

Chesapeake Bay Preservation Area Board

Public Hearing Minutes – June 15, 2022 City Council Chambers – 6:00 P.M.

Call to Order: Chairman Weckworth called the Chesapeake Bay Preservation Board meeting of June 15, 2022, to order at 6:00 p.m. in the City Council Chambers.

Roll Call:

PRESENT

Bruce Weckworth, Chair
Kimberly Koelsch, Vice Chair
John Klesch, Member
Jillian Sunderland, Member
Victoria Thomas, Member
Karen Toida, Member
Rick Underhill, Alternate Member

EXCUSED

Katie James, Member
Chris Wilson, Alternate Member

PLANNING DEPARTMENT STAFF PRESENT

Ethan Hoar, CBLP, CBPA Planner
Gil Bostwick, AICP Current Planning Administrator
Sherry Carawan, CBPA Recording Secretary

CITY ATTORNEY STAFF PRESENT

Meredith Jacobi, Assistant City Attorney

APPROVAL OF MINUTES:

The April 20, 2022, CBPA Board minutes were presented into the record for Board action.

CBPA BOARD ACTION:

MINUTES for the April 20, 2022, CBPA Board were **APPROVED** by unanimous consent.

CBPA BOARD VOTE:

Mr. Klesch moved that the **MINUTES** for the **April 20, 2022, CBPA Board meeting** be **APPROVED**. Ms. Thomas seconded the motion. The motion was carried by a vote of 7 – 0.

CBPA APPLICATION: VIOLATION

1. **V-20-23**
Location: 301 Kemp Lane
Show Cause Violation: Unpermitted construction of a driveway addition (approx. 4,500 SF) within the Resource Protection Area (RPA).
Subdivision/Lot: Parcel D-2-A Resub Pars D-1 & D-2 Nettle Pro 1.068
Watershed: Eastern Branch of the Elizabeth River
Tax Map Parcel: 0134021000321
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CBPA BOARD ACTION:

CBPA Board **CONTINUED** (7 – 0; Toida/Underhill, Wilson and James excused) the application to the **July 20, 2022**, CBPA Board Meeting.

Staff Presentation:

Mr. Hoar read V-20-23 into the record for the Board's review and action. Mr. Hoar presented the CBPA Violation and gave a brief overview of the violation and the options available to the Board for consideration.

Board Discussion:

Ms. Toida asked Mr. Hoar to refresh her memory about the violation and if any progression in removal of the asphalt was shown. Mr. Hoar summarized the violation and stated that she does not intend to remove the asphalt.

Ms. Toida asked for more discussion from the board before action was taken. Mr. Hoar presented details and pictures for the project.

Ms. Sunderland asked Mr. Hoar if he had seen a plan other than the one for the five trees. Mr. Hoar stated that there was no formal restoration plan prepared for Ms. Jennings. Unless stipulated by the Board, Ms. Jennings is not interested in voluntary removal of the asphalt driveway.

Ms. Toida questioned Mr. Hoar if Ms. Jennings had been cooperative. Mr. Hoar stated that she was cooperative and had added five shrubs. Mr. Hoar advised Ms. Jennings to work with the Board to review the plan and then if stipulated, purchase and have them planted, however the plantings were already installed.

Ms. Koelsch asked Mr. Hoar if Ms. Jennings showed interest in coming back before the Board. Mr. Hoar stated that she did but was unable to due to a sick spouse.

Ms. Sunderland asked Mr. Hoar if there was room for additional planting between the impervious area and the water. Mr. Hoar stated that there is limited space; however, Ms. Jennings was advised to fill with plantings with whatever she is comfortable growing there.

Ms. Toida asked Mr. Hoar how much additional vegetation Ms. Jennings would need to offset the asphalt driveway. Mr. Hoar stated minimum mitigation is 50% of encroachment into the buffer.

CBPA BOARD VOTE:

Mr. Underhill made a motion to **CONTINUE V-20-23** to the **July 20, 2022, CBPA Board Public Hearing**. Ms. Toida seconded the motion. The motion carried by a vote of 7 – 0. Ms. James and Mr. Wilson excused.

CBPA APPLICATION:

1. **PLN-CBPA-2021-045**
PROJECT/LOCATION: 1904 McCoy Road
APPLICANT/OWNER: Stephen Alexander Homes Two LLC
AGENT: Rodney Flores, P.E., Pinnacle Group Engineering, Inc.
PROPOSAL: In accordance with Section 26-528, of the Chesapeake City Code, the applicant seeks an **EXCEPTION** to construct a single-family home within the 50-foot landward and 50-foot seaward portions of the 100-foot Resource Protection Area (RPA) buffer. The total proposed additional impervious area will be 2,057 square feet (SF) (2,057 SF in RPA).
SUBDIVISION/LOT #: Park View / Lot 2 Block 9 Section 2
WATERSHED: Southern Branch of the Elizabeth River
TAX MAP PARCEL: 0344002004080
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CBPA BOARD ACTION:

CBPA Board **CONTINUED PLN-CBPA-2021-045**. (6 – 1; Underhill/Thomas, Toida opposed, James and Wilson excused)

Staff Presentation:

Mr. Hoar presented the application for a single-family home to the Board along with the CBPA Review Committee's findings and recommendations. He presented pictures of the site at 1904 McCoy Road. He stated that the CBPA Review Committee had recommended denial by a vote of 5 – 2.

Proponent:

Stephen Quick, Stephen Alexander Homes, 1944 Orange Way Road, Chesapeake, Virginia, applicant. Mr. Quick provided background information of the proposed application, and stated they went to the Army Corps of Engineers and the Department of Environmental Quality (DEQ) to get approval for wetland impacts.

Rodney Flores, Pinnacle Group Engineering, 445 N. Battlefield Blvd., Chesapeake, Virginia, agent. Mr. Flores provided background information for the proposed application, and stated they also tried to minimize the disturbance as much as possible.

Jay Leftwich, Basnight, Kinser, Leftwich, and Nuckolls, 308 Cedar Lakes Drive, Chesapeake, Virginia, representing applicant. Mr. Leftwich provided background information of the previous application and compared it to the proposed application. The 2017 proposal had 53,850 square feet of impervious area and today this projects proposal is 32,343 impervious square feet. The applicants went 67% beyond what DEQ requires to mitigate run-off.

Alex Quick, Stephen Alexander Homes, 527 Virginia Avenue, Virginia Beach, Virginia, representing applicant. Mr. Quick provided background information and stated that reducing units will be a significant economic impact.

Opponent

John Russell, 2004 Kinston Waters Court, Chesapeake, Virginia, self. Mr. Russell stated he is concerned with the seven feet of fill and flooding.

Board Discussion:

Ms. Sunderland stated that the house had been brought up to the front setback line and asked what the square foot of the house is. Mr. Hoar stated that the footprint of the house is 1,411 square feet.

Mr. Underhill asked Mr. Hoar about the fill on the site. Mr. Hoar stated that it is to meet required elevations for the flood zone.

Ms. Toida stated that the Army Corps of Engineers and DEQ approvals expired on May 31, 2022. Mr. Quick stated that they are under contract with A&W, and they have one year extension to start developing the property.

Mr. Klesch asked for an explanation of the one-year extension. Mr. Quick explained that they are under contract with A&W and therefore they have one more year to develop. Mr. Klesch asked Mr. Quick about retaining walls and fill and if they had to provide trees and shrubs. Mr. Quick stated that they were approved by DEQ & Army Corps of Engineers and stated that they followed the restoration plan.

Mr. Klesch asked Mr. Quick if there was any time that they asked for a rezoning. Mr. Quick stated they thought of that, but it would change the character of the neighborhood. Mr. Klesch stated that resubdividing the property would make bigger lots and less homes. Mr. Quick stated that it was not affordable for them to do that.

Vice Chair Koelsch asked Mr. Quick if there were more things that the Review Committee recommended and if the applicant was able to implement their solutions. Mr. Quick stated that they tried to comply with recommendations that were reasonable and practical.

Mr. Sunderland asked if the driveways were single or double car. Mr. Quick stated it is a two-car driveway.

Mr. Klesch asked if mitigation was obtained. Mr. Flores replied yes. Mr. Klesch asked for information on the swales and BMPs. Mr. Flores provided information for the run-off calculation process.

Mr. Underhill asked if all ten of the lots were not approved if the project would not be viable from a financial standpoint. Mr. Leftwich stated that every time you lose a lot you lose some margin.

Mr. Underhill asked Mr. Russell if he had spoke with anyone else in the city about the application. Mr. Russell replied no and learned of the project by receiving an adjacent property letter.

Vice Chair Koelsch questioned Mr. Hoar if there was more, they can work out with the applicant for the property. Mr. Hoar stated that the applicant has proposed two lots with custom homes. Eight of the ten lots are model homes. Custom homes could be built on these lots.

Mr. Klesch stated that this lot is seriously incumbered in the seaward part of the RPA.

Ms. Toida stated concerns with amount of fill, changing landscape profile, porch reduction and clear cutting the lot.

Chairman Weckworth questioned if there was existing water between the project and his home. Mr. Russell stated there is water between him and the project.

Mr. Klesch moved to **DENY PLN-CBPA-2021-045** due to water quality not consistent with CBPA criteria. Ms. Toida seconded the motion. The motion was carried by a vote of 6 – 1. Chairman Weckworth voted against the motion. James and Wilson excused.

Chairman Weckworth clarified that his vote of no meant that he did not agree with the motion.

Mr. Hoar stated that if the plan changes for PLN-CBPA-2021-045, the application will have to go back to the Review Committee. The other nine applications were continued with no specific date. They could wait for the amended application for PLN-CBPA-2021-045 to go at the same time as the other nine.

Ms. Toida asked Mr. Hoar if he would have to review the other nine. Mr. Hoar stated that if there were changes to the site plan, they would have to go back to the Review Committee.

Vice Chair Koelsch made a motion to reconsider the denial for PLN-CBPA-2021-045. Seconded by Victoria Thomas. The motion was carried by a vote of 5 - 2. Board Members Toida and Underhill voting against the motion.

Mr. Underhill made a substitute motion to continue PLN-CBPA-2021-045. The motion was seconded by Ms. Thomas. The motion carried by a vote of 6 - 1. Board member Toida voted against the motion. Ms. James and Mr. Wilson excused.

CBPA BOARD VOTE:

Mr. Underhill moved to **CONTINUE PLN-CBPA-2021-045**. Ms. Thomas seconded the motion. The motion was carried by a vote of 6 – 1. Board member Toida voted against the motion. Ms. James and Mr. Wilson excused.

2. **PLN-CBPA-2021-046**
PROJECT/LOCATION: 1909 McCoy Road
APPLICANT/OWNER: Stephen Alexander Homes Two LLC
AGENT: Rodney Flores, P.E., Pinnacle Group Engineering, Inc.
PROPOSAL: In accordance with Section 26-528, of the Chesapeake City Code, the applicant seeks an **EXCEPTION** to construct a single-family home within the 50-foot landward and 50-foot seaward portions of the 100-foot Resource Protection Area (RPA) buffer. The total proposed additional impervious area will be 2,138 square feet (SF) (2,138 SF in RPA).
SUBDIVISION/LOT #: Park View / Lot 11 Block 9 Section 2
WATERSHED: Southern Branch of the Elizabeth River
TAX MAP PARCEL: 0344002004170
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CBPA BOARD ACTION:

CBPA Board **CONTINUED** PLN-CBPA-2021-046. (6 – 1; Underhill/Thomas, Toida opposed, James and Wilson excused)

Staff Presentation:

Mr. Hoar presented the application for a single-family home to the Board along with the CBPA Review Committee's findings and recommendations. He presented pictures of the site at 1909 McCoy Road. He stated that the CBPA Review Committee recommended approval by a vote of 6 – 0 with a stipulation of removing the paver patio shown on the site plan.

Proponent:

Jay Leftwich, Basnight, Kinser, Leftwich, and Nuckolls, 308 Cedar Lakes Drive, Chesapeake, Virginia, representing applicant. Mr. Leftwich asked for the board to consider a motion to reconsider the previous application and put it back on the agenda and continue for thirty days.

Ms. Jacobi stated that there is no special clause for that type of motion and that it must follow Roberts Rules. A member of the Board that voted with the prevailing party would have to move for reconsideration. That motion would have to be seconded and passed by majority vote. The Board would reconsider the application including continuing the previously denied application. The other applications have not been acted on and can be continued as so inclined. Mr. Quick stated they need the opportunity to hear the projects all together which gives them the best opportunity to formulate the plan soon.

Board Discussion:

Ms. Toida questioned the runoff from the roof, and Mr. Hoar stated that he would assume they would have a gutter system to reroute the runoff.

Ms. Toida questioned the setback, and Mr. Hoar explained that most of the lots have been cinched up to the front building setback line.

Ms. Toida questioned if they would be putting fill in the non-tidal wetlands, and Mr. Hoar stated that the fill will be put in for the retaining wall.

Ms. Sunderland asked staff about the retaining wall and if permits would be required from the Virginia Marine Resource Commission. Mr. Hoar stated that it is out of the Virginia Marine Resource Commission's jurisdiction.

Ms. Jacobi stated that the same Board member does not have to make the motion to reconsider, it must be made by one of the members who voted for the original motion.

Ms. Sunderland stated that she understood the applicant would like to make changes, but if denied would they be able to come back with changes. Mr. Hoar stated if it is not significantly reduced, they will have a one year waiting period before a resubmission can be processed.

Chairman Weckworth mentioned that even with the significant changes it will not be on next months agenda. Mr. Hoar stated if there are any changes made to the site plan it will go back to the Review Committee.

Chairman Weckworth asked Ms. Jacobi about rezoning the property. Ms. Jacobi stated that rezoning would completely change the application.

Mr. Hoar stated that if they were to vacate the interior lot line, that would be a resubdivision not a rezoning.

Vice Chair Koelsch asked if there are two separate proposals. Mr. Leftwich said that the request is for all of them to continue as one batch.

The Board rediscussed the merits of the application and chose to reconsider the application to be consistent and move forward along with the other applications on McCoy Road.

Vice Chair Koelsch asked Chairman Weckworth if the board could move on the remainder of the agenda.

Chairman Weckworth stated he was ready to hear a motion on all the applications starting with PLN-CBPA-2022-045-51, 053-055.

Ms. Thomas made a motion to continue all the applications stated by Chairman Weckworth. Ms. Koelsch seconded the motion. The motion was carried by a vote of 7 – 0.

CBPA BOARD VOTE:

Mr. Underhill moved to **CONTINUE PLN-CBPA-2022-045 through PLN-CBPA-2022-051, and PLN-CBPA-2022-053 through PLN-CBPA-2022-055**. Ms. Thomas seconded the motion. The motion was carried by a vote of 6 – 1. Board member Toida voted against the motion. Ms. James and Mr. Wilson were excused.

3. **PLN-CBPA-2021-047**

PROJECT/LOCATION: 1913 McCoy Road

APPLICANT/OWNER: Stephen Alexander Homes Two LLC

AGENT: Rodney Flores, P.E., Pinnacle Group Engineering, Inc.

PROPOSAL: In accordance with Section 26-528, of the Chesapeake City Code, the applicant seeks an **EXCEPTION** to construct a single-family home within the 50-foot landward and 50-foot seaward portions of the 100-foot Resource Protection Area (RPA) buffer. The total proposed additional impervious area will be 3,965 square feet (SF) (3,965 SF in RPA).

SUBDIVISION/LOT #: Park View / Lot 10 Block 9 Section 2

WATERSHED: Southern Branch of the Elizabeth River

TAX MAP PARCEL: 0344002004160

4. **PLN-CBPA-2021-048**

PROJECT/LOCATION: 1917 McCoy Road

APPLICANT/OWNER: Stephen Alexander Homes Two LLC

AGENT: Rodney Flores, P.E., Pinnacle Group Engineering, Inc.

PROPOSAL: In accordance with Section 26-528, of the Chesapeake City Code, the applicant seeks an **EXCEPTION** to construct a single-family home within the 50-foot landward and 50-foot seaward portions of the 100-foot Resource Protection Area (RPA) buffer. The total proposed additional impervious area will be 4,371 square feet (SF) (4,371 SF in RPA).

SUBDIVISION/LOT #: Park View / Lot 9 Block 9 Section 2

WATERSHED: Southern Branch of the Elizabeth River

TAX MAP PARCEL: 0344002004150

5. **PLN-CBPA-2021-049**
PROJECT/LOCATION: 1918 McCoy Road
APPLICANT/OWNER: Stephen Alexander Homes Two LLC
AGENT: Rodney Flores, P.E., Pinnacle Group Engineering, Inc.
PROPOSAL: In accordance with Section 26-528, of the Chesapeake City Code, the applicant seeks an **EXCEPTION** to construct a single-family home within the 50-foot landward and 50-foot seaward portions of the 100-foot Resource Protection Area (RPA) buffer. The total proposed additional impervious area will be 4,867 square feet (SF) (4,867 SF in RPA).
SUBDIVISION/LOT #: Park View / Lot 8 Block 9 Section 2
WATERSHED: Southern Branch of the Elizabeth River
TAX MAP PARCEL: 0344002004140
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6. **PLN-CBPA-2021-050**
PROJECT/LOCATION: 1916 McCoy Road
APPLICANT/OWNER: Stephen Alexander Homes Two LLC
AGENT: Rodney Flores, P.E., Pinnacle Group Engineering, Inc.
PROPOSAL: In accordance with Section 26-528, of the Chesapeake City Code, the applicant seeks an **EXCEPTION** to construct a single-family home within the 50-foot landward and 50-foot seaward portions of the 100-foot Resource Protection Area (RPA) buffer. The total proposed additional impervious area will be 3,870 square feet (SF) (3,870 SF in RPA).
SUBDIVISION/LOT #: Park View / Lot 7 Block 9 Section 2
WATERSHED: Southern Branch of the Elizabeth River
TAX MAP PARCEL: 0344002004130
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7. **PLN-CBPA-2021-051**
PROJECT/LOCATION: 1912 McCoy Road
APPLICANT/OWNER: Stephen Alexander Homes Two LLC
AGENT: Rodney Flores, P.E., Pinnacle Group Engineering, Inc.
PROPOSAL: In accordance with Section 26-528, of the Chesapeake City Code, the applicant seeks an **EXCEPTION** to construct a single-family home within the 50-foot landward and 50-foot seaward portions of the 100-foot Resource Protection Area (RPA) buffer. The total proposed additional impervious area will be 4,563 square feet (SF) (4,563 SF in RPA).
SUBDIVISION/LOT #: Park View / Lot 6 Block 9 Section 2
WATERSHED: Southern Branch of the Elizabeth River
TAX MAP PARCEL: 0344002004084
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8. **PLN-CBPA-2021-053**
PROJECT/LOCATION: 1910 McCoy Road
APPLICANT/OWNER: Stephen Alexander Homes Two LLC
AGENT: Rodney Flores, P.E., Pinnacle Group Engineering, Inc.
PROPOSAL: In accordance with Section 26-528, of the Chesapeake City Code, the applicant seeks an **EXCEPTION** to construct a single-family home within the 50-foot landward and 50-foot seaward portions of the 100-foot Resource Protection Area (RPA) buffer. The total proposed additional impervious area will be 2,510 square feet (SF) (2,510 SF in RPA).
SUBDIVISION/LOT #: Park View / Lot 5 Block 9 Section 2
WATERSHED: Southern Branch of the Elizabeth River
TAX MAP PARCEL: 0344002004083
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9. **PLN-CBPA-2021-054**
PROJECT/LOCATION: 1908 McCoy Road
APPLICANT/OWNER: Stephen Alexander Homes Two LLC
AGENT: Rodney Flores, P.E., Pinnacle Group Engineering, Inc.
PROPOSAL: In accordance with Section 26-528, of the Chesapeake City Code, the applicant seeks an **EXCEPTION** to construct a single-family home within the 50-foot landward and 50-foot seaward portions of the 100-foot Resource Protection Area (RPA) buffer. The total proposed additional impervious area will be 1,745 square feet (SF) (1,745 SF in RPA).
SUBDIVISION/LOT #: Park View / Lot 4 Block 9 Section 2
WATERSHED: Southern Branch of the Elizabeth River
TAX MAP PARCEL: 0344002004082
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10. **PLN-CBPA-2021-055**
PROJECT/LOCATION: 1906 McCoy Road
APPLICANT/OWNER: Stephen Alexander Homes Two LLC
AGENT: Rodney Flores, P.E., Pinnacle Group Engineering, Inc.
PROPOSAL: In accordance with Section 26-528, of the Chesapeake City Code, the applicant seeks an **EXCEPTION** to construct a single-family home within the 50-foot landward and 50-foot seaward portions of the 100-foot Resource Protection Area (RPA) buffer. The total proposed additional impervious area will be 2,057 square feet (SF) (2,057 SF in RPA).
SUBDIVISION/LOT #: Park View / Lot 3 Block 9 Section 2
WATERSHED: Southern Branch of the Elizabeth River
TAX MAP PARCEL: 0344002004081

CBPA BOARD ACTION:

The CBPA Board CONTINUED PLN-CBPA-2022-045 through PLN-CBPA-2022-051, and PLN-CBPA-2022-053 through PLN-CBPA-2022-055. (6 – 1, Underhill/Thomas, Toida opposed, James and Wilson excused)

Proponent:

Stephen Quick, Stephen Alexander Homes, 1944 Orange Way Road, Chesapeake, Virginia, applicant.

Rodney Flores, Pinnacle Group Engineering, 445 N. Battlefield Boulevard, Chesapeake, Virginia, agent.

Jay Leftwich, Basnight, Kinser, Leftwich, and Nuckolls, 308 Cedar Lakes Drive, Chesapeake, Virginia, representing applicant.

Alex Quick, Stephen Alexander Homes, 527 Virginia Avenue, Virginia Beach, Virginia, representing applicant.

Opponent:

John Russell, 2004 Kinston Waters Court, Chesapeake, Virginia, self.

CBPA BOARD VOTE:

Mr. Underhill moved to **CONTINUE PLN-CBPA-2022-045 through PLN-CBPA-2022-051, and PLN-CBPA-2022-053 through PLN-CBPA-2022-055.** Ms. Thomas seconded the motion. The motion was carried by a vote of 6 – 1. Board member Toida voted against the motion. Ms. James and Mr. Wilson were excused.

OTHER BUSINESS:

None

ADJOURNMENT:

With no further business, the meeting was adjourned at 8:20 P.M.

Sincerely,

Sherry Carawan,
Recording Secretary

EH/sc