



County of Fairfax, Virginia

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Minutes

Meeting of the Chesapeake Bay Exception Review Committee

December 12, 2018, 2:00 PM
Herrity Building, Room 106
12055 Government Center Parkway
Fairfax, Virginia 22035

Present

Committee:

Chris Koerner, Anne Kanter, Ken Lanfear, Sue Kovach Shuman, Dr. David Schnare, Dr. Elizabeth Martin, Amy Gould.

County Staff:

Matthew Hansen, Danielle Badra, Camylyn Lewis, Jerry Stonefield, Marc Gori, Hanna Kras, Keyona Green, Emily Pertz, Bruce McGranahan.

Applicant:

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

General Attendance:

Philip Latasa (Friends of Accotink Creek), Jeanne Kadet (Braddock District Environment and Land Use Committee), Marcia Pape (Braddock District)

Committee Members Absent

Edward Monroe Jr., Monica Billger, The Honorable James Chesley.

Call to Order

Meeting called to order by Chairman Koerner at: 2:13 PM

ERC Business

1. Review of the November 7, 2018 minutes:
 - a. Motion from Shuman to approve the minutes as amended. The motion was seconded and approved 6-0, Lanfear abstained.
 - b. Introduction of Danielle Badra as the newly appointed ERC Clerk.



Committee Matters

1. Decision only for 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. Koerner stated that the public hearing discussion was closed at the meeting on October 3, 2018.
- b. ERC members were given three days to review the applicant's revised submission and the staff report addendum.
- c. Schnare stated that there have been revisions made to the application that should be considered before a decision is made.
- d. There were questions and discussion on the required findings from the committee regarding floodplain, RPA, and water quality concerns.
- e. Kelly and Budnick (applicant's representatives), in support of the application, answered questions concerning the floodplain, RPA, and water quality.
- f. Hansen (county staff) answered questions from the committee regarding the staff report findings.
- g. Koerner explained that the applicant's proposal to put fill in the stream channel will change the stream velocity and increase erosion, with detrimental effects on water quality. The applicant was asked how much fill would be added to the RPA and floodplain; Budnick responded that he had not done the calculation. Koerner replied that his back-of-the-envelope calculation indicated that about 52 cubic yards would be added in the floodplain, and a total of 1,900 cubic yards, or 300 6-yard truckloads, in the RPA. Budnick later concurred that those numbers were about right.
- h. Koerner stated that the September 2018 version of the floodplain analysis contained many errors as previously noted in earlier meetings. He indicated that the modification of the house location in the December version of the application, and the significant amount of added fill were required due to the newer iteration of the floodplain analysis prepared by the applicant, and the requirement to be 15 linear feet away and 18 inches above the floodplain.
- i. Koerner then passed out a handout referencing a link to the Public Facilities Manual (PFM) and Zoning Ordinance ([Attachment 1](#)) which quotes PFM 6-1403.4E, "When the floodplain study is prepared in accordance with the provisions of Parts 6 and 9 of Article 2 of the Zoning Ordinance, then, consideration of the effects of any proposed use must be based on the assumption that **there will be an equal degree of encroachment by others extending for a significant reach on both sides of the stream.** This combined effect must not

- have an adverse effect (normally construed to include no rise in water surface elevation) upon the adopted 100-year floodplain.”
- j. The requirement to conduct the necessary floodplain modeling iteration that considered the effect of the proposed fill on the neighboring properties had not been performed by the applicant. This iteration would likely indicate a significantly greater amount of fill would be required to be placed within the applicant property RPA, and the house may need to be again relocated. Therefore, the current application was incomplete and the ERC did not have sufficient information to evaluate this critical portion of the application.
 - k. No plan was proposed by the applicant on how they would comply with Condition #5 of the December 12, 2018, Proposed Exemption Conditions proposed by County staff. “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.” Budnick instead proposed to install dry swales, with a drain underneath.
 - l. Gould stated concerns regarding the proposed use of dry swales in the application, referencing the staff report’s conclusion that dry swales may not function well in this location.
 - m. Hansen reported that he hasn’t seen dry swales used this close to a stream before. The risks are (1) it must have an underdrain, which is less effective and must be maintained by the homeowner, and (2) the water table could be higher than anticipated. Typically, it’s 2-3’ deep. He expressed confidence that the applicant will find a way to install one.
 - n. Kanter stated that these are individuals and we can’t overburden them. This is as good as we’re going to get, so she supports granting the exception.
 - o. Lanfear noted his two main concerns: the impact on water quality, and the major intrusion into the floodplain, and the RPA. His concerns about water quality are somewhat allayed by the applicant’s answers to questions, but he remains deeply concerned about the intrusion into the floodplain which will affect the RPA. Due to climate change, storms are getting stronger so the consequences are dire.
 - p. Schnare stated that six conditions must be met for the exception to be approved, and in his view this application fails three of them. First, he doesn’t believe this is the minimum necessary to afford relief. There is too much fill. The house size and deck are more than the minimum. Second, this is a self-created or self-imposed condition, due to the applicant’s failure to realize it is not suited for the intended use. Third is the potential for degradation of water quality. He doesn’t believe that reasonable and appropriate conditions can ensure that water quality is not affected.
 - q. Motion was made by Schnare to deny the application ([Attachment 2](#)). The motion was seconded and approved unanimously. Gould abstained.

- r. Motion was made by Koerner to amend previous motion to include an additional finding (#3 in [Attachment 2](#)). The motion was seconded and approved unanimously, with Gould abstaining.

Next Meeting

The next meeting date was set for January 16, 2019.

Adjournment

Motion from Schnare to adjourn at 4:22 PM. The motion was seconded and approved 7-0.

Attachment 1

PFM and Zoning Ordinance links.

[Public Facilities Manual Section 6-1403.4E](#)

When the floodplain study is prepared in accordance with the provisions of **Parts 6 and 9** of [Article 2 of the Zoning Ordinance](#), then, consideration of the effects of any proposed use must be based on the assumption that there will be an equal degree of encroachment by others extending for a significant reach on both sides of the stream. This combined effect must not have an adverse effect (normally construed to include no rise in water surface elevation) upon the adopted 100-year floodplain.

[Zoning Ordinance Article 2](#)

Section 2-903 Permitted Uses

Section 2-602 Drainage, Floodplains, Wetlands and Resource Protection Areas

1. Notwithstanding the provisions of Sect. 601 above, no building shall be erected on any land and no change shall be made in the existing contours of any land, including any change in the course, width or elevation of any natural or other drainage channel, in any manner that will obstruct, interfere with, or change the drainage of such land, taking into account land development that may take place in the vicinity under the provisions of this Ordinance, without providing adequate drainage in connection therewith as determined by the Director in accordance with the provisions of the Public Facilities Manual.
2. There shall be no filling, change of contours or establishment of any use in any floodplain except as may be permitted by the provisions of Par. 1 of Sect. 601 above, or **Part 9** below.
3. There shall be no filling, change of contours, or establishment of any use or activity in any wetlands except as may be permitted by the provisions of Chapter 116 of The Code.
4. There shall be no filling, change of contours, or establishment of any use or activity in any Resource Protection Area except as may be permitted by the provisions of Chapter 118 of The Code.
5. Notwithstanding the above, no building shall be erected, no filling or cutting, change in contours or establishment of any use or activity shall be permitted within a major underground utility easement except as may be approved by the Director in accordance with Sect. 515 above.

Section 2-415 Yard Regulations for Lots Having Area in Floodplain

Except as provided for in Sect. 412 above, no dwelling or portion thereof shall be located closer than fifteen (15) feet in horizontal distance to the edge of a floodplain, except the Director may approve:

1. The location of dwellings closer than fifteen (15) feet to a permanent water surface of any appropriately designed impoundment; or
2. The location of additions closer than fifteen (15) feet to the edge of a floodplain for single family detached and attached dwellings constructed prior to August 14, 1978. Any

decision of the Director shall be based on consideration of at least all of the following factors:

- A. Type and location of proposed structure
- B. Nature and extent of any proposed grading or fill
- C. Impact of proposal on the floodplain on properties upstream and downstream
- D. Potential of proposal to cause or increase flooding or to jeopardize human life
- E. Impact of the proposed use on the natural environment and on water quality

For the purpose of this Ordinance, the fifteen (15) feet horizontal distance shall be deemed a minimum required yard. If a dwelling or portion thereof is proposed for location in a floodplain, however, such shall be regulated by the provisions set forth in Part 9 below.

Attachment 2

RESOLUTION, as amended and passed 12 December 2018

Whereas, at the suggestion of the ERC, the Applicant has made substantial changes to the proposed development at 4104 Woodlark Drive, including:

- The plan has been revised to pull the house back out of the seaward 50 feet of the RPA;
- A Best Management Practice facility (dry swales) are proposed;
- Draft floodplain calculations have been completed;

However,

1. Revisions to the plan (including an unknown amount of fill in the floodplain) have increased the impact: encroachment into the RPA increased from 7,568 square feet to 8,915 square feet, and disturbance within the seaward 50 feet is increased from 2,462 square feet to 2,680 square feet.
2. The feasibility of the proposed dry swales has not been provided, and no calculations have been provided to demonstrate their effectiveness in mitigating the impact of sediment or nutrient runoff.
3. The proposal indicates the need to import 1900 cubic yards of fill into the RPA.

Therefore, I move that the exception is not the minimum necessary to afford relief.

It is not possible to conclude that the exception would not be of substantial detriment to water quality; and because the property is not suited for the intended use, the exception is based upon conditions or circumstances that are self-created or self-imposed.

Be it resolved, I move that we deny the request for an exception.