



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

September 7, 2022, 2:00 PM

Microsoft Teams Electronic Meeting Platform, Audio Call-in #1-571-429-5982, Phone
Conference ID 201 064 210#

Present

Committee:

Kenneth Lanfear, Som Govender, Edward W. Monroe, Jr., Dr. David Schnare, Dr.
Elizabeth Martin, Amy Gould, Anne Kanter, Sue Kovach Shuman, Mary Smith, Dr.
Barbara Ryan, Alexis Dickerson

County Staff:

Camyllyn Lewis, Brandy Mueller, Nicola Mutesi, Jerry Stonefield, Matthew Hansen, Bin
Zhang, Riam Danai, Yosif Ibrahim, Julianne Moyer, Kinnari Radadiya

Public:

J.T. Kelley, Representative
Sarah Hutchinson, Representative
Ted Britt, Representative
Dan Brzezynski, Representative
John Zecca, Owner
Lindsay Noble, Owner
Michael (Owners' son)
Philip Latasa, Speaker
Tom Jacobi, Speaker
Matthew Schlueter

Committee Members Not Present:

N/A

Call to Order

Meeting called to order by Chair Elizabeth Martin at: 2:05 PM

Topic 1: ERC Business

Department of Land Development Services

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1. Motion made by Martin to establish each member's voice could be heard by every other member. Seconded (Lanfear) and approved 11-0.
 - a. Anne Kanter - McLean, VA representing At-Large #1
 - b. Dr. David Schnare - Burke, VA representing Springfield District
 - c. Kenneth Lanfear - Reston, VA representing Hunter Mill District
 - d. Som Govender - Clifton, VA representing Sully District
 - e. Amy Gould - Annandale, VA representing Braddock District
 - f. Elizabeth Martin - Stockton Parkway representing Mount Vernon District
 - g. Alexis Dickerson - Alexandria, VA representing Lee (soon to be Franconia) District
 - h. Sue Kovach Shuman - Mantua, VA representing Providence District
 - i. Barbara Ryan, McLean, VA representing At Large #2
 - j. Mary Smith, Falls Church, VA representing Mason District
 - k. Edward Monroe, McLean, VA representing Dranesville District
2. Motion made by Martin to conduct the meeting electronically through the dedicated video conferencing platform (Microsoft Teams) with public access. Seconded (Shuman) and approved 11-0.
3. Motion made by Martin regarding continuity of government. Seconded (Lanfear) and approved 11-0.
4. Review and adopt revised [Remote Participation Policy](#):
 - a. Motion made by Martin. Motion seconded (Lanfear) and approved 11-0.
5. Review and adopt the new [All-Virtual Public Meetings Policy](#):
 - a. Motion made by Martin. Motion seconded (Lanfear) and approved 11-0.
6. Review of the [October 6, 2021, meeting minutes](#):
 - a. Motion made by Kanter. Motion seconded (Shuman) and approved 11-0.
7. Review and adopt the revised Draft Motions – ERC Resolution template.
 - a. Motion made by Smith. Motion seconded by (Shuman) and approved 11-0.
8. Introduction of newest committee members (Dr. Barbara Ryan, At Large #2 & Mary Smith, Mason District).
9. Introduction of the new Clerk to the ERC, Nicola Mutesi, LDS staff
10. [Presentation](#): Overview of ERC Roles and Responsibilities (Chairperson, Martin)

Topic 2: Public Hearing

Encroachment Exception Request #1996-WRPA-016 and Water Quality Impact Assessment #1996-WQ-005, John Zecca, an application for an exception to construct a pool in the Resource Protection Area (RPA) under the Chesapeake Bay Preservation Ordinance (CBPO) Section 118-6-8 at 917 Whann Avenue, McLean, Virginia 22101; Langley Forest, Section 1, Lot 13A; Tax Map #0214 06 0013A; Dranesville District.

- Martin asks whether there are any members of the public who wish to speak beyond the received email. Philip Latasa raised his virtual hand to acknowledge his intent to speak at the appropriate time of the hearing.
- Martin asks committee members whether there are any conflict disclosures or appearances of impropriety. With none heard staff begins the exception presentation.
- [Staff exception presentation](#) provided by Camylyn Lewis.
- [Applicant presentation](#) provided by J.T. Kelley, representative. Scope includes proposed pool, spa and pool deck with a new stormwater management facility and plantings. Kelley compares this application against other submitted exception applications. Disagrees with staff perception of aerial imagery in evaluating the existing buffer vegetation over the years.
- Martin opens the hearing to supporting or opposing statements for the application:
 - a) Martin reads 913 Whann Avenue's Tom Jacobi email in support of the application. Jacobi, having been identified in the meeting, speaks to his comments, again supporting the application.
 - b) Philip Latasa points to the minimum necessary being the original construction of the house therefore making the pool unnecessary. Latasa further references the retaining wall construction as being beyond the intended pool location which may possibly mean it would be, "no worse".
- Staff presentation of Director Position provided by Lewis, regarding the required findings, included the following points:
 - a) Permit was not found for the existing retaining wall. Moving forward would require a grading plan which provides the condition of the wall and confirms it can handle what is there now and any additional loading provided by the proposed pool. The wall was created prior to the RPA.
 - b) Staff recommends the applicant restore the area on the opposite side of the stream to the condition it was prior to the RPA establishment prior to performing mitigation planting. Staff note the water quality requirements were waived for the construction of the original house.
 - c) Planter boxes are proposed to ensure there is not a detriment to water quality. Computations and sizing would be shown on a future grading plan.
 - d) The request qualifies under 118-6-8(b). Staff recommends approval with conditions (noted in Attachment A).
- Applicant rebuttal:
 - a) Kelley notes the RPA restoration, viewed as mitigation versus additional forestation, is still proposed by the application. The Director/ERC can require restoration under a 1:1 ratio, using low-growing vegetation versus overstory trees, as proposed under this application, along with the planter boxes. Further notes the seaward 50' is currently used as a maintained lawn and has been.
- Committee questions for staff or applicant/representative:
 - a) Lanfear: Clarifies the sanitary sewer easement existed before the RPA – correct?

- i) Kelley confirms that is accurate.
- b) Shuman: Where is the pool water going to discharge?
 - i) Kelley – pool water will discharge to the stream when it is drained. There is a county policy for such discharge. It will not adversely affect flow or flooding.
- c) Shuman: Fairfax County requires fencing around the pool and asks where the fencing will be placed?
 - i) Zecca: allows for a retractable pool cover in place of a fence.
- d) Shuman: The generator that exists, why?
 - i) Zecca: Generator is a requirement for the elevator.
- e) Smith: Access material will be hauled off site per plan? Asks about how this will be implemented.
 - i) Kelley: acknowledges E&S regulations and the information/detail which will ultimately be contained within the future grading plan.
- f) Ryan: Retaining wall – wants to know what is known about the integrity and stability of the wall. Sounds like there will be a structural review down the road. What happens if it is found that the wall will not support the pool? Second, regarding the planter boxes – are there any special requirements for proposing BMPs in RPAs – what considerations have been put in place to address this?
 - i) Kelley: We do not have existing studies currently. Observations indicate there is no failure. The pool will be designed to ensure no additional force is put on the existing wall.
 - ii) Zecca: Did talk to the pool company and confirmed the weight will not rely on the wall and it will be protected as part of the pool.
 - iii) Kelley: There is no feasible way to place the BMP outside of the RPA. The facility would treat impervious area within the RPA. During the process they will work out the maintenance and agreement language for ongoing maintenance.
- g) Ryan: What if the construction impacts the wall? If the wall has to be replaced, will that impact the limits of disturbance?
 - i) Ted Britt: Part of the grading plan that must be submitted for pool construction, the engineer and pool designer/landscape company would have to perform additional borings to understand how it was built, what the footing/foundation considerations need to be and any additional sheeting and shoring that may need to happen as part of the design.
- h) Monroe: Mentions DEQ guidelines for discharge of pool water – one option to direct to sanitary sewer (not an option for this property), second option is to well vegetated area. Considering space limitations, how do you plan to address?
 - i) Kelley: The pool is within 20' of the resource. There is not a well vegetated area to flow through. It will be discharged in accordance with the regulations. The revegetation will occur on the backside of the wall.
 - ii) Britt: Does not know whether Public Works would entertain discharge to the sewer. They would have to look into that. May lead to additional disturbance in

- the RPA, or tie into the house lateral. Will work with staff to further explore this option. Will ensure they follow DEQ regulations.
- i) Kanter: Can grasses or other vegetative cover be installed over the sewer area?
 - i) Kelley: Application proposes riparian seed mix overtop of the easement area.
 - j) Kanter: How deep is the pool? Judges the pool discharge volume to be about 20,000 gal; concerned about the discharge. How is the pool to be brought in/constructed?
 - i) Kelley: Regardless of the total volume, it's more about the rate of the water to the discharge rate/concentration.
 - ii) Britt: Construction of pool is proposed as gunite pool.
 - iii) Zecca: Nearby driveway would be utilized by the cement truck using pumping system to the spot (about 20').
 - k) Govender: Has a flood elevation ever been taken on the area? Seems like the wall was to assist with flood waters since stream is up against the wall. Concerned about the floodplain and accuracy 50' measurement.
 - i) Kelley: Notes it is a minor floodplain and is unaware of a formal floodplain study.
 - ii) Zecca: The wall has been in place for decades, likely to retain the previous pool that existed and create a flatter yard. Stream is at least 20 feet over. Further noting the intention of the planter boxes and vegetation to create an environmental benefit.
 - iii) Britt: Believes the floodplain comes up between the wall and the channel.
 - iv) Lewis: References the grading plan for the existing house which demonstrates the floodplain elevation. The flood is noted but staff would have to do an analysis in more detail during the floodplain review, subject to the Zoning Ordinance, a separate process from the ERC RPA exception request. References Attachment C.8.4 (shared on the virtual screen).
 - l) Martin: Asks about the planting plan for the embankment area behind the wall – what happens with that?
 - i) Kelley: Confirms location as the backside between the wall and stream. Notes the infill lot grading plan will show that area within the limits of disturbance. No trees or plants, just native grasses/low-growing plantings. No concerns with stability, it is currently stable. Vegetation regularly grows. The retaining wall predates the RPA.
 - m) Ryan: Follow up to clarify, in looking at the photos of existing condition – there are existing invasives in that area. Will that also be removed and replaced with native vegetation?
 - i) Zecca: Will do what is required and expected. With replanting there is an expectation of native plantings being used. Removing the invasives will impact soil stability but we can look into removal/replacement.
 - n) Gould: Concerned with the pool draining into the stream and putting off evaluation of that information until after the ERC issues a decision.

- i) Zecca: Would only discharge in concert with the law. Where the county allows certain things, it must apply here as well.
- o) Gould remains concerned with water quality obligations under the Ordinance.
- p) Schnare: Discharging water must be dechlorinated; this is a standard requirement – only need to evaluate the discharge rate which is a standard computation that can be performed.
- q) Ryan: Concerned with the retaining wall and information missing regarding the wall, approving this application and determining at a later date that the wall is not stable and must be removed.
 - i) Kelley: The limits of disturbance for this project due to extend to the stream side edge of the retaining wall. The wall is a non-conforming use in the RPA meaning it is able to be maintained and restored under the Ordinance, as an exempt use. If there is an issue with the wall, it can be fixed, which is allowed under the regulations.
 - ii) Ryan is concerned that the process of fixing will have a greater impact than the pool proposal.
- r) Govender: Limits of disturbance will be on the downstream side of the retaining wall or on the inside of the wall?
 - i) Kelley: Currently is shown on the downside stream of the wall.
 - ii) Britt: Actually, planning to place E&S controls on the house side of the retaining wall.
- s) Schnare: Moves to **close** the public hearing. Seconded (Monroe). Approved 11-0.

Final Committee Discussion:

- Monroe: Discusses pool discharge requirements and DEQ guidelines. Direct discharges are discouraged and should only be considered as last resort for pool water disposal. Wants to ensure the committee agrees with determining all other options have been considered (sewer option/truck out, etc.)
- Lanfear: Questions how they can discharge to the stream when there's a direct sanitary sewer connection for the house. Notes a necessary connection line between the house and the sewer easement. May require a pump/check valve but should be a possibility. Suggests approving the request with a requirement to truck out to the sewer or directly pump into the sewer – not allowing discharge directly to the stream.
- Schnare: Believes this fails 6(b) requirements to deny others in similar situations, referencing the committee has never approved a pool within the seaward 50 feet. Further points to the issue being self-created as the house was purchased after the RPA was established and the purchaser has an obligation to determine whether the house is acceptable as constructed. Does not support approval.
- Smith: Disagrees, respectfully, that everyone buys their property as-is and cannot seek an exception after that fact.

- Schnare: References prior cases where someone wished to build an addition to the house, was approved, as it was reasonable in context to the use of the facility. Pools have not been viewed as such but seen more as an amenity, which the committee has not previously allowed in the seaward 50.
- Martin recognizes Monroe to introduce a motion to approve the exception with conditions.
- Draft Motion shared on the screen for reading/discussion.
- Monroe makes formal motion to approve with conditions. Seconded (Schnare).

Discussion:

- a) Finding (a) – “The requested exception, as conditioned, is the minimum necessary to afford relief.”
 - i) Monroe: Agrees it is the only location where a pool could be placed though other uses could be made for the property/area.
 - ii) Kanter: Agrees it is the only location but does not believe a pool is necessary for this property.
 - iii) Martin moves to adopt finding (a) as written. **Approved 7 - Opposed 3** (Govender, Ryan, Gould) - Abstained 1 (Martin).
- b) Finding (b) – “Granting the exception will not confer upon the applicant any special privileges that are denied by this part to other property owners who are subject to its provisions and who are similarly situated.”
 - i) Schnare: Wooded Glen Lot 4 was denied in a similar situation and because they were not given approval and it was similar enough to this one, granting of the exception would grant a special privilege.
 - ii) Lanfear: The pool is going on top of an already maintained grassy area. Not aware of other cases proposing a pool within a managed lawn area.
 - iii) Schnare: Mentioned they’ve had cases of pools proposed in both lawns and buffers but not within the seaward 50.
 - iv) Smith: Concerned with interpreting the language, and never approving something within the 50 feet. If that was the intent, why would Virginia give that sort of guidance and allow it within the regulations?
 - v) Schnare: Staff report references four similar cases. The one within the 50 feet was denied previously.
 - vi) Lanfear: Disagrees.
 - vii) Gould: Agrees this would grant a special privilege. Precedent setting. Further mentions the potential property purchasing notification regarding RPAs. Clarifies the residential disclosure that there could be RPA and it’s up to the buyer to do their due diligence.
 - viii) Ryan: Agrees this would grant a special privilege.

- ix) Martin moves to adopt finding (b) as written. Approved 2 - **Opposed 7** (Gould, Kanter, Govender, Schnare, Dickerson, Ryan, Shuman) - Abstained 2 (Martin and Monroe).
- x) Detailed reasoning proposed by Martin (Wooded Glen referenced). Modified to say, “a swimming pool” instead of “swimming pools”.
 - (1) Kanter moves to adopt proposed reasoning, as edited. Seconded (Schnare). **Approved 8** - Opposed 1 (Smith) - Abstained 2 (Martin and Lanfear).
 - (2) Lanfear will vote for the language because it represents the majority of the opinion, not that he agrees with the overall finding.
 - (3) Smith abstains the language as she previously voted against the finding.
- c) Finding (c) – “The exception, as conditioned, is in harmony with the purpose and intent of the CBPO and is not of substantial detriment to water quality.”
 - i) Motion made by Schnare not to make a formal finding for (c) as the committee has already reached a decision to deny the exception request based on finding (b) and hence need not review and consider the proposed conditions.
- d) Finding (d) – “The exception request is not based upon conditions or circumstances that are self-created or self-imposed.”
 - i) Motion made by Martin that the exception is not self-created/self-imposed. Approved 3. (Smith, Lanfear, Shuman). **Opposed 7** (Schnare, Dickerson, Monroe, Kanter, Gould, Govender, Ryan). Abstained 1 (Martin).
 - ii) Reasoning by Kanter: It’s a difficult property, you’ve got a gully and a creek in the backyard. I do not see that this is required. The need for a pool is a self-imposed condition and the house is perfectly fine without. No need for it. Not necessary for medical, health, employment conditions.
 - iii) Reasoning by Ryan: No one needs a swimming pool.
 - iv) Reasoning by Govender: it is not an absolute essential – previous owners did without the pool. Trying to justify it as essential is not possible.
 - v) Reasoning by Gould: Wrong location for a pool and the ERC is getting into the seaward 50 feet which is the hurdle they can’t get around.
 - vi) Smith: Mentions the 50 feet seaward component is critical to justify the reasoning.
 - vii) Detailed reasoning proposed by Martin.
 - viii) Kanter moves to approve proposed language. Seconded (Schnare). **Approved 10**. Abstained 1 (Smith).

Motion from Martin to **DENY** the application - **Approved 9** (Martin, Schnare, Ryan, Kanter, Gould, Monroe, Shuman, Dickerson, Govender) - Opposed 2 (Smith, Lanfear).

Topic 3: Election of Committee Members

- Betsy Martin, Chair
- Edward Monroe, Vice Chair
- Sue Shuman, Secretary

Motion from Gould to **Approve** current members continue in their roles. Seconded (Ryan).
Approved 11-0.

Adjournment

Motion from Gould to adjourn at 4:53 PM. Seconded (Kanter). **Approved 11-0.**