

**King & Queen County
Planning Commission Minutes
June 6, 2022**

The King & Queen County Planning Commission met on Monday, June 6, 2022, at 6:00 p.m. in the King & Queen County Courts and Administrations Building in the General District Courtroom for their regular monthly meeting.

Planning Commission Members Present:

Hunter Richardson
Milton Watkins
Comer Jackson
Barbara Hudgins

Mark Berry
David Campbell
Robert Coleman, Jr.

Also in Attendance:

Donna E. Sprouse, Director of Community Development
Thomas J. Swartzwelder, County Attorney

Call to Order

Chairman, Mr. Richardson called the meeting to order.

Roll Call/Determination of Quorum

Mr. Campbell took roll call and determined that a quorum was present.

Introduction of Newly Appointed Stevensville Commission Member, Mr. Mark Berry

Mr. Richardson welcomed newly appointed Commission member, Mr. Mark Berry. Mr. Berry thanked Mr. Richardson and Mrs. Doris Morris for appointing him to serve on the Commission. Mr. Berry is an appointee representing the Stevensville District.

**Approval of Minutes
December 6, 2021**

After review of the minutes, a motion was made by Mr. Watkins to accept the minutes as presented, seconded by Mrs. Hudgins.

Voting For: Watkins, Richardson, Coleman, Hudgins, Campbell, Jackson
Voting Against: None
Abstain: Berry

Citizens Comment Period

Mr. Richardson opened the floor for citizens' comment period.

Hearing no comments, citizens comment period was closed.

New Business

A. CBPA22-01, Richard A. and Lauren B. Opett (*public hearing*)

Mr. Richardson opened the public hearing for CBPA22-01, Richard A. and Lauren B. Opett. Mr. Richardson asked Mrs. Sprouse to please provide proof of publication and review the request.

Mrs. Sprouse noted that public notice ran in the Tidewater Review and Rappahannock Times for 2 consecutive weeks (May 18, 2022 and May 25, 2022). Adjoining property owners were notified of the public hearing via certified return receipt mail.

Mrs. Sprouse stated that Planning and Zoning Department received an application packet with site plan on April 18, 2022 from Mrs. Lauren Opett, requesting a Chesapeake Bay Exception as found in the King & Queen Zoning Ordinance, Article 12, Section 3-277, Exceptions. Approval of the Chesapeake Bay Exception request is required in order for Mr. & Mrs. Opett to preserve the after the fact patio in RPA. The subject property is County Tax Map Parcel #1623-165X-803, a 3.1-acre parcel, located at 384 Shepards Warehouse Road, in the Buena Vista Magisterial District.

Mrs. Sprouse further explained that Mr. Opett is requesting a Chesapeake Bay Exception from Zoning Ordinance, Article 12, Section 3-277, Exceptions for an 860 sq. ft. brick patio in which the prior owner constructed on the property within the RPA buffer without prior approvals or permit. The prior owner, before selling the property to the Opett family, had submitted a Water Quality Impact Assessment (WQIA) to remove the non-permitted patio in its entirety and to place mulch in the area of the patio. The submitted Water Quality Impact Assessment (WQIA) included mitigation plantings as part of the patio removal (land disturbance in the RPA). Those required mitigation plantings were planted, however the patio was never removed. Subsequently, the current owners purchased the property and now wish to leave the patio in place rather than removing it per the approved WQIA.

As indicated on the site plan prepared by Scott E. Shorland, Land Surveyor, the patio is 860 sq. ft. total. Of the 860 sq. ft., 690 sq. ft. is in the landward 50' of the RPA buffer and 174 sq. ft. is in the seaward 50' of the RPA buffer. The closest point of the patio to the marsh edge is 46'.

Mrs. Sprouse noted that she received an email from Mr. Opett inquiring about the future development options for the property as a potential buyer in November of 2020. It wasn't until this inquiry regarding the property, that it came to our attention that there were violations on the property as it pertained to non-permitted development and non-permitted modifications in the RPA buffer. Staff then began working with the property owner in an attempt to resolve the RPA violations on site. While working with the property owner, it appears that the sale of the property was still in negotiations. The prior property owner applied for and received approval of a WQIA for the patio's removal. Surety was posted for the mitigation and the plantings were planted for the patio's removal, however the property sold prior to the patio being removed.

Rather than removing the structure out of the RPA buffer per the approved WQIA application submitted by the prior owner, the current owner is seeking approval of a Chesapeake Bay Exception request to leave the patio in its current location.

Mrs. Sprouse informed the Commission that the property owners were present in the audience to speak to their request.

Mr. Richardson asked if there was anyone from the public that would like to speak or comment regarding the request.

Property owner, Mr. Richard Opett approached the podium. Mr. Opett affirmed that what Mrs. Sprouse had reported was correct. He stated that they had purchased the property and knew that the home would need improvements to make it the home they wanted for their family. Prior to the purchase, they wanted to build a garage in the future and contacted Mrs. Sprouse to inquire about doing so on the property. When they asked about the future construction of the garage, that is when

and how the violation was discovered by Mrs. Sprouse. Mr. Opett noted that he was led to believe that the patio issue was corrected by the prior land owner and that when they had inquired about the corrective actions taken by the then land owner regarding the violations, Mrs. Sprouse informed them that she could not discuss it with them as they were not the property owner of record. He noted that once they purchased the property, they then discovered that the prior owner planted the mitigation plantings for the patio's removal, however they later decided to keep the patio. Mr. Opett noted that they were not aware that the owner had applied for the patio's removal. They assumed it was taken care of with the mitigation plantings. After speaking with Mrs. Sprouse, she informed them of the exception process. He added that the patio was a selling feature when considering the home purchase. He had noted that they had corrected the prior owner's violation for clearing the lot without approvals. Mr. Opett informed the Commission that they had just planted 10 canopy trees, 20 understory trees and 30 shrubs on the property, not including the mitigation plantings that the prior owner planted for the patio.

Adjoining property owner, Alvin Belfield approached the podium. He noted that the Opett's were model neighbors. He feels that they are a great addition to the County. Mr. Belfield stated that the patio does not hold water and it's a really nice addition to the property.

Hearing no further comments, Mr. Richardson closed public comment and the public hearing.

Mr. Richardson asked about the trees that were already planted. Mrs. Sprouse noted that she did not include that information in her report because that was regarding another violation that did not involve the request to keep the patio that is before the Commission tonight. She did clarify that the property owners have resolved the violation regarding the vegetation removal in the RPA. Mr. Opett noted that they were not permitted to move forward with the exception request until they had resolved the other violation on the property.

Mr. Coleman asked what was significant about the landward RPA buffer vs. the seaward RPA buffer. Mr. Richardson noted that the seaward is the first 50' from the water and the remaining 50' is landward. Mr. Coleman noted that he was aware of that, but asked why was it important to limit encroachments in the seaward 50'. Mrs. Sprouse noted that its simply in the Chesapeake Bay Act, that the purpose of the buffer is to filter or remove sediments and such from stormwater runoff and helps control erosion. Mr. Coleman asked if they had talked with staff regarding reducing the size of the patio to get it out of the seaward 50' of the buffer. Mr. Opett noted that they had. Mrs. Opett said that they would need to remove much more of the patio than the 4 feet because of the fire pit location.

Mr. Coleman asked staff about a prior patio request before the Commission years ago. He asked what was the outcome of that one and if it was a similar situation. Mrs. Sprouse noted that he was speaking of the Tuthill case and that too was an issue of an after the fact violation discovered when the property owner asked for staff to meet on site to discuss a future shoreline project. Mrs. Sprouse noted that the Commission denied that property owner's request to keep the patio and the owner removed it and then sold the property.

Mr. Jackson asked if they could reconfigure the patio so that they are not as close to the river in the first 50' of the buffer. Mr. Swartzwelder noted that they have to consider the application before them, they can either approve, deny or table the request.

Mr. Berry referenced the email dated November 24, 2020 between staff and the property owners, where the property owners acknowledge and agree to remove the patio. Mrs. Opett noted that once they discovered that they could apply for the exception to possibly keep the patio, they decided to apply to keep it.

Mr. Richardson asked if any of the Commission members visited the site. Hearing no comment from the Commission, Mr. Richardson noted that he visited the site. Mr. Richardson asked if there was another structure on the property that they could remove to offset some of the square footage, maybe the shed located on the property. Mrs. Sprouse noted that they actually just replaced the shed with a

new shed, like for like in size and location. Mr. Richardson asked if there was anything that they could give up at all. Mrs. Opett replied that they have nothing else to give up.

Mr. Richardson asked if they could plant more trees on the property. Mr. Opett noted that they had already planted 10 trees, 20 understory trees and 30 shrubs. Mrs. Opett said that she wouldn't know where they could plant more.

Hearing no further comments Mr. Richardson asked if there was a motion or if more time would help the Commission. If more time was needed, they could table the request.

Mrs. Hudgins made a motion to deny CBPA22-01 because she felt that their approval would provide a privilege that would otherwise be denied to others. Mrs. Hudgins motion was seconded by Mr. Jackson. Hearing no further comment, Mr. Richardson asked Mr. Campbell for a roll call vote.

Voting For: Watkins, Berry, Coleman, Hudgins, Campbell, Jackson

Voting Against: Richardson

Abstain: None

Old Business

None

Staff's Comments

Mrs. Sprouse noted that she does not have any pending applications for the Commission at this time. She stated that her office is remain busy with property development questions and are really tied up with the Walnut Solar site plan review process.

Mr. Bailey expressed his appreciation of the Commission and thanked them for making their jobs so much easier. He noted that they often have to make difficult decisions and appreciates their time. He informed the Commission that he will not serve another term on the Board of Supervisors, as he hopes to retire in the near future.

Mr. Coleman asked if he could ask staff a question. He asked about the use of clam shells in the RPA. He further noted that it appears that clam shells were not an option for the applicant tonight, is there a list of approved material that can be used. Mr. Swartzwelder noted that Maryland has adopted a set of standards that lists acceptable material, however Virginia DEQ has refused to do anything. For a long time, they had told people that crushed clam or oyster shell was permissible as it was natural, but they have since backed off of that and treat it no differently than gravel. He noted the only direction received from the State as far as any sort of deck type material is stepping stones. Then there have been arguments as to how many, what size and what would the approved spacing be, etc. Mr. Swartzwelder noted that it's a real challenge. He stated that there are some localities that are very lenient and they make findings for things that they want to approve. Some allow everything, that we have neighboring jurisdictions that approve patios, inground swimming pools, decks and such. Now DEQ says its wrong, and if there will be repercussions for such approvals, he doesn't know. He said where DEQ really gets testy is that first 50' line. Looking at county's that have gotten into trouble have been historically those that allow multiple encroachments in the first 50'. He added that the law doesn't say that you cannot go into the first 50' but there is a higher standard. Mr. Coleman added that is why he asked the question, could they move it back. In his mind, had they been able to push it back outside of the seaward 50', it would be better and consistent.

Commissioner's Comments

Mr. Coleman thanked Mr. Bailey for attending the meeting tonight. He welcomed Mr. Berry to the Commission.

Mr. Jackson welcomed Mr. Berry to the Commission and thanked Mrs. Sprouse for her hard work.

Mr. Berry thanked everyone for the opportunity to serve on the Commission. He added that he had worked with Mrs. Sprouse another time in life and noted that she was very professional. He looks forward to working with everyone.

Mrs. Hudgins welcomed Mr. Berry to the Commission. She noted that this was her last meeting of the Planning Commission. She stated that she and her husband were both moving to Tennessee. Mrs. Hudgins noted that she has really enjoyed serving on the Commission and will miss it tremendously. She thanked Mrs. Sprouse and Mr. Swartzwelder for all that they do and thanked Mr. Bailey for appointing her to the Commission and giving her the opportunity to serve.

Mr. Campbell noted that's the price that you pay for having waterfront property, especially when you have a lot of marsh.

Adjournment

Mr. Richardson noted that the next meeting is set for Tuesday, July 6, 2022 at 6 p.m. He noted that if that changes, Mrs. Sprouse will notify them of such.

There being no further business, a motion was made by Mr. Watkins to adjourn the meeting. The meeting was adjourned by all present members stating "Aye".

Hunter Richardson, Chairman