

MINUTES

**Chesapeake Bay Preservation Area
Board**

September 19, 2018 – 6:00 PM

Human Resources Training Room

Call to Order: Chair Stephen Nowak called the Chesapeake Bay Preservation Board meeting of September 19, 2018, to order at 6:15 p.m. in the Human Resources Training Room.

Roll Call:

PRESENT

Stephen F. Nowak, Chair
Chris Wilson, Vice-Chair
Vickie Greene, Member
John Klesch, Alternate Member

EXCUSED

William Spaur, Member
Kaite James, Alternate Member

ABSENT

Henry Curling, Member

PLANNING DEPARTMENT STAFF PRESENT

Michael Anaya, Senior Planner
Allison Gurkin, CBPA Recording Secretary

CITY ATTORNEY STAFF PRESENT

Meredith Jacobi, Assistant City Attorney

APPROVAL OF MINUTES:

The August 15, 2018 CBPA Board minutes were presented into the record for Board action.

CBPA BOARD ACTION:

MINUTES for the August 15, 2018 CBPA Board were **APPROVED** as amended. (4-0; Greene/Wilson – Spaur and James excused, Curling absent)

CBPA BOARD VOTE:

Ms. Greene moved that the **MINUTES** for the **August 15, 2018 CBPA Board meeting** be **APPROVED**. Mr. Wilson seconded the motion. The motion was carried by a vote of 4 - 0.

CBPA APPLICATION:

1. **PLN-CBPA-2018-012**

PROJECT/LOCATION: Detached Garage/490 Plummer Drive

APPLICANT: Kyle Strickland

PROPOSAL: In accordance with Section 26-528 of the Chesapeake City Code, the applicant is seeking an **EXCEPTION** for authorization to construct a new detached garage within the 50-foot landward portion of the 100-foot RPA buffer. A total of 624 SF of new impervious area is proposed (366 SF within RPA).

SUBDIVISION/LOT #: 141 PLUMMER PLANTATION SEC 3

WATERSHED: Southern Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0345002001410

CBPA BOARD ACTION:

The CBPA Board **GRANTED THE EXCEPTION** requested in PLN-CBPA-2018-012 with the following stipulations:

1. **Provide one (1) small canopy tree 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. **No additional driveway access is authorized as part of this**

application. Additional construction activity, clearing, grading, excavating, or filling within the RPA portion of this site will require additional CBPA approval and will be required to meet the current CBPA regulations at that time.

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 490 Plummer Drive. He stated that the applicant is seeking an exception for authorization to construct a new detached garage within the 50-foot landward portion of the 100-foot RPA buffer. The lot was recorded in 1962. The Review Committee reviewed this application on August 7, 2018. The CBPA Review Committee has recommended approval with the stipulation that one (1) small canopy tree be provided within the 100-foot RPA buffer. The Review Committee also recommended the stipulation that no additional driveway access be authorized from Shell Road as part of this application.

Proponent:

Kyle Strickland, 490 Plummer Drive, Chesapeake, Virginia, appeared before the Board as the applicant of PLN-CBPA-2018-012.

Board Discussion:

Mr. Wilson questioned if the driveway restriction from Shell Road would be lifted for a temporary ingress during construction of the building. Mr. Anaya informed Mr. Wilson that the applicant is available and may be able to answer that question. He suggested that timber mats may be an appropriate solution if materials have to be brought in through the back of the site.

Mr. Strickland introduced himself to the Board and advised that the planned structure will be a metal, car-port style detached garage with a concrete pad. He added that he currently has gated access off of Plummer Drive. He advised that he had a brief meeting with a concrete company and conducted a plan to have the materials delivered through the front of the property, since the back of the property is extremely soft. He added that the garage components will be delivered on a trailer that will be brought in through the front of the site as well.

Mr. Wilson questioned if any trees would need to be removed during the construction process. Mr. Strickland advised that there are no trees on his lot that will need to be removed, however, one tree from the adjacent property has a limb that hangs over his shed, but it should not affect construction.

Ms. Greene asked to confirm whether the materials would be backed up onto the driveway. Mr. Strickland confirmed that the materials will be delivered on the side of the house where the trailer is shown on the graphic in which there is gated access.

CBPA BOARD VOTE:

Mr. Wilson moved to **GRANT the exception requested in PLN-CBPA-2018-012** with the stipulation that one small canopy tree be planted within the 100-foot RPA to mitigate the impact of impervious area, as well as no additional driveway access permitted from Shell Road. Ms. Greene seconded the motion. The motion was carried by a vote of 4 – 0, Spaur and James excused, Curling absent.

2. PLN-CBPA-2018-016

PROJECT/LOCATION: Chicken Coop/437 Shell Road

APPLICANT: Nicholas Deitz

PROPOSAL: In accordance with Section 26-528 of the Chesapeake City Code, the applicant is seeking an **EXCEPTION** for authorization to construct a new chicken coop within the 50-foot landward portion of the 100-foot RPA buffer. A total of 30 SF of new impervious area is proposed (30 SF within RPA).

SUBDIVISION/LOT #: PAR 2 SUBD PROP OF FAITH ALIVE CH OF GOD
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WATERSHED: Southern Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0340000001220

CBPA BOARD ACTION:

The CBPA Board CONTINUED PLN-CPBA-2018-016 to the October 17, 2018 CBPA Board Meeting.

Staff Presentation:

Mr. Anaya presented a brief summary of the application to the Board for the site at 437 Shell Road. He stated that the applicant is seeking an exception for authorization to construct a new chicken coop within the 50-foot landward portion of the 100-foot RPA buffer. He explained to the Board that the applicant has not submitted the adjacent property owner list or stamped, addressed envelopes as required by Chesapeake City Code sec. 26-528 (f), therefore, staff recommends application PLN-CBPA-2018-016 be continued to the CBPA Board meeting scheduled for October 17, 2018.

CBPA BOARD VOTE:

Ms. Greene moved to **CONTINUE PLN-CBPA-2018-016** to the **October 17, 2018 CBPA Board meeting**. Mr. Wilson seconded the motion. The motion was carried by a vote of 3 – 1, Klesch opposed, Spaur and James excused, Curling absent.

3. PLN-CBPA-2018-021

PROJECT/LOCATION: Driveway Expansion/717 Wood Duck Lane

APPLICANT: Gary W. & Julie M. Foshee

PROPOSAL: In accordance with Section 26-528 of the Chesapeake City Code, the applicant is seeking an **AFTER-THE-FACT EXCEPTION** for authorization to expand an existing driveway within the 50-foot landward portion of the 100-foot RPA buffer. A total of 839 SF of new impervious area is proposed (645 SF within RPA buffer).

SUBDIVISION/LOT #: 39 SUB FIRMAN ESTATES SEC ONE

WATERSHED: Southern Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0346003000390

CBPA BOARD ACTION:

The CBPA Board **GRANTED THE AFTER-THE-FACT EXCEPTION** requested in PLN-CBPA-2018-021 with the following stipulations:

1. Provide five (5) large canopy trees within the 100-foot RPA buffer to mitigate the impact of the new impervious area within the 100-foot RPA buffer. See Appendix A of the Chesapeake Landscape Specifications Manual for recommended tree species.
2. Provide two (2) large canopy trees within the Resource Management Area (RMA) to mitigate the impact of the new impervious area within the RMA. 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 717 Wood Duck Lane. He stated that the applicant is seeking an after-the-fact exception for authorization to expand an existing driveway within the 50-foot landward portion of the 100-foot RPA buffer. The CBPA Review Committee reviewed the application on August 21, 2018. The Review Committee had recommended approval with the stipulations that five (5) large canopy trees be provided within the 100-foot RPA buffer, as well as two (2) large canopy trees within the RMA to mitigate the impact of the new impervious areas.

Proponent:

Gary Foshee, 717 Wood Duck Lane, Chesapeake, Virginia, appeared before the Board as the applicant for PLN-CBPA-2018-021.

Board Discussion:

Mr. Klesch questioned whether the applicant planned to return the removed concrete area to a grass lawn or to install gravel or similar type of material. Mr. Anaya confirmed that on the plan the applicant has shown returning the area to turf. Mr. Foshee introduced himself and confirmed that the removed concrete will be returned to a grass lawn.

Mr. Wilson questioned if the applicant had considered the spacing of the trees on the proposed plan. Mr. Nowak added that spacing of the trees is pertinent in order for their healthy growth. Ms. Greene commented that the correct species will need to be chosen in order for them to thrive. Mr. Foshee advised that he will request his neighbor, Dr. Spaur's advice on the spacing of the trees. Mr. Wilson encouraged the applicant to pay close attention to the spacing in order to not crowd the trees.

Ms. Greene suggested that small canopy trees be planted, however, Mr. Wilson noted that large canopy trees are required per the recommended stipulation. Mr. Anaya added that the Board may change the stipulation to small canopy trees if they wish.

CBPA BOARD VOTE:

Ms. Greene moved to **GRANT the after-the-fact exception requested in PLN-CBPA-2018-021** with the stipulation that five large canopy trees be planted in the 100-foot RPA and two large canopy trees be planted in the RMA. Mr. Klesch seconded the motion. The motion was carried by a vote of 4 – 0, Spaur and James excused, Curling absent.

4. **PLN-CBPA-2018-023**

PROJECT/LOCATION: Replacement of porch, deck, and retaining wall/1004 Angora Court

APPLICANT/AGENT: Lynette Bolton/Marine Engineering, LLC

PROPOSAL: In accordance with Section 26-528 of the Chesapeake City Code, the applicant is seeking an **EXCEPTION** for authorization to replace an existing porch, deck, and retaining wall within the 50-foot seaward portion of the 100-foot RPA buffer. The proposed improvements will yield a net reduction of 38 SF of impervious area within the 50-foot seaward portion of the 100-foot RPA buffer.

SUBDIVISION/LOT #: 5 PINETTA II

WATERSHED: Eastern Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0204005000050

CBPA BOARD ACTION:

The CBPA Board **GRANTED THE EXCEPTION** requested in PLN-CBPA-2018-023 with the following stipulation:

Provide two (2) large canopy trees within the 100-foot RPA buffer to mitigate the two (2) trees removed for construction of the proposed retaining wall. Per Chesapeake City Code Sec. 26-520(b)(7)(c), any trees removed shall be replaced to provide 50 percent tree canopy coverage. 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 1004 Angora Court. He stated that the applicant is seeking an exception for authorization to replace an existing porch, deck, and retaining wall within the 50-foot seaward portion of the 100-foot RPA buffer. The CBPA Review Committee reviewed the application on August 21, 2018. The Review Committee had recommended approval with the stipulation that two (2) large canopy trees be provided within the 100-foot RPA to mitigate the removal of two (2) trees during construction of the proposed retaining wall.

Proponent:

Lynette Bolton, 1004 Angora Court, Chesapeake, Virginia, appeared before the Board as the applicant for PLN-CBPA-2018-023.

David Kledzik, 4212 Dougherty Court, Virginia Beach, Virginia, appeared before the

Board on behalf of PLN-CBPA-2018-023, as the agent representing the applicant.

Board Discussion:

Ms. Greene asked Mr. Anaya to confirm whether this lot was platted prior to the CBPA ordinance. He advised that the lot was platted in 1989, however the request is within the 50' seaward portion, therefore the Board must review the application.

Mr. Klesch requested an explanation of the blue 4' contour line on the aerial photo. Mr. Anaya explained that the photo shows 4' as a benchmark. Mr. Klesch added that the applicant is in need of this retaining wall in order to shore up the property. Mr. Anaya agreed.

Ms. Greene questioned if there was a concrete pad on the site. Mr. Anaya responded that there is currently decking, timber and cement installed on the site.

Mr. Wilson questioned if the original deck was built as a part of the house or added on after the fact. Ms. Bolton introduced herself and advised that the existing deck was built as a part of the house. She added that she feels the deck was not built well and it is currently failing. She wishes to re-build and enclose the structure to accommodate the special needs of a resident who is not able to be outdoors regularly.

Mr. Kledzik introduced himself as the agent representing Ms. Bolton.

Ms. Greene asked for confirmation of the current situation consisting of the existing decking and failing retaining wall. Mr. Kledzik explained that there is currently a timber sheet pile bulk head wall that is failing, as well as a deck on top of it that is subsiding. He added that outside of the back door from the garage, there is currently a paver deck with trash cans, etc. He explained that the pavers are subsiding and shifting downhill. He added that there is a steep slope from the house to approximately 15' downward. Mr. Kledzik added that the applicant informed him that the foundation on the upper left side portion of the home had to be repaired. He stated that the existing wall provided some protection over the years, but has lost all functionality. Overall, there will be a 5% reduction in impervious area. He explained that the only new impervious area is the new wall itself. He considers the living space portion of the project as a re-development. As part of the new plan, they have eliminated unnecessary walkways, steps and planting borders. Mr. Kledzik explained that the new wall will sit approximately 3 feet seaward of the existing retaining wall. The area behind the wall will be left in a natural condition to act as a buffer on the steep embankment.

Mr. Wilson asked Mr. Kledzik to clarify if he was suggesting leaving the gap between blue and pink line on the graphic as a buffer. Mr. Kledzik replied that the areas to the left and right will act as a buffer and is currently covered in ivy.

Mr. Wilson asked for clarification as to whether or not the existing retaining wall will be removed. Mr. Kledzik confirmed that the existing failing wall will be removed.

Ms. Greene asked the applicant if she was willing to plant the two additional trees to replace the two trees that are to be removed during construction. She replied that she was in agreement with that stipulation.

Mr. Wilson explained that some may disagree on the calculations of impervious area. With the existing deck, rain water can flow through the slatted boards, which will convey with the new deck. He feels that the sunroom will be completely impervious as it will have roof. He does not see this as a reduction in impervious area. Mr. Anaya explained that per the ordinance, decks are included as impervious area.

Mr. Wilson questioned whether the existing retaining wall lies where blue line is on the graphic. Mr. Kledzik explained that the existing wall is further back. They will be installing the block wall approximately 3' in front of existing wall closer to the feature.

Ms. Greene questioned whether fill would be added to level the area. Mr. Kledzik informed the Board that in order to limit excavation, they plan only to backfill behind the wall to stabilize it.

Mr. Nowak suggested that since the sunroom is seen as an impervious area to some, a rain barrel may be appropriate. Ms. Greene added that the applicant could contact the Elizabeth River Project to install a rain barrel if the Board would like to add that stipulation.

Mr. Kledzik provided further clarification on the conditions of the existing porch. He explained that there is currently a wooden structure with a deck underneath. Mr. Wilson asked if there was an existing concrete porch, not just a deck. Mr. Kledzik added that there is a raised porch to reach the elevation of the home, but there is currently no roof.

Ms. Jacobi provided clarification and read that the CBPA Ordinance does include decks as impervious area.

Mr. Klesch added that he assumes that there will be a drain outlet for water that seeps into soil under deck area. He questioned whether there would be an area near the retaining wall for plantings. Mr. Kledzik explained that at the base or on top of the retaining wall there will be additional room for plantings. He added that currently around the backside of the house there is a small area with step stones, but on either side is all volunteer vegetation.

Mr. Nowak noted that if action is not taken, the house will likely collapse. He explained that any trees on property are to be replaced on a one to one basis.

Mr. Wilson requested clarification on where the new trees would be located. Mr. Kledzik replied that he feels the best area for the trees will be to the left of retaining wall, as well

as one possibly in the front yard. Ms. Bolton added that there are currently two very large trees in front yard. The trees that will be removed are growing into the water and leaning. Mr. Kledzik explained that the tree on right hand side has fallen into another and locked limbs. He added that the magnolia tree is upright and the second tree has fallen onto it. He feels that there will be sufficient space for the two new trees.

CBPA BOARD VOTE:

Ms. Greene moved to **GRANT the exception requested in PLN-CBPA-2018-023** with the stipulation that two (2) large canopy trees be provided within the 100-foot RPA to mitigate the removal of two (2) trees during construction of the proposed retaining wall. Mr. Klesch seconded the motion. The motion was carried by a vote of 4 – 0, Spaur and James excused, Curling absent.

CBPA VIOLATION:

1. **CBPA Violation V-18-07(v)**
LOCATION: 1232 George Washington Highway North
OWNER: F&W Builders, Inc.
VIOLATION: Unauthorized clearing and grading within the 100-foot RPA buffer and RMA. Approximately 21,130 SF of unauthorized impacts within RPA buffer, and approximately 1,830 SF of unauthorized impacts within RMA.
WATERSHED: Southern Branch of the Elizabeth River
TAX MAP SECTION/PARCEL: 0251001000780

CBPA BOARD ACTION:

1. The CBPA Board voted to determine that a violation has occurred at 1232 George Washington Highway N involving 13,800 SF of unauthorized clearing and grading on the site (4-0, Greene/Klesch; Spaur and James excused, Curling absent).
2. The CBPA Board voted to determine that restoration of the site is required (4-0, Nowak/Greene; Spaur and James excused, Curling absent).
3. The CBPA Board voted to table the matter until the March 2019 CBPA Board meeting in order to allow the property owner to submit a site plan for review and approval by all applicable City departments (4-0, Nowak/Greene; Spaur and James excused, Curling absent).
4. The CBPA Board voted to table the discussion of the civil penalty until the March 2019 CBPA Board meeting (4-0, Nowak/Greene; Spaur and James excused, Curling absent).

Staff Presentation:

Mr. Anaya presented the violation to the Board along with staff's findings and recommendations. He presented pictures of the site at 1232 George Washington Highway North.

For the Show Cause Hearing, the Board was directed to vote on whether a violation had occurred, whether restoration was complete or if additional restoration was required.

The Board was also directed to vote on the appropriate penalty (referral to circuit court, civil charge, restoration, reprimand). In determining an appropriate civil charge, the Board should consider the extent of the violation, level of good faith of the property owner, history of non-compliance and cooperation.

Proponent:

Chris Falk, 205 South Battlefield Boulevard, Suite 100, Chesapeake, Virginia, appeared before the Board on behalf of CBPA (V)-18-07 as the owner of F&W Builders, Inc.

Sam Baraki, 800 Juniper Crescent, Chesapeake, Virginia, appeared before the Board on behalf of CBPA (V)-18-07 representing the owner.

Board Discussion:

Ms. Greene asked Mr. Anaya if this was an older lot. He found that the lot was recorded in 1971. She also questioned whether there was a structure behind the front trees on the concrete pad. Ms. Jacobi and Mr. Anaya confirmed that the space was previously used for dog kennels.

Ms. Greene asked if any fill was removed or added on the site. She commented that it appears the owner has graded the site. Mr. Anaya stated he could not confirm whether fill was added or removed, but agreed that the lot was graded.

Ms. Greene requested that Ms. Jacobi explain the correspondence shown in the package in which Mr. Falk referenced a law that exempted this property from the CBPA Ordinance. Ms. Jacobi explained that the law referenced in the letter is not relevant to the CBPA proceedings.

Ms. Greene questioned what the term "Shell CO" meant in an e-mail correspondence between Ms. Jacobi and Mr. Falk. Ms. Jacobi explained that there are multiple city ordinance violations taking place at this property and the term "Shell CO" is referring to a uniform state wide building code issue.

Mr. Klesch asked for clarification of the process of making the decision regarding the violation. Ms. Greene explained that the Board typically votes on each issue individually.

Mr. Falk introduced himself as the President of F&W Builders, Inc. He advised the board that F&W Builders, Inc. is a building company that purchases commercial property. He explained that this property was owned by the bank and the site had not been used in four to five years. When he purchased the property, there was a dilapidated house with an attached kennel that was accessible from inside the house. The previous owners boarded dogs and it appears they also lived at the site.

Mr. Falk went on to explain that the first task he completed upon purchasing the property was cleaning the site. There was a block shed in back of the property that was falling and full of debris and waste oil. He removed the shed and disposed of it. On the back fringe, there were dog pens and a concrete pad that was allowing the waste from the dog pens to be drained into the tributary. He removed the pens and concrete. Along the back tree line, he removed approximately three dumpsters full of debris. To the right of the house, there was a colonial barn shed which was also removed. Mr. Falk then began removing the kennel portion of the structure. Mr. Falk explained that he contacted the city and confirmed that he did not need a demolition permit to remove the kennel portion of the structure. He proceeded with the removal of the kennel and installed gravel.

Ms. Greene questioned where the gravel was placed and how much was installed. Mr. Falk explained that he installed approximately five truckloads of gravel and spread it

across the entire site. He added that portions of the site had existing gravel, but some did not.

Mr. Falk explained that he began removing the dog kennels and planned to pour concrete over the existing slab. He found that the center of the slab was level, but the sides of the slab were slanted to allow the water to run off when cleaning the kennels. He added that at this point, a city representative visited the site and issued a stop work order. He then arrived at the city with a site plan and building plans to install a metal building similar to a car port. When submitting the plans, he explained that he planned to pour a slab over the existing concrete to ensure it was level. He added that he was approved by the city and began construction shortly after. First, he dug a footing after the stop work order was removed. He then removed a tree in the front of the property and installed gravel. He was then visited by a city representative.

Mr. Wilson questioned why the tree was removed. Mr. Falk responded that the tree was very large, which made it difficult to utilize the entrance. He also added that the magnolia tree left a tremendous amount of foliage on the ground. He explained that there had been no maintenance at the property for so long that any existing gravel could be not be seen.

Mr. Falk stated that after he received an inspection for the footing, he proceeded with the installation of the metal building. He received a final building inspection and proceeded with the application for a certificate of occupancy. He was then told that a certificate of occupancy would not be issued until a fire inspection was completed. He then received an e-mail from Wendy Tabler in the Development and Permits department that a mistake was made by two city representatives from the department. The request was not sent to engineering for site plan review, which is a requirement for any commercial addition. Mr. Falk explained that a certificate of occupancy issuance was put on hold and he was advised to stop any progress on the site. Mr. Falk added that at this point, the building was completed, but according to Ms. Tabler, the process should not have gone this far.

Mr. Falk stated that he then received a stop work order from Somer Dimaya, stating that greater than one acre was disturbed and he would need to address storm water management. Mr. Falk contacted Ms. Dimaya and advised that he did not disturb more than one acre. Ms. Dimaya's communication noted that she had not been to the property, but had been notified of the disturbance. Mr. Falk commented that he feels he has had to look more closely and argue each situation throughout various City of Chesapeake departments. Soon after, Mr. Falk received confirmation that he did not disturb more than one acre of land.

Mr. Falk introduced Mr. Baraki as his engineer. He advised that Mr. Baraki has spent a great amount of time developing a restoration plan. He is hopeful that the Board will allow him to submit the restoration plan and return to the Board for approval.

Ms. Greene questioned when the trees were cut down trees and why. Mr. Falk explained that he was issued his building permit on February 27th and removed the trees shortly

after. He explained that the removal of the trees was a result of their size, which prohibited entrance to the property. He also stated that the two large magnolias left excessive foliage behind and were also taking up parking space.

Ms. Greene questioned why the trees in the back of the property were removed. Mr. Falk described three to four pine trees on the side of the property, two of which were dead and leaning over into the right of way. He proceeded to the screen at the front of the room to point out where gravel was existing on the property when he purchased it, as well as the areas where trees were removed. He stated that he was not aware that grading out gravel was a CBPA violation. He agreed that natural soil was disturbed upon placing gravel in areas where it was not currently laid.

Ms. Greene asked for clarification as to what the darker lines on the graphic were. Mr. Wilson and Mr. Baraki identified the lines as the RPA feature.

Ms. Greene questioned how Mr. Falk knew about the RPA feature behind his property, yet did not think that the feature would place constraints on the property. Mr. Falk explained that he did not realize this, as the site has a curb and gutter in the front of it, which drains to the front of the property into a ditch.

Ms. Greene asked Mr. Falk to clarify if he was an attorney. Mr. Falk confirmed that he is an attorney, but was not aware of the CBPA until recently as he has never been referred to the Board or represented a client in the CBPA. She commented that as an attorney, he should not use the excuse of not knowing the law. She asked Mr. Falk what the general consensus about knowledge of the law was in the eyes of an attorney. He responded that ignorance is no excuse for violating the law.

Mr. Falk stated that he wished to further explain the obstacles he encountered in order for the Board to understand his position. He proceeded to explain that concrete was poured at bottom of the fences in order to keep the dogs from digging and escaping under the fences. He reiterated that he agrees he did disturb the land as shown on the graphic on the left side of the property.

Mr. Nowak explained that the Board's purpose is to protect the water quality in the Chesapeake Bay, which is dependent on the soil and vegetation on these sites. He added that a full grown tree transpires approximately 55,000 gallons of water each year. Mr. Nowak also explained that within the CBPA District, trees are required to be maintained and replaced on a one-to-one basis. He explained that a sapling will not do the job of a fully grown green tree for approximately thirty years. He commented that there is a large change in the amount of vegetation between the two graphics that were shown in the presentation.

Ms. Greene commented that she is having a hard time getting past Mr. Falk's statement of not knowing about the law, when he is an attorney and there is an RPA feature on the

property. Mr. Falk responded that he wished he was knowledgeable regarding every law, but he is not.

Mr. Falk stated that the city stated he has disturbed 21,130 square feet, which he does not agree with. Ms. Greene responded that the five truckloads of gravel that were spread across the entire site are considered disturbance.

Mr. Klesch questioned how Mr. Falk intends to use the property. Mr. Falk explained that he originally planned to have a small contractor utilize the site. Upon the stop work order, that plan fell through. He added that there is currently an auto repair business operating out of the building.

Mr. Wilson questioned what the intent of graveling the entire lot was. Mr. Falk responded that his intent was to gravel the area for parking, as the metal building has three bay garage doors in front and one in the back.

Mr. Wilson questioned if a site plan was included with the permit application. Mr. Falk responded that a site plan was submitted and approved by the city, but it did not show installing gravel as he was under the impression that he was able to install gravel and grade the lot.

Mr. Anaya stated that the site plan provided to the Board was used for the building permit review, but he did not receive any other site plan. Ms. Jacobi added that the site plan and the entire building permit was provided in the Board package. Mr. Falk added that he does have pictures of the site prior to his changes if the Board would like to view them.

Ms. Greene explained that she has purchased water front property a mile from his site, and that she is well aware of how these older sites are used as dumps.

Mr. Falk explained that he would like to show the Board pictures of the existing gravel on the site, prior to the five truckloads that he had installed. Mr. Wilson commented that he would like to see those pictures. Mr. Anaya requested that Mr. Falk send the pictures to him via e-mail to be included in the record. Mr. Falk proceeded to show the Board members photos of the site where gravel was previously placed.

Mr. Klesch commented that he researched the property via Google Maps, and confirmed that the site was used for kennels. He added that he could see that gravel was laid in a U-shaped driveway. He added that by 2017, you could see that vegetation had begun to cover the gravel driveway. To the left of the house, you could see a grass yard near the kennels. He stated that with the vegetation now gone and gravel placed on the site, water will drain. He understands that Mr. Falk stated the property is graded to drain to the front into the ditch.

Mr. Wilson explained that the ditch will drain straight to the river. He added that the purpose of the CBPA existence is to ensure that any water that falls on a site is treated

through vegetation. He stated that the idea of cutting down trees because they are in the way and adding gravel across the site does not mesh with the intent of the CBPA Board.

Ms. Greene stated that adding gravel on top of the tree roots will kill the tree roots that are left. Mr. Falk responded that he did not add gravel on top of the existing tree roots. Ms. Greene explained that the tree roots extend out 1 1/2 times the height of the tree, so the roots will indeed be affected by the gravel.

Mr. Falk stated that he feels there should be a document that is given to citizens in the CBPA that explains these laws. Mr. Wilson agreed, however, the legal team has advised that ignorance of the law is not acceptable.

Mr. Anaya commented that if this activity was shown on the plan submitted for the building permit, they would have been directed to the CBPA Board for approval. Mr. Falk explained that he was not originally planning on the additional work, it happened as he began working on the property. He added that he was under the impression he was covered under the building permit. He explained that he had no intent to disturb the alleged 21,130 square feet.

Ms. Greene asked Ms. Jacobi if the Board is able to decide on a restoration plan if there is no application for an exception. Ms. Jacobi explained that it is permissible to look at the restoration plan and in a matter of efficiency, the Board can approve only the CBPA portion of the restoration. If the plan shows parking, storm water management, etc. the Board cannot approve those items.

Ms. Greene asked Mr. Falk if he understood Ms. Jacobi's explanation. Mr. Falk responded that the explanation was not clear to him, as there are so many moving parts involved in this project.

Ms. Jacobi added that she was not arguing the plan, but simply noticed that the plan showed parking spaces, and the CBPA Board is not authorized to approve that.

Mr. Wilson suggested that the CBPA Board will only be approving vegetation essentially.

Mr. Anaya commented that the parking spaces would require CBPA approval as they are within the 100-foot RPA buffer.

Mr. Baraki introduced himself as the agent representing F&W Builders, Inc.

Mr. Falk interjected and asked for clarification on whether the Board would be able to approve the parking spaces or not. Ms. Jacobi explained that there is a requirement for the number of parking spaces per the zoning ordinance for the site, which cannot be approved by the CBPA Board. There is also the issue of the impervious area that the parking spaces create, which will require CBPA Board approval. She added that she does not wish to create a constant circle for the issue, however, she does not want the

restoration plan to be approved by the CBPA Board and the zoning administration receive backlash at a later time.

Mr. Wilson added that the parking spaces will need to be submitted as an exception application with a site plan. Mr. Anaya confirmed.

Mr. Baraki explained that they are not requesting the Board to approve the plan or the number of parking spaces. He added that he studied the plan to see how many parking spaces will be required by the zoning ordinance to operate the site as a business. He also studied to find where the twenty spaces would fit, as well as the amount of impervious area the spaces would generate.

Mr. Baraki provided the Board with three documents. The first document was provided by the surveyor in late December or early January, prior to any clearing. Mr. Baraki proceeded to show the Board the RPA limits on the graphic provided. He requested the surveyor calculate the impervious area within the 100-foot marker. The surveyor calculated 12,436 square feet of impervious area, including the building and existing gravel. Mr. Baraki commented that the total lot area is approximately 20,025 square feet from above the top of bank to the property line along the right of way.

Mr. Baraki provided the Board with a second document. This exhibit showed the site as it stands today. When questioning the surveyor, Mr. Baraki was told that there was gravel in the back of property. He explained that the surveyors were not able to drive nails to install a traverse line, as the gravel was so compacted. Mr. Baraki added that if a site is left unattended for an extended period of time, vegetation will grow, even over asphalt. Based on the site as it is today, the impervious area was calculated to be 17,838 square feet, an increase of approximately 5,000 square feet from what was calculated prior to Mr. Falk purchasing the property.

Mr. Baraki explained that he researched what would be required to meet the zoning ordinance. He generated a plan and met with Mark Curry and Michael Anaya and discussed site plan requirements. He stated that Mark Curry would look for storm water management, parking requirements and landscape requirements. He added that twenty parking spaces are required for this site. Mr. Baraki explained that he developed the restoration plan to place the parking spaces in the least detrimental area as possible. He explained that if the proposed restoration plan is implemented, the impervious area on the site will be 14,684 square feet, an increase of approximately 2,400 square feet from prior to Mr. Falk's ownership. He added that he plans to plant eighteen trees behind the building, where all gravel will be removed. Mr. Baraki reiterated where the trees were cut down by Mr. Falk.

Ms. Greene asked Mr. Baraki if he reviewed the canopy coverage requirements. She advised that the tree coverage must reach 50%. Mr. Baraki stated that the restoration plan shows planting eighteen trees on the site. He added that he proposed planting the trees where it is most appropriate, along the bank. He also explained that with site plan review,

Mr. Falk will have to complete storm water management, this will increase and bring site into compliance. He feels that the RPA and CBPA will be better off now than they were a year ago based on this restoration plan.

Ms. Greene suggested that the Board should start by addressing whether or not a violation has occurred.

Mr. Klesch questioned whether there is an exception to the parking requirements. Mr. Baraki explained that if an existing business remains in operation, the new ordinance does not apply. Since this site was previously a business and has since been ceased and is now returning to a business operation, the new ordinance applies. Ms. Jacobi commented and suggested that question be presented to the zoning administration, as the CBPA Board cannot make that determination.

Ms. Greene made the motion to determine that a violation has occurred. She explained that previously each of the violation questions has been handled separately.

Ms. Jacobi commented that the Board has been provided with a factual dispute as to the amount of land that was disturbed. She added that the Board is legally required to make a finding on how much land was disturbed. Whether it be 20,000 square feet or 17,838 square feet of disturbance. Mr. Baraki clarified that 17, 838 square feet was the total impervious area. He does not feel that this is the total area that was disturbed, as the building was included in that square footage.

Mr. Anaya explained that the numbers provided in the staff report were based on the total area within the RPA buffer and the RMA, not based on impervious areas. Mr. Baraki stated that the surveyors calculated this area and are certifying that the area is less than the number Mr. Anaya presented. Mr. Anaya noted that before the engineer produced drawings with the buffers on them, he used approximate measurements off of a scaled PDF drawing. The recommended restoration requirement is based on the total lot area within the RPA buffer, not just impervious area.

Mr. Baraki stated that 17,838 is the square footage for the total lot area, not just the impervious area. Mr. Baraki stated a CAD system was used, which Mr. Anaya agreed is likely more accurate than the method that he used.

Mr. Nowak clarified that 17,838 is the square footage denominator. Mr. Baraki stated that 17,838 includes the building, which should not be included in the restoration area.

Mr. Anaya noted that the document Mr. Baraki provided stated the square footage included post-development impervious area. He explained that the Board is discussing the whole site, including impervious and pervious areas.

Ms. Greene stated the survey shows 71,744 square foot as the total. Mr. Baraki clarified that 71,744 square feet is the entire site, including the marsh and the side of the river.

Ms. Greene questioned how large the building is. Mr. Baraki responded that the building is approximately 4,000 square feet.

Mr. Anaya stated he was willing to verify his numbers. He clarified that the twenty six tree requirement is based on 21,130 square feet of disturbed area. Mr. Wilson commented that Mr. Anaya could figure the amount of trees based on Mr. Baraki's square footage calculation and compare the two.

Ms. Greene commented that the disturbed area is approximately 13,800 square feet. She asked Mr. Baraki if that was a fair number, to which he agreed.

Ms. Greene made a motion that a violation has occurred concerning 13,800 square feet. She stated that the violation consists of disturbing the grade, adding fill and cutting trees. Mr. Klesch seconded the motion.

Ms. Greene commented that she feels the engineer has made a conscious effort to accommodate each law that applies to this property. She is concerned with the idea of gravel parking spaces lying within the RPA. She feels these will not be friendly to the growth of trees.

Mr. Anaya commented that given the shape of the RPA buffer and the shape of the impervious area Mr. Baraki is proposing in the restoration plan, he feels it is being placed as far landward as possible while accommodating twenty parking spaces per the zoning ordinance.

Ms. Greene requested Ms. Jacobi discuss vested rights in keeping this site as a business. Ms. Jacobi responded that a vested rights determination would need to be made by the City Attorney. Ms. Greene asked if this was a relevant question. Ms. Jacobi responded that it is relevant, and proceeded to describe a similar case in the City of Virginia Beach.

Mr. Nowak commented that he feels additional restoration is required.

Ms. Greene stated she does regret that Mr. Falk has been circulated through so many different city departments. She is concerned that if a decision is made by the CBPA Board regarding the restoration plan without other city department's approval, it may set Mr. Falk back even more.

Mr. Wilson moved that additional restoration was required. Ms. Greene seconded the motion.

Mr. Nowak suggested that Mr. Falk circulate through the standard process of each department prior to the CBPA Board approval of a restoration plan.

Ms. Greene commented that she does feel a penalty is appropriate, however, she is not inclined to decide on that penalty until a restoration plan is approved. She asked for Ms. Jacobi's advice regarding tabling a decision of the fine to a later date. Ms. Jacobi stated that there is nothing prohibiting the Board from tabling the determination of a fine until the restoration discussions proceed.

Mr. Wilson asked Mr. Falk if an engineer was hired when the project began. Mr. Falk responded that he did not have an engineer until Mr. Baraki took on the project. Mr. Wilson advised Mr. Falk to hire an engineer in the future. Mr. Falk noted that he did have a surveyor.

Mr. Klesch questioned if there was an active court case for this property. Ms. Jacobi stated that there is not a court case under the CBPA.

Mr. Klesch commented that he feels the Board could consider that F&W Builders has contact with other builders throughout the city and could act as an advocate for the CBPA.

Mr. Klesch questioned whether the driveway to the right of the property would be utilized as part of business. It was confirmed that the driveway Mr. Klesch was referring to was not part of Mr. Falk's property.

Ms. Greene questioned whether the gravel in the back of the lot would be removed prior to the trees being planted. Mr. Baraki explained that, as noted on the restoration plan, the gravel will be removed and top soil will be installed prior to planting the trees. He also added that once the site plan review process is completed, the landscaping requirements will likely entail more plantings.

Mr. Wilson questioned whether Mr. Baraki has considered what storm water management will require. Mr. Baraki stated that he has thought to possibly install a rain garden. He does not believe that infiltration is an option on this site due to where the ground water lies. Mr. Baraki then proceeded to provide another overview of the restoration plan. He added that if the parking surfaces are to remain gravel, the plan will have to be submitted to the Planning Commission for approval.

Mr. Nowak commented that he does see this restoration plan as a good starting point. He added that if the Board's recommendation is that the plan be circulated through the various city departments, he believes the Board would want to table the issue. Ms. Greene agreed.

Ms. Greene commented that on the civil charge chart, the fine is between \$1,000 and \$10,000, depending on the relative degree of non-compliance. She feels there is an honest effort in regards to the restoration plan, and moved that the Board table the issue until a more complete restoration plan is submitted. She added that the Board shall make a determination regarding the penalty at that time.

Mr. Wilson clarified Ms. Greene's motion to state that the Board would suggest that the current restoration plan is a good starting point. When it returns to the Board, they would decide the penalty at the same time as deciding on the restoration plan.

Ms. Greene noted that there is question regarding whether or not this site can be developed as a business.

Mr. Nowak rephrased the motion to state that the Board is recommending the restoration plan be submitted to the necessary city departments for approval, and the penalty phase be tabled until a completed restoration plan is presented to the Board.

Ms. Jacobi requested that a date be provided, as opposed to an indefinite tabling. She would also ask if the Board is recommending an action to the applicant and sending it for a status check, or imposing additional continuance.

Ms. Greene wished to clarify the issue of vested rights. She requested that Ms. Jacobi pose the vested rights question to the City Attorney.

Mr. Falk reiterated that had he not been given the building permit, he would have never proceeded. He added that he has paid a considerable amount of money into this project.

Ms. Greene added that she feels a business on the site is not good for water quality.

Mr. Wilson requested that the Board decide on an agreeable timeframe for continuance.

Mr. Anaya asked Mr. Baraki if they have initiated an application with Planning Commission. Mr. Baraki stated that they are looking at least 90 days to be heard by the Planning Commission.

Mr. Nowak made the motion that the restoration plan be submitted and approved by all affected City of Chesapeake departments and brought back to the Board by the March 20, 2019 CBPA Board meeting. Ms. Greene seconded the motion.

Mr. Nowak moved that the discussion of a penalty be continued to the March 20, 2019 CBPA Board meeting. Ms. Greene seconded the motion.

Mr. Falk asked Mr. Anaya if he should file an after-the-fact exception to speed the process along. Mr. Anaya replied that he does not know that it would be necessary. He stated he would discuss this with the various departments first, so that Mr. Falk can take the necessary steps in the proper order.

CBPA BOARD VOTE:

Ms. Greene moved to **DETERMINE that there was a violation.** Mr. Klesch seconded the motion. The motion was carried by a vote of 4 – 0; Spaur and James excused, Curling absent.

Mr. Wilson moved to **DETERMINE that additional restoration is required.** Ms. Greene seconded the motion. The motion was carried by a vote of 4-0; Spaur and James excused, Curling absent.

Mr. Nowak moved to **CONTINUE** the decision to assess a **penalty CBPA (V)-18-07.** **Ms. Greene** seconded the motion. The motion was carried by a vote of 4 – 0, Spaur and James excused, Curling absent.

Mr. Nowak moved to **CONTINUE CBPA (V)-18-07** to the **March 20, 2019 CBPA Board meeting.** Ms. Greene seconded the motion. The motion was carried by a vote of 4 – 0, Spaur and James excused, Curling absent.

OTHER BUSINESS:

Mr. Nowak asked for clarification regarding the continuance of PLN-CBPA-2018-016 since the applicant was not present. Ms. Jacobi stated that the application is not complete and staff will need to administratively remove the item from the docket until it is properly completed.

ADJOURNMENT:

With no further business, the meeting was adjourned at 8:48 P.M.

Sincerely,

Allison Gurkin,
Recording Secretary

APPROVED: December 19, 2018