

Chesapeake Bay Preservation Area Board

Public Hearing Minutes – April 17, 2019 Human Resources Training Room – 6:00 P.M.

Call to Order: Chairman Stephen F. Nowak called the Chesapeake Bay Preservation Board meeting of April 17, 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
Henry Curling, Member
Vickie Greene, Member
William Spaur, Member
Cristan Connito, Alternate Member

EXCUSED

Kaite James, Member
John Klesch, Member

ABSENT

Karen Toida, Alternate Member

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

Ms. Greene recommended a correction to application number PLN-CBPA-2018-026, presented by Mr. Klesch via email, to clarify canopy requirement. The number should be 50%, not the 15% presented in the minutes submitted to the board. The change has been made in the March 20, 2019 CBPA Board Minutes.

CBPA BOARD ACTION:

MINUTES for the March 20, 2019 CBPA Board were APPROVED by majority vote with the changes recommended.

CBPA APPLICATION:

- PLN-CBPA-2019-007**
PROJECT/LOCATION: Surface parking and buffer restoration/1232 George Washington Highway North
APPLICANT/AGENT: Chris Falk, F & W Builders/Sam Baraki, Site Improvement Associates, Inc.
PROPOSAL: In accordance with Section 26-528 of the Chesapeake City Code, the applicant is seeking an **EXCEPTION** for the authorization to construct surface parking within the 50-foot landward and 50-foot seaward portions of the 100-foot Resource Protection Area (RPA) buffer and conduct buffer restoration activities associated with CBPA Violation V-18-07(v). A total of 15,500 SF of impervious area is proposed (13,480 SF within the RPA buffer).
SUBDIVISION/LOT #: PT GEO WASH HWY NASH TR ST JULIAN CRK 1.525AC
WATERSHED: Southern Branch of the Elizabeth River
TAX MAP SECTION/PARCEL: 0251001000780
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CBPA BOARD ACTION:

The CBPA Board **GRANTED** the exception for a period of two years with the following stipulations:

- Provide the equivalent of 26 large canopy trees within the 100-foot RPA buffer to mitigate the impact of the new impervious area within the 100-foot RPA buffer. Healthy existing trees**

along the shoreline should be preserved. The 20 large canopy trees and 23 mulched shrubs depicted on the received site plan entitled “CBPA Restoration Plan” and dated October 31, 2018, should be planted as shown. 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. All proposed drive aisles and parking stalls shall be constructed exclusively of gravel, with the exception of designated handicapped parking stalls and loading space depicted on the received site plan.**
- 3. All reasonable efforts shall be made to preserve existing trees along property shoreline.**

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 1232 George Washington Highway North. He stated that the applicant is seeking an exception to construct surface parking within the 50-foot landward and 50-foot seaward portions of the 100-foot Resource Protection Area (RPA) buffer and conduct buffer restoration activities associated with CBPA Violation V-18-07(v). A total of 15,500 SF of impervious area is proposed (13,480 SF within the RPA buffer). The lot was recorded in 1924. The CBPA Review Committee reviewed this application on March 19, 2019 and recommended approval with a vote of 4 – 3.

Proponent:

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

Sam Baraki, 800 Juniper Crescent, Chesapeake, Virginia, agent

Board Discussion:

Mr. Curling read a disclosure stating that he had previously hired, for an unrelated matter 10 to 15 years ago, Mr. Christopher Falk who is President of the landowner company that is subject of the matter V-18-07(v). The City Attorney’s Office has confirmed that this issue does not propose a legal conflict now withstanding. He wishes to disclose the above and state that he is able to participate in the transaction fairly, objectively and in the public’s interest.

Mr. Nowak clarified that this disclosure would apply to application number PLN-CBPA-2019-007.

Ms. Jacobi stated that the disclosure were read backwards, PLN-CBPA-2019-007 should have been read first then V-18-07(v) when it is presented to the board. The disclosure will have to be read again before the next application.

Ms. Greene questioned if the 13,480 SF in the within the RPA buffer was the correct number.

Ms. Jacobi stated that the number was the number the board found was disturbed and was the board's Finding of Fact.

Mr. Wilson questioned if the work that had been completed extended into the neighbor's parcel line as shown in the pictures and if the property owner was the same for both lots.

Mr. Harbin clarified that it is a different owner, however the parcel line depicted in the pictures are not surveyed and are not exact in the picture.

Ms. Greene questioned if the pictures presented are how the property looks right now.

Mr. Harbin stated that the pictures presented are the most current pictures of the property.

Dr. Spaur questioned if the square building in the pictures was still there.

Mr. Harbin clarified that the building is still there as is a garage on the property. He also clarified that both of the buildings in the picture are still existing and were existing prior to the application being submitted.

Mr. Wilson questioned whether the driveway being proposed is considered pervious or impervious.

Mr. Harbin stated that the driveway is considered impervious.

Mr. Nowak questioned if the required canopy is 10,565 SF while the application stated 8,920 SF of canopy coverage.

Mr. Harbin clarified that 8,920 SF is the canopy coverage provided with the new plantings and does not include the preservation of any existing canopy coverage.

Mr. Wilson questioned how much of the water in the property is included in the RPA boundary line.

Mr. Harbin answered that it does not include the water, it is a surveyed line presented.

Ms. Greene requested clarification if the water is not included in the calculations, and most of the property will be covered in concrete, will the calculations include the land across the water that is also within the property line.

Mr. Harbin clarified that the lot area square footage does include the water. The calculation for impervious area includes the water and is calculated according to code.

Dr. Spaur stated that he did not recall a lot area being calculated with the waterway included in the square footage.

Ms. Jacobi stated that it is rare for a property to include land that is across waterway.

Dr. Spaur stated he finds it unusual to include a waterway into the calculation of square feet.

Ms. Jacobi stated that in this case, it is calculated according to how it is written according to the city code.

Mr. Wilson questioned if there was future developments for the lot or if the parking lot was all that will be proposed. He also questioned if it will be asphalt or concrete and if the application had been through stormwater review.

Mr. Harbin confirmed it had been through review.

Mr. Falk introduced himself to the board.

Mr. Baraki introduced himself to the board.

Mr. Falk clarified that there are two driveway entrances that were constructed by the City of Chesapeake. He also clarified that the adjacent parking lot is for a veterinary hospital and connects the properties.

Mr. Wilson questioned if the parking lot would be paved right along the property line.

Mr. Falk clarified that it was his understanding that the parking lot would be paved along the property lines.

Mr. Baraki stated that the property was previously a dog kennel and was paved with gravel. Mr. Falk removed the building which housed the dog kennel and put a new building in its place. Mr. Falk also added additional gravel, which the board found to be in violation, so he was instructed to get an approved site plan which is the site plan presented. He also stated that the parking shown was the minimum amount of parking spaces allowed for the site.

Mr. Baraki stated that there is a plan to remove some of the gravel along the tree line, place top soil and seed and plant additional grass and trees. The trees planted will exceed the canopy requirements and has been reviewed by staff.

Mr. Baraki stated that they have worked hard with city staff to minimize environmental impact and have done all they can to make sure requirements have been met.

Mr. Baraki stated that they have submitted a preservation easement to cover the area from the top of the bank to the end of the property. They also submitted a stormwater management agreement that includes gravel to slow water flow to prevent erosion. This will be maintained by the applicant.

Ms. Greene requested if Ms. Jacobi could discuss the opinion she provided on the property.

Ms. Jacobi stated she could not discuss the opinion because it is a privileged decision and a single board member could not waive privilege. If further discussion was needed it would need to be in a closed meeting.

Mr. Wilson moved to have the application approved based on the findings contained in the Chesapeake Bay Preservation Act Review Committee staff report including any stipulations recommended by the Review Committee in the report.

Mr. Curling seconded the motion.

A roll was taken and the motion was voted a tie, 3 – 3 (Conitto, Greene and Spaur oppose, James and Klesch excused, Toida absent.).

Ms. Jacobi stated that in a tie vote the motion does not carry and the board can continue to discuss to see if an alternate motion is proposed or the motion does not carry and the motion is not approved.

Mr. Wilson requested that the board members who are in disagreement discuss what their concerns are and see if an alternate motion can be agreed upon.

Ms. Greene requested to discuss the legal opinion in a closed meeting.

Ms. Jacobi requested that the meeting be placed in a brief recess to ensure that Ms. Greene's concerns are appropriate for a close meeting.

Mr. Nowak put the meeting in recess at 6:30 P.M.

Mr. Nowak brought the meeting back in session at 6:32 P.M.

Ms. Green stated that her concerns are that the lot is odd and covers the marsh and the creek which creates the calculations to include the waterway.

Ms. Greene also stated that the amount of concrete to make the parking lot that close to the water concerns her.

Mr. Wilson stated that he understands that mistake were made clearing the lot which will be discussed in the next item. The lot already has an office building. He stated that the alternative is to vote no, which would leave the lot vacant and it be worthless.

Ms. Conitto stated she disagreed with that statement and there are alternatives like removing the office space which would remove some of the parking spaces.

Mr. Wilson questioned what the rule was for parking spaces for office buildings.

Mr. Baraki stated that it is 1 space per 270 SF. He also stated that unless the entire building is brought down and parking rearranged, the entire parking area is in the 100 FT buffer. A vote no would be essentially condemning the property, no business licensed could be issued because of insufficient parking spaces.

Ms. Greene stated that the property was not always business property, a house was built there and the dog kennel built around the house.

Mr. Baraki stated that since at least the 1980's there have been dog kennels there.

Ms. Greene stated that the applicant bought the property after the CBPA ordinance came into effect so what it was used for previously has no effect on the application.

Mr. Nowak stated that according to the city code the waterway should be counted for the square footage. He then asked Ms. Jacobi for clarification.

Ms. Jacobi stated that city code ordinance number 26-515 states the impervious area of any lot or parcel includes the entire lot.

Ms. Jacobi stated that according to city code the ordinance number 26-515 states the impervious area of any lot or parcel which includes the entire lot.

Dr. Spaur disagreed with the code.

Mr. Wilson questioned if there were any alternate plans to retain stormwater through underground management devices or retention ponds.

Mr. Baraki stated that there is not enough space in the lot to install a retention pond so the flow will be across the grass and stone, which will slow the water and filter the stormwater. The plans exceed the water quality requirements.

Mr. Baraki stated that the calculations for the canopy was calculated using the land where the development will be and did not include the water or the land across the water within the property lines.

Mr. Falk stated that there is stormwater drainage along the property using a ditch that is already there.

Mr. Nowak questioned when the buildings were built.

Ms. Jacobi stated that the garage was built shortly after February 26, 2018 and the house was built before the CBPA ordinance.

Ms. Greene noted that the garage was built on the previous footprint of the previous garage and is a building in compliance.

Ms. Greene stated she is concerned about the top soil and concrete being used killing the existing trees on the property.

Mr. Falk stated that the parking lot is using gravel not concrete.

Mr. Baraki clarified that the only parking spaces using concrete are the handicap parking spaces and the side walk to meet ADA requirements the rest will be gravel parking lot.

Ms. Jacobi stated that the information she has is that the parking lot will need to be paved unless a conditional use permit is approved.

Mr. Harbin stated that the approved site plan states that the parking lot will be gravel and limited gravel as described. He stated the site plan is in the violation staff report of the CBPA Board package.

Mr. Curling questioned if the parking lot is in accordance with the Chesapeake Bay Preservation Act.

Mr. Baraki confirmed it had been approved.

Mr. Nowak questioned if additional approval would be needed according to the code to use gravel for the parking lot.

Ms. Jacobi stated it is her understanding that additional approval depending on what the board approves. The board has previously approved alternate paving for parking spaces.

Ms. Greene expressed concern of the existing trees and the top soil and construction equipment being used.

Mr. Baraki stated that the work will be 3 to 4 feet above where the trees are and heavy equipment cannot be used near the trees.

Ms. Greene requested clarification that gravel will be used instead of concrete.

Mr. Baraki confirmed that gravel will be used along with stone along the parking spaces to assist in filtering runoff water.

Ms. Greene stated the stipulation should state that the only concrete used for the parking lot would be for the handicap parking space and the sidewalk from those spots that leads to the building entrance.

Mr. Nowak stated that every reasonable effort be made to protect existing trees as a stipulation for approval.

Ms. Jacobi stated that the Review Committee was under the understanding that it would be a paved parking. If the application is approved the stipulation should be made that it is a gravel parking lot.

Mr. Nowak questioned if the lot comes under water, does the statute recognize that trees cannot be replaced if there is less land.

Ms. Jacobi stated that it is an issue within the CBPA and somehow the owners will have to find a way to comply until the issue of the RPA coming further inland is resolved.

CBPA BOARD VOTE:

Mr. Wilson moved to **GRANT THE EXCEPTION** requested in **PLN-CBPA-2019-007** with the stipulations that the applicant provide the equivalent of 26 large canopy trees within the 100-foot RPA buffer to mitigate the impact of the new impervious area within the 100-foot RPA buffer. Healthy existing trees along the shoreline should be preserved. The 20 large canopy trees and 23 mulched shrubs depicted on the received site plan entitled "CBPA Restoration Plan" and dated October 31, 2018, should be planted as shown. All proposed drive aisles and parking stalls shall be constructed exclusively of gravel with the exception of designated handicapped parking stalls and loading space depicted on the received site plan. All reasonable efforts shall be made to preserve existing trees along property shoreline. Mr. Curling seconded the motion. The motion was carried by a vote of 5 – 1, Spaur opposed, James and Klesch excused, Toida absent.

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 March 20, 2019 CBPA Board Meeting)

CBPA BOARD ACTION:

The CBPA Board took the following action on the above referenced CBPA Violation:

- 1. The CBPA Board voted to accept PLN-CBPA-2019-007, as approved by the CBPA Board, as the restoration required for the site.**
 - 2. The CBPA Board voted to impose a civil penalty of \$5,000.**
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Staff Presentation:

Mr. Harbin presented the violation to the Board, along with the findings and recommendations. He presented pictures of the site at 1232 George Washington Highway North. He stated that the violation was for unauthorized clearing and grading within the 100-foot RPA buffer and RMA. Approximately 21,130 SF of unauthorized changes are within the RPA buffer, and approximately 1,830 SF of unauthorized changes are within the RMA. The lot was recorded in 1924. The CBPA Board reviewed this application on at the September 2018 CBPA Board meeting at which time the CBPA Board voted to determine that a violation had occurred at 1232 George Washington Highway N involving 13,800 SF of unauthorized clearing and grading on the site. The CBPA Board voted to determine that restoration of the site is required. 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. The CBPA Board voted to table the discussion of the civil penalty until the March 2019 CBPA Board meeting. The CBPA Board voted to table the discussion of the civil penalty until the April 2019 CBPA Board meeting so both the exception application and the violation could be heard at the same time. In determining an appropriate civil charge, the CBPA Board should consider the extent of the violation, the level of good faith effort demonstrated by the owner, the history of non-compliance by the owner, and the level of cooperation by the owner.

Proponent:

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

Sam Baraki, 800 Juniper Crescent, Chesapeake, Virginia, agent.

Board Discussion:

Mr. Nowak questioned if the board could reconsider the violation since the board had previously decided there was a violation.

Ms. Jacobi stated that it was already decided that there was a violation and the board could no longer reconsider the previous findings.

Mr. Nowak confirmed the board's action during this meeting was decision was for a civil fine, if needed, and the restoration required.

Ms. Greene clarified that there was a period of non-compliance followed by a series of cooperative discussions.

Ms. Jacobi stated that was correct.

Mr. Harbin stated there was a stop work order issued May 29, 2019.

Ms. Jacobi stated there were other violations of ordinances. A different stop work order was issued for violation of the erosion sediment ordinance, which was followed by an appeal and circuit court proceedings.

Mr. Falk stated that there was a prior letter sent that F&W builders had disturbed over 43,560 SF of land at the site. There was a period of time in which he worked with staff to clarify the situation and an amended letter was sent showing that he had been cooperating.

Mr. Wilson questioned if there was approval for a set of plans to build a garage.

Mr. Falk stated that was correct. When he first started working on the property the first thing he did was clean up the property. He presented pictures of the property prior to when he purchased and started to clean the property up. He took down a tree that was effecting entrance of the property. 2-3 pine trees that were dead were also taken down. He received a stop work order letter on February 26, 2018. He received site plan approval and a building permit on February 27, 2018. On March 7, 2018 a City inspector visited the site and approved the footing and concrete was poured. On April 12, 2018 another City inspector visited, did not have issues with anything, so he was given a final building inspection. On April 12, 2018 a Certificate of Occupancy permit was filed. On April 30, 2018 a hold was placed on the Certificate of Occupancy because of an error.

Dr. Spaur questioned that if after the stop work order was issued had he continued the work with approval.

Mr. Falk confirmed that he was issued all the certificates so he continued construction.

Mr. Wilson clarified his questioned if the mistake made was parking spaces.

Ms. Jacobi stated that the parking spaces were not the issue the stop work permits were the issue. She presented pictures by City inspectors of the property. City Staff concluded that the buildings were in the existing footprints, so no further permits were needed.

Mr. Falk stated that he sat down with the head of building inspections and nothing else was required based on his site plans. Staff granted him the permits.

Ms. Greene stated that the CBPA violations are the trees being taken down. The Site plan presented is appropriate restoration. The civil fine will be based on the trees being removed, soil being disturbed and adding the fill. She stated that 13,000 SF were disturbed. His non-cooperation with the city and the 13,000 SF of land disturbed would be the process in determining the fine and she asked for clarification as to whether this was correct.

Ms. Jacobi stated that it is up to the board's findings. The City position is that Site plans were submitted in November 2018 and from that stand point there has been cooperation. The CBPA stop work order was issued May 29, 2018.

Mr. Falk stated that he had been communicating with Mark Curry two to three times to resolve the issue.

Mr. Nowak stated that the board should not focus on the length of time for the violation, but the deviation of non-compliance.

Ms. Greene stated that the board, in previous cases, has used the square footage and the severity of the disturbance to determine the fine.

Mr. Falk stated that he had been unaware that he was not allowed to grade and add gravel to existing gravel.

Mr. Wilson clarified that the board's decision was not about the building permits but rather the land disturbance

Mr. Falk clarified that the lot was not pristine and gravel was already there.

Mr. Curling read a disclosure stating that he had preciously hired, for an unrelated matter 10 to 15 years ago, Mr. Christopher Falk who is President of the landowner company that is subject of the matter V-18-07(v). The City Attorney's Office has confirmed that this issue does not propose a legal conflict now withstanding. He wished to disclose the above and state that he is able to participate in the transaction fairly, objectively, and in the public's interest.

CBPA BOARD VOTE:

Mr. Curling moved to take the following action on CBPA VIOLATION V-18-07(v) with the stipulations that the board accept PLN-CBPA-2019-007, as approved by the CBPA Board, as the restoration required for the site. The CBPA Board would impose a civil penalty of \$5,000. Ms. Greene seconded the motion. The motion was carried by a vote of 6 – 0, James and Klesch excused, Toida absent.

OTHER BUSINESS:

None.

ADJOURNMENT:

With no further business, the meeting was adjourned at 7:40 P.M.

Sincerely,

Lewis Martinez,
Recording Secretary

LM/jh