

Chesapeake Bay Preservation Area Board

Public Hearing Minutes – October 21, 2020 City Council Chambers – 6:00 P.M.

Call to Order: Chairman Wilson called the Chesapeake Bay Preservation Board meeting of October 21, 2020, to order at 6:00 p.m. in the City Council Chambers.

Roll Call:

PRESENT

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

EXCUSED

William Spaur, Member
Kaite James, Member
Karen Toida, Alternate Member

PLANNING DEPARTMENT STAFF PRESENT

Ethan Hoar, Planner II
Jennifer Joseph, Office Coordinator
Gilbert Bostwick, Current Planning Administrator
James McNamara, Assistant Planning Director

CITY ATTORNEY STAFF PRESENT

Meredith Jacobi, Assistant City Attorney

APPROVAL OF MINUTES:

The September 16, 2020, CBPA Board minutes were presented into the record for Board action.

CBPA BOARD ACTION:

MINUTES for the September 16, 2020 CBPA Board were APPROVED by unanimous consent.

CBPA VIOLATION APPLICATION:

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
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CBPA BOARD ACTION:

1. **The CBPA Board FOUND THAT RESTORATION IS COMPLETE. (6 – 0; Green/Curling, Spaur, Toida, and James excused)**
 2. **The CBPA Board FOUND THAT NO PENALTY WAS APPROPRIATE. (6 – 0; Green/Connito, Spaur, Toida, and James excused)**
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Staff Presentation:

Mr. Hoar presented the Show Cause violation, an 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, to the Board. He provided background information of the violation and presented pictures of the site at 4223 Goldcrest Drive from the original violation and the site's restoration after the 60-day continuance that shows both the shed and gravel drive within the RPA. Since then, the shed has been removed and the gravel driveway has been removed and grass has been planted in its place.

For the Show Cause Hearing, the Board was directed to vote on whether a violation had occurred, whether restoration was complete or if additional restoration was required.

The Board was also directed to vote on the appropriate penalty (referral to circuit court, civil charge, restoration, reprimand). In determining an appropriate civil charge, the Board should consider the extent of the violation, Good faith of the property owner, history of non-compliance and cooperation.

Board Discussion:

Ms. Greene asked Mr. Hoar if he is happy with the restoration and if the lot meets the tree canopy requirements. Mr. Hoar stated that there has been improvement, and with another growing season the grass will improve where the gravel was previously located. There was no removal of trees.

Chairman Wilson stated that no speaker card was filled out, and believes the applicant is not present.

Ms. Greene asked if consideration was to plant a tree in lieu of a fine.

Ms. Connito stated she agrees with the planting of a tree, and a small fine.

Mr. Wilson stated that there was a violation and the applicant acted in good faith and was cooperative. He asked the Assistant City Attorney, Ms. Jacobi, if the fine would go to civil court, or if that was between the Board and applicant. Ms. Jacobi clarified that fine would be voluntary; however, if they did not pay, then a discussion would occur for court involvement.

Mr. Nowak stated that the Board's concern is water quality and the applicant has been cooperative.

Mr. Kelsch stated that he believes no penalty should be implemented.

CBPA BOARD VOTE:

Ms. Greene moved that restoration is complete. Mr. Curling seconded the motion. The motion was carried by a vote of 6 – 0. Board Members Spaur, Toida, and James were excused.

Mr. Klesch found that no penalty was appropriate. Mr. Nowak seconded the motion. The motion was carried by a vote of 6 – 0. Board Members Spaur, Toida, and James were excused.

2. V-19-06(v)

LOCATION: 829 Hidden Harbor Court

SHOWCAUSE VIOLATION: Addition of an unpermitted 1,051 square-foot (890 in RPA) second driveway and 84 square-foot tree house (84 SF in RPA) within the Resource Protection Area (RPA).

SUBDIVISION/LOT #: Harbor Landing / Lot 16

WATERSHED: Southern Branch of the Elizabeth River

TAX MAP SECTION/PARCEL: 0473004000160

CBPA BOARD ACTION:

1. The CBPA Board voted and found that a violation did occur. (6 – 0; Green/Connito, Spaur, Toida, and James excused)
 2. The CBPA Board voted and found that restoration had not been successfully completed. (6 – 0, Klesch/Nowak, Spaur, Toida, and James excused)
 3. The CBPA Board voted to give the property owner 120 days to complete restoration, which is outlined in number four (4) and number five (5), below. The property owner shall provide City staff with an update on or before the 120 days expires. If staff deems the restoration tasks to be completed successfully, the violation will subsequently be closed. (6 – 0; Nowak/Curling, Spaur, Toida, and James excused)
 4. The property owner shall decrease the amount impervious area on the property from the current 34.75%, to the watershed recommendation of 28%. The treehouse may be excluded from the impervious area calculation. (6 – 0; Nowak/Curling, Spaur, Toida, and James excused)
 5. The property owner shall plant additional vegetation to meet the minimum 50% tree canopy coverage requirement in the RPA buffer. Plantings shall be selected from the species list contained in Appendices A and B of the Chesapeake Landscape Specifications Manual. (6 – 0; Nowak/Curling, Spaur, Toida, and James excused)
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Staff Presentation:

Mr. Hoar presented the Show Cause violation application, an addition of a 1,051 SF secondary driveway within the 50-foot landward buffer of the Resource Protection Area (RPA), and an approximately 84 SF treehouse within the 50-foot seaward buffer of the RPA. He provided background information of the violation and presented pictures of the site at 829 Hidden Harbor Court of its current conditions.

For the Show Cause Hearing, the Board was directed to vote on whether a violation had occurred, whether restoration was complete or if additional restoration was required. The lot was recorded in May 24, 1993.

The Board was also directed to vote on the appropriate penalty (referral to circuit court, civil charge, restoration, reprimand). In determining an appropriate civil charge, the Board should consider the extent of the violation, Good faith of the property owner, history of non-compliance and cooperation.

Proponent:

Bryan Peeples, 222 Central Park Avenue, Suite 400, Virginia Beach, Virginia, representing applicant. Mr. Peeples stated that the applicant was unaware of the CBPA and relied on the contractor. He is willing to work with the Board and try to find a good restoration short of removing the driveway. In applying for the after the fact exception application, the driveway is located in the landward portion and a water study was submitted and shows no detrimental effects of the driveway. Also, 10 trees have been planted along with many shrubs.

Oscar Gavarrete, 829 Hidden Harbor Court, Chesapeake, Virginia, applicant.

Hollis Ellis, 321 Office Square Lane, Virginia Beach, Virginia, civil engineer for the project. Mr. Ellis stated that the handicap ramp was outside the previously completed driveway.

Board Discussion:

Chairman Wilson asked if this item was previously discussed and also asked if the removal of five (5) trees was discussed in the August Board meeting. Mr. Hoar replied no and he was not aware of the tree removal.

Chairman Wilson asked if there was a discussion of the driveway being permitted with the curb cuts in the right-of-way. Mr. Hoar replied that the curb cuts were permitted; however, the driveway was not.

Ms. Connito stated that she believes that there was a misunderstanding, and the client did not know; however, there are many items that can be eliminated to improve the property, such as removing the columns from the driveway.

Chairman Wilson stated that when you remove 5 mature trees, and replace it with a concrete driveway there is a substantial difference to water quality.

Chairman Wilson suggested the removal of the fountain and removal of the columns from the right-of-way.

Mr. Gavarrete stated that the columns are Styrofoam and are not secure.

Mr. Klesch asked if there was a site plan submitted when he went to get his permit for the driveway cuts. Mr. Gavarrete provided a copy of the original site plan that shows the handwritten cut out information for the driveway and a handicapped ramp was installed previously.

Mr. Ellis stated that the handicap ramp was previously installed by the City and that the ramp was outside of the protection area.

Chairman Wilson asked Mr. Gavarrete if he had any concerns removing the trees, and Mr. Gavarrete replied that the trees were in bad shape.

Mr. Nowak asked Ms. Jacobi if the removal of trees needs to be approved for a one-to-one replacement ratio, and Ms. Jacobi stated yes, it requires the approval of the City Manager's designee with a one-to-one ratio replacement.

Mr. Klesch stated a possible resolution, have the applicant return the property to the 28% threshold allowed.

Ms. Jacobi stated it is a factual discrepancy in the information, and the Board has to decide which information is creditable.

Mr. Kelsch requested the Board to consider the restoration plan adjust the lot to the 28% threshold and additional plantings.

Mr. Nowak stated that he supports the resolution to adjust the 28% impervious area threshold but believes no specifics requirements to mentioned because there could be better solutions and did not want to tie down the applicant.

Ms. Greene stated she would like to remove the treehouse as part of the violation because there are plantings underneath.

Ms. Greene is unsure of the restoration requirements.

Ms. Jacobi suggested consulting the applicant to ensure compliance if a restoration plan is approved.

Chairman Wilson asked Mr. Gavarrete if he would be willing to comply with the 28% impervious area and if he would be willing to comply. Mr. Gavarrete stated yes, he would comply with the standards meet.

Ms. Greene suggested complying with the species list contained in Appendices A and B of the Chesapeake Landscape Specifications Manual.

Mr. Nowak asked Mr. Gavarrete how much time will he need to comply, and Mr. Gavarrete stated he works full-time and will need awhile because he will be doing the improvements himself.

Ms. Connito suggested a 120-day follow-up to ensure restoration is being complied with and improvements are being made.

Mr. Peebles asked if the Board would considered no penalty if the restoration is completed.

Ms. Greene suggested the Board be silent on the penalty or fine due to the fact that the future is unknown and wants to ensure compliance.

Mr. Wilson clarified and stated that due to many factors being involved, the Board should remain silent and see what happens with the restoration process.

Mr. Nowak agreed with his fellow Board members.

CBPA BOARD VOTE:

Ms. Greene moved to **DETERMINE that there was a violation.** Ms. Connito seconded the motion. The motion was carried by a vote of 6 – 0. Board Members Spaur, Toida, and James were excused.

Ms. Greene moved that restoration is required. Mr. Nowak seconded the motion. The motion was carried by a vote of 6 – 0. Board Members Spaur, Toida, and James were excused.

Mr. Nowak moved to give the property owner 120 days to complete restoration to include: The property owner shall decrease the amount impervious area on the property from the current 34.75%, to the watershed recommendation of 28%. The treehouse may be excluded from the impervious area calculation, and the property owner shall plant additional vegetation to meet the minimum 50% tree canopy coverage requirement in the RPA buffer. Plantings shall be selected from the species list contained in Appendices A and B of the Chesapeake Landscape Specifications Manual. The property owner shall provide City Staff with an update on or before the 120 days expires. If staff deems the restoration tasks to be completed successfully, the violation will subsequently be closed. Mr. Curling seconded the motion. The motion was carried by a vote of 6 – 0. Board members Spaur, Toida, and James were excused.

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3. **V-20-02(v)**
LOCATION: 712 Greenwing Drive
SHOWCAUSE VIOLATION: Unpermitted addition to an existing deck and tree clearing within the Resource Protection Area (RPA).
SUBDIVISION/LOT #: Wingfield Pointe / Lot 60
WATERSHED: Southern Branch of the Elizabeth River
TAX MAP SECTION/PARCEL: 0346010000600
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CBPA BOARD ACTION:

1. **The CBPA Board voted and found that a violation did occur. (6 – 0; Green/Connito, Spaur, Toida, and James excused)**

2. **The CBPA Board voted and found that restoration had not been successfully completed. (6 – 0; Green/Connito, Spaur, Toida, and James excused)**
 3. **The CBPA Board voted to continue the violation hearing until the CBPA exception application is reviewed by the Board. (6 – 0; Green/Connito, Spaur, Toida, and James excused)**
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Staff Presentation:

Mr. Hoar presented the Show Cause Violation application, the removal of mature trees in the RPA and an addition to an existing deck without the approval of a CBPA exception application to the Board. He provided background information of the violation and stated that an after the fact exception application was completed and received at 4:45 p.m. He presented pictures of the site at 712 Greenwing Drive.

For the Show Cause Hearing, the Board was directed to vote on whether a violation had occurred, whether restoration was complete or if additional restoration was required.

The Board was also directed to vote on the appropriate penalty (referral to circuit court, civil charge, restoration, reprimand). In determining an appropriate civil charge, the Board should consider the extent of the violation, Good faith of the property owner, history of non-compliance and cooperation.

Proponent:

Taylor Kool, 712 Greenwing Drive, Chesapeake, Virginia, applicant. Mr. Kool provided background information of his project and was not aware of CBPA exception. He received approval from his Home Owner's Association but did not hear about the CBPA from anyone. Mr. Kool would like suggestions on how to improve his application to come into compliance.

Board Discussion:

Chairman Wilson asked if we know where the 50-foot seaward/landward line buffers are located, and Mr. Hoar stated we just received the information and he has not reviewed it yet but he believes that the 100 foot buffer runs between the house and deck and the 50-foot buffer is between the deck extension and back fence.

Ms. Greene clarified that we are hearing the violation and not the exception, and Mr. Hoar stated yes.

Mr. Greene asked Mr. Kool why he did not correspond to staff. Mr. Kool stated that he was doing a lot of renovations prior to moving in and was not responsive and was not in malice as he was waiting for site plan and was unsure if the contractors were corresponding with staff and took some time for the company to reach someone to respond.

Ms. Greene made suggestions to the applicant and to ensure compliance with the CBPA Board.

Mr. Kool explained he thought the builders were corresponding, and when he did not hear a response from the builders and it took a total of 2 weeks to remove all of the tree debris.

Mr. Nowak suggested to discuss the challenges with his HOA head, and Mr. Kool stated his Chair has been approved.

Ms. Jacobi asked Mr. Kool if he would approve the continuation of his violation to be heard with the exception application.

Mr. Kool asked for clarification, and Mr. Wilson stated that he should work with staff to ensure his application is prepared before returning to the Board.

Mr. Kool asked Ms. Green when an appropriate time to plant a tree is. Ms. Greene stated now is a good time to plant a tree and mentioned that the Elizabeth River project is a good source and to use the species manual for trees recommendations.

CBPA BOARD VOTE:

Ms. Greene moved to **CONTINUE CBPA (V)-20-02(v)** until the **CBPA exception application is reviewed by the CBPA Board**. Ms. Connito seconded the motion. The motion was carried by a vote of 6 – 0. Board Members Spaur, Toida, and James were excused.

OTHER BUSINESS:

Introduction Current Planning Administrator, Gilbert Bostwick.

ADJOURNMENT:

With no further business, the meeting was adjourned at 8:00 P.M.

Sincerely,

Jennifer Joseph
Office Coordinator

EH/jj

APPROVED: X XX, 20XX