



County of Fairfax, Virginia

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Draft Minutes

Meeting of the Chesapeake Bay Exception Review Committee

April 7, 2021, 2:00 PM

Cisco WebEx Event #1-844-621-3956, Access Code 179 332 0686

Present

Committee:

Ken Lanfear, Sue Kovach Shuman, Edward W. Monroe, Jr., Dr. David Schnare, Elizabeth Martin, James Chesley, Ann Kanter, Som Govender, Amy Gould, Alexis Dickerson

County Staff:

Danielle Badra, Brandy Mueller, Camylyn Lewis, Jesus Rico, Keyona Green, Patrick Foltz, Jerry Stonefield, Jan Leavitt, John Friedman, Brian Keightley, Shahab Baig, Matthew Hansen, Behnaz Bagherian, Durga Kharel, Prutha Rueangvivatanakij, Catie Torgersen

Applicant:

Avi Sareen (Applicant Representative), Dan Brzeznski (Applicant Representative), Tara Wilkins (Applicant Representative), Teseco Bergoglio (property owner), Cecilia Bergoglio (property owner)

Call to Order

Meeting called to order by Chair Elizabeth Martin at: 2:01 PM

ERC Business

1. Motion was made to establish each member's voice could be heard by every other member. Seconded (Lanfear) and approved 8-0.
2. Motion was made to conduct the meeting electronically through the dedicated video platform with public access. Seconded (Schnare) and approved 8-0.
3. Review of the December 2, 2020 minutes:
 - a. Kanter notes places within the minutes where her name was incorrectly spelled. Corrections made.
 - b. Motion was made by Lanfear to approve the minutes with noted correction. The motion was seconded (Kanter) and approved 8-0.

Public Hearing



1. Encroachment Exception Request #129-WRPA-005-1 and Water Quality Impact Assessment #129-WQ-001-3, Teseco and Cecilia Bergoglio:

An application for an exception to include unpermitted patio and grill in the Resource Protection Area (RPA) under Chesapeake Bay Preservation Ordinance (CBPO) Section 118-6-9 at 6630 Holland Street, McLean, VA 22101; Langley Forest, Section 4, Lot 6; Tax Map #021-2-02-0006; Dranesville District.

Martin asks whether any submissions were provided in advance from the public and whether anyone is online wishing to speak.

With no one acknowledged, Martin subsequently 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 – none heard.
- Applicant Rebuttal presented by Sareen and property owner, Teseco Bergoglio:
 - o Mentions two and a half years of coordination with the two hired firms to correct the violation they unknowingly committed.
- Staff presentation of Director Position provided by Lewis, regarding the required findings:
 - o Includes deficiencies identified in the submitted [Water Quality Impact Assessment](#) (WQIA), dated March 10, 2021, and recommended approval conditions to have the deficiencies addressed in later submission.
- Applicant Rebuttal presented by Sareen.
 - o No rebuttal provided.
- Committee Questions for Staff or Applicant's Representative:
 - o Kanter asks whether the proposal includes buffer mitigation to include encroachments created by the previous owner, regarding the past buffer planting that was removed.
 - o Sareen states this application does not try to address past encroachments and only attempts to address the subject of the notice of violation and the work performed by the current owner.
 - o Kanter has concerns with this aspect. Believes the requirements are conveyed with the land and should be satisfied regardless of current ownership.
 - o Gould joins meeting late and clarifies RPAs are listed in the Residential Property Disclosure but are not their own separate disclosure.
 - o Monroe asks for more information regarding the proposed planting footprint.

- Sareen references the separately submitted planting plan which was included in the WQIA and shown on [Attachment B3](#) of the Staff Report.
- Lanfear speaks to whether a property owner should know whether they have a property with RPA limits with use of the [Jade](#) system.
- Shuman speaks to the topic of realtors and their lack of identification of RPA. Shuman asks about a required maintenance agreement for the plantings going forward and where the legal authority exists to require this. Shuman also asks whether this has been done before or if this is precedence setting.
 - Patrick Foltz with the Office of the County Attorney mentions these types of maintenance agreements are common during the development process, typically for commercial properties. Staff believe this addresses the future acknowledgement needed for property owners.
 - Foltz also speaks to enforcement.
- Kanter mentions problems with cases which obtain approval from the Exception Review Committee (ERC) and then later in the future, remove or alter the approved conditions.
- Martin mentions her involvement in the Wetlands Board and annual photos provided to confirm existence.
- Mueller speaks to enforcement coordination and resource restrictions to provide an annual oversight for all RPA exceptions in perpetuity.
- Schnare comments on enforcement for future discussion and consideration for long term maintenance and assurances.
- Martin closes public hearing at 3:09pm.
- Motion made by Martin to alter the initial roll call motion to include Amy Gould and Alexis Dickerson. They were present in the meeting from the beginning as “attendees” who could not speak but could listen and were made “panelists” who could participate in the meeting only after a technical difficulty was resolved.
- Committee discussion on proposed conditions and decision.
- Motion made by Lanfear to accept the application and conditions provided by staff. Seconded by Kanter.
- Martin asks staff as to whether there is a suspected wetland in the rear of the property.
 - Lewis mentions staff from the Stormwater Planning Division provided information to the effect that the presence of a wetland needs to be formally evaluated which is why this was listed by staff as a recommended condition to consider for approval by the committee.
- Lanfear and Dickerson concur from their site visit that they do not believe wetlands are present on the site and do not wish to include this condition (listed as condition #6 on the [WQIA proposed conditions](#)).

- Lanfear moves to amend his motion to include approval of the application to include all of staff's recommendation except for WQIA condition #6 regarding the wetland. Seconded by Dickerson.
- Monroe states the committee does not have enough information to remove condition #6 without knowing more about the wetlands or lack thereof.
- Lanfear modifies his previous Motion to accept the proposed application including all staff recommended conditions. Dickerson seconded the modified Motion.
- Shuman questions the requirement of the two-week removal for the portions of the patio that are shown to be removed from the RPA. Asks whether the committee should extend to one month.
- It is decided that the 6-month completion timeframe is sufficient, keeping the two-week period of just the patio removal, within that 6-month period.
- Sareen requests a chance to comment on item #6 (wetland matter). Asks for clarification from the committee as to what level of evaluation will be required to perform the wetland determination.
- Lewis confirms the information to be provided within the as-built and confirmed by the Stormwater Planning Division staff.
- Sareen agrees that is a reasonable request.
- Discussion regarding the required wording of the wetland condition #6.
 - o Recommendation to include wording regarding the completed data form in general conformance with US Army Corps of Engineers (ACOE) for the potential wetland.
- Patrick Foltz asks whether the area has been identified with specificity within an appropriate attachment/document.
- Lewis confirms the attachment within the staff report which identifies the approximate location ([Attachment C8C](#)).
- Wetland condition #6 revised to read as follows:
"The possible wetland noted on Attachment C8C shall be evaluated in accordance with the US Army Corps of Engineers data form delineating soils, vegetation and hydrology. The RPA will be re-delineated if necessary and shall be shown on any future plan."
- Kanter to provide exact wording in writing separately, by email to the Clerk and Chair of the ERC.
- Lanfear Motions to accept the change as read by Kanter. Dickerson Seconded.
- Sareen requested clarification on the matter of the Maintenance Agreement condition.
 - o Govender seeks clarification on what the Maintenance Agreement will cover.
 - o It is confirmed the Agreement as drafted in the current condition, intends to cover the existing and proposed plantings as well as the proposed facility.
- Motion approved 10-0 for the WQIA conditions.

- Committee moves to adopt the proposed Exception Conditions. Motion from Schnare, seconded by Shuman.
 - o Martin questions type of seed mix. It is listed as the Northern Virginia Piedmont seed mix, shown on page 5 of the [WQIA](#).
- Motion approved 10-0 for the Exception Conditions.
- Motion by Schnare to approve the application #129-WRPA-005-1 and 129-WQ-001-3 to allow encroachment in the RPA located at 6630 Holland Street. Lanfear Seconded.
- Motion approved 10-0 for the Exception Application.

Break at 3:48pm

Resume at 3:53pm

ERC Business

2. Staff Presentation on Department of Environmental Quality (DEQ) Proposed Changes to state Chesapeake Bay Regulations:

- a. Stonefield [presentation on proposed amendments to the Chesapeake Bay Regulations](#) from the state, which was previously emailed out to the committee and posted on the county's [ERC](#) webpage.

Recommendation Questions and Discussion:

- Martin asks about item three regarding a “fill only project”.
- Stonefield confirms staff is unsure at the moment and is making assumptions at this point in time. More clarification will be requested by way of county comment, to include a definition.
- Gould asks whether DEQ can be contacted to explain the proposed amendments.
- Martin raised this question with Marc Gori and advised against it during the public comment period noting the state would likely not include this level of specificity.
- Gould referenced the Board's comment during the presentation about possible takings and wanting clarification from DEQ directly as to their thinking on these proposed requirements.
- Lanfear mentions the matter of mature trees and impacts to county stream restoration projects.
- Stonefield mentions the county will seek clarification on this matter as well.
- Keightley discusses concerns with this reference as well and future application.
- Kanter asks about removal of trees to improve the view.
- Martin confirms Ordinance currently allows for this and the proposed amendment does not propose changing that reference.
- Martin provides her [presentation for draft ERC recommendations](#) to use to initiate committee discussion and finalization.

- Monroe mentions consideration of meeting time and how best to review the proposed recommendations and establish an appropriate Motion.
 - Draft Recommendation 1: Mature Trees. Motion to approve by Martin. Seconded by Monroe. Approved 10-0.
 - Draft Recommendation 2: Development in Seaward 50 feet.
 - Majority supports retaining local control but requests the Board seek that the state require higher standards than the current language, “not of substantial detriment to water quality” and instead require a “net environmental benefit.”
 - Draft Recommendation 3-6: Compliance, Education, Takings.
 - Discussed improvements for ensuring compliance in the RPA overtime.
 - Discussed the recommendation that real estate agents be required to disclose RPA limitations and restrictions to new perspective buyers and the need to use and create outreach materials for homeowners with RPA.
 - Discussed the issue of takings. Stonefield confirmed staff is working on this matter directly.
 - Draft Recommendation 7: No Fill Within 100’ of RPA
 - What is “fill-only”? Request clarification from the state.
 - Draft Recommendation 8-9: Consideration of Impacts of Climate Change for Land Development in RPA.
 - Raise Other ERC Issues About Chesapeake Bay Preservation Ordinance?
 - Comments made surrounding appeal process considerations.
 - Friedman mentions a Board-adopted appeal process that exists. Friedman will share this document with the Clerk to distribute to the rest of the committee members.
 - Rezoning applications do not include ERC evaluation and possibly should.

Next Meeting

No meeting date was set.

Adjournment

Motion from Monroe to adjourn at 5:44PM. Seconded by Kanter.