



# 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

January 16, 2019, 2:00 PM  
Herrity Building, Room 941  
12055 Government Center Parkway  
Fairfax, Virginia 22035

#### Present

##### Committee:

Chris Koerner, Dr. Elizabeth Martin, Anne S. Kanter, James C. Chesley, Sue Kovach Shuman, Edward W. Monroe, Jr., Dr. David Schnare, Ken Lanfear, Amy Gould.

##### County Staff:

Danielle Badra, Brandy Mueller, Camylyn Lewis, Jerry Stonefield, Prutha Rueangvivatanakij, Matthew Hansen, Durga Kharel, Hanna Kras, Keyona Green, Orna Zaman.

##### Applicant:

Michael Collier (applicant), Avi Sareen (applicant's representative).

#### Committee Members Absent

Monica Billger.

#### Call to Order

Meeting called to order by Chairman Koerner at: 2:04 PM

#### ERC Business

1. Review of the December 12, 2018 minutes:
  - a. Discussion regarding what to include in the meeting minutes. It was agreed that summarized arguments should be included in meeting minutes.
  - b. Motion was made by Schnare to adopt Koerner's edits to December 12, 2018, minutes with amendments to include Kanter's comments. The motion was seconded and approved 7-0, Chesley and Monroe abstained.
  - c. Motion was made by Koerner to revise the minutes to address the applicant submitting documents three days prior to the hearing.



- d. Motion made by Martin to include PFM and Zoning Ordinance attachment and Resolution attachment to minutes.
- e. Motion was made by Schnare to approve the minutes as amended and to attach handout. The motion was seconded and approved 7-0, Chesley and Monroe abstained.
- f. Staff will update Koerner regarding the Board of Supervisors date for the appealed Woodlark case.
- g. Discussion of lobbying memo. First Amendment rights guarantee private citizens the right to lobby on behalf of their interests. However, if a private citizen lobbies on behalf of a particular organization, they must identify themselves as representing that organization and those interests cannot conflict with those of the organization. Therefore, ERC members cannot lobby against Fairfax County interests as representatives of the ERC, but as private citizens, they can.
- h. RPA Policy Committee update. Koerner and Schnare are contacts for RPA Policy Committee and any comments should be directed to either of them. Conclusion of the RPA Policy Committee should be within a month or two.

#### Committee Matters

1. Public Hearing for Case No. 1996-WRPA-015-3 and 1996-WQ-004-3

Address: 908 Mackall Avenue, McLean, VA 22101

Lot Description: Collier Residence, Sec. 1, Lot 12B

Applicant: Michael and Julie Collier.

- a. Koerner asked for any conflicts from the committee members. None were expressed.
- b. Lewis summarized the following: applicant wishes to replace the patio with pervious pavers, construct a swimming pool, and add a detached garage in the RPA (118-6-9); disturbance in the seaward 50-feet is not proposed; the applicant is proposing re-planting in the seaward 50-feet.
- c. Case originally heard in June. Applicant worked with staff on existing conditions.
- d. Sareen presented a PowerPoint on land survey information.
- e. Lewis asked if there were any statements in support of the application. Sareen stated that two neighbors submitted letters in support of the previous application.
- f. Gould and Monroe posed questions regarding the removal of pea gravel.
- g. Gould questioned the 2007 planting plan reference in the staff report.
- h. Schnare asked whether the vegetated area has to be equal to the area of encroachment or larger. Sareen answered that the proposed vegetated area is 2.4 times larger.
- i. Monroe asked about the sizing of the planter boxes. Sareen responded 3'x5' wide and long. Schnare responded that he did not see in the staff report a statement that

these planter boxes would maximize the water quality benefits. Lewis pointed to Attachment I of the staff report then mentioned that the baseline of calculations is not yet accurate. Sareen responded that this is the first time he heard that the staff doesn't agree with the baseline numbers.

- j. Discussion continues between ERC members and applicant about the 2007 impervious area and proposed impervious area with current application. No conclusion reached. A last-minute submittal from the applicant lead to some confusion during the meeting.
- k. Schnare wants to know why applicant failed to comply with recommendations of staff from 2007 but also, how much of that non-compliance will be fully redressed in the current proposal? Schnare wants to be assured that the ERC isn't being asked to accept an exception that has conditions that were not previously met.
- l. Gould voiced concerns regarding the previous 2007 violation and the installation of invasive species not adequately addressing water quality.
- m. Lewis asked if there were any statements in opposition to the application from the community. There were none.
- n. Lewis discussed the findings and position of staff. The application does not meet the required findings. Staff recommends denial of the WRPA encroachment exception request and the Water Quality Impact Assessment.
- o. Lanfear asked if what is being proposed will result in less phosphorous than in 2006, if this will slow down the peak flows, and if they have professional engineers conducting these calculations. Sareen responded by confirming that the phosphorous will be less, the peak flow will slow down, and they do have professional engineers making these calculations.
- p. Lanfear suggested that a new condition be in place that requires revegetation occur before construction. Sareen said that this is not an unreasonable request.
- q. Schnare asked if it would be reasonable to accept a condition of replanting being completed prior to submission of the grading plan—is that even possible?
- r. Collier responded that he wouldn't want to do that without an approved grading plan. He would agree to a condition requiring planting prior to construction after a grading plan is approved.
- s. Applicant expressed willingness to remove portion of existing driveway which had been added without receiving approval.
- t. Many ERC members stated that they found the new application/staff report to be confusing and they wanted more clarity from both staff and the applicant.
- u. Koerner explained that the main issue is that there were two violations: failing to meet conditions and expanding without approval. The newest application does not address this main issue.
- v. Sareen mentioned that they were directed by staff to organize the staff report in this way. Stated that if ERC wants the staff report organized differently, Sareen can do that.

- w. Koerner suggested that the revised application be set up to show: what was supposed to be done in 2007 & 2009 and why it wasn't done; what will be done to make up for what wasn't done in 2007; what will be done for the proposed plan with the swimming pool.
- x. Schnare said that the last question not yet answered is whether Chesapeake Bay Preservation Ordinance 118-6-9 was fully met. There is disagreement between the staff and the applicant's representative.
- y. Koerner highlighted that the staff report has nine comments and a recommendation to deny. He'd like to have the applicant and the staff figure out a way to satisfy each of the nine comments including what to do with the prior violations. He recommended that staff wrap up their statements and move to motion.
- z. Motion was made by Schnare to suspend the public hearing. The motion was seconded and approved unanimously.
- aa. Motion was made by Kanter to amend previous motion to suspend the public hearing until March 6, 2019. The motion was seconded and approved unanimously.
- bb. Sareen wanted clarification from staff that if the applicant meets all conditions, can a staff report recommend approval? Staff previously stated that they cannot approve a swimming pool in an RPA.
- cc. Lewis responded that the swimming pool itself was not the issue. The violations are the concern.
- dd. Koerner asked if it was possible to work this out to have staff approval.
- ee. Sareen said he wanted it on the record that a swimming pool can exist in an RPA.
- ff. Schnare mentioned that swimming pools have been approved in RPAs. Reminded ERC members that staff recommendation is valuable but does not dictate what ERC decision will result. Mentioned that ERC will need the resulting application in a timely manner so they will have the chance to digest the new findings.
- gg. Motion was made by Kanter to adjourn. The motion was seconded and approved unanimously.

#### Next Meeting

The next meeting date was set for March 6, 2019.

#### Adjournment

Motion from Kanter to adjourn at 5:04 PM. The motion was seconded and approved 9-0.