



County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

Final Minutes

Meeting of the Chesapeake Bay Exception Review Committee

August 4, 2021, 2:00 PM

Cisco WebEx Event #1-844-621-3956, Access Code 173 676 9923

Present

Committee:

Kenneth Lanfear, Sue Kovach Shuman, Edward W. Monroe, Jr., Dr. David Schnare, Elizabeth Martin, Som Govender, Amy Gould, Alexis Dickerson

County Staff:

Danielle Badra, Brandy Mueller, Camylyn Lewis, Keyona Green, Jerry Stonefield, John Friedman, Shahab Baig, Matthew Hansen, Behnaz Bagherian, Durga Kharel, Jerry Stonefield, Clinton Abernathy, Prutha Rueangvivatanakij

Applicant:

Avi Sareen (Applicant Representative), Jillian Moore (Applicant Representative), Edwin Yeshvanth (Applicant)

Public:

Clarke McMillen

Committee Members Not Present:

James Chesley, Anne Kanter

Call to Order

Meeting called to order by Chair Elizabeth Martin at: 2:04 PM

ERC Business

1. Motion was made to establish each member's voice could be heard by every other member. Seconded (Schnare) and approved 8-0.
 - a. Betsy Martin for Mount Vernon District – Stockton Pkwy
 - b. Ed Monroe for Dranesville District
 - c. Ken Lanfear for Hunter Mill District – Reston
 - d. Amy Gould for Braddock District – Lafayette Forest in Annandale
 - e. Alexis Dickerson for Lee District – Alexandria



- f. Som Govender for Sully District – Cavalier Woods Drive
 - g. Dr. David Schnare for Springfield District
 - h. Sue Shuman for Providence District – Mantua
2. Motion was made to conduct the meeting electronically through the dedicated video platform with public access. Seconded (Lanfear) and approved 8-0.
 3. Review of the April 7, 2021, meeting minutes:
 - a. Motion was made by Schnare to approve the minutes without amendments. The motion was seconded (Lanfear) and approved 8-0.
 2. Reminder for all committee members to complete the One Fairfax Acknowledgement Form and watch associated video.

Public Hearing

1. **Encroachment Exception Request #3276-WRPA-003 and Water Quality Impact Assessment #3276-WQ-004, Mr. Yeshi Edwin:**

An application for an exception to include a driveway turnaround and retaining wall in the Resource Protection Area (RPA) under Chesapeake Bay Preservation Ordinance (CBPO) Section 118-6-9 at 8747 Brook Road, McLean, Virginia 22102; Woodside Estates, Section 3, Lot 16A; Tax Map #020-3-03-0016A; Dranesville District.

Martin asks committee members whether there are any conflicts. With none heard staff begins the exception presentation.

- [Staff exception presentation](#) provided by Lewis.
- [Applicant exception presentation](#) provided by Sareen.
- Martin asks whether there are any supporting or opposing statements for the application.
 - Property owners speak to appeal to the committee in support of the application, pointing to concerns with visitor parking and delivery turnaround. Safety concerns also mentioned in regard to reentering Brook Road.
 - No one in opposition.
- Staff presentation of Director Position provided by Lewis, regarding the required findings:
 - Newly requested exception is not the minimum necessary to afford relief as the previous uses were requested at the discretion of the owners as the minimum necessary.
 - Would not confer a special privilege but would create a serial exception by its nature and create a special privilege.
 - Water quality detriment concern: reviewing the total impervious areas added to the property over time should continue to be the basis for any future computations to properly evaluate water quality for the entire lot.

- Current calculations do not demonstrate a water quality benefit to meet the additional requirements of 118-6-9.
- For these reasons, staff recommends denial of the request.
- Applicant Rebuttal presented by Sareen.
 - 2012 exception demonstrated to staff's satisfaction that the house construction met the water quality requirements in place at that time. There was no net degradation to water quality. The methodology in place at the time and in place now are not the same. The 2012 method was less stringent than today's standards. There is an excess in treatment of pollutant loads using the Virginia Runoff Reduction Method (VRRM) model in the current application. Sareen does not believe they should apply the new methodology to the entire lot including the previous areas approved in 2012 under a different methodology.
- Sub Rebuttal presented by Lewis.
 - Computations were done using the entire lot to calculate the phosphorus load before the redevelopment of the new house and after the house was constructed. The challenge in reviewing the computations is that the benefit calculation for the vegetated buffer proposed superimposes the benefit from the buffer and causes the area to be counted twice. Computations should include the entire parcel and all impervious areas to properly address water quality impacts.
- Committee Questions for Staff or Applicant's Representative.
 - Monroe asks the applicant's representative about the area of impermeable pavers along with vegetated buffer area and where this location would be on site, referencing Friday's site visit to the property.
 - Lanfear asked staff about the calculations used in 2012 for runoff.
 - Staff is concerned whatever calculation method is used, you don't count the land area twice in the computation. If you count the runoff from the parcel, you've used the entire parcel for the computation. If you superimpose another calculation based on another footprint from the same parcel, regardless of the method, it does not provide a proper calculation. The issue is not the method, but the footprint used for the calculation.
 - Staff does not support a serial exception to add something that was not necessarily correct in the first place for water quality and instead require it be properly addressed and evaluated with this request, if so approved by the committee.
 - Impacts would likely require additional facilities be installed to properly treat the water quality. Staff has not fully evaluated this proposal but instead performed rough pre-analysis to find a thorough evaluation would likely require BMPs and extensive revegetation.

- Sareen responds to Lanfear comments. Regarding prior application not providing a water quality benefit - is not accurate. The application at the time did provide a benefit.
 - Martin asks where the septic field is located on the property.
 - Sareen confirms the location is in the rear of the lot.
 - Martin asks what area the water quality benefit computations used in this current application were based off of.
 - Sareen replies that it includes all new proposed impervious area below the deck, using the VRRM.
 - Monroe understands access issues and vehicular concerns at the property but is struggling to understand how this is not self-created or self-imposed. The application had permission in 2012 to build the desired structure. Have other considerations been made or thought of by the property owner?
 - Sareen points to both the concern of deliveries as well as visitors parking and exiting who do not have enough space to make safe vehicular movements with the current configuration.
 - Lanfear discusses his experience in visiting the site on Friday afternoon. He did mention the idea of thinking of that earlier in the process of house construction.
 - Shuman agrees with Lanfear and the safety concerns, even without large delivery trucks. Need to find a solution. Asks staff where would revegetation go.
 - Lewis mentions staff report imagery (pre house construction), considering the land cover versus current land cover. Considering the impervious area over time, creates a water quality concern. Basically, most of the areas which are currently grass/lawn would have to become wooded to put this right, based on the imperviousness, in addition to Best Management Practices (BMPs). Again, pending detailed computations for a thorough review.
 - Schnare points out the constitutional duty to protect the bay is to protect human health and welfare. Not pleased with having to do this a second time, he agrees humans are imperfect and errors occur which can only be determined later. Must consider the safety matter in comparison to the protection of the bay and balancing risks.
 - Lanfear suggests reviewing incrementally. Consider the turnaround only and the impact that new improvement would have to the Chesapeake Bay and mitigate only that area. Current application proposes a benefit to water quality but does not consider the entire lot. Lanfear is supportive of this approach.
- Martin closes public hearing at 3:19pm.

- Committee discussion on proposed conditions and decision.
 - Monroe speaks to the challenge of approval with current draft conditions versus denial and instead suggests deferral because of the two different opinions by staff and the applicant.
 - Gould respects Lanfear's position and owner's claim of safety but is still concerned why this wasn't addressed previously under the first application. Gould agrees calculations should be properly shown as staff requests.
 - Dickerson would appreciate a comparison of the 2012 request versus current request. Wants a clearer picture as to what would be proposed if the entire lot was considered versus just the current proposed improvement.
 - Martin mentions the VRRM calculations use acreage which is why they are seeing the small decimal points. Observation from the recent site visit was that the existing buffer is not adequate. Trees are growing nicely but missing the lower-level vegetation. Wider buffer with more mitigation and additional calculations, so thereby recommended deferral.
 - Sareen clarifies the proposed buffer is more than twice the size required by county code. The VRRM spreadsheet was used with applying only the disturbed area and does not count the existing vegetated buffer (so no double counting as referenced by staff). Believes the calculations provided in the 2012 application were deemed accurate and approved by staff and the committee.
 - Martin agrees the vegetated area proposed in the application is an appropriate location but understands that it still may not be enough to provide a net water quality benefit.
 - Lanfear mentions the need to evaluate the entire lot – understand the reasoning but does not agree with it. It was evaluated at the initial instance during the house construction and now review the additional area under this application. Agrees with considering adding more buffer area as a means to mitigate. Does not agree with holding the site to a new methodology.
 - Govender agrees with Lanfear. They met the 2012 requirements during plan review. Now we would be penalizing them for adding this small turnaround area. They have done better than what is required, and we are trying to make them resolve the entire problem. Has it been established that the 2012 calculations were incorrect?
 - Schnare discusses serial exception consideration. People recognize changes over time and the need for them. Agrees that we shouldn't recalculate. We should only evaluate the increment we have.
 - Monroe points out whether we should offer space for further negotiation between county staff and the applicant by making a motion to defer.

- Lanfear and Monroe ask whether the applicant would be amenable to deferral for additional replanting's in the WQIA for the current proposal, not the 2012.
- Martin notes the committee needs to discuss and decide what the committee is expecting regarding more negotiations and more calculations and what those negotiations would/should look like or entail.
- Shuman agrees we should go back and re-regulate to either approve with some conditions or defer with conditions, such as revegetation, but be specific on what we are trying to get to (but not back to 2012).
- **Motion made by Lanfear to defer application pending recalculation of the water quality benefits going back to the 2012 construction. Seconded by Martin. Five opposed (Schnare, Monroe, Lanfear, Govender, Shuman). Two in favor (Gould, Martin). One abstained (Dickerson). Motion dies.**
- Monroe discusses possible motion to defer the decision to provide for modification of the application to provide for further time between staff and the applicant as they currently disagree with the mitigation approach.
 - Lewis asks what is expected of staff as they are in the advisory capacity as opposed to a negotiation mechanism. It is not staff's decision.
- **Motion made by Lanfear to defer the decision with the instruction for the applicant to recalculate the amount of mitigation needed based on the proposed turnaround area and any impervious area added since the last approval. Decision deferred to October 6 meeting. Seconded by Govender. Additional discussion occurs.**
 - Sareen offers on behalf of the applicant that they simply agree to double the planting mitigation and associated area (making it 1690 sq. ft.) under the current application to allow the committee to approve today with conditions.
- **Lanfear restates the motion: Motion to approve the application with condition that the mitigation area be extended to 1,690 square feet. Seconded by Schnare. Additional discussion occurs.**
 - Lanfear withdraws motion.
- **Schnare moves to accept proposed exception conditions #1-4 and #7-11 and no others and add a condition requiring an increase in remediation plantings equal to 1,690 square feet. Seconded by Lanfear. Schnare moved to question. Schnare, Lanfear, Govender, Shuman, Dickerson, Monroe in favor. Martin opposed. Gould abstained. Motion approved 6-1.**
- **Committee moves to adopt the proposed WQIA. Motion from Schnare, seconded by Lanfear. Schnare, Lanfear, Dickerson, Monroe, Govender, Shuman in favor, Martin and Gould abstain. Motion approved 6-0..**

Staff Presentations

1. **Staff Update on Resource Protection Area (RPA) Outreach Effort**
 - a. Brandy Mueller, Environmental Compliance Coordinator for Land Development Services provides an update on the RPA outreach campaign.
 - RPA outreach postcard created spring 2020 and piloted in the fall 2020.
 - Phase 1 completed June 2021 to approximately 16,000 property owners within the Dranesville, Mount Vernon, and Springfield districts.
 - Phase 2 scheduled for late fall of this year will include Hunter Mill, Braddock, and Mason.

2. **Staff Presentation on Department of Environmental Quality (DEQ) Proposed Changes to state Chesapeake Bay Regulations:**
 - a. Jerry Stonefield, Engineer IV for Land Development Services presents an update on the State Water Control Board's recent adoption of the Chesapeake Bay Regulatory Amendments.

Subsequent Discussion (Question/Answer):

- Martin asks whether staff learned what fill only language meant. Was in reference to south-eastern properties which have flat parcels of land where allegedly owners were bringing in fill to raise their yards above high-tide elevations.
- Fill language was removed.
- Gould asks about the summary of changes for the amendments.
- Stonefield confirms next step was to publish in the Virginia register and agreed to notify the committee. Register is published every two weeks.

Next Meeting

Set for Wednesday, October 6, 2021, at 2:00 p.m.

Adjournment

Motion from Shuman to adjourn at 4:33PM. Seconded by Lanfear. Approved 8-0.