



NEW KENT COUNTY WETLANDS/BEACHES & CHESAPEAKE BAY BOARD MEETING THURSDAY, MARCH 5, 2020 AT 6:00 PM COUNTY ADMINISTRATION BUILDING BOARD ROOM MINUTES

A MEETING OF THE NEW KENT COUNTY CHESAPEAKE BAY PRESERVATION BOARD WAS HELD ON THE 2ND DAY OF MAY IN THE YEAR TWO THOUSAND TWENTY IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 6:00 P.M.

IN RE: ROLL CALL

Attendance:

Mr. Julian Ward	Present
Ms. Jean Street	Absent
Mr. Lyle Gleason	Absent
Mr. John Bragg	Present
Mrs. Connie Bennett	Present
Ms. Sarah Richardson	Absent

Also present:

Mr. Josh Airaghi, Director of Environmental Programs
Mrs. Gail Carey, Administrative Assistant, Environmental Department
Ms. Rebecca M. Ringley, Applicant
Mr. Jamie Hudson, Consultant

The meeting was called to order at 6:00PM and a quorum was established.

IN RE: DECLARATION OF POLICY FROM THE LAWS OF VIRGINIA

Chairman Bragg read the Declaration of Policy from the laws of Virginia relating to the Marine Resources of Virginia and the New Kent County Code relating to Chesapeake Bay regulations.

IN RE: ELECTION OF OFFICERS

Mr. Airaghi opened the nominations for 2020 Chair. A motion was made by Mr. Ward and seconded by Mrs. Bennett to nominate Mr. Bragg as the 2020 Chair of the Wetlands/Beaches and Chesapeake Bay Board. There being no objection to a vote by acclamation, the motion passed.

A motion was made by Mr. Bragg to nominate Mrs. Bennett as the 2020 Vice-Chair of the Wetlands/Beaches and Chesapeake Bay Board. There being no objection to a vote by acclamation, the motion passed.

IN RE: APPROVAL OF MINUTES

A motion was made by Mr. Ward and seconded by Mrs. Bennett to approve the June 6, 2019 minutes. The Board members were polled and the motion was passed.

IN RE: NEW BUSINESS CBPA 4244-2020

Application **CBPA 4244-2020**: Mr. Airaghi presented his staff report on application CBPA 4244-2020, submitted by Rebecca M. Ringley, to construct a pool and associated hardscaping within the landward 50' of the (Resource Protection Area) RPA Buffer at Tax Map parcel 19B1-1-CA-16, GPIN J06-1259-2945.

Mr. Airaghi informed the Wetlands/CBPA Board the encroachment is to be contained to the landward 50 feet of the RPA Buffer, according to the submitted WQIA. The wetlands and RPA limits have been flagged on the site and there will be approximately 600 square feet of land disturbance.

The lot was recorded in 1968 and the house was built in 1985. Both actions pre-date the 1989 Chesapeake Bay Preservation Act. Although the proposed construction falls entirely within the 100-foot RPA, it is contained to the landward 50-foot RPA. The lot has been primarily maintained as a lawn with woody vegetation along the property lines – no woody vegetation will be removed. Erosion and Sediment controls will be utilized during the construction phase, and a Building permit will be

required. The septic system is located on the western side of the property which further restricts where the pool may be installed. The applicant's consultant has located the pool as close to the house and as far away from the wetlands as possible. There are currently two (2) other pools in the subdivision, possibly located within the RPA.

Mr. Airaghi added that the applicant's consultant proposed mitigation which would follow (Department of Conservation and Recreation) DCR's *Riparian Buffers Modification & Mitigation Guidance Manual*, to include the following: Two (2) planting units of two (2) canopy trees; four (4) understory trees; and six (6) shrubs.

Mr. Airaghi presented the Staff Findings to the Board. The proposed application is not harmonious with the purpose and intent of the regulations, as the pool is an accessory structure. The proposed is not believed to be of substantial detriment to water quality. Mitigation is proposed, no mature vegetation will be removed and standard practices will be employed during construction. If approved, the proposed pool has been located in the optimum location and the request is for the minimum necessary to afford relief. The applicant's property was purchased and house built prior to the Chesapeake Bay Act. Circumstances, other than wanting the proposed pool, are not self-imposed. As previously stated, two (2) other pools currently exist within Five Lake subdivision that may lie within the RPA. There are no records of any permits for these two (2) existing pools.

The Staff Recommendation, presented by Mr. Airaghi, recommends that the Board thoroughly review and discuss the findings as they relate to the regulation, prior to presenting a possible motion.

Mr. Bragg inquired if the applicant or consultant had any comments to add to the Staff Report.

Neither Ms. Ringley, nor Mr. Hudson, had further comments pertaining to the Staff Report.

Mrs. Bennett inquired if the proposed pool was to be above ground or inground, as well as the pool dimensions.

Mr. Hudson stated the pool was to be inground.

Mrs. Ringley stated the pool area was to be approximately 20 feet by 30 feet.

Mr. Bragg mentioned he noted there was another 200 square feet for the area around the pool for some reason

Mrs. Bennett said she had interpreted that area as the pool apron.

Mr. Hudson replied that he basically placed a box on the plan for the pool and the surrounding pool apron.

Mrs. Bennett inquired if the pool itself measured 20 feet by 30 feet, to which Mrs. Ringley answered no.

Mrs. Ringley informed the Board members that the pool was maybe 14 feet by 23 or 26 feet. The pool would be pretty small and then there would be ten feet. Mrs. Ringley stated she did not get into those exact dimensions when discussing the pool, but it would probably be about ten feet around the pool for the apron (five feet on each side).

Mr. Bragg said that what the Board was mainly looking at was the total impermeable surface.

Mr. Hudson replied that the total impermeable surface, the box, would be 600 square feet.

Mrs. Bennett explained the reason for asking was, because there already exists a slope on the property, when digging the pool so it would be necessary to add additional disturbance around the area of the pool apron. With this in mind, more than 600 square feet of disturbance would occur. Also, it would be necessary to slope around the walkway to make the grade.

Mr. Bragg then said the Land Disturbance would be subject to Erosion and Soil environmental requirements, regardless of the size of the pool disturbance. Mr. Bragg added what he would suggest, as far as mitigation, when actually planting Mrs. Ringley liked small gardens, something like that.

Mr. Hudson replied that was why he put the mitigation area on the plans where it was. Mr. Hudson added that Mrs. Ringley planned to landscape around the area and he did not want to tie her into exactly what was to be done with the area with additional planting.

Mr. Hudson confirmed to Mr. Bragg that the proposed construction mitigation would also include herbs, flowers and other herbaceous items.

Mrs. Bennett stated that her point was the construction area would be sloping away from the pool. Also, for the pool to remain level, it would be necessary to disturb more than 600 square feet.

Mr. Bragg inquired if the actual impermeable surface would remain at 600 square feet. Mr. Bragg added that when the Land Disturbance plan is submitted for Soil and Erosion Controls, he suggested to include something that would address the reclamation of the area – how it would be reclaimed.

Mr. Hudson mentioned he thought there was something that said the soil would be balanced and not hauled away.

Mrs. Bennett again stated the disturbance would be in excess of 600 square feet.

Mr. Hudson asked Mrs. Bennett if she had already seen the site and added it was bare dirt at the present time.

Mrs. Bennett replied that she had not seen the site, and stressed that the disturbance would be in excess of 600 square feet – possibly between 1,000 to 2,000 square feet.

Mr. Bragg added that anything extra would be addressed in the Soil and Erosion Control plan which would be submitted.

Mr. Airaghi interjected that the WQIA included silt fence during construction.

Mr. Ward agreed with any soil stockpiles would have the silt fence around them.

Mr. Bragg stated his concern was about impermeable surfaces. Mr. Bragg also said he thought it would be outstanding for a full reclamation plan for the area to ensure no issues with the soils.

Mr. Hudson agreed and said that the magnitude of the project was small and the site currently slopes and was not flat.

Mrs. Bennett inquired about the pool depth and said it would probably have five (5) dug out and will need to be leveled off.

Mr. Hudson stated the site currently had a slope and added that the site would be graded.

Mrs. Bennett said her point was grading of the slope would add to the additional area around the perimeter of the pool and also requested for the applicant be required to obtain a Land Disturbance Permit.

Mr. Airaghi informed the Board a Building Permit would be required. Mr. Airaghi added that a Land Disturbance was not required (due to the size of the area being disturbed), however, the applicant had offered to install Silt Fence during construction.

Mrs. Bennett reiterated her request for the applicant to obtain a Land Disturbance Permit.

Mr. Hudson stated he thought the application under review was the Land Disturbance Permit. Mr. Airaghi replied that the application under review was just for the encroachment into the RPA, not for land disturbance.

Mr. Bragg inquired if anyone had questions.

Mrs. Bennett replied she felt it would be a good to have a better idea of the area of fill surrounding the pool – the perimeter. Mrs. Bennett added that since the pool was an accessory structure it should not be approved anyway.

Mr. Ward asked who would it be incumbent upon to obtain a Land Disturbance Permit – the homeowner or contractor?

Mr. Airaghi informed Mr. Ward the homeowner is ultimately responsible to obtain the Land Disturbance Permit. However, the homeowner could choose to build it into the contract. Mr. Airaghi added that, typically, the Land Disturbance Permit is required for any disturbance of 2,500 square feet.

Mr. Bragg again inquired if anyone had further questions, to which no one replied.

Mr. Bragg declared the Public Hearing open at 6:20PM and inquired if anyone would like to speak.

Since no one present wished to speak, Mr. Bragg declared the Public Hearing closed at 6:20PM.

Mr. Bragg asked if Staff had any further comments or questions.

Mr. Airaghi also inquired if there were any questions for Staff.

Mr. Bragg stated the Board heard discussion from a member who was not comfortable with approving the pool since it was an accessory structure.

Mrs. Bennett mentioned that she also did not feel it was appropriate for the Board to allow the pool to encroach into the RPA and set a precedence for other applicants. Mrs. Bennett added although it was stated two (2) existing pools may be within the RPA, it is not certain if that is the case as they may have been in the RPA prior to the Regulations or were constructed without permit approval. Mrs. Bennett concluded by saying she just did not think the Board should be approving pools within the RPA because of the fact pools are considered to be an accessory structure.

Mr. Ward commented that he thought the Board had (approved a pool within the RPA) before.

Both Mr. Hudson and Mr. Bragg confirmed Mr. Ward's comment.

Mr. Hudson added that he was not going to mention it, but it did happen during the last time he attended a Board meeting.

Mr. Bragg stated it was done previously. However, the questions are: Is approving the current application going to set a precedence that will be an unfair advantage to the applicant as opposed to what is going on with two (2) other pool sites(as previously discussed); Is this something that has happened previously, either in this area or other parts of the county that are subject to the purview of the Wetlands/CBPA Board? Mr. Bragg also questioned if this (a pool) is a reasonable and customary structure that one would find accessory to a home similar to that of the applicant.

Mrs. Bennett inquired what would be done with the pool discharge.

Mr. Hudson stated he was not in the pool business and was unsure as to what Mrs. Bennett was referring to.

Mr. Bragg confirmed that Mrs. Bennett was referring to discharge from the pool, possibly once or twice a year.

Mr. Ward said, although he had little involvement with pools, he was surprised to learn that nothing governed pool discharge. He added that he initially thought a drain field had to be in place to catch all of the backwash (pool discharge), but that was not the case.

Mr. Bragg agreed with Mr. Ward's statement. Mr. Bragg then said that Staff stated the exception request was in harmony with the purpose and intent of the regulations.

Mr. Airaghi corrected Mr. Bragg and stated pools were NOT in harmony with the purpose and intent of the regulations.

Mr. Bragg agreed and said the pool was not a substantial detriment to water quality.

Mr. Airaghi then informed the Board what findings had to be considered: Is the exception request in harmony with the purpose and intent of the regulations and is not of substantial detriment to water quality. Staff Findings indicate pools are not in harmony with the regulation because they are considered an accessory structure. However, when considering the second piece (Is not of substantial detriment to water quality) Mr. Airaghi noted that he did not feel the pool would degrade water quality based upon the proposed mitigation and additional landscaping around the pool. Mr. Airaghi added that the application met the mitigation requirements, as far as the manual required, for the amount of proposed disturbance.

Mrs. Bennett inquired if the proposed mitigation was for land disturbance or for impervious cover.

Mr. Airaghi replied that the proposed mitigation from the manual was based upon land disturbance.

Mrs. Bennett agreed with Mr. Airaghi's statement and added that was the point she had been trying to make. Mrs. Bennett also said that there would actually be more disturbance than the initial 600 square feet because of additional fill around the perimeter – the sidewalk area to get the slope back.

Mr. Ward inquired if the additional fill was part of the 600 square feet of disturbance.

Mr. Hudson informed the Board that the 600 square feet would be the pad that includes the pool and the hardscape perimeter. Mr. Hudson also mentioned he was not certain if there would be any grading in the existing yard and the contractor would 'have to make it work'. Mr. Hudson added that there would not be a grading plan for the construction of the pool as there would be with development.

Mrs. Bennett interjected and stated, in her opinion, a grading plan should be provided from him (Mr. Hudson) because it is necessary to show how much area will be disturbed.

Mr. Hudson's reply was that all area that is to be disturbed will be exactly as it is currently, a month after it is disturbed.

Mr. Bragg said that what he thought Mrs. Bennett was actually saying is when soil is dug up, it will be necessary to go beyond the footprint of the pool and uprooting dirt (land disturbance).

Mr. Bragg continued and questioned will the mitigation plan submitted for the trees, etc. cover the impermeable surface. Mr. Bragg commented, in his opinion, the Erosion & Sediment Control plan to be submitted as part of the landscaping plan was going to be a mandatory item.

Mr. Airaghi said to Mr. Bragg that the Board could require an Erosion & Sediment Control plan if they chose to include it in the motion. However, the proposed mitigation was not for the impervious surface. The proposed mitigation was based upon the amount of disturbance within the RPA as prescribed by DCR's Guidance Manual.

Mr. Bragg confirmed that he understood what Mr. Airaghi said.

Mr. Hudson then asked the Board a hypothetical question. Would it make a difference if: The disturbance is 1,000 square feet, the area that is to be disturbed where the pool will be located along with hardscape and gravel obviously cannot be returned to the original/current state. If all of the other area can be returned to the original/current state, would that make a difference? If all of the other area around the pool, etc. will be returned to the same condition or better, what they (the applicant) is offering is a mitigation for the disturbance elsewhere on the site.

Mr. Bragg answered Mr. Hudson's question by saying what the Board is referring back to now is the reclamation plan for disturbance that is not included within the graph of the CBPA.

Mr. Hudson confirmed to the Board that both he and the applicant did not have any problem with providing a plan to restore the area to as good as, or better condition post-construction.

Mr. Bragg stated that the reclamation plan was a standard item.

Mr. Ward mentioned that, in his opinion, the construction of the pool would most likely involve two (2) or three (3) people, plus a small skid steer. Mr. Ward added those people would do the digging since the pool would measure 27 feet by 14 feet, and given the pool size it may not be outside of the 600 square feet. Mr. Ward continued and said the skid steer would be running and taking out dirt and maybe placing the dirt and packing down onto the walkway location before the concrete is poured.

Mrs. Bennett again stated due to the contours on the property, it would be necessary to have a slope since the ground was not level.

Mr. Hudson questioned the Board what they wanted the applicant to do.

Mrs. Bennett replied that additional mitigation area would be a minimum and ensuring the square foot area is at least in the 50-foot landward side of the RPA buffer so as not to encroach.

Mrs. Bennett also inquired as to the number of pools that the CBPA Board had approved during the last few years.

Mr. Ward replied that he knew of just one and while looking at Mr. Hudson stated that he (Mr. Hudson) was present for that application on the York River.

Mr. Bragg agreed with Mr. Ward regarding the number of pools approved by the CBPA Board within the last few years.

Mr. Hudson confirmed that the only pool he would be able to speak to was the application that Mr. Ward had referred to and was not certain if that particular lot predated the Bay Act.

Mr. Ward then stated he did not think that the application in question had predated the Bay Act.

Mr. Hudson agreed with Mr. Ward's statement and then mentioned that particular applicant had just purchased the property overlooking the bluff and everything had been previously cleared.

Mr. Ward inquired if the transaction of purchasing property negates the CBPA application approval.

Mrs. Bennett clarified to Mr. Ward that the CBPA application approval/denial goes with the property - regardless of who owns the property, a buffer is a buffer.

Mr. Ward disagreed with Mrs. Bennett and stated that information was not mentioned during an application previously reviewed by the CBPA Board. Mr. Ward then said that Mrs. Bennett is most likely correct, but insisted that particular information was not mentioned during a Board review of an application.

Both Mrs. Bennett and Mr. Bragg stated the CBPA is consistent and goes with the property. Mrs. Bennett added that subdividing a property will negate the grandfathering of the property's CBPA.

Mr. Airaghi then stated that perhaps Mr. Ward was recalling the application previously presented for a house where the lot predated the Bay Act. Originally the lot did predate the Bay Act and the proposed house would have been an Administrative Exception and not a CBPA Board meeting. The reason the application was presented to the CBPA Board was due to a boundary line adjustment which occurred after the Bay Act. The Bay Act states that once a boundary line adjustment is performed, any previous grandfathering is null and void.

Mr. Ward agreed with Mr. Airaghi's explanation.

Mrs. Bennett informed Mr. Ward and Mr. Bragg that they would need to convince her to change her mind.

Mr. Bragg then stated he knew the following: The pool is considered an accessory structure and if it would be setting an unacceptable/unnecessary precedent – to which Mr. Bragg said it had been done before in other counties; Is it reasonable that the homeowner be allowed to have an accessory structure (the pool), same types of accoutrements about the house as someone who may be outside the Bay Act – to which he mentioned the Board had done this before with garages not attached to the houses in this county; With regards to the land disturbance, that is a matter of looking at all of the land to be disturbed – with the lot and slope there is not going to be a question of where to put the slope and excess dirt, etc.

Mr. Hudson informed the CBPA Board that whatever requirements they attach to the permit application will be fine. Also, he suggested perhaps doing an inspection after the fact and more mitigation. Mr. Hudson added that the applicant plans to do landscaping.

Mr. Bragg replied that he understood the basic landscaping plan will address areas currently being discussed, including a mitigation plan that was previously suggested. In his opinion, that would satisfy the requirements of land disturbance. Also, any landscaping would be in addition and an accessory to installing the pool. Mr. Bragg then said the main issue, in his mind, is the accessory structure issue. Mr. Bragg then stated he felt the accessory structure can be thought of in one (1) of two (2) ways: he knew they have been previously approved – so he did not feel the Board would be setting any precedent.

Mr. Ward confirmed that he was fine with the permit application currently under review.

At that point, Mr. Bragg asked for a motion, as well as if any further discussion was needed on the issue.

Mrs. Bennett mentioned the only other option she would suggest would be to table the application until another meeting when there may possibly be a better vote?

Mr. Bragg then said a two to one (2:1) vote would do it (permit receive approval or denial).

Mr. Bragg added if the permit was denied, he guessed the applicant could come back.

Mrs. Bennett spoke up and said if the application was denied at this meeting, the applicant would not be able to reapply.

Mrs. Bennett then mentioned to Mr. Hudson and Ms. Ringley that she will leave it up to them if they would prefer to wait for another meeting with more CBPA Board members present.

Ms. Ringley requested to speak to the Board regarding her application. Per Mrs. Ringley: the property is a three-quarter (3/4) acre lot with plenty of room for mitigation as it is two lots; it is very well possible that a retaining wall might be necessary that would further protect the wash/runoff from the proposed pool. Mrs. Ringley stated her intent, not including mitigation, is to have enough landscaping around the pool that will absorb any type of backwash. If nothing else, the landscaping will serve to help any runoff. Mrs. Ringley informed the CBPA Board that she had lived in the house for 35 years and knows what the rain looks like when it comes down. The proposed mitigation will help to stop the runoff from up on the road – currently, the runoff comes through the lot and down into the RPA. Mrs. Ringley added the mitigation will serve as a barrier and with regards to the size of the disturbance, the available area to place the pool is very limited. Mrs. Ringley assured the Board that she would not encroach past the 50-foot buffer and there may not even be 50 feet between the buffer and her house. Mrs. Ringley closed by saying she felt that she had been a good citizen and steward for the protection of the little pond in her backyard, throughout the years, by keeping vegetation there and was not planning to stop.

Mr. Ward replied that it would not only be the CPBA Board, there were other county offices that are the Erosion and Sediment issues. Mr. Ward said the Board was just there to 'Aye' or 'Nay' the application.

Mr. Bragg agreed with Mr. Ward's statement. Mr. Bragg confirmed their (the Board) job is to say 'Mrs. Ringley wants to put a pool (an accessory structure) in a location that is within the RPA, unfortunately. The lot is pre 1968 and pre-Bay Act. So, we (the Board) will take a look at what is appropriate. In this case-in my mind, is she doing something that hasn't been done before the New Kent County Wetlands CBPA Board? As far as any mitigation or land disturbance and all of that, yeah.

Mr. Bragg turned to Mr. Airaghi and stated that his department (Environmental) would do the approvals and inspections. Mr. Bragg added that the Board does not get involved in any of that. Mr. Bragg then asked Mr. Hudson and Mrs. Ringley if they wanted to wait and table the application until another meeting.

Mr. Airaghi added that if the applicant decided to wait and table the application, it can be reviewed during the meeting in April.

Mr. Hudson stated he did not see where it was necessary to table the application.

Mr. Bragg acknowledged Mr. Hudson's statement and called for a motion.

Mr. Ward requested to make a motion.

Mr. Ward moved to approve CBPA 4244-2020 as presented with the following conditions: All vegetation must be maintained in a healthy and vigorous growing condition; Two (2) years following installation, any vegetation that dies or becomes diseased or fails to flourish must be replaced.

Mr. Bragg then mentioned adding Soil and Erosion control. Also, an environmental plan will be provided as part of that addressing the entire disturbed area and suggested a revised WQIA can be submitted with landscaping features. Mr. Bragg turned to Mr. Airaghi and asked if the Board doesn't need to review the second WQIA. Mr. Bragg then said a revised WQIA

and an environmental control plan subject to the approval of New Kent County is to be submitted to address any additional landscaping that the Board feels is necessary. Mr. Bragg then turned to Mr. Airaghi and inquired, 'How does that sound?'

Mr. Airaghi replied that he could not tell the Board what to do, that was not his call.

Mr. Bragg agreed and said he knew that. Mr. Bragg then called for any additions or deletions to the motion.

Mr. Bragg requested for the Board to be polled.

The members were polled.

Mr. Gleason	Absent
Mrs. Bennett	Nay
Ms. Richardson	Absent
Mrs. Street	Absent
Mr. Ward	Aye
Mr. Bragg	Aye

The motion was passed 2:1:0 and the application CBPA 4244-2020 was approved.

IN RE: OTHER BUSINESS

Mr. Bragg informed the Board about the Annual VIMS meeting in the Spring and requested for Board members to please keep eyes open for registration information sent by New Kent County Environmental staff.

Mr. Airaghi added once registration for the event is open, the Environmental Department would send out the information.

IN RE: ADJOURNMENT

A motion to adjourn the meeting was made at 6:51 PM by Mr. Bragg and all were in favor.

Respectfully submitted,

Gail Carey, Recording Secretary