the findings of the Chesapeake Bay Preservation Act Review Committee, including the conditions and stipulations recommended by the Review Committee in its staff report. Mr. Barath seconded the motion. The motion was carried by a vote of 7 – 0.

OTHER BUSINESS:

- Introduction of John Klesch, new alternate member and Meredith Jacobi, new assistant attorney.
- Mr. Nowak noted that Virginia Law states that sellers and realtors do not have to disclose negative information on property. He inquired whether there is a feasible way to record that the responsibility of maintaining these trees could be communicated. He suggested that an advisory could be implemented requiring land owners/realtors to educate the buyers.
- Ms. Jacobi suggested that an advisory should be something that the City Manager would implement.
- Ms. Jacobi asked Mr. Anaya if he specifically tells applicants where to place the trees. Mr. Anaya stated that he does specify in cases of violations and restoration plans; however, generally he does not.
- Mr. Sherman asked if the Board's authorization of encroachment can be the only encroachment allowed, and no other additions can be made unless the applicant receives additional approval from the Board. Ms. Jacobi stated that it is implied in the approval.
- Ms. Jacobi provided updates to previous violations.

ADJOURNMENT:

With no further business, the meeting was adjourned at 8:09 P.M.

Sincerely,

Jennifer Joseph
Recording Secretary