

Chesapeake Bay Preservation Area Board

Public Hearing Minutes – May 15, 2019 Human Resources Training Room – 6:00 P.M.

Call to Order: Chairman Stephen F. Nowak called the Chesapeake Bay Preservation Board meeting of May 15, 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
John Klesch, Member
William Spaur, Member
Cristan Connito, Alternate Member
Karen Toida, Alternate Member

EXCUSED

Chris Wilson, Vice-Chair
Kaite James, Member

PLANNING DEPARTMENT STAFF PRESENT

Leslie Bonilla, CBPA Planner
Lewis Martinez, CBPA Recording Secretary

CITY ATTORNEY STAFF PRESENT

Meredith Jacobi, Assistant City Attorney

APPROVAL OF MINUTES:

The April 17, 2019 CBPA Board minutes were presented into the record for Board action.

Ms. Greene recommended editorial changes to the minutes presented by Chairman Nowak via email. The changes have been made to the April 17, 2019 CBPA Board Minutes.

CBPA BOARD ACTION:

MINUTES for the April 17, 2019 CBPA Board were APPROVED by majority vote with the changes recommended.

CBPA APPLICATION:

1. **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
(Continued from March 20, 2019 CBPA Board Meeting)
-

CBPA BOARD ACTION:

The CBPA Board CONTINUED THE EXCEPTION for sixty (60) days to the July 17, 2019 CBPA Board meeting.

Board Discussion:

Mr. Nowak stated the applicant has requested a continuance.

Ms. Jacobi stated a motion to continue the application was needed.

CBPA BOARD VOTE:

Ms. Greene moved to **CONTINUE THE EXCEPTION for sixty (60) days to the July 17, 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. Dr. Spaur seconded the motion. The motion was carried by a vote of 6 – 0; James, Klesch, and Wilson excused.

Mr. Klesch arrived following the vote to continue application PLN-CBPA-2018-026. The Board was empty one seat when he arrived and he was allowed to fill the empty seat for the remainder of the meeting.

2. PLN-CBPA-2019-011

PROJECT/LOCATION: Three Storage Sheds/2137 Arbutus Circle

APPLICANT/AGENT: Bonnie Self

PROPOSAL: In accordance with Section 26-528 of the Chesapeake City Code, the applicant is seeking an after-the-fact **EXCEPTION** for the authorization to retain three storage sheds within the 50-foot landward and 50-foot seaward portions of the 100-foot Resource Protection Area (RPA) buffer. A total of 438 SF of impervious area is associated with the storage sheds (438 SF within the RPA buffer).

SUBDIVISION/LOT #: 22 Brentwood Sec 1

WATERSHED: Southern Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0253007000220

CBPA BOARD ACTION:

The CBPA Board DENIED THE EXCEPTION requested in PLN-CBPA-2019-011 due to the following finding:

The requested exception to the criteria is NOT the minimum necessary to afford relief. The Board further concurred with the CBPA Review Committee analysis as found within the staff report regarding item two of the CBPA applications heard at the afore-mentioned Board Meeting.

Staff Presentation:

Ms. Bonilla presented the application to the Board, along with the CBPA Review Committee's findings and recommendations. She presented pictures of the site at 2137 Arbutus Circle. She stated that the applicant is seeking an after-the-fact EXCEPTION for the authorization to retain three storage sheds within the 50-foot landward and 50-foot seaward portions of the 100-foot Resource Protection Area (RPA) buffer. A total of 438 SF of impervious area is associated with the storage sheds (438 SF within the RPA

buffer). The lot was recorded in 1953. The CBPA Review Committee reviewed this application on April 2, 2019, and recommended denial with a vote of 7 - 1.

Proponent:

Bonnie Self, 2137 Arbutus Circle, Chesapeake, Virginia, applicant. Ms. Self stated that the sheds were there before she purchased the property about a year and a half ago.

Steve Self, 2137 Arbutus Circle, Chesapeake, Virginia, applicant. Mr. Self confirmed the shed closest to the water had been in place prior to the CBPA ordinance.

Board Discussion:

Ms. Toida questioned which shed was Shed 1.

Ms. Bonilla stated that the shed closest to the water body is in the 50 foot seaward portion of the CBPA and is the shed the exception request is concerning.

Ms. Greene questioned how the applicants were notified about the discovery of the problem.

Ms. Bonilla stated that the applicant submitted an application for an addition of their house. During the process, it was discovered that there were three sheds on the site that had not been permitted. In order for the sheds to remain on the site, they require permits which require approval through the Board.

Ms. Greene questioned if the sheds in question pre-dated the ordinance.

Ms. Bonilla stated that since the sheds predated the ordinance it would need to be legal non-conforming.

Ms. Jacobi stated that a permit is still needed unless they apply for a lawful non-conforming permit. As far as narrowing down the date of when the sheds were placed there, staff uses aerials from Pictometry and Google Maps for time lapsed photos. This was how staff concluded permits were definitely needed for the sheds closest to the house since there were none on record.

Ms. Greene questioned if the shed was there before the ordinance, is it grandfathered in and assumed to be legal.

Ms. Jacobi answered that it is a complex issue. The property owner has not applied for that status and the records indicate that the shed pre-dates the ordinance. It is a benefit to the property to put it on a site plan and have it approved. The application is for approval of the shed not the legality of the shed.

Ms. Greene questioned why the Review Committee recommended denial of the application.

Ms. Jacobi stated that the consideration needed to be met in Section 26-528(c) of the City ordinance needed to be met, the Review Committee found that the standard was not met.

Ms. Greene questioned what type of foundation the sheds are sitting on.

Mr. Self stated that they are sitting on form blocks and are movable. The one closest to the water is on a block and concrete slab.

Ms. Greene asked if the applicant is willing to move the sheds.

Mr. Self questioned where the sheds could be moved.

Ms. Self stated that there is not enough room behind the garage since the area is too narrow and the back yard would be inaccessible if the sheds were moved to the opposite side of the property outside the buffer area.

Mr. Self noted that they are currently waiting on approval for a pier and they would need to be able to get through that area to build the pier.

Mr. Nowak questioned if the sheds were there before they moved in, were they essential.

Ms. Self stated that she uses the garage to park her car and not for storage.

Mr. Self stated that they use the sheds to store items for their grandkids, lawn care equipment and other miscellaneous items. He stated they moved from a five bedroom house to a three bedroom house and the sheds are being used for those items.

Ms. Greene suggested to move the shed behind the garage.

Ms. Self stated there is an addition to the house being constructed. The shed would not fit in that area if you allow ten feet from the property line.

Mr. Klesch questioned if the applicants intend to park their jet-skis in the sheds when they are not in use and if a path was going to be created to make the pier accessible.

Mr. Self confirmed they intend to use the area along the property to access the pier.

Ms. Self confirmed the jet-ski is in the garage during the winter and is normally parked in the backyard at the side of the house.

Mr. Self stated the sheds would be an eyesore and they are trying to be respectful to their neighbors.

Mr. Klesch questioned if the applicants plan further disturbances in their backyard besides the pier.

Ms. Self stated once the pier is installed they will keep the jet-ski on the pier so access to the backyard would no longer be needed to put the jet-skis in the water.

Mr. Klesch questioned which side of the property the path and the pier would be placed.

Mr. Self stated that the pier would be placed in the middle of the property.

Ms. Toida questioned when the other sheds were placed on the property.

Ms. Bonilla stated staff used aerial photography to determine when the sheds were installed since there is no record of any permits.

Ms. Toida questioned if the sheds were installed at the same time or at different times

Mr. Self stated the sheds are exactly the same; however, one has a new roof that is why its looks different in the aerial pictures.

Ms. Toida questioned when the applicants purchased the property.

Ms. Jacobi stated that City records show the date of purchase as November 8, 2017.

Dr. Spaur questioned if there was rip rap installed along the bank or if was other material.

Mr. Self stated it is rip rap with felt underlay.

Ms. Greene questioned if there is any record on the rip rap.

Ms. Jacobi stated the permit for the rip rap was not permitted by the City so she does not have information on the installation of the rip rap.

Mr. Nowak stated the CBPA has to balance the quality of the water as well as property rights. He questioned if only one of the sheds has a concrete pad.

Ms. Self confirmed that only one shed had a concrete pad. She also stated that she had not been told to submit a legal non-conforming application but was willing to do so.

Mr. Nowak stated he understood the Review Committee's recommendations for denial; however, if the application was approved could a stipulation be made that once the shed is no longer useful, it cannot be replaced or deny the application and it would have to be removed.

Dr. Spaur stated that another option would be that the shed closest to the water be removed and approve the other two sheds.

Ms. Greene stated that if the Review Committee's recommended to deny the application could staff explain conditions in the staff report.

Ms. Bonilla stated that there were conditions recommended by the Review Committee, but conditions that can discussed if the Board chooses to approve the application.

CBPA BOARD VOTE:

Ms. Greene moved to **DENY APPLICATION PLN-CBPA-2019-011** where the facts presented do not support the following finding: The exception request is NOT the minimum necessary to afford relief. Ms. Toida seconded the motion. The motion was carried by a vote of 6 – 1; Klesch opposed, James and Wilson excused.

3. PLN-CBPA-2019-015

PROJECT/LOCATION: 25'x55' in-ground pool & concrete/3920 Walkers Bend Dr.

APPLICANT/AGENT: Bill Fearn

PROPOSAL: In accordance with Section 26-528 of the Chesapeake City Code, the applicant is seeking an **EXCEPTION** for the authorization to construct a 25' by 55' in-ground pool and associated concrete located within the 50-foot landward portion of the 100-foot Resource Protection Area (RPA) buffer. A total of 1,375 SF of new impervious area is proposed (425 SF within the RPA buffer).

SUBDIVISION/LOT #: Walkers Bend Ph 2/Lot 11

WATERSHED: Western Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0164017000110

CBPA BOARD ACTION:

The CBPA Board DENIED THE EXCEPTION requested in PLN-CBPA-2019-015 due to the following finding:

No special situation has been identified that prevents the applicant from abiding by the Ordinance. The Board further concurred with the CBPA Review Committee analysis as found within the staff report regarding item three of the CBPA applications heard at the aforementioned Board Meeting.

Staff Presentation:

Ms. Bonilla presented the application to the Board, along with the CBPA Review Committee's findings and recommendations. She presented pictures of the site at 3920 Walkers Bend Drive. She stated that the applicant is seeking an EXCEPTION for the authorization to construct a 25' by 55' in-ground pool and associated concrete located within the 50-foot landward portion of the 100-foot Resource Protection Area (RPA) buffer. A total of 1,375 SF of new impervious area is proposed (425 SF within the RPA

buffer). The lot was recorded in 2014. The CBPA Review Committee reviewed this application on April 16, 2019, and recommended denial with a vote of 7 - 0.

Proponent:

Katie Jerabek, 3920 Walkers Bend Drive, Chesapeake, Virginia, applicant. Ms. Jerabek submitted pictures of the area of the pool. She stated that there would be more concrete around the pool closer to the house; however, it is not shown in the site plan. There would also be a walkway installed using stone pavers.

Matthew Jerabek, 3920 Walkers Bend Drive, Chesapeake, Virginia, applicant.

Bill Fearn, 760 Oak Grove Road, Chesapeake, Virginia, agent.

Board Discussion:

Ms. Toida questioned if the concrete shown on the site plan would be the only concrete laid around the pool.

Mr. Nowak questioned what type of walkway would be installed and if the walkway would have to be shown in the site plan.

Ms. Bonilla requested clarification on where the walkway would be installed.

Ms. Greene questioned if the walkway would be cement.

Ms. Jacobi clarified that everything that is impervious is to be presented on the site plan. If the Board approves the application, the walkway is small enough where it could be approved and stipulations be imposed.

Ms. Greene questioned if the 55 feet for the pool was large for a pool.

Ms. Jerabek clarified that the pool is 40 feet not 55 feet.

Mr. Fearn clarified that the pool is 18 feet x 40 feet.

Ms. Bonilla clarified that the pool itself is 40 feet and the concrete surrounding the pool brings the length to 55 feet.

Ms. Greene referenced the Staff Report that stated the pool can be moved out of the RPA entirely and that was the reason for the denial recommendation and questioned if they have perceived ways to move it out of the RPA.

Ms. Jerabek stated they can move the pool out of the RPA but the reason they chose the lay out is there is a tree and a deck that the site plan doesn't show. The pictures she presented shows the tree and the deck. If the pool is shifted it would be right off the steps of the deck and would be a hazard for her kids.

Ms. Toida questioned if the tree in the pictures is a sapling.

Ms. Jerabek confirmed it is a sapling and can be moved if necessary.

Ms. Greene questioned if the pool can be kept out of the RPA if it is smaller.

Ms. Jerabek confirmed that if the pool is moved a different direction it can be kept out of the RPA; however, it would be right off the step of the deck.

Mr. Klesch stated since the lot was recorded after the CBPA ordinance, all efforts should be made to keep out of the RPA buffer. He stated the deck can be rebuilt or a smaller pool installed to keep out for the RPA buffer.

Ms. Connito stated she has family members that live in the neighborhood and they are currently having issues with water having nowhere to go because of new developments. The issue is causing properties to become wet and soggy because the water has nowhere to go.

Ms. Toida stated that she feels there are options available to keep the pool out of the RPA buffer, possibly shifting the pool or making it smaller.

Mr. Nowak questioned if there are other options for the pool.

Mr. Fearn stated there are other options for the pool, however, the location selected was the ideal location for the applicant to preserve some of the yard for her children and to maintain privacy from the neighbors. He has spoken to staff about other options for the location of the pool and he was advised to come before the Board to request approval for this location. The size of the pool is ideal for the family.

Mr. Nowak questioned how much of the pool was inside the RPA buffer.

Ms. Bonilla confirmed it is 425 SF inside the RPA buffer.

Mr. Klesch stated that since it is a new development the 100 foot RPA should be respected. He stated that he is worried about setting precedent for other neighbors requesting pools and other exceptions. Mr. Klesch stated that offering a landscape plan along with the site plan would be beneficial.

Ms. Jerabek stated that she has planted trees and asked if there was a specific amount she could plant.

Dr. Spaur stated a riparian buffer would be beneficial to the site.

Mr. Nowak stated that properties in the CBPA ordinance must replace trees in a one for one basis to ensure the water quality of the Chesapeake Bay.

Mr. Nowak questioned if there was a way to take the pool out of the 100 foot buffer.

Mr. Fearn stated there is a way to situate a different pool in a different orientation, but it is not ideal for what the applicants want.

Mr. Jerabek questioned if there is a certain number of trees that can be planted.

Ms. Jerabek stated she has contacted Riverstar Homes for assistance on planting.

Mr. Klesch stated that the applicant can modify the plan or minimize the impact to the RPA with a different shape pool.

Mr. Jerabek questioned if there is a certain number of trees that can be planted.

Mr. Klesch confirmed there is a formula to account for the number of trees that should be planted.

Mr. Nowak questioned if the application is disapproved can they submit a different plan.

Ms. Jacobi confirmed that if the applicant can submit a different plan that is in the opinion of the CBPA Planner materially different, then they will not be bound by the year timeline that prevents them from submitting a new plan.

CBPA BOARD VOTE:

Ms. Greene moved to **DENY APPLICATION PLN-CBPA-2019-015** where the facts presented do not support the following finding: No special situation has been identified that prevents the applicant from abiding by the Ordinance. Dr. Spaur seconded the motion. The motion was carried by a vote of 7 – 0; James and Wilson excused.

OTHER BUSINESS:

- Discussion of CBPA Board meeting rules and procedures
- Discussion of letter to send to City Council suggesting ordinance modification to allow Riparian Buffers without Code Violation

ADJOURNMENT:

With no further business, the meeting was adjourned at 7:12 P.M.

Sincerely,

Lewis Martinez,
Recording Secretary

LM/lb