

**MINUTES**

**Chesapeake Bay Preservation Area  
Board**

**January 16, 2019– 6:00 PM**  
Human Resources Training Room

**Call to Order:** Chair Stephen Nowak called the Chesapeake Bay Preservation Board meeting of January 16, 2019, to order at 6:00 p.m. in the Human Resources Training Room.

**Roll Call:**

**PRESENT**

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

**PLANNING DEPARTMENT STAFF PRESENT**

John Harbin, Interim CBPA Planner  
Lewis Martinez, CBPA Recording Secretary  
Allison Gurkin, Interim CBPA Recording Secretary

**CITY ATTORNEY STAFF PRESENT**

Meredith Jacobi, Assistant City Attorney

---

**APPROVAL OF MINUTES:**

The December 19, 2018 CBPA Board minutes were presented into the record for Board action.

---

**CBPA BOARD ACTION:**

**MINUTES for the December 19, 2018 CBPA Board were APPROVED by majority vote.**

**CBPA APPLICATION:**

---

- PLN-CBPA-2018-029**  
**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** for authorization 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 new impervious area is proposed (1,808 SF within the 100-foot RPA buffer).  
**SUBDIVISION/LOT #:** 8 BLK 7 PARK VIEW SEC 2  
**WATERSHED:** Southern Branch of the Elizabeth River  
**TAX MAP SECTION/PARCEL:** 0344002003681  
*(Continued from December 19, 2018)*
- 

Staff Presentation:

Mr. Harbin advised the Board that the applicant has withdrawn the application as of Monday, January 14, 2019. No further action by the CBPA Board is required. Mr. Harbin advised the Board members that the applicant plans to proceed with the previously approved application from March 15, 2017.

Board Discussion:

CBPA Board members discussed concerns regarding project completion prior to the expiration date of the previously approved application.

---

2. **PLN-CBPA-2018-034**

**PROJECT/LOCATION:** New Single-Family Home/1718 Rockwood Drive

**APPLICANT/AGENT:** Jesse N. Walker/American Engineering Associates-Southeast, PA

**PROPOSAL:** In accordance with Section 26-528 of the Chesapeake City Code, the applicant is seeking an **EXCEPTION** for authorization to construct a new single-family home within the 50-foot seaward portion of the 100-foot RPA buffer. A total of 1,388 SF of new impervious area is proposed (1,388 SF within the 100-foot RPA buffer).

**SUBDIVISION/LOT #:** 20 BLK 8 PARK VIEW SEC 2

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

**TAX MAP SECTION/PARCEL:** 0344002004060

---

**CBPA BOARD ACTION:**

**The CBPA Board DENIED THE EXCEPTION requested in PLN-CBPA-2018-034 due to 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.**

---

Staff Presentation:

Mr. Harbin presented the application to the Board, along with the CBPA Review Committee's findings and recommendations. He presented pictures of the site at 1718 Rockwood Drive. He stated that the applicant is seeking an exception for authorization to construct a new single-family home within the 50-foot seaward portion of the 100-foot RPA buffer. A total of 1,808 SF of new impervious area is proposed. The lot was recorded in 1953. The CBPA Review Committee reviewed this application on December 4, 2018 and recommended approval with a vote of 5 – 2.

Proponent:

Brad Martin, American Engineering, 448 Viking Drive, Virginia Beach, Virginia, appeared before the Board as the agent on behalf of PLN-CBPA-2018-034.

Board Discussion:

Ms. Greene inquired whether fifteen trees would fit within the proposed area. Mr. Harbin clarified that only five trees are required to meet the CBPA canopy requirements.

Ms. Greene also questioned whether the CBPA Review Committee, Army Corp of Engineers or Wetlands Board approved the proposed retaining wall. Mr. Harbin advised that the retaining wall does not require approval from any of the mentioned parties.

Ms. Greene warned Mr. Martin that the only trees that will survive on a low lying lot such as this are river birches, bald cypress and wax myrtle, which contain very rigorous root systems.

Mr. Martin introduced himself to the Board as the agent representing the owner, Mr. Richard Clair. Ms. Greene confirmed that Mr. Clair would be living in the proposed home.

Mr. Klesch questioned whether Mr. Claire had purchased the home yet. Mr. Martin explained that Mr. Clair has signed a contract to purchase the property based on the ability to build on the lot.

Mr. Wilson questioned which City department handles the BMP review. Mr. Harbin clarified that the department of Development and Permits reviews the site plans to ensure that additional storm water requirements are met.

Mr. Wilson asked Mr. Martin to explain the BMP that is planned for the site. Mr. Martin explained that bio retention planting beds will likely be used to filter gentle runoff from the driveway, as well as gutters, downspouts, splash blocks and hearty plants that will soak up pollutants.

Mr. Martin touched on Ms. Greene's questions regarding the trees that will be planted. He noted that bald cypress and river birches would be suggested to the owner based on Ms. Greene's recommendation. Additional trees have not been proposed due to the lot's size.

Ms. Greene questioned what type of retaining wall will be built. Mr. Martin described it as an approximately 2' segmented block wall that will be built using landscaping blocks that connect together.

Mr. Klesch revealed when he visited this lot, he noticed the lot was below road grade, meaning fill material will be needed to level the site. When looking at the neighborhood, it appears each lot has been filled in. He added that culverts are around each lot, feeding into the storm drainage, which eventually drain onto the streets. He explained that eventually, with erosion, the retaining wall will act as a bulkhead. At that time, the Army Corp of Engineers would be involved. Mr. Harbin added that the site is not actively eroding, but the scenario Mr. Klesch described could eventually happen.

Mr. Klesch added that a lot of houses in the neighborhood have water draining through culverts, which will create a drainage current towards the inlet at the foot of Garwood Lane. He feels that the owner could have taken a comprehensive look at this

neighborhood and kept this key lot preserved as a mitigation bank. While he understands Mr. Clair has a dream house in mind, he is surprised that anyone is trying to build on this lot.

Mr. Nowak commented that when he sees the wall, he feels that drainage going towards the water will have no biological activity to filter the water. He also added that it appears everything is planned so that the water drains towards the culvert. He questioned whether the same material is being put into the water, only by a different route.

Mr. Martin explained that the lot will be designed so that water will flow in all directions. He added that the gentle overflow from the back of the house is an appropriate ecological solution. Mr. Martin explained that a benefit of exceeding the lot percentage is that additional biological BMP is required. Because this lot is on the environmental finger of the neighborhood, it is very desirable to homeowners.

Mr. Martin added that this neighborhood, platted in the 1950s, created lots that are developable. He commented that the intent of the CBPA ordinance was never to vacate property and development rights. This lot is intended for single family home.

Mr. Klesch observed that trash collects on this lot. He noted that the property already floods. He feels that when the lot is built up, it will create additional issues.

Ms. Greene added that listening to the neighbors from the previous application on Rockwood Drive has also brought attention to certain issues.

Mr. Nowak commented about an article where it was mentioned that progress has been made on the Chesapeake Bay water quality, up to a C-. The progress has now fallen back to a D+. Mr. Nowak added that after seeing the digression, he questioned whether the Board is doing their job to the best of their ability.

Dr. Spaur explained that the point on the lot is subject to southeast winds, particularly if there is a high tide during a storm. These winds will erode the land next to the retaining wall. He added that he has never seen the Board approve an application that required a bulkhead around the lot. He explained that the soil next to the bulkhead will be eroded away during storms. He added that he does not feel this is a good property to develop. He has observed that each full or new moon, the property is under water and the streets are flooded. He feels it is suitable to leave the property as is.

Mr. Nowak added that he understand the conundrum of balancing between development rights and water quality issues.

Dr. Spaur questioned whether property rights transfer from owner to owner.

Ms. Jacobi stated that property rights are a fact specific determination, which would need to be decided on by the City Attorney or discussed in a closed meeting.

Dr. Spaur added that he can understand why developers buy these lots. The water levels increase each year and the land becomes inexpensive.

Ms. Greene confirmed with Mr. Harbin that the lot is completely within the 50' seaward portion of the RPA.

Mr. Wilson commented that in the past, Ms. Greene has particularly opposed anything recreational within the 50' seaward portion. Ms. Greene agreed. She added that homeowners have been made to move recreational structures out of the 50' seaward.

Ms. Greene commented that building on this lot will disturb the small amount of stable soil, which would cause detriment to the water quality. She added that the sylvatica is one other tree that would likely grow on this lot

Mr. Wilson asked what kind of trees are on the property now. Ms. Greene commented that based on the pictures, it appears there are red oak trees, pines, and frag mites.

Mr. Harbin added that the applicant is able to meet the vegetation requirements with a combination of small canopy trees and shrubs, which may be better suited for this lot.

Mr. Nowak and Mr. Wilson confirmed that none of the existing vegetation will remain. Mr. Martin stated that everything will be cleared upward of the 3' contour.

Mr. Nowak questioned the survival of the existing tree roots if the level of the land is raised.

Mr. Martin stated that if the material is added far enough away from the base of the trees, they would likely be fine. Ms. Greene commented that it may not kill the trees right away, but within a few years it is possible.

Ms. Greene questioned whether the Board has ever approved an application that was completely within the 50' seaward portion.

Mr. Harbin added that the application for 1828 Rockwood Drive that was recently withdrawn was also mostly within the 50' seaward portion.

Ms. Greene explained that the lot being completely within the 50' seaward portion is what is troubling the Board. She cannot recall a time where the Board has approved an exception of that nature.

Mr. Martin commented that adding a homeowner on this lot would help with the trash collection and culvert drainage as you would have someone maintaining the property.

Mr. Martin questioned whether the Board's vote to deny the application voided the property rights of the existing lot. Ms. Jacobi advised the Board to refrain from answering Mr. Martin's question.

Mr. Martin explained that because the Board did not discuss the details of the plan or provide him with a request to revise the plan, he feels the rights to build on the lot have been voided.

Ms. Jacobi explained that the Board is not required to provide the applicant with ways to revise the application. She added that if Mr. Martin feels that there is a property right that has been voided, that may be discussed, but she does not agree with his statement.

**CBPA BOARD VOTE:**

Ms. Greene moved to **DENY THE EXCEPTION requested in PLN-CBPA-2018-034** due to the finding that 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. Mr. Curling seconded the motion. The motion was carried by a vote of 7 – 0.

---

**OTHER BUSINESS:**

There was no other business discussed at the meeting.

**ADJOURNMENT:**

With no further business, the meeting was adjourned at 6:50 P.M.

Sincerely,

Allison Gurkin,  
Recording Secretary

AG/jh

**APPROVED: February 20, 2019**