

Chesapeake Bay Preservation Area Board

Public Hearing Minutes – March 20, 2019 Human Resources Training Room – 6:00 P.M.

Call to Order: Chairman Stephen F. Nowak called the Chesapeake Bay Preservation Board meeting of March 20, 2019, to order at 6:00 p.m. in the Human Resources Training Room.

Roll Call:

PRESENT

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

EXCUSED

Chris Wilson, Vice-Chair

PLANNING DEPARTMENT STAFF PRESENT

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

CITY ATTORNEY STAFF PRESENT

Meredith Jacobi, Assistant City Attorney

APPROVAL OF MINUTES:

The February 20, 2019 CBPA Board minutes were presented into the record for Board action.

CBPA BOARD ACTION:

MINUTES for the February 20, 2019 CBPA Board were **APPROVED** by majority vote.

CBPA APPLICATION:

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

(Continued from September 19, 2018 CBPA Board Meeting)

CBPA BOARD ACTION:

The CBPA Board **CONTINUED THE VIOLATION** for thirty (30) days to the April 17, 2019 CBPA Board meeting.

Proponent:

Chris Falk, 205 South Battlefield Blvd, Ste 100, Chesapeake, Virginia, applicant.

Board Discussion:

Mr. Nowak stated that he was going to change the order of the agenda to put CBPA Violation V-18-07(v) first. Mr. Nowak stated that the applicant is requesting a continuance to gather more information.

Mr. Falk confirmed the continuance in concurrence with the City Attorney's office and the CBPA Administrator due to advertising constraints that the violation be moved to the April 17, 2019 CBPA Board meeting.

Ms. Jacobi stated that the continuance is recommend so that the violation and the application for the property can be heard at the same time. The application and the violation will be on the April agenda.

CBPA BOARD VOTE:

Ms. Greene moved to **CONTINUE THE CBPA VIOLATION V-18-07(v) for thirty (30) days to the April 17, 2019 CBPA Board meeting.** Mr. Curling seconded the motion. The motion was carried by a vote of 7 – 0, Wilson excused.

2. PLN-CBPA-2018-026

PROJECT/LOCATION: 1924 Lancing Crest Lane

APPLICANT/AGENT: Mountain Creek Custom Homes, LLC

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 1,420 SF of new impervious area is proposed (1,420 SF within the 100-foot RPA buffer).

SUBDIVISION/LOT #: 53 NEW MILL LANDING SEC 3

WATERSHED: Southern Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0462001000530

CBPA BOARD ACTION:

The CBPA Board CONTINUED THE EXCEPTION for sixty (60) days to the May 15, 2019 CBPA Board meeting.

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 1924 Lancing Crest Lane. He stated that the applicant is seeking an exception to construct a new detached garage within the 50-foot landward portion of the 100-foot RPA buffer. A total of 1,420 SF of new impervious area is proposed (1,420 SF within the 100-foot RPA buffer). The lot was recorded in 1997. The CBPA Review Committee reviewed this application on February 19, 2019 and recommended approval with a vote of 5 – 2.

Proponent:

Charles Hartman, Mountain Creek Custom Homes LLC, 189 Enchanted Forest Drive, Currituck, North Carolina, agent.

Steven Chandler, 1924 Lancing Crest Lane, Chesapeake, Virginia, owner.

Board Discussion:

Ms. Toida questioned if the impervious the area noted was just the footprint of the building.

Mr. Harbin stated that the impervious area noted was the driveway, walkway, building and deck. He also stated that if the applicant wanted to have the driveway connect to the garage, a new application would have to be submitted.

Mr. Klesch noted that there was a previous permit to raise the garage. He questioned if the applicant will be using fill material to raise the garage.

Mr. Harbin stated that if the garage is built on the flood plain, they will be required to meet the flood plain ordinance which would be associated with the building permit.

Ms. Jacobi stated that if there are questions about the fill requirements for the flood plain ordinance, it would be a question for the applicant on how they intend to meet the ordinance.

Ms. Greene questioned how many trees were on the lot and if the two trees required per the application would meet the exception requirement.

Mr. Harbin stated that calculation for canopy requirement is made based on the new impervious area of the addition.

Ms. Greene questioned if the lot is in the CBPA if there is a standing 50% canopy requirement.

Ms. Jacobi stated that the ordinance does require that the buffer have 50% canopy coverage and if there is not one it shall be established. As a matter of enforcement discretion, the City typically does not cite just for that individual violation.

Mr. Hartman introduced himself to the Board. He stated that he was not the owner of the property but the owner of the property is present.

Ms. Greene asked if fill would be necessary to raise the pad for the garage.

Mr. Hartman stated that they would have to wait for confirmation from the Building Department for their recommendations.

Ms. Greene stated that added fill would be a violation and Ms. Jacobi would have to confirm how the process would be handled. She also questioned if there were any plans to connect the existing driveway to the new garage.

Mr. Hartman stated that it is possible to add fill to the interior of the addition in order to elevate the garage. It would be filling inside structure and not filling in the lot to elevate the garage.

Ms. Jacobi confirmed that it would only be a violation if it exceeds 2,500 sq. ft. of fill. If the fill is kept under 2,500 sq. ft. to meet the flood plain requirements, there would not be a violation.

Ms. Greene questioned the tree coverage of the lot.

Mr. Chandler introduced himself and stated that there are quite a few trees on the lot, there is a row of trees in the back of the lot, approximate 20 trees.

Ms. Greene stated that according to the picture it does not look like there are many trees, approximately 5 trees by the look of the picture.

Mr. Chandler stated he is not sure how old the picture is, however the middle area of the picture is grown in with trees.

Mr. Harbin confirmed the picture was taken in March 2018.

Ms. Greene stated that according to the CBPA ordinance there is a 50% tree coverage per lot and the lot does not look like it is in compliance even with the addition of the two extra trees per the application requirements. She also questioned if the applicant would be willing to plant additional trees if necessary.

Mr. Chandler stated that he is willing to do whatever it takes for his application to be approved. He also stated that he is probably going to plant additional trees in the front of the lot and planting more in the back yard would not be a problem.

Ms. James noted that a look up of the property on Google Maps there are a lot of trees in the back of the lot that are not visible in the picture dated March 2018.

Mr. Chandler noted that a walk through his property to the wetlands, there is not an area where there are not any trees.

Ms. Toida questioned if there were intentions to extend the driveway to the garage.

Mr. Chandler confirmed he does intend to extend the driveway to the garage.

Ms. Greene stated that he would need to submit a new application in order to extend the driveway to the garage, since it is not on the submitted site plan.

Mr. Hartman stated that they were asked to remove the driveway extension from the site plan for the application to move forward.

Mr. Harbin confirmed they were asked to remove the driveway extension from the site plan.

Ms. Greene noted in the correspondence there was a plan to build a swimming pool and questioned if there were intentions to build a pool.

Mr. Chandler confirmed there are intentions to build a pool with impervious pavers.

Ms. Greene stated the ordinance which states there shall be 100 feet vegetative barrier between any impervious structures and the wetlands. She also noted that this request is for a variance of a very big structure so it is her opinion that it would be very difficult to add any other impervious structures.

Ms. Greene questioned if the driveway extension would set the property over the maximum impervious area.

Mr. Harbin answered that it would get close but could not answer the question for sure without the measurements. He also stated that the reason the pool was removed from the site plan for this application was that the application submitted only specified the detached garage. The site plan submitted showed the detached garage and a proposed pool and pool deck. In order to make the site plan match the application, the CBPA Review Committee asked that the pool and pool deck be removed. The applicant complied, the CBPA Review Committee reviewed that application again and recommended approval of the updated site plan. He noted that it is his opinion that it sounds like that applicant would like the detached garage, pool and pool deck be heard at the same time.

Ms. Greene questioned if the pool, pool deck, garage would exceed the allowable impervious area of the lot size.

Mr. Harbin answered that it would put it over the allowable impervious area.

Mr. Nowak questioned if the application being reviewed does not reflect what the actual plans are for the site. He also questioned if it would be appropriate if the application be tabled and allowed to go through the review process with the updated proposed plans.

Ms. Jacobi noted that the Board cannot force an applicant to amend their application or submit a new application. The board can rule on the application presented or continue and request the applicant submit new information, the applicant would have to consent to submitting an amended application.

Ms. Greene stated she would be strongly against to a pool and the big garage. The Board has never approved a pool in the 50 foot seaward portion. She stated the wetlands needed to stay undisturbed for water quality and the best option for water quality is trees. She also stated they have previously approved one structure in the 50 foot landward structure, but there has never been approval of two structures.

Ms. Jacobi confirmed the CBPA Review Committee requested the pool and pool deck be removed from the site plan because it was their opinion that the applicant was planning on doing the work in stages. The CBPA Review Committee did not want to imply that the pool would also be approved as part of the application. She noted that anything not on the site plan as part of the application would not be approved and a new application would have to be submitted for any future site plans.

Mr. Nowak stated that he did not want to mislead the applicant, and wanted to make sure the applicant understood that the application can be ruled on with just the garage, and without the other planned structures or the plan could be amended with all plans involved.

Mr. Klesch inquired if the applicant had considered moving the garage close to the driveway that is currently paved rather than putting in additional impervious structures.

Mr. Chandler answered that the closer the building comes to the property line the building would have to shift to the left due to side yard setbacks.

Mr. Klesch questioned the dimensions of the garage and if it was going to be a double garage.

Mr. Chandler confirmed that the plan was for a garage. He also confirmed that a portion of the garage was planned as a porch for the planned pool.

Mr. Klesch stated that the appearance of the neighborhood reflects that the conservation of the RPA was already in mind when the neighborhood was built and should be respected and taken into consideration.

Mr. Nowak questioned the applicant on how he would like to proceed.

Mr. Chandler noted that he was unsure of the best approach was for his application.

Mr. Harbin stated that typically it is asked that applicant submit the full scope of their plans, which was the original submitted site plan; however, the application only noted the detached garage.

Ms. Greene stated that there is only a certain percentage of impervious area for the lots and this application is asking for it all to be in the CBPA. She noted that she has concerns using that much of the lot for structures.

Mr. Klesch noted that the impervious area for this lot is 28%, and with the garage would place it at 24% impervious area.

Ms. Jacobi stated that in order to give the CBPA Review Committee time to review an updated application, it would need to be continued 60 days to the May 15 CBPA Board.

CBPA BOARD VOTE:

Ms. Greene moved to **CONTINUED THE EXCEPTION for sixty (60) days to the May 15, 2019 CBPA Board meeting**, to allow the applicant sufficient time to revise their application as appropriate to include all proposed development subject to review and approval under the CBPA Ordinance. Ms. Toida seconded the motion. The motion was carried by a vote of 7 – 0; Wilson excused.

3. PLN-CBPA-2018-033

PROJECT/LOCATION: 1200 George Washington Highway

APPLICANT/AGENT: Larry Johnson/Stokes Environmental

PROPOSAL: In accordance with Section 26-528 of the Chesapeake City Code, the applicant is seeking an **EXCEPTION** for authorization to construct 13,210 SF of surface parking, of which 5,746 SF will encroach into the 50-foot landward portion of the 100-foot RPA buffer.

SUBDIVISION/LOT #: PARCEL 1 RESUB A & B PORTION OF GENEVA CORP 1.3067

WATERSHED: Southern Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0251001000164

CBPA BOARD ACTION:

The CBPA Board GRANTED THE EXCEPTION requested in PLN-CBPA-2018-033 for a period of two years.

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 1200 George Washington Highway. He stated that the applicant is seeking an exception for authorization to construct 13,210 SF of surface parking, of which 5,746 SF will encroach into the 50-foot landward portion of the 100-foot RPA buffer. The lot was recorded in 1946. The CBPA Review Committee reviewed this application on February 5, 2019 and recommended approval with a vote of 8 – 0.

Proponent:

Dave Balsley, Stokes Environmental Associates Ltd, 4101 Granby Street, Norfolk, Virginia, agent.

John Pappas, 113A 83rd Street, Virginia Beach, Virginia, owner.

Opponent:

Harry Slaughter, 723 Wood Duck Lane, Chesapeake, Virginia, citizen.

Board Discussion:

Dr. Spaur questioned the past history of the lot.

Mr. Harbin answered that the lot development had come before the CBPA Board over ten years ago. The development was approved the encroachment with the same site plan. The development was never completed and the permit expired.

Ms. Greene questioned if the parking spaces shown were the minimum amount required for the structure.

Mr. Harbin answered the parking space allowed are dependent on the use of the structure and the agent was available to confirm the answer. The agent confirmed that the Zoning Department did review the site plan and did not have any issues with the parking spaces on the site plan. He stated he could not confirm if it was the minimum amount of parking spaces for the structure.

Mr. Klesch inquired about the dumpster location, and why it was not located on the opposite side of the building instead of by the side of the river.

Mr. Harbin stated that according to the site plan, there appeared to be storm water outfall and underground piping and the developer did not want it built on top of or place heavy equipment on top of the outfall. He also stated that the agent would be able to confirm in greater detail.

Mr. Klesch noted that depending on the use of the structure, he is concerned about trash draining into the river. He would also like to see some mitigation to prevent trash from flowing into the river.

Ms. Toida questioned about the drainage requirements of the site and if the development would drain into the City drains or into the river.

Mr. Harbin stated that the eventual outfall would be the creek; however, before it gets to the creek it would have to be treated for quality and quantity to meet present day storm water requirements.

Mr. Balsley introduced himself to the board.

Mr. Pappas introduced himself to the board.

Ms. Greene questioned what the building was going to be used for.

Mr. Balsley stated that the building would be an auto parts retail store.

Ms. Greene questioned Mr. Pappas about how long he has owned the property.

Mr. Pappas confirmed that he has owned the property over 40 years.

Ms. Greene inquired if there were any extra parking spaces other than the minimum required by the City.

Mr. Balsley confirmed that the spaces in the site plan are the minimum required for a retail structure that size.

Mr. Harbin stated that for a retail structure they are required to have one space for every 200 square feet which would be 31 parking spaces.

Ms. Greene inquired about how the water will be treated before it flows into the creek.

Mr. Balsley stated that there is no space on the lot for BMP without further encroachment, they will be using an underground treatment system. He stated the engineer who would be better able to answer the question was not at the meeting. He confirmed that it is the same plan that was submitted and approved in 2006.

Ms. Greene questioned if the engineers on the Review Committee approved the plan concerning the water runoff.

Mr. Harbin confirmed that the site plan was reviewed and approved for the encroachment for the principal structure and the minimum parking spaces.

Mr. Curling noted that the parking lot must have an underground retention pond. He stated that he wanted the applicant to be aware of the cost and maintenance associated with the underground retention pond.

Mr. Balsley confirmed that he is aware of the underground retention pond system and how the system will filter the overflow water into the creek.

Ms. Jacobi stated that the City has a department committed to storm water and drainage design. She confirmed that members of that department are on the Review Committee and there is an additional site plan review for storm water and drainage that will require approval. She stated that in most cases, before site plans come before the CBPA Board the rest of the site plan approval process has taken place, but she could not confirm for this specific application.

Mr. Klesch stated that he appreciates that there are more trees than required on the site plan and that the lot was recorded in 1946 and is the original owner.

Ms. Toida inquired if there was any sidewalks or cement on the back of the building.

Mr. Balsley confirmed that there are no plans to install cement or sidewalks in the back of the building and all the loading will be made on the side of the building.

Mr. Slaughter introduced himself to the Board. He stated he has witnessed the water quality in the City go from good to bad primarily due to drainage projects from the City. He stated he has seen more and more trash and oil sheen in the water. He stated the intersection of Canal Street and George Washington Highway has commercial buildings with parking lots that collect oil which drain into Saint Julian's Creek. He is concerned about the petroleum products from these buildings that eventual lead into the Elizabeth River.

Mr. Slaughter referenced an article from the March 6, 2019 edition of the Virginian Pilot that stated that Virginian Waters were not pristine but showed promise. He referenced another article from the March 20, 2019 Virginian Pilot that stated how the Government is using funds to protect the waters and if the application was approved it would be counterproductive in cleaning up the waters.

Mr. Slaughter stated that he is not opposed to new businesses but he is opposed to the infringement of the natural filtration system into the waterways. He is concerned that if more nonporous materials are covering the ground it allows easy runoff into the waterways. He stated he is concerned if these exceptions are granted, the fish and wildlife will not return.

Mr. Nowak inquired on how much of Mr. Slaughter concerns should be weighed into making a decision on the application.

Ms. Jacobi stated that it is an opinion that may be considered when deliberating the finding needed to approve the application. She stated his opinion can be weighed as much as possible within the bounds of the required factors, Mr. Slaughter's concerns sound like they are about water quality which is relative to the ordinance.

Ms. Greene stated that she has respect that this is the original owner since before the CBPA Ordinance took effect, and that carries rights concerning use and sell of the property.

CBPA BOARD VOTE:

Ms. Greene moved to **GRANT THE EXCEPTION requested in PLN-CBPA-2018-033** with the stipulation that the applicant provide all site landscaping as depicted in the submitted site plan, originally dated May 5, 2005. Ms. James seconded the motion. The motion was carried by a vote of 7 – 0; Wilson excused.

Ms. Greene moved that the CBPA Board go into a closed session in accordance with Virginia Code Section 2.2-3711 (A) (11) for the purpose of consultation with legal counsel assigned to the board to seek privileged legal advice where such consultation would adversely affect the public body. (7 – 0; Greene/Spaur, Wilson excused).

OTHER BUSINESS:

- Closed Session 7:12 P.M. – 7:19 P.M.
- Leslie Bonilla was introduced as the new CBPA Planner.

ADJOURNMENT:

With no further business, the meeting was adjourned at 7:20 P.M.

Sincerely,

Lewis Martinez,
Recording Secretary

LM/jh