



**CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA**

January 4, 2021

In accordance with Virginia Code § 2.2-3708.2, Virginia Code § 15.2-1413 and the City's Continuity of Government Ordinance adopted on September 15, 2020, and Chapter 1289 of the 2020 Acts of Assembly as amended, the chair of the Virginia Beach Chesapeake Bay Preservation Area (CBPA) Board called a special meeting for a public hearing to be held on Monday, January 4, 2021, at 10:00 am by electronic communication means which was held virtually with CBPA Board Members, Staff and citizens participating via video/audio conference.

The first order of business was to approve the finding and variance conditions of the December 7, 2020 CBPA Board Public Hearing. A motion was made by Mr. McCoy and seconded by Mr. Jones to approve the findings and variance conditions. All present voted for the motion accordingly. This vote also serves as the official roll call for this meeting.

BOARD ACTION: THE CBPA BOARD VOTED TO APPROVED THE DECEMBER 7, 2020 FINDINGS AND VARIANCE CONDITIONS ON JANUARY 4, 2021 AS FOLLOWS.

YES	6	NO	0	ABSTAIN	1	ABSENT	2
BARRETT-MCDANIELS				YES			
DREPS				ABSENT			
FRANCE				ABSENT			
JESTER				YES			
JONES				YES			
MCCOY				YES			
STEIER				YES			
WALLACE				YES			
YOUNG				ABSTAIN			

All CBPA Board Members present voted with Ms. Young abstaining from this vote as a newly appointed member of the CBPA Board.



Applicant & Contract Purchaser **Adam & Krystin Beck**
 Address **1624 Bay Breeze Drive**
 Public Hearing **December 7, 2020**
 City Council District **Lynnhaven**

Agenda
 Item
1

Parcel GPIN: 2409-23-9903
Accela Record: 2020-CBPA-00049
Applicant’s Agent: Sean Marsden, PE – Cardinal Civil Resources
CBPA Board Action: DEFERRED AT THE JANUARY 4, 2021 CBPA BOARD PUBLIC HEARING TO THE FEBRUARY 1, 2021 CBPA BOARD PUBLIC HEARING.

A motion was made by Mr. Jones, seconded by Mr. Wallace to defer the variance request to the February 1, 2021 CBPA Board Public Hearing. All present voted for the motion.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

BARRETT-MCDANIELS	YES
DREPS	ABSENT
FRANCE	ABSENT
JESTER	YES
JONES	YES
MCCOY	YES
STEIER	YES
WALLACE	YES
YOUNG	YES



Property Owner & Applicant **Robert & Joan Berndt**
Address **805 Cavalier**
Public Hearing **January 4, 2021**
City Council District **Beach**

Agenda
Item

2

Parcel GPIN: 2418-56-2080
Accela Record: 2020-CBPA-00053
Applicant's Agent: Billy Garrington, Governmental Permitting Consultant
CBPA Board Action: APPROVED WITH 17 CBPA VARIANCE CONDITION ON JANUARY 4, 2021

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated as *"there are no special privileges taken for this project and we expect to be treated fairly, as with any project."* The Board offers that the proposed improvements associated with this variance request deviate from the June 2002 CBPA Variance present to the Board with the location of the proposed improvements; however, the reduction in the amount of land disturbance associated with the 2002 variance and mitigation measures provided by the applicant specific to this new request offer merit towards this variance not providing a special privilege to the applicant.
- 2) The Board offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted more than 100 years prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"this project is very close to the house with minimal pool deck, including none on two sides. The previously approved plan was not environmentally sensitive."* The Board concurs and provides that the proposed pool deck has been further reduced as depicted on the CBPA Exhibit provided in this Staff report specific to this public hearing.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"this project is keeping filling, grading to a minimum and creating an outdoor space close to the house."* The Board concurs.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load *“the proposed will decrease the source of pollution. Currently the runoff goes right into the marsh, through lawn. We are creating a flat patio space and I plan on utilizing area drains which can be piped to a BMP, creating no runoff. Lawn will be converted to spartina as well.”* The Board is of the opinion that the applicant’s approach to ensure a no net increase of nonpoint source pollution is acceptable. These management techniques include situating the proposed improvements in an area currently devoted turf, managing the shoreline to promote more sunlight for the fringe marsh area, removing debris from the tidal cove, and integrating the revegetation of the adjacent shoreline into the design plan with the introduction of Spartina plant species.

CPBA Variance Conditions:

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 2,646 square feet.

All the required restoration shall be located in the 100-foot Resource Protection Area buffer integrating the redevelopment of the shoreline and transitioning into the uplands located along the eastern portion of the property to the greatest extent practicable. Said restoration shall achieve the full complement of vegetation consisting of understory trees, shrubs, grasses and groundcovers suitable for the existing grade elevations and environmental conditions to the greatest extent practicable suitable wetland community based on elevation (i.e. high marsh, transition, shrub, upland, etc.).

Buffer restoration areas shall be maintained and not removed or allowed to revert to turf in the future. Trees shall not be planted within 30 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 4) The conditions of the June 2002 Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration and stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.

- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) A double row of wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 5 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 14) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$303.18 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.

16) This variance and associated conditions **are in addition to** the conditions of the Board variance granted June 24, 2002 except for condition 6 and condition 9 of said variance.

17) The conditions and approval associated with this variance are based on the exhibit plan dated December 16, 2020 – Site Plan Concept B, prepared by Siska Aurand Landscape Architects. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

As an item on the consent agenda, Billy Garrington gave testimony to the Board as the applicant’s representative.

A motion was made by Mr. Jones, seconded by Mr. Wallace to approve the variance with the variance conditions as provided in the Staff report. All present voted for the motion.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

BARRETT-MCDANIELS	YES
DREPS	ABSENT
FRANCE	ABSENT
JESTER	YES
JONES	YES
MCCOY	YES
STEIER	YES
WALLACE	YES
YOUNG	YES



Property Owner & Applicant **Mark & Kelsey Kinnane**
Address **1200 Kamichi Court**
Public Hearing **January 4, 2021**
City Council District **Lynnhaven**

Agenda
Item

3

Parcel GPIN: 2418-42-9570
Accela Record: 2020-CBPA-00056
Applicant's Agent: Billy Garrington, Governmental Permitting Consultant
Brad Martin, Clark Design Group
CBPA Board Action: APPROVED WITH 17 CBPA VARIANCE CONDITION ON JANUARY 4, 2021

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because the existing home and improvements already exist on the property; the new owners want to enhance the livability of the project within reasonable limits and at a reasonable 32.9 percent impervious cover. In addition, the applicant's agent has acknowledged Staff's concern with the overall impervious cover of the lot and has provided a reduction in overall impervious cover of approximately 555 square feet. This reduction results in the overall impervious cover of the lot being 8,885 square feet or 30.9 percent of the lot outside of water and wetlands.
- 2) This variance request is not based upon conditions or circumstances that are or have been created by the applicant or predecessor in title because the house was built in the 1960's, prior to the enactment of the CBPA Ordinance, and the CBPA buffer encompasses the entire parcel.
- 3) The variance is the minimum necessary to afford relief because it is a modest request for a deck, patio enlargement, detached garage, and expanded driveway (to allow turning) in the natural places for these improvements. In addition, the applicant's agent has acknowledged Staff's concern with the overall impervious cover of the lot and has provided a reduction in overall impervious cover of approximately 555 square feet. This reduction results in the overall impervious cover of the lot being 8,885 square feet or 30.9 percent of the lot outside of water and wetlands.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the entire property will be designed to achieve stormwater

management and the proposed stormwater mitigation of the existing runoff will improve water quality.

- 5) And last, best management practices will be installed that will treat stormwater runoff before it enters Lynnhaven River as a means to manage towards a no net increase in nonpoint source pollution load.

CPBA Variance Conditions:

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) The elevated deck and associated steps and walkway shall be constructed of an open pile system with minimal excavation for the pile support. Said system shall be used for all portions of the improvements located within the 50-foot seaward buffer.
- 3) Under deck treatment of gravel shall be installed. Said treatment shall be installed under the elevated deck and associated stairs and walkway.
- 4) The layout of the driveway and all vegetation, inclusive of understory trees and shrubs shall be staked and flagged in the field and reviewed with Staff during the preconstruction meeting.
- 5) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 6) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,207 square feet x 200 percent = 4,408 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **5 canopy trees, 5 understory trees, 22 large shrubs, and 33 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to

ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 7) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 8) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 9) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 10) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 11) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed continuous along the toe of slope adjacent to northwest side of the residence and transition to the top of bank adjacent to the east side of the residence for those portions of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements. Construction limits shall lie within all areas of the silt fence.
- 12) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 13) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 14) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 15) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 16) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$505.77 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

17) The conditions and approval associated with this variance are based on the exhibit plan dated December 28, 2020, prepared by Clark Design Group, signed December 28, 2020 by Brad Martin. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from the provided layout of proposed improvements or said conditions during site plan review may require resubmittal to the CBPA Board consideration.

Billy Garrington and Brad Martin gave testimony to the Board as representatives for the applicant.

A motion was made by Mr. Jones, seconded by Mr. Wallace to approve the variance with the variance conditions as provided in the Staff report. All present voted for the motion.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

BARRETT-MCDANIELS	YES
DREPS	ABSENT
FRANCE	ABSENT
JESTER	YES
JONES	YES
MCCOY	YES
STEIER	YES
WALLACE	YES
YOUNG	YES



Property Owner & Applicant **Andrew J Busk**
Address **2216 Windward Shore Drive**
Public Hearing **January 4, 2021**
City Council District **Lynnhaven**

Agenda
Item

4

Parcel GPIN: 2409-19-5117
Accela Record: 2020-CBPA-00061
Applicant's Agent: Billy Garrington, Governmental Permitting Consultant
CBPA Board Action: APPROVED WITH 15 CBPA VARIANCE CONDITION ON JANUARY 4, 2021

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the request to be heard in January is identical to numerous of other variances that have been granted in Long Creek vicinity in recent years and will not confer any special privilege on the applicant. The subdivision predates the Bay Act by decades and the house was built many years to the adoption of the Act."* While the Board acknowledges the statement provided by the applicant's agent, Staff offers that *"other variances that have been granted in the Long Creek vicinity"* typically deal with the entire redevelopment of the associated lot. In some instances, while the footprint of proposed single-family residences has increased the requests often maintain accessory structures with a realm of reasonable accommodations to provide for the use.
- 2) The applicant offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather *"the entire back portion of this property is impacted by the RPA buffer since the Act was adopted. Avoidance of the buffer is not possible for any type of development in the back yard. We have tried to make sure we avoid the seaward buffer and limited the new development to a size that historically gets approved by the Board."* The Board concurs and offers that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"we are close to the 30% threshold the board usually likes to see. With some minor reductions we can get closer to that number on site."* The Board acknowledges the statement provided by the applicant's agent, however is of the opinion that the proposed pool deck proposed at approximately 2,155 square feet exceeds the minimum necessary to afford relief at a rate of more than 2 times the size of the proposed swimming pool. As such, Staff has provided recommended condition 2 below.

- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *“the purpose of the ordinance is “water quality”. This lot currently has ZERO storm water treatment on-site and never has since it was built, as a result of this variance request treatment on-site will occur, turf zones will be reduced, buffer restoration will be installed to create trophic layers and off-site mitigation will also occur ALL to help improve water quality in a subdivision that pre-dates the storm water ordinance so all the water in the streets direct flows into creek.”* The Board concurs.
- 5) The applicant provides, as a means to manage towards a no net increase in nonpoint source pollution load *“the first item to protect non-point source pollution is the E & S measures. First thing to be installed, last thing to be removed. Also stockpile on existing hard surfaces and single point accessway all are most important. Revegetating denuded areas as soon as possible will also help in reducing any runoff during construction, installing all required buffer restoration and infiltration measures will reduce runoff significantly.”* The Board concurs.

CPBA Variance Conditions:

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Exclusive of the covered patio area, the maximum impervious cover of the swimming pool paver surround shall not exceed 1,471 square feet whereas the west, north and east sides of the swimming pool surround shall be reduced in width resulting in the overall impervious cover of the site outside of water and wetlands not to exceed 8,242 square feet of the site outside of water and wetlands.
- 3) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 4) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **2,471 square feet x 200 percent = 4,942 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 6 understory trees, 24 large shrubs, and 36 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic

material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 15 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$566.27 and is based on 25

percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

15) The conditions and approval associated with this variance are based on the exhibit plan prepared by Gaddy Engineering Services, LLC, signed November 6, 2020 by Michael S. Gaddy. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

As an item on the consent agenda, Billy Garrington gave testimony to the Board as the applicant's representative.

A motion was made by Mr. Jones, seconded by Mr. Wallace to approve the variance with the variance conditions as provided in the Staff report. All present voted for the motion.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

BARRETT-MCDANIELS	YES
DREPS	ABSENT
FRANCE	ABSENT
JESTER	YES
JONES	YES
MCCOY	YES
STEIER	YES
WALLACE	YES
YOUNG	YES



Property Owner & Applicant **Hugo Living Trust**
Address **649 Thalia Point Road**
Public Hearing **January 4, 2021**
City Council District **Lynnhaven**

Agenda
Item

5

Parcel GPIN: 1488-00-3331
Accela Record: 2020-CBPA-00062
Applicant's Agent: Billy Garrington, Governmental Permitting Consultant
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITION ON JANUARY 4, 2021

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the request to be heard in January is identical to other variances that have been granted in this neighborhood in recent years and will not confer any special privilege on the applicant. The subdivision predates the Bay Act by decades and the house was built many years to the adoption of the Act."* The Board acknowledges the statement provided by the applicant's agent and concurs that the lots along this reach of Thalia Point Road are within the 100-foot RPA.
- 2) The applicant offers that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather *"the entire back and front portions of this property are impacted by the RPA buffer since the Act was adopted. Avoidance of the buffer is not possible for any type of redevelopment on this lot. We have tried to make sure we balance the amount of redevelopment on this lot and limit the encroachment request into the seaward buffer with the new development to a size that historically gets approved by the Board."* The Board concurs and offers that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because *"we are not proposing to increase the overall impervious cover of the lot with the proposed improvements."* The Board concurs and supports the request to have the swimming pool located farther than the depth of the pool away from the existing single-family residence.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the purpose of the ordinance is "water quality". This lot currently*

has ZERO storm water treatment on-site and never has since it was built, as a result of this variance request treatment on-site will occur, turf zones will be reduced, buffer restoration will be installed to create trophic layers and off-site mitigation will also occur ALL to help improve water quality in a subdivision that pre-dates the storm water ordinance so all the water in the streets direct flows into creek.” The Board concurs.

- 5) The applicant provides, as a means to manage towards a no net increase in nonpoint source pollution load *“the first item to protect non-point source pollution is the E & S measures. First thing to be installed, last thing to be removed. Also stockpile on existing hard surfaces and single point accessway all are most important. Revegetating denuded areas as soon as possible will also help in reducing any runoff during construction, installing all required buffer restoration and infiltration measures will reduce runoff significantly.”* The Board concurs.

CPBA Variance Conditions:

- 1) A Small Project in the RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **305 square feet x 200 percent = 610 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 2 understory trees, 4 large shrubs, and 6 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$69.89 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

15) This variance and associated conditions **will supersede** the conditions of the Board variance granted September 23, 1996.

16) The conditions and approval associated with this variance are based on the exhibit plan prepared by Gaddy Engineering Services, signed November 4, 2020 by Michael S. Gaddy. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

As an item on the consent agenda, Billy Garrington gave testimony to the Board as the applicant's representative.

A motion was made by Mr. Jones, seconded by Mr. Wallace to approve the variance with the variance conditions as provided in the Staff report. All present voted for the motion.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

BARRETT-MCDANIELS	YES
DREPS	ABSENT
FRANCE	ABSENT
JESTER	YES
JONES	YES
MCCOY	YES
STEIER	YES
WALLACE	YES
YOUNG	YES



Property Owner & Applicant **Anne Talbott Jordan & et al**
Address **Lot 164, North Linkhorn Park, 1108 Bruton Lane**
Public Hearing **January 4, 2021**
City Council District **Lynnhaven**

Agenda
Item

6

Parcel GPIN: 2418-37-2305
Accela Record: 2020-CBPA-00064
Applicant's Agent: Billy Garrington, Governmental Permitting Consultant
CBPA Board Action: APPROVED WITH 22 CBPA VARIANCE CONDITION ON JANUARY 4, 2021

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because this subdivision was recorded many years prior to the adoption of the Bay Act and as a result every waterfront home is significantly impacted by the Ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and have been granted so the approval of this request will in no way confer any special privilege to the current owners.
- 2) The applicant provides that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather the buffer zones were made part of the Bay Act and these lots were already in place when it was enacted and the hardship that is now on these properties will never go away.
- 3) With regard to the minimum necessary to afford relief the applicant's agent provides that *"the minimum necessary to afford relief is a very arbitrary concept but the Board has routinely granted variances with the understanding that the total impervious cover not exceed 30% of the land area which leaves a significant amount of land to be used for buffer restoration and bioretention beds."* The Board evaluates each variance request based off the merits provided with the request specific to the existing conditions of the lot and not solely on the overall impervious cover of the lot and has provided the conditions of this variance accordingly.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the purpose and intent of the Ordinance is simply water quality, to prevent pollution of the Bay as a result of non-point source pollution. Most of these lots currently have no stormwater treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-*

site treatment via the Lynnhaven Oyster Heritage program all to benefit water quality.” The Board concurs and offers that with the redevelopment of lots in this neighborhood that are not located within the RPA buffer only compliance with stormwater management regulations would be required with regard to water quality.

- 5) The applicant’s agent provides that as a means to manage towards a no net increase in nonpoint source pollution load *“strict erosion and sediment control measure do more to halt non-point source pollution, stockpiling material on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters.”* The Board acknowledges the statement provided by applicant’s agent and has provided the 22 conditions of this variance as a means to manage towards a no net increase in nonpoint source pollution.

CPBA Variance Conditions:

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) The 50-foot seaward buffer shall remain in its current natural state. Required buffer restoration shall be augmented with the existing vegetation. Existing vegetation within the 100-foot RPA shall not be removed to accommodate the required buffer restoration.
- 4) Only the variable width buffer portion of the RPA feature shall be devoted to turf for this lot. All remaining impervious area shall be areas of buffer restoration.
- 5) Buffer restoration shall be installed within the 100-foot RPA buffer. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 12 understory trees, 50 large shrubs, and 75 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall augment in proposed vegetation with the existing vegetation. Existing vegetation within the 50-foot seaward buffer of the RPA shall not be removed to accommodate the required buffer restoration. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to

ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) Said silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.
- 9) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 10) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 11) A double row of wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 12) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 13) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 14) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 15) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 16) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.

- 17) **All improvements shall be constructed landward of the top of bank feature.**
- 18) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 19) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 20) **** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,171.95 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.**
- 21) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
- 22) The conditions and approval associated with this variance are based on the exhibit plan dated December 1, 2020, prepared by Gallup Surveyors and Engineers, signed December 3, 2020 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

Billy Garrington gave testimony to the Board as the applicant's representative.

Staff ready letters of opposition from Mr. Michael Via and Mr. Stewart Kroll in opposition to the CBPA variance request.

Ms. Price Clark – resident, Ms. Devin Neff – resident, Mr. Steve Husak – resident and Ms. Debbie Lou Hague – residence and President of the Bay Colony Civic League spoke in opposition to the CBPA variance request.

A motion was made by Mr. Wallace, but no second to the motion provided to deny the variance request. The motion did not carry to a vote.

A motion was made by Mr. Jones, seconded by Mr. McCoy to approve the variance with the variance conditions as provided in the Staff report. A substitute motion was made by Ms. Barrett-McDaniels, seconded by Mr. Wallace to approve the variance with the variance conditions as modified to remove condition 17 that the pool shall be constructed prior to or concurrent with the residence and replace with the condition that all improvements shall be constructed landward of the top of bank feature.

AYE 5 NO 2 ABSTAIN 0 ABSENT 2

BARRETT-MCDANIELS YES
 DREPS ABSENT
 FRANCE ABSENT

JESTER	YES
JONES	NO
MCCOY	YES
STEIER	NO
WALLACE	YES
YOUNG	YES



Property Owner & Applicant **Anne Talbott Jordan & et al**
Address **Lot 165, North Linkhorn Park, 1108 Bruton Lane**
Public Hearing **January 4, 2021**
City Council District **Lynnhaven**

Agenda
Item

7

Parcel GPIN: 2418-37-2268
Accela Record: 2020-CBPA-00065
Applicant's Agent: Billy Garrington, Governmental Permitting Consultant
CBPA Board Action: APPROVED WITH 22 CBPA VARIANCE CONDITION ON JANUARY 4, 2021

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because this subdivision was recorded many years prior to the adoption of the Bay Act and as a result every waterfront home is significantly impacted by the Ordinance. Since the enactment in 1991 numerous homes have made similar variance requests and have been granted so the approval of this request will in no way confer any special privilege to the current owners.
- 2) The applicant provides that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather the buffer zones were made part of the Bay Act and these lots were already in place when it was enacted and the hardship that is now on these properties will never go away.
- 3) This is the minimum necessary to afford relief on this lot and the Board evaluates each variance request based off the merits provided with the request specific to the existing conditions of the lot and not solely on the overall impervious cover of the lot and has provided the conditions of this variance accordingly.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare. Most of these lots currently have no stormwater treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage program all to benefit water quality. The Board concurs and offers that with the redevelopment of lots in this neighborhood that are not located within the RPA buffer only compliance with stormwater management regulations would be required with regard to water quality.

- 5) The applicant's agent provides that as a means to manage towards a no net increase in nonpoint source pollution load strict erosion and sediment control measure do more to halt non-point source pollution, stockpiling material on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters. The Board acknowledges the statement provided by applicant's agent and has provided the 22 conditions of this variance as a means to manage towards a no net increase in nonpoint source pollution.

CPBA Variance Conditions:

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) The 50-foot seaward buffer shall remain in its current natural state. Require buffer restoration shall be augmented with the existing vegetation. Existing vegetation within the 100-foot RPA shall not be removed to accommodate the required buffer restoration.
- 4) Only the variable width buffer portion of the RPA feature shall be devoted to turf for this lot. All remaining impervious area shall be areas of buffer restoration.
- 5) Buffer restoration shall be installed within the 100-foot RPA buffer. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 12 understory trees, 50 large shrubs, and 75 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall augment in proposed vegetation with the existing vegetation. Existing vegetation within the 50-foot seaward buffer of the RPA shall not be removed to accommodate the required buffer restoration. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.

- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) Said silt fence shall be staked in the field by the Engineer of Record and reviewed with the Civil Inspector at the pre-construction meeting.
- 9) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 10) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 11) A double row of wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 12) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 13) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 14) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 15) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 16) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 17) All improvements must occur above the top of bank.
- 18) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.

- 19) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$1,171.95 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City’s watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 20) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
- 21) The conditions and approval associated with this variance are based on the exhibit plan dated December 1, 2020, prepared by Gallup Surveyors and Engineers, signed December 3, 2020 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

Billy Garrington gave testimony to the Board as the applicant’s representative.

Staff ready letters of opposition from Mr. Michael Via and Mr. Stewart Kroll in opposition to the CBPA variance request.

Ms. Price Clark – resident, Ms. Devin Neff – resident, Mr. Steve Husak – resident and Ms. Debbie Lou Hague – residence and President of the Bay Colony Civic League spoke in opposition to the CBPA variance request.

A motion was made by Mr. Jones, seconded by Mr. Steier to approve the variance with the variance conditions as modified to remove condition 17 that the pool shall be constructed prior to or concurrent with the residence and replace with the condition that all improvements shall be constructed above the top of bank feature.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

BARRETT-MCDANIELS	YES
DREPS	ABSENT
FRANCE	ABSENT
JESTER	YES
JONES	YES
MCCOY	YES
STEIER	YES
WALLACE	YES
YOUNG	YES



Property Owner & Applicant **Michelle & David Gregory**
Address **2005 InlandCove**
Public Hearing **January 4, 2021**
City Council District **Lynnhaven**

Agenda
Item

8

Parcel GPIN: 2408-49-1368
Accela Record: 2020-CBPA-00066
Applicant's Agent: Billy Garrington, Governmental Permitting Consultant
CBPA Board Action: APPROVED WITH 17 CBPA VARIANCE CONDITION ON JANUARY 4, 2021

The Chesapeake Bay Preservation Area Board variance request was granted with the following reasonable and appropriate conditions offered towards preventing the variance from causing or contributing to a degradation of water quality based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because this subdivision was recorded many years prior to the adoption of the Bay Act. The Board acknowledges the applicant's statement regarding other approved encroachment requests into the RPA buffer. Specific to encroaching into the RPA feature with impervious cover, the Board concurs that this request will not confer upon the applicant any special privilege subject to the provisions of this Ordinance.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessors in title because the RPA was made a part of the Chesapeake Bay Act and these lots were already in place when it was enacted and the hardship that is now on these properties will never go away.
- 3) This is the minimum necessary to afford relief given the topography of the lot and layout of the drive and that the community has agreed upon given the property owner access to the lot via the community boat ramp.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the purpose and intent of the ordinance is simply water quality, to prevent pollution of the Bay as a result of non-point source pollution, most of these homes currently have no storm water treatment on site. As a result of this variance request the owner will install bioretention beds, buffer restoration in areas currently devoted to turf and even off-site treatment via the Lynnhaven Oyster Heritage Program all to benefit water quality. The Board offers is of the opinion that the applicant's proposal to install a gravel pad area within the rear portion of the lot to provide a stable surface does provide merit towards

long-term water quality standards through the management of the lot to minimize sediment migration from land disturbance.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load strict erosion and sedimentation control measures do more to halt non-point source pollution, stock piling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters.

CPBA Variance Conditions:

- 1) The material, size and use of the gravel pad shall not be constructed of any other type of impervious cover, for example a shed, concrete pavers, etc.
- 2) A Single-Family Small Project in the RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 3) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required stormwater management facilities shall be documented on the revised site plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 4) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 5) The total impervious cover associated with the proposed request shall not exceed 520 square feet. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **520 square feet x 200 percent = 1,040 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **3 canopy trees, 3 understory trees, 6 large shrubs and 9 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to

ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 6) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 9) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 10) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 11) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.
- 12) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 13) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 14) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 15) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 16) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$119.16 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster

habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

- 17) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
- 18) This variance and associated conditions **are in addition to** the conditions of the Board variance granted July 27, 1998.
- 19) The conditions and approval associated with this variance are based on the exhibit plan dated December 7, 2020, prepared by Gallup Surveyors & Engineers, signed December 7, 2020 by David Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

Billy Garrington gave testimony to the Board as the applicant's representative.

A motion was made by Mr. Jones, seconded by Mr. McCoy to approve the variance with the variance conditions as provided in the Staff report. All present voted for the motion.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

BARRETT-MCDANIELS	YES
DREPS	ABSENT
FRANCE	ABSENT
JESTER	YES
JONES	YES
MCCOY	YES
STEIER	YES
WALLACE	YES
YOUNG	YES



Property Owner & Applicant **Scott & Suzie Moore**
Address **1694 S Woodside Lane**
Public Hearing **January 4, 2021**
City Council District **Lynnhaven**

Agenda
Item

9

Parcel GPIN: 1499-33-4433
Accela Record: 2020-CBPA-00067
Applicant's Agent: Bob Simon, Waterfront Consulting
CBPA Board Action: APPROVED WITH 15 CBPA VARIANCE CONDITION ON JANUARY 4, 2021

Board's Findings:

- 1) Granting the variance will not confer upon the applicant any special privilege or convenience not accorded to other owners of property in the Chesapeake Bay Preservation Areas who are subject to the provisions of this Ordinance and are similarly situated because *"the proposed pool was approved previously and the total proposed development in the RPA is at 28 percent."* While the Board acknowledges that the previous administration approval of a swimming pool for the subject lot, this variance application further increases the amount of new impervious cover with the proposed accessory structure and associated patio area, therefore necessitating that the variance request be granted by the CBPA Board and the project looked at in totality for the merits of the variance request.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because *"the proposed pool was previously approved in a larger and more aggressive footprint. The proposed pool now will be a reduction and retreat. The proposed guest residence is partial redevelopment of an existing gravel parking area."* The Board acknowledges the statement provided by the applicant's agent and provides that the current property owners are not associated with any past variance requests for the subject lot.
- 3) This variance request is the minimum necessary to afford relief because *"the proposed pool is a reduction in square feet and retreat landward from the prior approved site plan and the proposed guest residence is shown to not encroach into the 50' seaward buffer."* The Board is of the opinion that the location of the proposed improvements provide merit towards limiting land disturbance to only a portion of the lot. However, the Board is concerned with the amount of impact the limits of the proposed improvements will have on the riparian ecosystem, specifically the extent of existing canopy trees requested for removal and recommends condition 9 below to address this concern.
- 4) This variance request is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because *"the proposed development is at 28% in the RPA, there will be a 10% reduction in stormwater runoff from development and therefore in harmony with the ordinance."* Staff has provided recommended conditions for the Board's deliberation

pertaining to land management practices within the riparian buffer ecosystem of the lot towards managing the redevelopment as a means to provide water quality and riparian buffer restoration that specifically addresses riparian buffer preservation and mitigation with new plant material.

- 5) *“Bioretention beds and enhancing the natural area will reduce non-point source pollution running off this lot unchecked”* as a means to manage towards a no net increase in nonpoint source pollution load. The Board offers that the preservation of existing canopy trees to a greater extent than provided on the submitted variance application and the planting of buffer mitigation provides merit towards a no net increase in nonpoint source pollution load towards the redevelopment of this lot.

CPBA Variance Conditions:

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) Submitted concurrent with the site plan shall be a separate planting / buffer restoration plan detailing location, number, and species of vegetation to be installed as per the buffer restoration requirements. The planting / buffer restoration plan shall clearly delineate existing naturalized area (forest floor), planting beds, turf zones and areas of shoreline vegetation to be managed permitting sunlight to interface with tidal fringe marsh.
- 3) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **3,128 square feet x 200 percent = 6,256 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **7 canopy trees, 15 understory trees, 30 large shrubs, and 45 small shrubs.**

The required restoration shall be located in the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. The restoration shall be installed beginning in the seaward portion of the buffer and progressing landward and shall have a mulch layer of organic material 4 inches to 6 inches in depth. Said mulched restoration areas shall be maintained and not removed or allowed to revert to turf in the future. The required trees shall be comprised of approximately 50 percent deciduous and 50 percent evergreen species and shall be evenly distributed within the RPA buffer. Trees shall not be planted within 15 feet of the shoreline where such planting would result in marsh shading or interference with the integrity of shoreline structures. Salt and flood tolerant plant species shall be planted below the five-foot contour to ensure greater survival of the plantings. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.

- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 9) Limits of construction and tree preservation for the redevelopment of this lot shall be as follow.
 - Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
 - All canopy trees and understory vegetation outboard the conditioned construction limits shall be preserved.
 - Construction limits shall lie a maximum of 10 feet outboard of the proposed improvements and be continuous within the RPA of the lot.
 - Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
 - For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 10) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 11) The proposed concrete patio associated with the guest house shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.

- 12) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 13) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
- 14) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$716.83 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated November 5, 2020, prepared by Chesapeake Bay Site Solutions, Inc. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

As an item on the consent agenda, Bob Simon gave testimony to the Board as representatives for the applicant.

A motion was made by Mr. Jones, seconded by Mr. Wallace to approve the variance with the variance conditions as provided in the Staff report. All present voted for the motion.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

BARRETT-MCDANIELS	YES
DREPS	ABSENT
FRANCE	ABSENT
JESTER	YES
JONES	YES
MCCOY	YES
STEIER	YES
WALLACE	YES
YOUNG	YES