



County of Fairfax, Virginia

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Minutes

Meeting of the Chesapeake Bay Exception Review Committee

October 3, 2018, 2:00 PM
Herrity Building, Room 106
12055 Government Center Parkway
Fairfax, Virginia 22035

Present:

Committee:

Chris Koerner, Edward Monroe Jr., Ken Lanfear, Elizabeth Martin, Dr. Schnare, Monica Billger, The Honorable Mr. James C. Chesley, Anne Kanter.

County Staff:

Hanna Kras, Orna Zaman, Prutha Rueangvivatanakij, Mathew Hansen, Jerry Stonefield, Shahab Baig, Bruce McGranahan, Camylyn Lewis, Mary Ann Welton, Dipmani Kumar, Shannon Curtis, Marc Gori.

Applicant:

Sheila Konecke (applicant), Greg Budnik (applicant's representative), J. T. Kelly (applicant's representative).

General Attendance:

Jeanne Kadet (Braddock District Environment and Land Use Committee), Beverly Boschett (Braddock District Environment and Land Use Committee), Katherine Schultz, Josh Snyder.

Committee Members Absent:

Sue Kovach Shuman.

Call to Order

Meeting called to order by Chairman Koerner at: 2:01 PM

Committee Matters:

1. Chairman Koerner shared that Vice Chair Sherry Fisher, Braddock District, has resigned from the committee and thanked her for her service.
2. Review of June minutes:



- a. Motion from Anne Kanter to approve the minutes. The motion was seconded and approved 8-0.
- b. Motion from Chairman Koerner to approve the revision to the December 2017 minutes. The previously approved minutes are amended to include the statement from Ms. Gould. The motion was approved 8-0.
3. Chairman Koerner asked the committee if they have any conflicts of interest with case to be heard on 4104 Woodlark Drive. There were no conflicts of interest.
4. Public Hearing of Case No. 2582-WRPA-007-1 and 2582-WQ-004-1

Address: 4104 Woodlark Drive
Lot Description: Fairfax Hills Sec.1, Lot 42
Applicant: K2NC, LLC.

- a. Mathew Hansen (county staff) gave a presentation summarizing the issues before the Committee.
- b. Greg Budnik (applicant's representative) made a statement in support of the application for an exception.
- c. There were two statements against the application; Ms. Gould and Ms. Kadet. See Attachment I.
- d. There were two statements in support of the application; Mr. Snyder and Ms. Schultz. See Attachment I.
- e. Mr. Hansen presented the position of the Director and addressed the required findings.
- f. Mr. Shannon Curtis, Stormwater Planning Division (SWPD), The Department of Public Works and Environmental Services (DPWES), made a statement regarding water quality and stream assessments. See Attachment I; Statement from Stormwater Planning – Water Quality.
- g. Mr. Dipmani Kumar, SWPD, DPWES, made a statement regarding the floodplain. See Attachment I; Statement from Stormwater Planning – Floodplain.
- h. Mr. Budnik gave a rebuttal. See Attachment I; Applicants Rebuttal.
- i. There were questions and discussion from the committee. See Attachment I; Questions and Discussion.
- j. The Chairman moved to close the public hearing. The motion was seconded and approved 8-0.
- k. There was discussion among the committee regarding a deferral date. Dr. Schnare made a motion to defer the case to December 12, 2018 at 2pm, and to move the originally scheduled date of the committee meeting from December 5, 2018 to December 12, 2018. Both motions were seconded and approved 8-0.

Next Meeting

5. The next meeting will be November 7, 2018, for a business meeting. The request was made for the Clerk to send a meeting reminder to the committee members prior to.

Adjournment

6. The meeting was adjourned at 4:54pm.

Attachment I

- i. Staff Presentation - Part 1 (see Staff Report)
- ii. Staff Presentation - Part 2 (see Staff Report)

Additional comments to staff presentation.

- It was noted that during the grading plan process, staff will enforce the requirement that there is no increase in peak flow rates from the site.
 - Committee member, Mr. J Kelsey asked for some examples of BMPS, will the property owner be required to sign a maintenance agreement, and will the high ground water restrict the types of BMP. Mr. Hansen responded that bio-retention planters may be an option, and a private maintenance agreement would be required. Groundwater may restrict the types of BMPs.
- iii. Greg Budnik (applicant's representative) statement in support of the application.
 - The applicant would prefer not to build a home in the RPA.
 - They have been working with staff on this application for the past 13 months.
 - They have looked at alternatives to site the house. There was an injunction that prevented moving the house forward. They do not wish to move the house further back, closer to the stream. They considered moving the house to the left or to the right but if you move the house upstream, you impact the RPA more because you move further into the 50 feet seaward, if the house was to be moved downstream it starts impacting other trees in the proximity of homes on other lots and would start to require a skew on the house.
 - A home should not be 10 feet from a major tree. There needs to be enough room to construct the structure. The yard was minimized; the back yard was traded for a deck.
 - Ground covers are required to be planted around the pervious patio.
 - He has been notified by LDS that a flood study is required and that approval for the use in the floodplain is required by Zoning Ordinance Section 2-903. They will provide detailed computations for the floodplain and work with staff to show compliance.
 - The county geotechnical engineer told him that there would need to be a review of the soils on the property.
 - The applicant is prepared to comply with all the required approvals.
 - The application meets all the DEQ requirements. JT Kelly from Wetland Studies and Solutions, is here to answer any related questions.
 - The application meets the Chesapeake Bay requirements.

- iv. Statements against the application.
 1. Ms. Amy Gould; see the Committee Package.
 2. Jeanne Kadet, The Braddock Land use and Environmental Committee; see the Committee Package.

- v. Statements for the application.
 1. Josh Snyder, Realtor and Classic Contractor.
 2. Katherine Schultz, Woodlark neighbor.

The level of flooding shown in the pictures has only happened twice since 2009. The applicant has cleanup the trash on the lot, which included an old sofa and tires.

- vi. Statement from Stormwater Planning – Water Quality.

Mr. Curtis referenced an email which he previously sent to Land Development (LDS) staff. There is a TMDL on this stream. The drainage area coming to the site has 27% impervious cover. This is significant with regard to the stream condition. In stream habitat declines with 5 to 10% impervious. There is a lot of sediment and stormwater which is ripping up the banks. This stream is a good example of one that needs a sediment TMDL. DEQ has been monitoring the Accotink watershed. There is an EPA flow TMDL. Now there is a sediment TMDL. DEQ had declared that the stream is sedimentation and chloride impaired. The County will be required to reduce the sediment to the stream, and will need to control stormwater runoff. The stream is a level 2 management category. Innovative BMPs and reduction of impervious cover should be required for infill development. The stream is in bad shape.

- vii. Statement from Stormwater Planning – Floodplain.

Mr. Kumar stated that Stormwater Planning's role for floodplains is limited to ensuring that the National Flood Insurance Program (NFIP) requirements are met, to provide information on approximate flood zones, and to provide information on the watershed planning studies. When information is provided from the watershed planning studies, they cannot guarantee that the water surface elevation (WSEL) is the actual WSEL. The customer must update the topography and the flow. The information that they provided to the customer was based on current flow condition flows; 1997 data. The information was taken at a cross section 100 feet upstream of the lot.

- viii. Rebuttal - Greg Budnik.
 - Staff is requesting BMP measures beyond the Stormwater Management Ordinance.
 - He agrees to work with staff to develop BMPs. However, he does commercial design on shopping centers and there are certain BMPs that he would recommend

against. Certain BMPs, are cost prohibitive. Not opposed to BMPs but they should be implemented in a meaningful way.

- He is familiar with hydrology requirements and floodplain (FP) requirements and is prepared to demonstrate that all the FP requirements will be met.
- The applicant will commit to any condition that the committee would impose regarding floodplains.
- The applicant will commit to conditions to limit sediment.
- The applicant is in agreement to add more trees provided the county arborist agrees that there are not too many. They would be agreeable to a condition that puts the requirement for trees in the hands of the County Arborist.
- He would like the opportunity to use any of the BMPs in the clearing house.
- Concern was expressed about Condition No. 5 in Appendix A of the Staff report, regarding detention.

Condition No. 5 in Appendix A is:

In order to minimize the impact to the existing stream health, including water quality and erosion, the 1-year and 2-year post-development peak flow rates must be equal to or less than those for the site in good forested condition.

- Budnik expressed concern that detention would worsen erosion within the stream. He requested that the detention condition be related to the velocity or elevation of the stream.
 - He expressed reservation about the planters in Arlington County. The biggest and most expensive problem is water getting in the foundation of a house. A failing foundation planter can lead to huge problems for the home owner. Seepage against the building is a problem. However, he agreed to review the use of planters in Arlington County.
 - He expressed that the impervious of the lot is 6%.
- ix. Ms. Schultz (member of the Friends of Accotink) – Comments following Mr. Budnik’s Rebuttal. Acknowledges the problems with the stream has personal knowledge of Keorns Run.
- x. Chairman Koerner’s Questions; dated 10-3-2018.

xi. Summary of Questions and Discussion:

- Amy Gould expressed concerns that the floodplain map the applicant provided (see the Staff Report) may be incorrect.
- Chairman Koerner provided a hand out with a list of questions, dated 10-3-2018. He recommended that Mr. Budnik review the comments, and may wish to request deferral of the application for 70 days to address and respond to comments.
- Ms. Kadet asked if anyone had spoken to Supervisor Cook. The committee replied that Supervisor Cook had not voiced a position. Concern was expressed that there is not a Braddock representative currently on the ERC.
- The Chairman asked if the committee has authority to defer the hearing. Mr. Gori (Assistant County Attorney) confirmed that the committee can defer to a date certain.
- There was discussion between Chairman Koerner and Dr. Schnare regarding a potential motion.
- There was discussion as to whether the application meets the required findings. Dr. Schnare referenced the DCR Guidance Handout. He handed out a graphic showing a comparable home, and referenced the applicants plat (see the Staff Report). He explained that it is possible to provide a house completely outside of the seaward 50 feet. Dr. Schnare expressed that, the application is not the minimum necessary to afford relief, that the request is self-created and self-imposed, and that the property could be developed with a 2600 square foot home, in keeping with the neighborhood, and the home be outside the seaward 50 feet. As the application, would not meet the requirements stated above, he would vote against the application.
- Mr. Lanfear asked if the house size, 2600 square feet, includes access.
- Ms. Kanter shared that a 25 feet wide house is not an unreasonable requirement. She expressed disappointment that the applicant had not considered different house plans.
- The committee asked staff (Mr. Hansen) why the last statement in Attachment A of the Staff report from November 2017, was missing in the current Staff report.

The last statement of Attachment A in the November 2017 staff report was:

This approval, contingent on the above noted conditions, does not relieve the applicant from compliance with the provisions of any applicable Federal, State, or County ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the approval of any required plans and permits through established procedures, and this RPA Exception shall not be valid until this is accomplished.

- The committee asked whether the missing statement should be added to the approval conditions. Mr. Hansen replied that it should be added, and that the committee have the authority to write any approval conditions that they deem appropriate as the committee is not bound by the conditions in the Staff Report.

- In reference to condition no. 4 in the Staff Report, Mr. Budnik requested that there be some discussion about the velocity and the timing of flows in the stream.
- Mr. Monroe asked about the types of BMPs which were proposed. Mr. Budnik, referred to JT Kelly who explained that compost amended soils were proposed and that they required disking (tilling) 18 to 24 inches of compost into the soil.
- Mr. Monroe asked about the trees that were cleared and to what extent the property will be re-planted. Mr. Hansen – exhibit proposed trees/ vegetation. Not a full re-forestation of the site but re-vegetation of some of the cleared area.
- Mr. Monroe asked if the space within the limits of clearing could be utilized to mitigate some of the runoff. Mr. Hansen responded that there will need to be an engineering solution for how the water is to be detained.
- Ms. Martin asked how the lawn is the minimum necessary to afford relief. The plan shows lawn on the sides of the house and in the front. Mr. Budnik responded that it is typical with other encroachment requests that do not come before the ERC, that some lawn is allowed. He said that they were not given any guidance regarding the lawn, and said that if it is the belief of the committee that the lawn should be smaller, please provide guidance regarding the amount of lawn. Dr. Schnare said that there should be no lawn behind the house.
- Dr. Schnare expressed that the deck is too large, that only one tree might suffer by having a longer house, and a replanting area could mitigate the loss of the tree. Mr. Budnik responded that the applicant is amenable to a change in the architectural product. Dr. Schnare explained that the ERC must consider the application presented and that until there is a house proposed that does not have its footprint in the seaward 50 feet, it cannot be considered.
- Mr. Chesley expressed that if one buys a property that has restrictions and covenants and they are clearly aware of what they can do, then they should build within the existing constraints. He added that across the street there is a ranch house which would fit within the constraints of the 75-foot setback and the 50-foot seaward. He was not satisfied that the soil and floodplain requirements could be met. He thought that the application would have a hard time meeting the requirements and is interested to see the mitigation plan. He thought that moving the house would solve most of the problems.
- Mr. Chesley expressed concern that there are three other lots adjoining and that when exceptions are made, the cumulative effect should be considered. If this case is approved there would be three other properties presented to the ERC in the near future. He would like to see the architecture changed. He shared that, as it stands, he could not support the current application. He might be able to support the application if there were answers to the question which had been asked.
- Mr. Lanfear asked Stormwater Planning (Mr. Curtis) about the Accotink TMDL. Mr. Lanfear expressed that they are charged to protect the Chesapeake Bay, and that they are spending a huge amount of money on stream restoration. He asked how much it will cost to restore the stream. Mr. Curtis responded that the restoration is not in the

- current plan. Most projects are one million to two million dollars. About 26 million is spent in total on stream improvements.
- Mr. Lanfear expressed that we should not make the problems worse. That we should not create more phosphorous or raise the flows. He said that stream restoration \$ for \$ is about 10 times as effective as other practices. Mr. Curtis agreed that stream restoration is the most cost effective method. Mr. Lanfear expressed that the problem is in reducing the loading, and that the application has not presented any quantitative analysis.
 - Ms. Billger explained that the RPA buffer is 100 feet in width, it is not just the seaward 50 feet. She expressed that the proposed project is within 16 feet of the stream. She said that point source pollution has been addressed and that now the leading source of pollution is stormwater. She stated that we need to look at the stormwater from every individual home owner. We are having storms that are not typical of 1 to 2 year storms. The flood limits on the applicant's map are not accurate. How can we talk about the water quality impact assessment (WQIA) without accurate information on the floodplain. She agreed with Dr. Schnare's point on self-imposed conditions, and that alternative homes have not been considered. She expressed that the WQIA does not demonstrate that there is not a detriment to water quality. She expressed concern over the time the committee has been looking at the exception request and that the questions are still not answered.
 - Ms. Martin thought that it was very problematic that the WQIA never assessed the impact on water quality, that there was no assessment of the health of the stream, the impact on this project, or the cumulative impact. She expressed concern that the impervious area surrounding the project is 27% and little is offered to mitigate the effects of this project. She thought that the request was self-created. She expressed concern that the owner purchased the property with the knowledge of the 75-foot setback, and that they had the land cleared. She thought that the property was never suited for the proposed use.
 - Mr. Budnik explained that the lot was recorded just after the second world war; that the Zoning Ordinance was adopted in 1941; the Public Facilities Manual (PFM) in 1978; the Original Chesapeake Bay Act was in 1979; the County Chesapeake Bay Ordinance was adopted in 1993; and that the first several years the lot existed, the lot was clearly buildable. He thought that the constraints were due to the Chesapeake Bay Ordinance. He thought the applicant did not create the 75-foot setback. He thought that the house footprint was reasonable. He asked for a voluntary deferral of 70 days to correct errors, address the ERC's concerns, and modify the application.
 - There was discussion about the best way to allow the applicant an opportunity to address the questions and concerns raised.
 - Mr. Lanfear thought that stream restoration for one property would be ineffective but that there may be an opportunity for the adjoining properties (five properties in total) to get together and present a plan to restore the stream.

- Ms. Schultz shared that there was a stream restoration project but it stopped at the other side of her driveway. Mr. Curtis explained that the restoration project stopped at the limits of County-owned land.
- Chairman Koerner explained the options available to the committee, including the option for the applicant to voluntarily request a deferral to a date certain within 70 days. There was further discussion over the options.