

## **MINUTES**

# **Chesapeake Bay Preservation Area Board**

**April 18, 2018 – 6:00 PM**

Human Resources Training Room

**Call to Order:** Chair Stephen Nowak called the Chesapeake Bay Preservation Board meeting of April 18, 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  
Rusty Barath, Member  
John A. Sherman, Member  
John Klesch, Alternate Member

**ABSENT**

Kaite James, Alternate Member

**PLANNING DEPARTMENT STAFF PRESENT**

Michael Anaya, Senior Planner, CBPA Review Committee Chair  
Deondra Morales, CBPA Board Recording Secretary

**CITY ATTORNEY STAFF PRESENT**

Meredith Jacobi, Assistant City Attorney

**APPROVAL OF MINUTES:**

The March 21, 2018 CBPA Board minutes were presented into the record for Board action.

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**CBPA BOARD ACTION:**

**MINUTES for the March 21, 2018 CBPA Board were APPROVED** by unanimous consent.

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**CBPA BOARD VOTE:**

Mr. Curling moved that the **MINUTES** for the **March 21, 2018 CBPA Board meeting** be **APPROVED**. Mr. Spaur seconded the motion. The motion was carried by a vote of 7 – 0.

**CBPA APPLICATION:**

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- PLN-CBPA-2018-006**  
**PROJECT/LOCATION:** Bryan's Cove, Phase 2, Marina & Infrastructure/1740 Shipyard Road  
**APPLICANT/AGENT:** Bryan's Cove Developers, LLC/Land Planning Solutions  
**PROPOSAL:** In accordance with Sections 26-519(e) and 26-526(d) of the Chesapeake City Code, the applicant is seeking **APPROVAL** for construction of a new road and pervious pathways, portions of which encroach into the 50-foot landward and 50-foot seaward portions of the 100-foot RPA buffer. Additionally, in accordance with Section 26-528 of the Chesapeake City Code, the applicant is seeking an **EXCEPTION** for authorization to construct a new marina facility with amenities and associated parking, portions of which encroach into the 50-foot landward and 50-foot seaward portions of the 100-foot RPA buffer. A total of 609,189 SF of new impervious area is proposed (50,893 SF within RPA).  
**SUBDIVISION/LOT #:** PARCEL A-1 RESUBD PAR A1 & B1 BRYAN'S COVE 105.452AC  
**WATERSHED:** Southern Branch of the Elizabeth River  
**TAX MAP SECTION/PARCEL:** 03500000005802

**CBPA BOARD ACTION:**

The CBPA Board **APPROVED** (6-1; Wilson/Spaur; Green opposed; James absent) **PLN-CBPA-2018-006** application for a period of two years, with the following stipulations:

- 1. Provide appropriate tree canopy coverage within the 100-foot RPA buffer, as prescribed in the City of Chesapeake Code, to mitigate the impact of the new impervious area within the 100-foot RPA buffer. Existing trees on site may be preserved and counted toward this requirement. 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. Provide appropriate tree canopy coverage within the Resource Management Area (RMA), as prescribed in the City of Chesapeake Code, to mitigate the impact of the new impervious area within the RMA. Existing trees on site may be preserved and counted toward this requirement. Per City of Chesapeake Code Sec. 26-520(b)(3), the RMA landscaping requirement is a minimum fifteen (15) 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.**
- 3. The proposed parking spaces, pool deck, and access walkway to the proposed observation deck shall be constructed using a pervious paver system and/or wood or composite decking.**

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 1740 Shipyard Road. He stated that the applicant seeks an exception for authorization to construct parking spaces, a swimming pool, bath house, and access walkway to a proposed observation deck, all associated with a proposed marina facility. The development is proposed within the 50-foot landward and 50-foot seaward portions of the 100-foot RPA buffer in Phase 2 of the Bryan's Cove development, located at 1740 Shipyard Road in Chesapeake. Mr. Anaya stated that City Council approved the a Planned Unit Development (PUD) on May 1, 2007 with a General Land Use Plan dated January 23, 2007 and PUD Development Criteria dated March 7, 2007. He presented pictures of the previously approved General Land Use Plan and currently proposed site plan. The application was reviewed by the CBPA Review Committee on March 6, 2018. It was recommended that the exception requested in application PLN-CBPA-2018-006 be granted for a period of two years, with the following stipulations: provide appropriate tree canopy coverage within the 100-foot RPA buffer, as prescribed in the City of

Chesapeake Code, to mitigate the impact of the new impervious area within the 100-foot RPA buffer and provide appropriate tree canopy coverage within the Resource Management Area (RMA), as prescribed in the City of Chesapeake Code, to mitigate the impact of the new impervious area within the RMA. Existing trees on site may be preserved and counted toward this requirement.

Proponent:

Melissa Venable, Land Planning Solutions, 5857 Harbor View Blvd Suite 202, Suffolk, VA, agent. Ms. Venable stated that she brought along the development criteria established during rezoning. Ms. Venable presented pictures of the proposed project from 2007. She explained that initially there was much excitement for the idea of a marina and water-dependent activities at this location, but when the market crashed, the idea was deserted. Ms. Venable stated that in 2007, 615 units had been approved, but the total number of units has been brought down to 411 units, thus reducing overall impacts of the development. Ms. Venable stated that initially, they had projected a maximum of 200 boat slips in the marina. Now, they are projecting approximately 30 slips with 30 associated parking spaces. She reported that putting structures into the 50-foot landward portion seemed to be more reasonable and the bath houses were a required component of the marina with two male and two female bathrooms. Ms. Venable presented pictures of marinas in Suffolk and Virginia Beach that are similarly situated along shorelines.

Jim Cahoon, Bay Environmental, Inc., 648 Independence Parkway Suite 100, Chesapeake, VA, agent. Mr. Cahoon stated that he had been a part of the development of Bryan's Cove since 2003. He indicated that the marina facility has always been proposed since 2007 with the Development Criteria that the city approved. He stated that state code requires them to have bathroom facilities for the marina and every successful marina has a pool. Mr. Cahoon stated that the developers have been in discussion with the Elizabeth River Project, and noted that he has been a technical consultant to the Elizabeth River project since 2005. The Elizabeth River will help toward the stormwater devices and are considering installing rain barrels. Mr. Cahoon stated the project was designed in compliance with the state stormwater regulations. He then added that the reason why the project is squeezed into this point is that they cannot put anything on the front face because of the 85-foot maintenance setback from the federal channel. Mr. Cahoon stated that environmentally speaking this project has the least damaging alternative for the property.

Jeff Smerko, Bryan's Cove Developers, LLC, 3716 National Drive, Suite 105, Raleigh, NC, applicant. Mr. Smerko stated that he is one of the owners of the property.

Board Discussion:

Mr. Nowak asked for speaker cards to be filled out for any additional representatives.

Ms. Greene asked how wide the peninsula is as well as the location of the proposed marina and pool. Mr. Anaya responded that it is slightly over 200 feet wide.

Ms. Greene asked if all of the proposed project was within the RPA. Mr. Anaya confirmed that nearly the entire project is within the RPA and only a small portion of the proposed pool is within the RMA.

Ms. Greene asked if the proposed pool and parking lot are being reviewed as part of the exception request to be considered by the CBPA Board. Mr. Anaya confirmed that is correct and added that the proposed walkway to the observation deck is also to be considered.

Mr. Nowak asked for the speakers to introduce themselves.

Mr. Wilson asked for clarification of the required canopy coverage calculations. Mr. Anaya explained that the calculations are based on the overall development, and that calculations haven't been broken down specifically for the marina portion of the development. The marina project is part of a larger parcel that includes other uses and development is being done in phases. Mr. Anaya stated noted that the plan indicates large masses of existing canopy trees to be preserved.

Ms. Greene asked for clarification of whether or not the road was to should also be a consideration in the review. Mr. Anaya stated that the road was an exempt activity with CBPA Review Committee approval. Mr. Cahoon noted that road is proposed to be located in such a way to avoid impacting a significant area of non-tidal, non-RPA wetlands to the east. Ms. Venable added that the proposed road would be in the same location as the existing dirt road.

Ms. Jacobi made a procedural suggestion that, in the future, if an applicant prepares a presentation, prior to asking any questions, the Board should allow them to make their presentation.

Ms. Greene asked what type of dwelling the waterfront units are. Mr. Cahoon explained that they are condo units on the shoreline side of the property.

Ms. Greene asked why the large area in the middle of the property could not be used. Mr. Cahoon responded that it was wetlands.

Dr. Spaur stated that the shoreline was severely eroding and inquired as to what would be included in the next application in an effort to control the erosion. Mr. Cahoon stated that the Corps of Engineers regulate activity within the 85-foot maintenance setback area from the channel, and there are strict limitations on the types of activities that could be permitted within the setback. Mr. Cahoon stated that the soils are highly erodible. He explained that they were mostly concerned with the shoreline inside the cove itself because of the proximity of the road to the shoreline and that would most likely be their next environmental application.

Dr. Spaur estimated that along the Deep Creek shoreline, the shoreline is losing about a foot a year. Mr. Cahoon agreed.

Mr. Wilson asked if the pier along the shoreline is a part of exception application being reviewed. Mr. Anaya stated that it is not, as it is proposed channelward of the limits of the RPA feature. Mr. Cahoon stated that it would require a Joint Permit Application, and is water dependent. Mr. Anaya explained the boundaries of the site plan as they relate to the CBPA Board's jurisdiction.

Mr. Nowak asked if the dashed line on the top of the site plan was the 85-foot Corps of Engineers' maintenance setback.

Mr. Wilson noted that the dashed line was the right-of-way line for the interstate.

Ms. Greene inquired why the developer chose to locate the pool in an area entirely encumbered by the RPA buffer. Ms. Venable explained that has been proposed in the 50-foot landward portion in an effort to locate it as far landward as possible.

Ms. Greene asked for clarification on the location of the marina building on the site plan. Mr. Anaya pointed out the area of the proposed marina building on the site plan. Ms. Venable explained the importance of including the pool with the marina facility in order to provide an amenity that makes the marina a viable business. Mr. Cahoon stated that the marina was consistent with the approval of the development criteria as a mixed-use area.

Mr. Wilson asked if the proposed decking surrounding the pool would be concrete. Mr. Cahoon stated that they have the ability to construct much of it with pervious products. He stated that it is necessary for some of it to be constructed from concrete in order to provide structural stability. However, outside of areas critical to the structural stability, there are opportunities to use a number of pervious alternatives.

Mr. Wilson asked if there was any conversation about using a deck to surround the pool, with gaps between the planks that will allow water to pass through. Mr. Cahoon stated that they could use a deck, but questioned whether the city will consider it to be pervious. Mr. Anaya explained that the city generally considers a deck to be impervious. Mr. Cahoon stated that it would be less expensive to use a deck product.

Mr. Wilson asked if there were any BMPs included in the design. Ms. Venable stated that they have not gotten that far in the design process, but have been considering low impact design alternatives such as rain barrels to collect roof runoff and small rain gardens disbursed throughout the site. Ms. Venable stated that the proposed impervious area for the overall development is below the threshold that would require stormwater BMPs. However, she thinks it is important to include them where there are opportunities. Mr. Cahoon stated that they are looking into the Virginia Clean Marina program which provides another level of environmental awareness to the boaters who

are using the facility. He stated that not only are they required to provide bathroom facilities, but they must also include sewage collection for the vessels and a specified dump station. Mr. Cahoon noted that they had incorporated a designated secure locking dump station connected to the city's sanitary sewer system. He explained that the Virginia Clean Marina program requires marinas to have spill kits on site for cleanup of leaks from boats. The program also requires more signage to create awareness of water-related potential impacts.

Mr. Wilson inquired about the current status of the site, whether clearing has begun, and if so, how much has been cleared. Mr. Smerko stated that the area is currently undisturbed.

Mr. Wilson asked if they intend to clear the entire peninsula and re-plant with large canopy trees. Ms. Venable explained that the intent is to minimize disturbance and preserve as much existing vegetation as possible with some general woodlot management to clean up the existing understory and remove invasive vines. Mr. Cahoon stated that they must take care in the work they do on the site as they do not want to destabilize the banks.

Mr. Nowak asked how they would count the one for one tree replacement. Mr. Anaya stated that the tree canopy requirement is based off of the breakdown of the overall area of the Bryan's Cove development.

Mr. Nowak asked if the tree area would still be protected. Mr. Anaya confirmed that it would. Ms. Jacobi stated that it may require additional testimony rather than being counted. She added that it would have to be a city expert using his or her experience visiting the site.

Mr. Klesch asked for clarification of the location of planting of 2600 additional trees on the property. Ms. Venable presented the project site plan which depicted the existing trees that are to be preserved on the site. Mr. Smerko pointed out that the exhibit does not show the entire 140-acre parcel and that they have cleared about 20 acres out of the 140. Ms. Venable explained that 2000 trees that are required on the site include the existing trees to be preserved. Mr. Anaya stated that all of the area outside of the RPA buffer is considered to be RMA, which is subject to a 15 percent canopy coverage requirement.

Mr. Klesch asked for clarification for the RMA and the location of planting 600 trees in the RPA. Ms. Venable explained that there is an RPA area that will remain undisturbed. Existing trees preserved in that area will count towards the tree requirement. Mr. Anaya pointed out an area on the proposed plan in which they are proposing to preserve existing trees as well as planting new trees. Ms. Venable stated that the overall plan is to preserve as much of the existing vegetation as possible and additionally providing new landscaping to enhance the site.

Mr. Spaur asked if there would be any conflict with nearby Chesapeake Yacht. Ms. Venable stated that there would no conflict because of the buffer between the two sites. She explained that Chesapeake Yacht does not have a marina. Mr. Cahoon added that Chesapeake Yacht only has one boat ramp which would be impossible to use unless it was a large vessel.

Mr. Spaur inquired what kind of buffer would be provided. Ms. Venable explained that the proposed buffer will be made up of existing, mature to be preserved. She noted that new plantings would be provided to enhance the buffer in sparse areas.

Mr. Klesch asked if there were plans to enhance the marsh grasses along the shoreline. Mr. Cahoon confirmed they plan to address shoreline protection through the Joint Permit Application process. Mr. Cahoon added that the initial focus will be on the inside of the cove where there are some areas they believe to have the correct grade to ensure a traditional living shoreline with marsh grass. He stated that there are some areas where bank is so steep and the cove depth falls off too quickly to get a reasonable slope for a living shoreline.

Mr. Nowak asked if there were any other questions or comments. He stated that he liked the idea of using permeable materials for the pool deck and parking spaces and hopes that it is feasible and could be included. Mr. Cahoon replied that if it is a stipulation of the approval then it is feasible.

Mr. Nowak asked for additional questions or comments. He then asked for a motion.

Mr. Wilson requested to use permeable materials around the pool, parking spaces, and walkway to the observation deck. Ms. Venable asked if wood decking is recognized as permeable.

Mr. Wilson stated that wood decking or composite decking would be acceptable.

**CBPA BOARD VOTE:**

Mr. Wilson moved to **APPROVE PLN-CBPA-2018-006** with the stipulations as recommended in the staff report, and the additional stipulation that the proposed parking spaces, pool deck, and access walkway to the proposed observation deck shall be constructed using a pervious paver system and/or wood or composite decking. Dr. Spaur seconded the motion. The motion was carried by a vote of 6 – 1, Greene opposed, James was absent.

2. **PLN-CBPA-2018-007**

**PROJECT/LOCATION:** Patio & Shed Relocation/721 Wood Duck Lane

**APPLICANT:** David Lewter

**PROPOSAL:** In accordance with Section 26-528 of the Chesapeake City Code, the applicant is seeking an **EXCEPTION** for installation of a pervious paver patio and relocation of an existing shed within the 50-foot landward and 50-foot seaward portions of the 100-foot RPA buffer. A total area of 977 SF of new pervious pavers is proposed (977 SF within RPA).

**SUBDIVISION/LOT #:** 37 SUB FIRMAN ESTATES SEC ONE

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

**TAX MAP SECTION/PARCEL:** 0346003000370

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**CBPA BOARD ACTION:**

The CBPA Board **APPROVED** (7-0; Green/Spaur; James absent) **PLN-CBPA-2018-007** application for a period of two years, with the following stipulations:

1. **Provide Permeable paver system shall be installed according to installation detail provided.**
2. **Landscaping shall be installed in accordance with the proposed planting plan.**
3. **Rain barrels shall be provided as proposed.**

Staff Presentation:

Mr. Anaya presented the application to the Board, along with the CBPA Review Committee's findings and recommendations. He explained that the Board had denied a previous application for an after-the-fact exception in December 2017 for constructing a concrete patio without proper authorization at the subject property. Mr. Anaya explained that the current application is for authorization to install a pervious paver patio and relocate an existing shed within the 50-foot landward and 50-foot seaward portions of the RPA buffer. He added that the Board denied the December 20, 2017 application and ordered that the unauthorized patio to be removed as it was in violation of the CBPA Ordinance. Mr. Anaya stated that the applicant has since worked with the Elizabeth River Project to develop a new, low-impact design alternative for the patio within the buffer. He presented pictures of the site at 721 Wood Duck Lane and of the existing patio. Mr. Anaya also presented the landscape plan developed by the Elizabeth River Project.

Proponent:

David Lewter, 745 Mandarin Lane, Chesapeake, VA, applicant. Representing Lois Warner.

Board Discussion:

Ms. Greene asked if the applicant was proposing to replace existing turf with native shrubs. Mr. Lewter confirmed that was the proposed design.

Mr. Wilson asked where the proposed rain barrels will be located. Mr. Lewter explained that the rain barrels would collect from the three downspouts on the house. Mr. Lewter added that the Elizabeth River project recommended use of the rain barrels and also installed them for the applicant.

Ms. Greene noted that the rain barrels could be used to water the surrounding flowers and shrubs. Mr. Lewter agreed.

Mr. Wilson asked whether the rain barrels would fill up fast after one rain event. Ms. Green noted that the rain barrels have a capacity of 125 gallons each and are not regular sized rain barrel. She added that she has two at her house that holds a significant amount of water.

Ms. Green stated that her barrels have only overflowed once, which happened during Hurricane Matthew.

Mr. Wilson stated that the barrels were impressive and that he was unaware that they had such capacity.

Mr. Nowak asked if there were any further questions.

**CBPA BOARD VOTE:**

Ms. Greene moved to **APPROVE PLN-CBPA-2018-007** with the stipulations as recommended in the staff report. Dr. Spaur seconded the motion. The motion was carried by a vote of 7 – 0, James was absent.

**OTHER BUSINESS:**

- Discussion on the new communication guidelines
- Deondra Morales will be resigning as Recording Secretary.

**ADJOURNMENT:**

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

Sincerely,

Deondra Morales,  
Recording Secretary