



County of Fairfax, Virginia

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Draft Minutes

Meeting of the Chesapeake Bay Exception Review Committee

October 6, 2021, 2:00 PM

Cisco WebEx Event #1-844-621-3956, Access Code 173 259 6685.

Present

Committee:

Kenneth Lanfear, Sue Kovach Shuman, Dr. David Schnare, Elizabeth Martin, Som Govender, Amy Gould, Alexis Dickerson, Anne Kanter

County Staff:

Danielle Badra, Brandy Mueller, Camylyn Lewis, Jerry Stonefield, Jeff Vish, Matthew Hansen, Behnaz Bagherian, Durga Kharel, Prutha Rueangvivatanakij, Bin Zhang, Nicola Mutesi, Gary Wallace, Emily Pertz

Applicant:

Avi Sareen (Applicant Representative), Tara Wilkins (Applicant Representative), David Tortolero (Applicant), Matthew McGill (Applicant)

Public:

Tom L., Larry King

Committee Members Not Present:

James Chesley, Edward W. Monroe, Jr.

Call to Order

Meeting called to order by Chair Elizabeth Martin at: 2:00 PM

ERC Business

1. Motion was made to establish each member's voice could be heard by every other member. Seconded (Kanter) and approved 8-0.
 - a. Alexis Dickerson – Lee District from Alexandria, VA
 - b. Betsy Martin – Mount Vernon District
 - c. Amy Gould – Braddock District from Annandale, VA
 - d. Anne Kanter – At large from McLean, VA
 - e. David Schnare – Springfield District



- f. Ken Lanfear – Hunter Mill District from Reston, VA
 - g. Sue Kovach Shuman – Providence District
 - h. Som Govender – Sully District
2. Motion was made to conduct the meeting electronically through the dedicated video platform with public access. Seconded (Gould) and approved 8-0.
 3. Motion made for continuity of government. Seconded (Gould) and approved 8-0.
 4. Review of the August 4, 2021, and September 1, 2021, meeting minutes:
 - a. Motion made by Martin to approve the minutes from August 4, 2021, without amendments. The motion was seconded (Shuman) and approved 7-0, with Gould abstaining.
 - b. Motion made by Kanter to approve the minutes from September 1, 2021, without amendments. The motion was seconded (Lanfear) and approved 8-0.

Public Hearing

1. **RPA Encroachment Exception #4135-WRPA-003 and Water Quality Impact Assessment (WQIA) #4135-WQ-001, Mr. Matthew McGill.**

An application for an exception to permit a shed in the RPA under CBPO Section 118-6-8 at 1932 Great Falls Street, McLean, Virginia, 22101; Falls Run Estates, Lot 1; Tax Map #040-2-01-0003B; Dranesville District.

- Martin asks committee members whether there are any conflict disclosures or appearance of impropriety. With none heard staff begins the exception presentation.
- [Staff exception presentation](#) provided by Lewis.
- Applicant statement made by Matthew McGill, property owner. Agrees with findings, opinions, and conditions noted in the staff report.
- Martin asks whether there are any supporting or opposing statements for the application with none provided, the presentation continues.
- Staff presentation of Director Position provided by Lewis, regarding the required findings.
- Committee Questions for Staff or Applicant's Representative.
 - Kanter asks about the reference to the lower portions of the site and associated plantings.
 - Lewis confirms the shed is close to the azaleas and walnut tree. The mitigation should capture the runoff from the impervious area, ideally in the lower portions identified to ensure proper treatment before entering the stream.
 - Kanter asks whether more planting will be performed.
 - Lewis confirms this is up for committee discussion.

- Martin reads a proposed edit to the Attachment A conditions. Slight modification of the first condition and additional third condition (establishing a 25-foot buffer along the stream edge):
 - *3. In addition to the buffer plantings required in (1), the applicant agrees to plant and maintain a 25' wide vegetated buffer on the south side of the unnamed tributary. Tree and shrub species to be planted should be selected from the Recommended Tree and Shrub Species for Reforestation of RPAs, June 4, 2008, with preference given to native shrubs that already grow on or near the site, such as Elderberry. No specific planting density, size, or placement are required, but dense, multi-layered plantings are preferred. In addition to trees and shrubs, planting a layer of herbaceous plants and grasses is recommended; appropriate riparian plants may be selected from [this list](#). Careful removal of invasive exotic species present on the streambank (such as Porcelainberry) is recommended, as is reduced (or no) use of fertilizer or pesticide.*
- Schnare mentions proposed amendment to condition (1) which cites the required buffer plantings.
- McGill confirms the understory and overstory trees referenced in the WQIA have been planted but the required shrubs (swamp azaleas) have not yet been planted due to being backordered. These are proposed plantings per the WQIA, to occur this fall.
- Lewis confirms the PFM modification and planting density flexibility.
- Martin confirms the previously proposed amendment to condition (1) would be unnecessary. Only proposed change to condition (1) is to add the “required” buffer plantings and not specify the number or what they need to be and specify overstory trees should not be located to interfere with the overhead powerlines:
 - *1. The required buffer plantings shall be planted in a focused area downslope of the proposed use to capture the runoff from the subject shed; except that the overstory tree should be located so as not to interfere with the overhead powerlines in the vicinity.*
- Gould mentions 10-foot consideration for Dominion Power lines and any overstory trees placed in the vicinity.
- Lanfear mentions the active erosion identified on the bank during the visit. Believes leaving the planting options open to the applicant that go within the 25-foot of the buffer is a good solution and will improve things significantly.
- Martin notes 12 swamp azaleas are proposed along the stream. Believes more plants are warranted and additional species to root along the edge and along the bank.

- Schnare notes his participation on the RPA Policy Committee and revised determination of the shed. Staff has modified and simplified the process accordingly. The impact of the shed is tiny. The committee appears to be taking advantage of the opportunity to require additional materials installed along the stream bed. It is of interest to the applicant to take care of the stream bed. Not opposed to the recommended changes but suggest the committee take care on the issue.
- Martin references the governing law which requires buffers be protected where they exist and installed where they are not present.
- Gould references the issue of flooding which created the issue of the existing shed and sees this (the 25-foot buffer) as a longer-term solution.
- Dickerson asks the applicant whether the shed was built to replace the existing shed or whether there is an intention to sell.
- McGill explains this was an effort to replace the existing shed to store things in. No intention to sell.
- Martin references the owners' interest in planting the buffer.
- Schnare cites the limited authority and duty of the committee under the law.
- Martin says the job is to ensure the water quality is protected. Martin proposes modification to the WQIA conditions as previously read allowed to condition (1) and newly added (3).
- Motion to vote on modified conditions by Martin. Seconded (Lanfear). Approved 7-1, Kanter opposing.
- Martin makes motion to approve the exception request and WQIA subject to the conditions recommended by staff in Attachment A of the staff report and revised October 6, 2021, by the committee. Seconded (Kanter). Approved 8-0.

2. RPA Encroachment Exception Request #5255-WRPA-003-1 and Water Quality Impact Assessment #5255-WQ-001-3, Mr. Tortolero.

An application for an exception to include unpermitted land disturbance activities in the Resource Protection Area (RPA) under CBPO Section 118-6-8(a) at 9407 Wooded Glen Avenue, Burke, Virginia, 22015; Wooded Glen, Section 1, Lot 4; Tax Map #088-1-20-0004; Springfield District.

- Martin asks committee members whether there are any conflict disclosures. With none heard staff begins the exception presentation.
- [Staff exception presentation](#) provided by Rueangvivatanakij.
 - Gary Wallace, DCC investigator acknowledges the unpermitted violation case which has escalated to court. Also, references the RPA and zoning matters that must be resolved prior to the building permit coordination.

- Schnare asks what process the county takes when someone does not obtain a permit.
- [Applicant exception presentation](#) provided by Wilkins.
 - Calculations do not match county numbers due to different use of programs (CAD vs. GIS).
 - Chicken coop will be removed or relocated outside of the RPA.
 - Fence currently installed on Fairfax County Park Authority property will be relocated onsite by hand.
- Martin asks whether there are any supporting or opposing statements for the application. Hearing none, the presentation continues.
- Staff presentation of Director Position provided by Rueangvivatanakij, regarding the required findings. Staff recommends approval of the encroachment with proposed conditions referenced within Attachment A of the Staff Report.
- No rebuttal by the applicant.
- No Sub Rebuttal by staff.
- Open for committee questions and discussion.
 - Govender asks whether this would be approvable by LDS if it had not been constructed illegally.
 - Schnare questions the Zoning matter regarding the Special Permit process for the additional impervious which exceeds 50%.
 - BZA typically asks the property owner/applicant to ask for stormwater detention or some sort of mitigation to address the increase.
 - Schnare proposes the committee decision is premature and should follow the BZA decision as they do not know what else may be needed or required. Suggests considering the committee's options to include denial for lack of appropriate application for the missing BZA approval.
 - Martin asks what the normal process would be and the order in which it should be reviewed.
 - Rueangvivatanakij explains these processes can be independent from one another.
 - Schnare says these processes need to be compatible.
 - Lanfear voices concerns with conflicting mitigation required for the RPA versus the BZA requirements.
 - Shuman references the issue of the chickens and that they are being asked to do something without all the facts. Feels a positive decision cannot be made with the facts provided.
 - Martin confirms the chickens had been removed and the coops were being disassembled.
 - Gould questions the new normal for the RPA (e.g., spa). BZA should go first and evaluate the percentage ratio and any associated mitigation.
 - Martin asked what happens if they defer.

- Wallace references the issue of needing to go through the ERC first in advance of the BZA.
- Lanfear talks through considerations of the conditions imposed on the exception.
- Schnare asks whether the engineer can confirm their evaluation.
- Sareen confirms their evaluation has only been on the RPA encroachment and have not evaluated Chapter 104 or 124 in regard to water quality and water quantity. Revegetation of the rear yard is separate process.
- Kanter references concerns with applicants not seeking the proper approval and permission in advance of performing the work and instead asking for forgiveness afterwards. Suggests denying under self-imposed/self-created finding.
- Mueller confirms there is no regulatory requirement for the order in which the applicant must submit for an RPA exception versus the BZA special permit. Also confirms self-imposed is not directly implied as a result of a violation, per Marc Gori, Assistant County Attorney.
- Tortolero confirms the chickens have been removed and the grill area is not a kitchen.
- Motion made by Schnare:
 - Whereas the applicant requested an exception to the criteria and requirements of the Chesapeake Bay Preservation Ordinance (CBPO) under Section 118-6-8(a), to expand a pool deck and add an outdoor barbeque surface and spa in the Resource Protection Area (RPA); and,

WHEREAS the application has been filed and notice given in accordance with the requirements of all applicable State and County codes; and,

WHEREAS, pursuant to Section 118-6-8(a) the Committee has made a finding that the requested exception, as conditioned, cannot be determined to be the minimum necessary to afford relief because the application does not adequately address reasonably expected stormwater requirements which may significantly impinge on the conditions needed to be addressed under subsection Section 118-6-8(e).

I, therefore, move that the Exception Review Committee disapprove both Water Quality Impact Assessment #5255-WQ-001-3 and Exception Request #5255-WRPA-003-1 under Section 118-6-8(a) of the CBPO to permit the encroachment into the RPA;

and waive the requirement for waiting a year before reapplication to the Committee. Seconded (Lanfear). Discussion:

- Lanfear requests the information before them would include the analysis needed to ultimately address the BZA matter in case the applicant does not wish to wait for the BZA hearing.
- Sareen asks for clarification. Understands water quantity and quality computations must be included to offset the impervious cover, ensuring all governing codes are satisfied.
- Approved 8-0.

Next Meeting

To be determined.

Adjournment

Motion from Gould to adjourn at 4:04 PM. Seconded by Kanter. Approved 8-0.