



# County of Fairfax, Virginia

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## Draft Meeting Minutes

### Meeting of the Chesapeake Bay Exception Review Committee

March 6, 2024, 2:00 PM

Park Authority Board Room, Suite 941

12055 Government Center Parkway

Fairfax, Virginia 22035

#### Present:

##### **Committee:**

David Schnare, Amy Gould, Som Govender, Mary Smith, Elizabeth Martin, Barbara Ryan, Kate Flynn, Edward Monroe

##### **County Staff:**

Steve Strackbein, Nicola Mutesi, Yosif Ibrahim, Bin Zhang, Matthew Hansen, Kirsten Munz

##### **Applicant:**

Andrew Rieger  
Curt Crouch (Applicant's Representative)

##### **Public:**

Hari Amamidala

#### Committee Members Absent:

Alexis Dickerson

#### Call to Order

Meeting called to order by Chairman Martin at: 2:06 PM

#### Topic 1: ERC Business

1. Election of Officers – Elizabeth Martin will continue as Chair, Barbara Ryan will act as Vice Chair, Mary Smith as Secretary. The motion was voted upon and passed.
2. Meeting minutes from December 6, 2023, were voted upon and approved.

#### Topic 2: Public Hearing

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**Encroachment Exception Request# WAIV-2023-00514 and Water Quality Impact**

**Assessment #009820-WQ-003-1, Andrew L. Rieger**, an application for an exception to allow an existing 800 square foot concrete sports court to remain in the Resource Protection Area (RPA) under the Chesapeake Bay Preservation Ordinance (CBPO) Section 118-6-9 at 12917 Percheron Lane, Oak Hill, Virginia 20171; Thompson Road Property, Lot 27; Tax Map #0353 26 0027, Sully District.

1. Chairman Martin asked if anyone in attendance would like to provide support or opposition to the exception request. Hari Aamidala expressed a desire to make a statement.
2. No conflicts of interest exist between the committee and the party seeking application approval.
3. County staff member Ibrahim introduced the case and presented a summary of issues ([Staff Presentation](#)).
4. Mr. Rieger presented his support and Mr. Crouch, the applicant's representative presented the statement of support ([Applicant Presentation](#)).
5. Interested parties were invited to speak. Mr. Aamidala made a statement indicating he was there to understand the committee procedures. He indicated the subdivision was developed with grass. He is a neighbor of Mr. Rieger and a member of the HOA. He stated he believes it is a net positive to keep the sport court and to offset the effects with plantings.
6. Mr. Ibrahim presented the position of the Director of LDS, a summary of staff's position on the required findings and staff's recommendation to approve the exception. See the [Staff Report](#) for further details.
7. Chairman Martin offered time for a rebuttal to Mr. Rieger. Mr. Crouch offered that during the WQIA application phase of this submission, staff indicated that soil amendments as a BMP would not be required based on the current use. They are happy to include what is needed to accept this waiver for exception. He thinks there is precedence to allow him to keep the sport court.
8. Chairman Martin opened the floor to committee members' questions and discussion.
9. Monroe posed a question, what is the change in surface material from swing set to sport court?
10. Mr. Rieger indicated it was pea gravel and mulch when it was a swing set and now it is concrete. A set of railroad ties create the 40' x 20' footprint of the area, and that has not changed.
11. Smith asked what the sports court is used for. Mr. Rieger indicated that the court is mostly used for hockey practice to shoot hockey pucks. The court is multifunctional and when the hockey equipment is removed it can be used for other sports, including pickleball.

12. Govender asked a question about the RPA lines in the presentation. What lines are we using for this evaluation? Mr. Crouch indicated that Fairfax County staff initially pointed him towards the County approved RPA maps that are publicly available. Around December 2023, Mr. Ibrahim notified the applicant of a field delineated RPA that should be used for the application. The field delineated RPA puts the sports court in the seaward 50 feet of the RPA. Mr. Ibrahim clarified that the County maps are used for reference and when there is a field delineated RPA boundary, that supersedes the County adopted maps. Chairman Martin clarified that the sport court is in the RPA and the difference in the maps put the sports court in (field delineated) or out (County approved) of the seaward 50 feet.
13. Martin asked where the proposed 465 sf area of compost soil amendments would be placed on the parcel. Mr. Crouch indicated that they would like to put it in the rear of the yard. The approved WQIA does not have the soil amendments identified on the plan. Mr. Crouch indicates that the incorrect WQIA was stamped approved although he removed this from submission.
14. Martin wanted to know why an undisturbed area would be the location of plantings. Mr. Crouch indicated that the locations can be changed, and they would like to plant where it would be most beneficial. Mr. Rieger stated that he owns property across the waterway and thinks plantings in that area could provide the most value. The plantings cannot be placed in the sanitary sewer easement. Martin pointed out that the area on the other side of the stream is not affected by runoff from his property and therefore would not mitigate the impact of the sports court.
15. Flynn stated that to plant on the other side of the stream would assume that the water coming from those properties is detrimental.
16. Martin reviewed the old cases with the committee and indicated a previous case was denied because there was a location the sport court could be installed elsewhere. She thought this case is very similar and maybe the sports court could be made smaller and installed elsewhere on the property, for example in the driveway/turnaround. Mr. Rieger mentioned that the location was selected because it was already disturbed by a swing set. He rejected an alternative location in the driveway because the hockey pucks would create a hazard, and the HOA would not allow it.
17. Gould detailed that there is a large amount of impervious area on the lot and there is a large slope in the back area and there are some trees removed. Schnare interjected that it is incorrect, and Mr. Rieger supported his interjection. Mr. Rieger stated a tree was removed after it was struck by lightning. He continued to seek the exception by stating he did not remove any trees and changed the use from grass to concrete.

18. Martin said the committee is sympathetic to planting trees to mitigate the impact, but the committee's job is to apply all six findings required in the ordinance, not only the criterion pertaining to water quality.
19. Schnare mentioned the following:
  - a. Staff recommendation was based on the amount of impervious surface. He questions, how much impervious surface is allowable? He contends 18% is the average in R-5 zoned. The imperviousness on this property is 21%. He contends this is not unreasonable.
  - b. Two other parcels in the subdivision will never be developed because they have a pond on them. He does not think this imperviousness is unreasonable and to remove the 800 square feet, bringing it to 18% would not bring much change.
  - c. One challenge the committee has is to make decisions that are not arbitrary and capricious. To make a decision based on RPA boundaries that are believed to be incorrect would be arbitrary and capricious. Schnare continued to detail the difference in mapped RPA boundaries. Schnare believes the site delineated RPA is not accurate because it is based on wetlands he does not believe exist in this area. He detailed the Virginia State Supreme Court ruling "Sackett", indicating a wetland must be continuously connected with waters of the state. He stated it was not true in 2003 and therefore not valid using different criteria from the Sackett ruling and read from a handout stating "Nontidal wetlands means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.  
  
Schnare further stated that no one had answered the question regarding what plants are in a wetland. To that end the committee was confronting a situation where there was a lack of information to know where the RPA boundaries are, however, even if measured from the stream bank that sports court would still be within in the RPA, it wouldn't be in the seaward 50 feet. Schnare asked if this was self-imposed to which he answered yes and if there was too much impervious area? He did not believe so.
20. Ryan stated that it is important that the sports court is in the RPA and whether it is in the seaward 50 feet is a lesser consideration. The previous sports court case was denied based on being in the RPA, not in the seaward 50'. Schnare argued

that this situation is different because the parcel is near two parcels that will never be developed and is situated in an area not causing harm.

21. Gould asked whether removing the sport court would provide increased water quality. Mr. Ibrahim indicated he did not think it would. She does not agree that the current plan addresses water quality enough and a new submission would be necessary.
22. Ryan felt very strongly that the planting plan could be improved to plant where there is turf and offered that plantings can be over the sanitary line. Schnare asked if this is possible. Mr. Ibrahim indicated that plantings in easements do not provide canopy coverage credit. Matthew Hansen clarified that shrubs can be planted in easements because they can be easily removed for maintenance of a sanitary line.
23. Martin reviewed the resolution from the Springvale hearing that needs to be considered in this hearing. Schnare argued that the cases are not similar and while putting together his application, the applicant was not aware the sport court was in the seaward 50.
24. Ryan clarified that there was no exception request at the time of installation of the sport court in the case under consideration. Smith supported this statement and that the cases are very similar. She stated that there was question as to where the RPA is on the property but regardless the sport court is within the RPA. Additionally, in an earlier recent application, the committee disapproved of a swimming pool although there was substantial water quality uplift.
25. Govender pointed out that the major difference between Springvale and Percheron is that the applicant clear cut the way to the stream to install the sport court, and that adjacent parcels remained wooded. Chairman Martin stated that the committee should not consider other parcels in reaching its decision.
26. Mr. Rieger interjected that he is confused as to why the discussion is focusing on the Springvale case that was disapproved rather than focusing on cases that have been approved. He reiterated he did not cut trees and there is precedent of committee approval for accessory structures.
27. Ryan commented that there are parallels between Springvale and Percheron and that the case is fresh in the committee's mind.
28. Chairman Martin did a straw vote on improved plans and more plantings for water quality improvement. 5 members voted in support.
29. Mr. Rieger interjected that he didn't know where an alternative location on the parcel would be for installation. He did not believe there were other places on the property where he could place the sport court.
30. Martin read from the interpretation of the findings and considerations for how to interpret "Self-Imposed" and "Minimum to Afford Relief".

31. Smith considered whether to approve something that is a very limited use and is for the enjoyment of the property owner.
32. Gould stated that she did not want to compare the cases as apples to apples and would rather see the water quality improved.
33. Ryan brought up the six findings and stated that it was the committee's role to decide based on the findings. Schnare mentioned that the basis for self-imposed or self-created is impervious surface, but could it be overcome by plantings and removal of the sports court would harm water quality. The second one, is it the minimum necessary? He believes that the use and location is the minimum necessary. This would not be allowed in a county park due to liability. Therefore, he believes they meet both conditions in that this is the minimum and not unreasonable in impervious area.
34. Chairman Martin counted as she believes five members that would like resubmission of the improved planting plan and three members with reservations and if Schnare would like to offer a motion, he can.
35. Speaking to Schnare's earlier point, Flynn suggested that with respect to considering the two parcels with the pond in calculating percent impervious was inappropriate and could be considered as similar to a taking. The HOA might choose to do something with the land. The uses on adjacent properties should not be considered by the committee in its decision.
36. Mr. Reiger voiced concerns that if he were to resubmit and have to go before the committee again, he was nervous that members may change and members who didn't attend the first hearing may feel differently.
37. Mr. Rieger asked whether approval with conditions was an option, rather than another hearing. Martin and Schnare stated that was not an option because they must approve the plan, not staff.
38. Martin pointed out that there were problems with the WQIA that must be corrected. The plantings must be moved out of the undisturbed forested area and into the turf area. Applicant is now saying that the composted area is not part of their plan to meet water quality requirements, but it is discussed in the WQIA (though the location is not mapped) and Mr. Ibrahim's VRRM calculations for the project assume it.
39. Mr. Crouch asked if there was an informal review that could be done or if this would need to be heard again. Martin answered that he could work with staff for any subsequent submissions. Smith added that it was against the law for more than 2 members to be together without proper notice.
40. Schnare made a motion that the committee defer decisions on this application until changes to the WQIA and planting plan are submitted and account for staff recommendations made in Attachment A conditions and that the plantings take

into account the opportunity to replace turf with appropriate native plants. The motion was seconded by Gould. The vote passes 5-3, with Schnare, Gould, Flynn, Govender, and Monroe voting in favor and Martin, Ryan, and Smith voting against.

41. Chairman Martin indicated to the applicant the decision can be appealed to the Board of Supervisors.
42. The public hearing was closed at 4:07pm.

#### Adjournment

Martin made a motion to adjourn. The motion was seconded and approved unanimously, and the meeting was adjourned at 4:08pm.

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