

## *Chesapeake Bay Preservation Area Board*

### **Public Hearing Minutes – February 19, 2020 City Council Chambers – 6:00 P.M.**

**Call to Order:** Chairman Chris Wilson called the Chesapeake Bay Preservation Area (CBPA) Board meeting of February 19, 2020, to order at 6:00 p.m. in City Council Chambers.

**Roll Call:**

**PRESENT**

Chris Wilson, Chair  
Henry Curling, Vice-Chair  
Vickie Greene, Member  
John Klesch, Member  
Stephen F. Nowak, Member  
William Spaur, Member  
Karen Toida, Alternate Member

**EXCUSED**

Kaite James, Member  
Cristan Connito, Alternate Member

**PLANNING DEPARTMENT STAFF PRESENT**

James McNamara, Current Planning Administrator  
Ethan Hoar, CBPA Planner  
Lewis Martinez, CBPA Recording Secretary

**CITY ATTORNEY STAFF PRESENT**

Meredith Jacobi, Assistant City Attorney

**APPROVAL OF MINUTES:**

**MINUTES for the November 20, 2019 CBPA Board were APPROVED.** (7 – 0; Greene/Nowak)

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**CBPA BOARD ACTION:**

Ms. Greene moved that the **MINUTES** for the **November 20, 2019 CBPA Board meeting** be **APPROVED**. Mr. Nowak seconded the motion. The motion was carried by a vote of 7 – 0.

**CBPA APPLICATION:**

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- 1. PLN-CBPA-2019-041**  
**PROJECT/LOCATION:** 4242 Schooner Trail  
**APPLICANT/AGENCY:** Russell Tye  
**PROPOSAL:** The applicant seeks an **EXCEPTION** for authorization to construct a new duplex dwelling within portions of the 50-foot landward portion and 50-foot seaward portion of the 100-foot RPA buffer. The total proposed impervious area will be 2,369 SF (2,369 SF in RPA).  
**SUBDIVISION/LOT #:** North Cove Section 1, Lot #12  
**WATERSHED:** Western Branch of the Elizabeth River  
**TAX MAP SECTION/PARCEL:** 0163011000120
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**CBPA BOARD ACTION:**

The CBPA Board **DENIED THE EXCEPTION** requested in **PLN-CBPA-2019-041** due to the following finding:

**Development of the property, as proposed, will cause degradation of water quality.**

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Staff Presentation:

Mr. McNamara presented the application to the Board, along with the CBPA Review Committee's findings and recommendations. Pictures of the site at 4242 Schooner Trail were presented. The Board was informed that the applicant is seeking an approval for the authorization to construct a new duplex dwelling within portions of the 50-foot landward portion and 50-foot seaward portion of the 100-foot RPA buffer. The CBPA Review Committee reviewed this application on January 21, 2020, and recommended approval. The lot was recorded in 1977.

Proponent:

Russell Tye, 6062 Indian River Road, Virginia Beach, Virginia, applicant.

Opponent:

Dormance Flora, 4240 Schooner Trail, Chesapeake, Virginia, self. Mr. Flora stated the ditch behind the property is constantly filled with water. He questioned where the water would go if the property is graded and if it would go into his property. Mr. Flora stated he is in opposition of the development.

Louis Matamoros, 825 Hollywood Drive, Chesapeake, Virginia, self. Mr. Matamoros stated that the property at 4240 Schooner Trail belongs to his daughter, son-in-law and their family. He stated the ditch is crucial to storm water, since the surrounding neighborhood is not flat, storm water runoff flows directly to the ditch which floods during heavy rains. He stated he is in opposition of the development.

Board Discussion:

Ms. Greene questioned if the trees on the property would be protected.

Ms. Jacobi stated that according to the site plan, the developer has stated that the tree will be protected and or planted in accordance to the Chesapeake landscape manual. All trees marked on the site plan will be protected.

Chairman Wilson questioned what actions are enacted when the impervious features are higher than the recommended amount.

Mr. McNamara stated the percentage is a recommendation of the CBPA Ordinance and CBPA Manual. They are recommended amounts and anything higher would require mitigation. Development and Permits would make the recommendations on BMPs, no additional BMPs were recommended for this site.

Mr. Nowak questioned if the water feature on the site is depicted by the blue line on the aerial photo.

Mr. McNamara stated that the blue line are the GIS depiction of the estimated three foot contour lines on the site. They are GIS depictions and not field verified.

Mr. Nowak questioned if the property would fit without going beyond the three foot contour line.

Mr. McNamara stated that the applicant would be better suited to answer the question regarding dimensions; however, according to the site plan there is no impact to the ditch.

Dr. Spaur stated the development is located near a six-foot perennial water filled ditch and normally there would not be any homes built near a deep perennial ditch.

Mr. Klesch questioned where the ditch is located on the site plan.

Mr. McNamara stated the ditch is located where the RPA feature is outlined on the site plan.

Mr. Flora stated that some of the houses in the neighborhood were built before 1985.

Chairman Wilson questioned if there was a plan to grade and fill the land into the ditch and for clarification on the construction plans for the site.

Mr. Tye stated that the plans do not call for the ditch to be disturbed at all. The house would be about 12-13 feet away from the contour line. During construction of the house there will be E and S measures to limit additional runoff into the ditch.

Ms. Greene questioned the depth of the ditch.

Mr. Tye stated during his visit to the site there appeared to be a foot of water but has not measured the depth of the ditch.

Ms. Greene questioned if there are plans to cut down any trees.

Mr. Tye stated they do not plan on cutting down any trees and the goal is to leave as many of the trees on the property there as possible. The large Cyprus tree will be left alone.

Ms. Greene questioned if there would be a barrier to protect the trees during construction.

Mr. Tye stated there would be a barrier to protect the trees during construction.

Mr. Nowak questioned if it would be necessary to raise the level of lot and what the guidance is for structures and the distance away it has to be to protect the trees.

Mr. Tye stated that the land would be graded to accommodate for the appropriate slope away from the house but there are no plans to raise the level of the property.

Ms. Jacobi stated that in the City's landscape there is guidance on the distance away from trees in order to protect them. The applicant has agreed to this compliance according to the site plan. Any land disturbances will be reviewed during the building and zoning permit process and those departments will ensure they are in compliance.

Chairman Wilson requested clarification on why there were no BMPs recommended despite the impervious area being higher than the recommended amount.

Ms. Jacobi stated Development and Permits reviews the BMP requirements, and the recommendation is based off of updated BMP requirements. She stated the percentage number shown is used as an educational factor during the site plan process, however, Development and Permits uses its calculations based off of updated BMP requirements in accordance with state regulations.

Ms. Greene questioned Mr. Flora about the depth of the ditch.

Mr. Flora stated that the ditch is approximately 3-4 feet deep. He stated he is concerned about the wildlife being misplaced.

Chairman Wilson clarified that there is a drainage easement that flows to the ditch in the back of the property.

Mr. Klesch questioned the age of Mr. Flora's house.

Mr. Flora stated that his house was built in 1985.

Mr. Klesch questioned if the other houses in the neighborhood were built during the same time.

Ms. Greene questioned Mr. Matamoros about how long his daughter has lived on the neighboring property.

Mr. Matamoros stated his daughter has lived in her house for 6 years.

Ms. Greene questioned if in his opinion the lot was left empty to collect water.

Mr. Matamoros stated in his opinion he feels the developer knew they would have this problem and therefore left the lot empty.

Ms. Toida questioned if in extremely heavy rain does the ditch flood over the banks.

Mr. Matamoros stated the ditch does flood over the banks, and stated it flooded 4-5 times in the previous year.

Mr. Curling commented that he is concerned about the drainage showed as depicted on the site plan along the canopy.

Chairman Wilson stated he is concerned about the site and how the contours of the ditch are depicted and the slope of the development to the ditch.

Mr. Tye questioned if the concern was the flow line on the right of the property.

Mr. Curling stated in his opinion the flow lines need to be revised.

Mr. Tye questioned if there was additional concerns in the back of the property.

Mr. Curling stated there should be a ten foot fall in the back of the property along the canopy line in order for the development to pass inspection.

Ms. Greene stated she is also concerned about disturbing drainage during construction.

Mr. Tye stated that there would be appropriate E and S measures used during construction to keep water quality safe.

Mr. Nowak is concerned with the loss of filtration in the back of the yard.

Ms. Toida stated she would like to see an updated site plan with the ditch plotted to see the measurement of the ditch from the house.

Chairman Wilson questioned if the site plan was showing a vegetative line underneath the house.

Mr. Tye stated the line shown was low growth vegetation that has not been upkept and none of the vegetation was large canopy trees.

Chairman Wilson stated that all vegetation was beneficial not just tall canopy trees.

Mr. Nowak stated he would like clarification on the drainage pipe and its location on the site plan.

Mr. Klesch questioned if the neighboring property was also a duplex and if the new development would be kept in line with the neighbor's property.

Ms. Jacobi stated the setback was in accordance with the zoning code.

Dr. Spaur stated that even though the plot was recorded in 1977, the rights of the property owner are not passed down to the current owner under the existing ordinance.

**CBPA BOARD VOTE:**

Dr. Spaur moved to **DENY PLN-CBPA-2019-041** where the facts presented support the following finding: development of the property, as proposed, will cause degradation of water quality. Vice-Chairman Curling seconded the motion. The motion was carried by a vote of 7 – 0.

**CBPA APPLICATION:**

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1. **V-19-01(v)**

**LOCATION:** 4223 Goldcrest Drive

**SHOWCAUSE VIOLATION:** Addition of approximately 6,900 square feet of gravel fill within the Resource Protection Area (RPA), and an approximately 330 square foot shed within the RPA.

**SUBDIVISION/LOT #:** INDIAN RIVER TERRACE / WASH LOT 12

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

**TAX MAP SECTION/PARCEL:** 0132007000120

**CBPA BOARD ACTION:**

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

- 1. The CBPA Board voted and found that a violation did occur.**
  - 2. The CBPA Board voted and found that satisfactory rehabilitation did not occur.**
  - 3. The CBPA Board continued the case for 60 days to allow Mr. Cochran the opportunity to properly rehabilitate the 100-foot RPA buffer.**
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Staff Presentation:

Mr. McNamara presented the Show Cause Violation to the Board, along with the findings and recommendations. He presented pictures of the site at 4223 Goldcrest Drive. He stated that the violation was for unauthorized addition of approximately 6,900 square feet of gravel fill within the Resource Protection Area (RPA), and an approximately 330 square foot shed within the RPA. He stated upon the discovery of the violation the property owner was sent two certified letters on November 11, 2019 and January 2, 2020 alerting the property owner of the violation with no reply back from the owner. The property owner did reply back via phone call the previous week before the Board meeting and was advised to attend the show cause meeting. The lot was recorded in 1924.

Proponent:

Adam Cochran, 509 Oaklette Drive, Chesapeake, Virginia, applicant. Mr. Cochran stated he placed the #57 stone in the yard to help with the yard being less muddy. He stated the shed is placed on cinder blocks. He stated he no longer lives at the house and has been moving around and was not in receipt of the letters until recently.

Board Discussion:

Ms. Toida questioned the location of the shed that is depicted in the photos provided.

Mr. McNamara stated the shed is located within the RPA buffer. He stated the exact location is not provided since an exact delineation of the property is not available.

Chairman Wilson questioned if there was a permit for the shed to be placed on the property.

Mr. McNamara stated that a permit for the shed has not been located.

Ms. Green questioned if there was an estimate of the square feet involved in the violation.

Mr. McNamara stated there is an estimated 6,900 square feet of gravel fill in the RPA and a 330 square foot shed.

Ms. Greene questioned if Mr. Cochran has learned about the CBPA since he has been notified of the violation and how he would like to fix the violation.

Mr. Cochran stated he has learned about the CBPA and would remove the stone and any other recommendations from the board to correct the violation.

Chairman Wilson request any preferred restoration from the board as guidance to Mr. Cochran to correct the violation.

Ms. Toida stated she would like the majority of the gravel removed and appropriate plant restoration before the violation. She stated she would recommend the shed be placed further away from the water feature.

Ms. Green stated she would like Mr. Cochran to follow the guidelines for tree and shrub restoration in the buffer.

Chairman Wilson requested clarification for which portion of the RPA the restoration should occur.

Ms. Greene stated the restoration should be within the 100 foot RMA.

#### **CBPA BOARD VOTE:**

Ms. Greene moved **A VIOLATION HAS OCCURED ON THE VIOLATION** based on the findings contained in the Chesapeake Bay Preservation Act staff report. Ms. Toida seconded the motion. The motion was carried by a vote of 7 – 0.

Ms. Greene moved **SATISFACTORY REHABILITATION DID NOT OCCUR ON THE VIOLATION** based on the findings contained in the Chesapeake Bay Preservation Act staff report. Ms. Toida seconded the motion. The motion was carried by a vote of 7 – 0.

Ms. Greene moved **CONTINUE THE VIOLATION for sixty (60) days to the April 15, 2020 CBPA Board meeting** to allow the applicant time to correct the violation. Dr. Spaur seconded the motion. The motion was carried by a vote of 7 – 0.

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#### **OTHER BUSINESS:**

- **Introduction of Ethan Hoar as the new CBPA Planner**
- **Update on ordinance modification to allow Riparian Buffers without City Code Violation**
- **Update on trial at 1718 Rockwood Drive**

**ADJOURNMENT:**

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

Sincerely,

Lewis Martinez,  
Recording Secretary

LM/jm