



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

February 1, 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, February 1, 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 January 4, 2021 CBPA Board Public Hearing. A motion was made by Mr. Jones and seconded by Mr. McCoy 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 JANUARY 4, 2021 FINDINGS AND VARIANCE CONDITIONS ON FEBRUARY 1, 2021 AS FOLLOWS.

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

All CBPA Board Members present voted as above.



Applicant & Contract Purchaser **Adam & Krystin Beck**
Address **1624 Bay Breeze Drive**
Public Hearing **February 1, 2021**
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: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON FEBRUARY 1, 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 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 variance requests presented to the CBPA Board are reviewed individually for the merits provided by each application and Staff has provided the recommended conditions below from a site-specific perspective. The Board is of the opinion that the recommend conditions below provide merit towards the variance request not conferring upon the applicant any special privilege or convenience not accorded to other owners of property in the neighborhood based off the topography and location of the existing residential structure on the lot.
- 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 predecessor in title because the lot was first platted in 1973, the existing improvements constructed in 1983 and the lot layout modified with a subsequent plat recorded in 2011 subdividing the stem portion of the lot from the adjacent lot to the south to provide access to the water.
- 3) The variance is the minimum necessary to afford relief because *the applicant has proposed to install a minimal concrete apron around the pool and has utilized portions of the existing wood deck as redevelopment. In addition, the pool is being installed adjacent to the existing residence and at an elevation such that the pool's mechanical equipment and storage will be installed underneath the existing deck.*
- 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 redevelopment of this lot as proposed reduces the amount of land disturbance to the existing riparian buffers ecological and biological function specific to the manipulation of exiting topography, removal of existing vegetation and the unknowns of

potential stormwater run-off concentrations and any erosion potentials that may be produced from the construction needed for the proposed improvements.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load because the modifications to the land necessary to construct associated with the proposed improvements are cognitive to the components of the riparian buffer specific to bank soil composition, forest hydrology and capacity of soil infiltration, and sediment capture dynamics which could potential contribute to the degradation of waterways.

Board Condition:

- 1) A submittal review meeting shall be held with CBPA Staff, the Development Services Center (DSC) Single Family Project Manager, CBPA Civil Inspections, the applicant, the applicant's Engineer of Record and the Contractor(s) hired for the construction of the proposed improvements after the first review of the site plan to review comments and construction sequencing.
- 2) 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.
- 3) Submitted concurrent with the site plan shall be a detailed Sequence of Construction providing the site plan submittal that addresses, but is not limited to marking of layout in the field, tree and bank protection during construction, management of stormwater run-off during construction, excavation associated with the construction of the proposed improvements inclusive of ground compaction, stabilization of grade and phases to which stabilization will occur and long-term evaluation and management of any future erosion that occurs due to construction.
- 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) All remaining pervious area of the Resource Protection Area (RPA) buffer – 50-seaward, 50-landward and variable width buffer shall be areas of buffer restoration. Buffer restoration areas 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 to the greatest extent practicable.

The required restoration shall have a mulch layer of organic material 4 inches to 6 inches in depth. 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) A double row of wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be provided and installed as follows:
 - The required silt fence shall be staked in the field by the applicant's agent prior to scheduling the preconstruction meeting with Civil Inspections.
 - Said silt fence shall be installed no more than 5 feet outboard of the proposed improvements and direct adjacent to and contiguous along the wooden stairs with gravel path.
- 7) All construction activity inclusive of land disturbance shall be contained within the limits of the required silt fence with all areas outboard of the silt fence left in a natural state.
- 8) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 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) 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 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 \$171.02 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) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated September 18, 2020 prepared by Sean C. Marsden of Cardinal Civil Solutions. 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.

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

AYE 6 NO 1 ABSTAIN 0 ABSENT 2

BARRETT-MCDANIELS	YES
DREPS	ABSENT
FRANCE	NO
JESTER	YES
JONES	YES
MCCOY	YES
STEIER	ABSENT
WALLACE	YES
YOUNG	YES



Applicant & Property Owner **David & Beth Darrow**
Address **2244 Windward Shore Drive**
Public Hearing **February 1, 2021**
City Council District **Lynnhaven**

Agenda
Item

2

Parcel GPIN: 2409-09-7055
Accela Record: 2020-CBPA-00069
Applicant's Agent: Aaron Morris, Second Nature Landscaping
CBPA Board Action: APPROVED WITH 9 CBPA VARIANCE CONDITIONS AS AMMENDED BY THE CBPA BOARD DURING THE INFORMAL PUBLIC HEARING ON FEBRUARY 1, 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 Findings:

- 1) The applicant's agent provides the "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 property owner is not looking for any special conditions or lack thereof that haven't been imposed on other developments within the neighborhood." The Board is of the opinion, given the condition of the existing retaining walls and location of the proposed patio area and walkways on this lot that granting the variance would not exceed that which has been granted to other lots that have been redeveloped within this neighborhood.
- 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, but rather is necessitated by the fact 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 property are within the RPA.
- 3) The variance is the minimum necessary to afford relief because "the replacement of the wall is within the same footprint of the existing wall and without repair, the wall will fail within a short time, causing serious erosion problems while offering merit towards the variance being the minimum necessary to afford relief.
- 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 preservation of existing vegetation, retention of all existing planting beds and vegetative growth present seaward of the proposed improvements contributes to water quality benefits.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load, the applicant's agent provides that by making the necessary repairs to the existing improvements this request will prevent future erosion or loss of backfill material from water flow into the adjacent canal.

Board Condition:

- 1) The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
- 2) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: 375 square feet x 200 percent = 750 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.

- 3) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 4) 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.
- 5) 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.**

- 6) 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.
- 7) 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.
- 8) No perimeter fill is authorized outboard or seaward of the proposed improvements.
- 9) The proposed paver patio area shall be constructed of a permeable pavement system.

As an item of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. McCoy to approve the variance request as amended adding a condition, condition 9 above that the proposed patio area be constructed of a permeable pavement system. All present voted for the motion.

AYE 7 NO 0 ABSTAIN 0 ABSENT 2

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



Applicant & Property Owner **Todd B. Perry Trust**
 Address **3517 Byrn Brae Drive**
 Public Hearing **February 1, 2021**
 City Council District **Kempsville**

Agenda
Item
3

Parcel GPIN: 1446-99-1992
Accela Record: 2020-CBPA-00072
Applicant’s Agent: Keith Oliver, PLA
CBPA Board Action: DENIED ON FEBRUARY 1, 2021.

CBPA Variance Request: Encroachment into the 100-foot Resource Protection Area (RPA) buffer to construct a swimming pool with associated pool surround and low-profile retaining wall.

A motion was made by Mr. France, seconded provided by Mr. Jones to approve the variance request as conditioned in the Staff report. All present voted for the motion.

AYE 3 NO 4 ABSTAIN 0 ABSENT 2

BARRETT-MCDANIELS	NO
DREPS	ABSENT
FRANCE	YES
JESTER	NO
JONES	YES
MCCOY	YES
STEIER	ABSENT
WALLACE	NO
YOUNG	NO