

**King & Queen County  
Planning Commission Minutes  
July 6, 2020**

The King & Queen County Planning Commission met on Monday, July 6, 2020, 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:**

Sheila Morton	Ryan Burroughs
Milton Watkins	William Herrin
James Guess	Robert Coleman, Jr.
Barbara Hudgins	
Robert Harvey	

**Also in Attendance:**

Donna E. Sprouse, Director of Community Development

**Call to Order**

Vice Chairman, Mr. Watkins called the meeting to order.

**Roll Call/Determination of Quorum**

Mrs. Sprouse took roll call and determined that a quorum was present.

**Approval of Minutes  
March 2, 2020**

After review of the minutes, a motion was made by Mr. Herrin to accept the minutes with the correction of a name in the Planning Commission Members Present section, adding Mr. Coleman and removing Mrs. Hudgins from New Business "B" as a voting member, seconded by Mr. Coleman.

Voting For: Watkins, Morton, Guess, Coleman, Herrin

Voting Against: None

Abstain: Burroughs, Harvey, Hudgins

**Citizens Comment Period**

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

Ms. Arlene Taliaferro, of Shacklefords asked if the Commission would consider advertising the papers now that they are meeting publicly to inform the citizens that the dial in option is no longer available.

Mrs. Sprouse noted that this is the first Commission meeting since COVID-19 and that the Commission has never had a dial in option, therefore there is nothing to advertise in regard to dialing in to participate in a Commission meeting. She added that the Board of Supervisors has a dial in option for the public and it was her understanding that it is still valid.

Hearing no further comments, citizens comment period was closed.

**New Business**

**A. CBPA20-01 Chesapeake Bay Preservation Area Exception – Tribble Properties, LLC (public hearing)**

Mr. Watkins opened the public hearing for CBPA20-01, a request for approval of a Chesapeake Bay Preservation Area Exception for an after the fact pole barn (1,080 sq. ft.), with 350 sq. ft. of the structure within the landward Resource Protection Area. The subject property is identified as County Tax Map Parcel #1632-54L-301, a 223.75-acre parcel, located at 1834 Pea Ridge Road, in the Newtown Magisterial District.

Mr. Watkins asked Mrs. Sprouse to review the request.

Mrs. Sprouse stated that public notice ran in the Tidewater Review and Rappahannock Times for 2 consecutive weeks (June 17, 2020 and June 24, 2020). She also noted that all adjoining property owners received notification via US mail, sent certified return receipt.

Mrs. Sprouse noted that the Planning and Zoning Department received an application packet with site plan on March 26, 2020 from Mr. Jeffrey L. Howeth, on behalf of David Tribble of Tribble Properties, LLC, 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. Tribble to preserve the after the fact pole barn in RPA. The subject property is County Tax Map Parcel #1632-54L-301, a 223.75-acre parcel, located at 1834 Pea Ridge Road, in the Newtown Magisterial District.

She added that Mr. Tribble is requesting a Chesapeake Bay Exception from Zoning Ordinance, Article 12, Section 3-277, Exceptions for a 30' x 36' pole barn in which he constructed on his property without prior approvals or permit.

Mr. Tribble has also submitted a Minor Water Quality Impact Assessment that has been reviewed by King & Queen County Environmental Codes and Compliance Officer, David McIntire (Please see attached WQIA application & email for comments from Mr. McIntire regarding the request). Mrs. Sprouse noted as indicated on the site plan prepared by Jeffrey L. Howeth, P.E., 350 sq. ft. of the 1,080 sq. ft. pole barn encroaches into the RPA buffer. The pole barn has an encroachment depth of 17 feet into the RPA (83 feet to the resource feature).

Mrs. Sprouse read the following from Article 12, Section 3-272 B, Buffer Area Performance Standards...

*A. When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer area may be permitted through an administrative process in accordance with the requirements for a Plan of Development and the following criteria:*

- (1) Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities;*
- (2) Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment and is an area equal to the area encroaching the buffer area shall be established elsewhere on the lot or parcel; and*
- (3) The encroachment may not extend into the seaward 50 feet of the buffer area.*

Mrs. Sprouse also read Article 12, Section 3-277, Exceptions...

*A. A request for an exception to the requirements of the Chesapeake Bay Preservation Area Overlay District shall be made in writing to the Planning Commission. It shall identify the impacts of the proposed exception on water quality and on lands within the RPA through the performance of a water quality impact assessment which complies with the provisions of this Article.*

*B. The county shall notify the affected public of any such exception requests and shall consider these requests in a public hearing in accordance with 15.2-2204 of the Code of Virginia, except that only one hearing shall be required.*

*C. The Planning Commission shall review the request for an exception and the water quality impact assessment and may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of this Article if the Planning Commission finds:*

- (1) Granting the exception will not confer upon the applicant any special privileges that are denied by this Article to other property owners in the Chesapeake Bay Preservation Area Overlay District;*
- (2) The exception request is not based upon conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels;*
- (3) The exception request is the minimum necessary to afford relief;*
- (4) The exception request will be in harmony with the purpose and intent of the Chesapeake Bay Preservation Area Overlay District, and not injurious to the neighborhood or otherwise detrimental to the public welfare and is not of substantial detriment to water quality; and*

(5) *Reasonable and appropriate conditions are imposed which will prevent the exception request from causing a degradation of water quality.*

D. *Once the exception is granted, the exception will become null and void if a valid building permit has not been obtained within twelve (12) months of the approval date.*

E. *If the Planning Commission cannot make the required findings or refuses to grant the exception, the Planning Commission shall return the request for an exception together with the water quality impact assessment and the written findings and rationale for the decision to the applicant, with a copy to the Board of Zoning Appeals. The applicant may then apply to the Board of Zoning Appeals for a variance as provided in Article 20 of this Ordinance.*

F. *The Board of Zoning Appeals shall consider the water quality impact assessment and the findings and rationale of the Zoning Administrator in determining harmony with the intended spirit and purpose of this Article.*

Mrs. Sprouse also provided some background information regarding the history of the request. She noted that the King & Queen County Building and Zoning Department was notified by the Commissioner of the Revenue's Office that there was a structure built without permits on property, according to the Commissioner's records, owned by Tribble Properties, LLC. The King & Queen County Building and Zoning Department followed up with a notice of violation, advising the owner that an after the fact permit was required for the pole barn, as it was already built without approvals/permits.

Mr. Tribble submitted an after the fact building and zoning permit on February 24, 2020. A site visit was conducted the same evening by Environmental Codes Compliance Officer, David McIntire. Mr. McIntire observed (with Mr. Tribble on site) that the structure was constructed within the 100' RPA buffer. Photos were taken of the structure and the tape measurement of such (attached) for the file. A denial letter was issued to Mr. Tribble on February 25, 2020, noting that the structure was built within the 100' Resource Protection Area unlawfully. In the notice, the owner was advised that he must remove the structure from the 100' Resource Protection Area buffer.

Rather than removing the structure or a portion thereof out of the RPA buffer, the owner is seeking approval of a Chesapeake Bay Exception request to leave the structure in its current location and install the required plantings as noted in the Water Quality Impact Assessment (WQIA) as submitted.

Mr. Watkins opened the floor for public comment. Hearing none, public comment was closed.

Mr. Watkins asked if the applicant would like to speak to their request.

Mr. Jeffrey Howeth, engineer for Mr. Tribble, introduced himself to the Commission. He stated that Mr. Tribble reached out to him and said that he may have a problem. That the County had come down because he may have built a building without a permit and that he had an issue with the Bay Act as well. Mr. Howeth noted that it's a pond that has been there about 50 years roughly and he noticed the pole shed was on the property and housed a tractor that he uses to maintain the property more or less, and he verified the 83' distance that the structure was from the pond. He said that there is more than likely a perineal stream under the pond and that would be the water surface that would tie it together. Mr. Howeth said that he would like to put what's here in perspective. Working backwards with the pond, the pond has a drainage area of about a quarter of a square mile, about 160 acres, if you go in and do the pollutant removal calculation using the DEQ spreadsheets, that pond actually removes about 38 and half pounds of pollutant a year. He added that is voluntary, that no one made the owner install, he could take that pond out at any time that he wants to because it's not a stormwater plan feature, however it is acting like a stormwater feature. That may be where there's little confusion. If you go into Henrico or Tappahannock Walmart and see a big stormwater pond and when everyone sees one out in front of the Walmart, we all know what it is. Looking at it from the Bay Act, that 17 feet of encroachment into the buffer area, or proximity to the pond, that needed a pollutant removal on an annualized basis of 0.09 pounds per year. So you are looking at a facility that can take out 3800 percent more pollution than what he would create or potentially need to mitigate. Mr. Howeth said that he asks the Commission to please take that into consideration and that whoever installed that pond in around 1955 certainly did this county a favor for water quality because that's another 38.41 pounds that you cannot get out either other way should he choose not to keep that pond. It would be quite a loss of water quality in that area. Mr. Howeth noted that if any of the Commissioner members had any questions, he would be glad to answer them.

Mr. Coleman stated that he was looking at the total size of the structure as 1080 sq. ft. and it looks as though the bioretention collects and treats the total area of the structure. Mr. Howeth responded that it does, that the structure is a pole shed with a slanted roof that tilts to the back side of the

structure. It was just as easy to include the full structure in the bio-retention design to get the .09 pounds of pollutant removal.

Mr. Howeth noted that the key to granting the Exception is being in harmony with the purpose and intent of the ordinance and do you have no water quality degradation. He said those are the real keys to what the Bay Act is about. He added that the question to ask is are we getting more water quality than what we started with.

Mr. Coleman asked, with the collection of the water from the roof, and the bio-retention that the engineer has designed, will it protect the water quality? Mr. Howeth replied, yes it does.

Mr. Coleman asked Mr. Tribble, out of the 223 acres how did he happen to choose this particular spot. Mr. Tribble said that he does not live there and he wanted a spot where people could not see it. He did not want to put it in the pasture out front. He added that he did not have to clear out anything to accommodate the structure.

Mr. Watkins closed the public hearing and asked if the Commission had any other questions.

Mr. Guess asked the owner what is the floor of the structure made of, is it concrete, dirt, or rock. Mr. Tribble stated that nothing is on the ground but dirt. It was constructed to keep his single tractor out of the weather.

Mr. Herrin asked what was the size of the structure. Mr. Tribble said it was 30 feet by 36 feet.

Mrs. Hudgins asked staff that in Article 12, Section 3-272B under "A-1" it states that the encroachment is to be minimum necessary to achieve to reasonable buildability of a principal structure and utilities. She asked what is the definition of a principal structure. Mrs. Sprouse read the definition from the Code, *"a building in which is conducted the principal or main use of the lot on which such building is located."*

Mr. Coleman noted that in this case, this pole barn will not be the principal structure because there is a house on it. Mrs. Sprouse agreed.

Mr. Coleman noted that he is familiar with this property because as a teenager his church group used to go there for a baptist training union and would enjoy the facility and has fond memories of the area. He added that he has not been there this year but had visited the property previously so he is familiar with how the property is laid out.

Mr. Harvey noted that it sounded like Mr. Howeth was implying that if the pole barn was to not be approved or had to be removed, the owner was going to take away the pond.

Mr. Howeth replied not necessarily. The thought process that he was trying to relay is that this pond has been providing water quality benefits for 50 or more years. He has noted that when you get back to the definition, the sole purpose of this shed was to maintain the dam. He said he has gone to Mr. Tribble and has suggested that there are some things that he may want to look at in regards to the dam in the near future. Everything like this pond needs maintenance. Had the pond not been there and it was just a perennial stream. The pond has given more benefit to this community far beyond what his request is for doing this. The shed is used for his maintenance of the pond and dam so that trees and such do not grow on it and destroy it. He did want the Commission to be aware that the pond was there by choice of the land owner. He wanted to inform the Commission of the good that the pond provides for the county in regards to water quality. Mr. Howeth noted that if the pond water surface goes down or increases, it changes the 100-foot buffer setback. He added that the pond adds value to the land and he wouldn't think that the owner would do away with the pond, but could if he so chooses.

Mr. Coleman noted that when he looks at the total square footage and the 17' depth that structure encroaches, as it's not the full structure, in his mind he feels it was a mistake on the owners' part. Listening to what the owner has described, he picked a spot where he did not have to destroy any of the existing material and it was an area that was flat to construct a building to maintain the property. The engineered design will allow for that water to be collected and mitigated. In his mind that allows the rain water to be collected and treated in a manner to not cause water quality issues to the Chesapeake Bay, which in the end would be the overall benefit of the Chesapeake Bay Act. So he feels that the mitigation plan has merit to allow the building to continue to reside where it is today.

Mrs. Hudgins noted that she was going to play devil's advocate to Mr. Coleman, which we are good at sometimes. She stated that they did not seek a permit for this particular building ahead of time, which she felt everyone should know that you should be getting a permit for a building. She said she was concerned about that. The other thing is that when the Commission looks at the five points, if the Commission approves this, she believes that he would be given a special privilege to the applicant that we may not be giving to other property owners if they were to come forward and ask for the same 17-foot variance. She added that in the code it says that the exception request is

not based on conditions or circumstances that are self-created or self-imposed. In this particular situation, it is totally self-created because they did not seek the permit ahead of time and would have followed the Chesapeake Bay Act.

Mr. Tribble asked the Chairman if he may say one other thing. Mr. Watkins agreed, if he was brief.

Mr. Tribble said that he did not know that he had to get a permit for a pole shed since the property is zoned agricultural. He added that it was an honest mistake. He stated that he doesn't have to have a building permit for the agricultural building but he did not apply for the zoning permit. That is where he messed up. Mr. Tribble informed the Commission that he was an electrical contractor and he pulls permits everyday but he just didn't know any better.

Mr. Watkins asked what was the pleasure of the Commission. He will now entertain a motion.

Mrs. Morton noted that she doesn't have an issue with it if it makes things better. That the benefit of the pond outweighs that of the structure encroachment.

The following motion was made by Mr. Coleman:

*"I make a motion that we approve CBPA20-01, keeping in mind that the motion needs to find that the requirements for granting the exception will not confer upon the applicant any special privileges that are denied by this article to other property owners in the Chesapeake Bay Preservation Overlay District. The request is not based on conditions or circumstances that are self-imposed, nor does it arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels. The exception request is the minimum necessary to afford relief. The exception request will be in harmony with the purpose and intent of the Chesapeake Bay Preservation Overlay District, and not injurious to the neighborhood or otherwise detrimental to the public welfare and is not of substantial detriment to water quality. Also, I will add that the engineering methods that he has proposed will be reasonable and appropriate conditions to propose which will prevent the exception request from causing a degradation to water quality."*

Mr. Coleman's motion was seconded by Mr. Harvey.

Mr. Watkins asked if there was any more discussion.

Mr. Harvey noted that he would like to say that his last statement did mean a lot because unless you know all the laws, because everybody doesn't know them all, he thought if you were building a stick barn and got further then you wanted, he was under the impression that you did not need a permit for a pole barn. He added that in this instance he believes the good out-weighs the bad and it's one of those things that we all can make a simple mistake, but overall thinks it will be okay in the end.

Voting For: Morton, Harvey, Coleman, Burroughs

Voting Against: Watkins, Guess, Herrin, Hudgins

Abstain: None

Mrs. Sprouse noted that the motion dies with a tie vote and the request is therefore denied.

### **Old Business/Staff's Comments**

Mrs. Sprouse noted that she knows that several Commission members are interested in the Walnut Solar project. She noted that the Board is now in the stage of review and a public hearing has not yet been set. She added that once a hearing is set, she will be sure to inform the Commission should they wish to attend the meeting(s).

### **Commissioner's Comments**

Mr. Harvey noted that he was glad to see everyone tonight and that everyone is well.

Mrs. Hudgins welcomed Mr. Burroughs to the Commission and added it's nice to have a new young face with us and hopes it goes well.

Mr. Coleman welcomed Mr. Burroughs to the Commission and asked if he would tell them more about himself and his background so they may get to know him better.

Mr. Burroughs thanked the Commission and noted that he has been in King & Queen for about 6 years and he is from the Hampton area. He has a background in heating and air conditioning. He added that he has been looking at King & Queen County for many years, moved here and has enjoyed it ever since.

Mr. Herrin welcomed Mr. Burroughs and he added that we are not usually evenly split.

Mr. Watkins welcomed Mr. Burroughs to the Commission and thanked everyone for coming out. He wanted to thank Mr. Burns for filling the spot until he found someone to take over.

**Adjournment**

Mr. Watkins noted that the Commission's next meeting will be August 3, 2020 at 6 p.m. Mr. Watkins thanked Lawrence Simpkins for attending the Commission meeting and that he is one of the dedicated supervisors who is here every time it is his turn and the Commission recognizes stuff like that. Mr. Coleman added that they all appreciated it too.

Mr. Watkins thanked Ms. Taliaferro for always attending the meetings as well.

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

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Milton Watkins, Vice-Chairman