



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

May 3, 2021

Chair of the Chesapeake Bay Preservation Area (CBPA) Board, Mr. Jester called to order the CBPA Board Public Hearing at Suite 5 of the Virginia Beach Convention Center, on Monday, May 3, 2021 at 10:00 a.m.

The first order of business was to approve the finding and variance conditions of the April 5, 2021 CBPA Board Public Hearing. A motion was made by Mr. Jones and seconded by Mr. Wallace 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 APPROVE THE APRIL 5, 2021 FINDINGS AND VARIANCE CONDITIONS ON MAY 3, 2021 AS FOLLOWS.

| YES | 5 | NO | 0 | ABSTAIN | 2 | ABSENT | 2 |
|-------------------|----------|-----------|----------|----------------|----------|---------------|----------|
| BARRETT-MCDANIELS | | | | YES | | | |
| DREPS | | | | ABSENT | | | |
| FRANCE | | | | ABSTAIN | | | |
| JESTER | | | | YES | | | |
| JONES | | | | YES | | | |
| MCCOY | | | | ABSENT | | | |
| STEIER | | | | ABSTAIN | | | |
| WALLACE | | | | YES | | | |
| YOUNG | | | | YES | | | |

All CBPA Board Members present voted as above with Mr. Dreps and Mr. McCoy absent from the May 3, 2021 CBPA Board virtual public hearing. Mr. France and Mr. Steier abstained from this vote due to being absent from the April 5, 2021 CBPA Board Public Hearing.



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| Property Owner & Applicant Charis Properties, LLC Address 465 Goodspeed Road Public Hearing May 3, 2021 City Council District Lynnhaven | Agenda Item 1 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|

Parcel GPIN: 2419-41-8184
Accela Record: 2021-CBPA-00003
Applicant’s Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: DEFERRED AT THE MAY 3, 2021 CBPA BOARD PUBLIC HEARING TO THE THURSDAY JULY 8, 2021 CBPA BOARD PUBLIC HEARING.

A motion was made by Mr. Jones, seconded by Ms. Barrett-McDaniels to defer the variance request to the July 8, 2021 CBPA Board Public Hearing. All present voted for the motion.

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|-------------------|----------|-----------|----------|----------------|----------|---------------|----------|
| AYE | 7 | NO | 0 | ABSTAIN | 0 | ABSENT | 2 |
| BARRETT-MCDANIELS | YES | | | | MCCOY | ABSENT | |
| DREPS | ABSENT | | | | STEIER | YES | |
| FRANCE | YES | | | | WALLACE | YES | |
| JESTER | YES | | | | YOUNG | YES | |
| JONES | YES | | | | | | |



Property Owner & Applicant **Dean Cauley**
Address **Roper Tract, Lot A-1, Lynnwood Drive**
Public Hearing **May 3, 2021**
City Council District **Beach**

Agenda
Item

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Parcel GPIN: 1488-88-4048
Accela Record: 2021-CBPA-00016
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 17 CBPA VARIANCE CONDITIONS ON MAY 3, 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 as provided in the Staff report, 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 proposed dwelling and associated improvements are in keeping with the neighborhood and because the City's setbacks and buffers on the yard are creating a hardship.
- 2) The variance is not based upon circumstances or conditions that have been created or imposed by the applicant or predecessor in title. The encroachment on the lot is based upon conditions that the variance was originally approved under and the request to encroach is consistent with the previous approval.
- 3) The variance is the minimum necessary to afford relief because the site as configured and the amount of impervious within the neighborhood's adjacent to it are consistent with this application.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, nor of substantial detriment to water quality, or otherwise detrimental to the public welfare because the proposed improvements will be meeting any stormwater mitigation required by the City Ordinance.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load. The existing shoreline will be enhanced and bioretention and stormwater management will be constructed.

Board 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) A maximum of 750 square feet of turf is permitted for this lot. Said turf shall not be permitted within the 50-foot seaward buffer. All remaining pervious area 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 consisting of 16 understory trees, 32 large shrubs, and 48 small shrubs.

The required restoration shall be installed beginning in the upper limits of 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 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 15 feet seaward of improvements.

- 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 \$2,015.29 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 May 22, 2017 for this lot only.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated February 23, 2021, prepared by WPL, signed April 6, 2021 by Eric Garner. 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.
- 17) The amount of encroachment into the 100-foot buffer shall be no greater than the amount of impervious cover approved with the 2017 Chesapeake Bay Preservation Area (CBPA) Variance.

Billy Garrington - Governmental Permitting Consultants, appeared before the Board representing the applicant.

A motion was made by Mr. France, 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 6 NO 1 ABSTAIN 0 ABSENT 2

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



Property Owner & Applicant **Todd B. Perry Trust**
Address **3517 Byrn Brae Drive**
Public Hearing **May 3, 2021**
City Council District **Kempsville**

Agenda
Item

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Parcel GPIN: 1446-99-1992
Accela Record: 2021-CBPA-00013
Applicant's Agent: Keith Oliver, PLA - VIA Design
CBPA Board Action: APPROVED WITH 11 CBPA VARIANCE CONDITIONS ON MAY 3, 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 as provided in the Staff report, 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 owner is limiting and mitigating impacts with thoughtful siting and a smaller than average swimming pool and deck surround, using primarily permeable paving outside of the existing impervious redevelopment area." While the Board acknowledges the statement provided by the applicant's agent, the Board reiterates that variance requests presented to the CBPA Board are reviewed individually for the merits provided by each request. Given the impervious development of the residential lots along this reach of the Elizabeth River with most residential structures being built during the early 1960's and the density of the area equal to or greater than 4 dwelling units per acre, the Board is of the opinion that the proposed improvements would not convey any special privileges to the applicant should they agree to the recommended conditions provided by the Board for this variance request. The recommended conditions require the applicant to meet additional standards for stormwater management for projects under 2,500 square feet and riparian buffer mitigation that would not be required if the residential lot was not located within the RPA Buffer of the Chesapeake Bay watershed.
- 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 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 "pool is located in part over existing patio and behind the top of slope. The retaining wall is vertical, not segmental with an angled face, to reduce the footprint. The largest area of deck is on the landward side in area that is already paved and has been reduced to 3' minimum on the seaward side. Only 60 sf of the deck outside of the Redevelopment Area will be impervious, and the remaining 292 sf of the

deck will be permeable. 20 sf of existing impermeable paving will be removed and replaced with permeable.” The Board concurs with the location of the improvements and offers that the proposed dimensions for both the swimming pool and surround are smaller than the average residential swimming pool size and surround.

- 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 variance takes a careful approach to minimize the footprint, incorporate permeable paving, replace lawn with buffer planting, utilize previously disturbed areas, avoid slopes. It is similar the adjacent neighbors pool which was approved and construction a few years ago. Some of the impervious area is actually the water surface of the pool, so not typically contributing to runoff.
- 5) The primary means is replacement of lawn with new buffer plantings and E&S controls during construction as a means to manage towards a no net increase in nonpoint source pollution load. Moreover, the Board is of the opinion that the analysis and layout of the proposed improvements coupled with the layout of the conditioned buffer restoration and selected plant species offers nutrient reduction annually on a lot and associated project that would not require stormwater management as proposed.

Board Conditions:

- 1) The conditions and approval associated with this variance are based on the exhibit plan prepared by Via Design, signed February 26, 2021 by Keith M. Oliver. 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 Single-Family RPA Small Projects 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. Land disturbance associated with the proposed improvements at any given time shall not exceeds 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
- 2) 1,180 square feet of buffer restoration shall be installed within the RPA buffer 50-foot seaward 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: 3 canopy trees, 5 understory trees 6 large shrubs and 9 small shrubs.

The restoration 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. 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) An infiltration trench shall be installed seaward of the proposed improvement to capture rainwater run-off from the proposed upland improvements and shall be sized by to accommodate and treat for pollutant removal.
- 4) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 5) 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.
- 6) 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.**
- 7) 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.
- 8) 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.
- 9) No perimeter fill is authorized outboard or seaward of the proposed improvements.
- 10) ** 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 \$135.20 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.
- 11) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.

Keith Oliver, PLA - VIA Design, appeared before the Board representing the applicant.

As an item of the consent agenda, a motion was made by Mr. Wallace, seconded by Mr. Jones 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

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



Property Owner & Applicant **Elizabeth B. Skolnick**
Address **512 Linkhorn Drive**
Public Hearing **May 3, 2021**
City Council District **Beach**

Agenda
Item

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Parcel GPIN: 2418-84-3220
Accela Record: 2021-CBPA-00019
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 19 CBPA VARIANCE CONDITIONS ON MAY 3, 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 as provided in the Staff report, 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 *"property was platted in 1916, prior to the Chesapeake Bay Act, and the improvements are keeping in line with other homes in the neighborhood"* as provided by the applicant. The Board concurs and offers that the proposed swimming pool and pool surround are similar in size to other custom swimming pools that have been built in the neighborhood on lots within the RPA.
- 2) The applicant provides that 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 *"property was platted in 1916, and the existing topographies and buffers now require approval from the Chesapeake Bay Preservation Act to seek variance approval."* Staff 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 applicant provides that this variance is the minimum necessary to afford relief *"per the layout of the submitted plan."* Staff acknowledges the statement provided by the applicant however evaluates each variance request based off merits of the proposal to existing environmental conditions and lot characteristics. As such, Staff is of the opinion that the proposed improvements, specific to the proposed swimming pool surround and stone patio areas challenge the findings of the CBPA Ordinance as being the minimum necessary to afford relief and has provided the recommended conditions below in support of the variance request.
- 4) The applicant provides that 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 project is in harmony with the intent of this neighborhood and not of substantial detriment to water quality or otherwise detrimental"*

to the public welfare. This project will beautify and get the property in line with the adjacent parcels.” The Board concurs with the statement provided by the applicant and is of the opinion that the location of the lot at the headwaters of the RPA feature provides merit towards water quality with optimal pervious area seaward of the proposed improvements to allow for infiltration of stormwater runoff.

- 5) As provided by the applicant “improvements made to this site will be done with any guidelines necessary to protect the bay” as a means to manage towards a no net increase in nonpoint source pollution load. The Board acknowledges the statement provided by the applicant and offers the recommended conditions below as a means to manage the redevelopment of this lot towards a no net increase in nonpoint source pollution.

Board 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: **5,321 square feet x 200 percent = 10,642 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, 12 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 beginning seaward of the top of bank to the greatest extent practicable. The restoration 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. 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 existing concrete basketball court shall be removed, and the area restored with vegetative cover.
- 5) The swimming pool area with associated ‘Forever Lawn’ areas and stone patios/walk shall be reduced by 435 square feet.

- 6) The areas described as 'Forever Lawn' shall be constructed of a permeable material/product system. A detail of the specific permeable material/product system and subbase construction shall be provided in the site plan submitted to the Development Services Center for review and approval.
- 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 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.
- 12) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 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) 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.
- 17) ** 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 \$1,219.39 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.

- 18) This variance and associated conditions **will supersede** the conditions of the Board variance granted December 21, 1993.
- 19) The conditions and approval associated with this variance are based on the exhibit plan dated December 2, 2020, prepared by Siska Aurand Landscape Architects, 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 of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. France 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 | | | | MCCOY | ABSENT |
| DREPS | | ABSENT | | | | STEIER | YES |
| FRANCE | | YES | | | | WALLACE | YES |
| JESTER | | YES | | | | YOUNG | YES |
| JONES | | YES | | | | | |



Property Owner & Applicant **Anthony & Cynthia Disilvestro**
 Address **1680 Godfrey Lane**
 Public Hearing **May 3, 2021**
 City Council District **Lynnhaven**

Agenda
Item
5

Parcel GPIN: 2409-23-0703
Accela Record: 2021-CBPA-00027
Applicant’s Agent: Robert Simon - Waterfront Consulting, Inc.
CBPA Board Action: DEFERRED AT THE MAY 3, 2021 CBPA BOARD PUBLIC HEARING TO THE AUGUST 2, 2021 CBPA BOARD PUBLIC HEARING.

Robert Simon of Waterfront Consulting, Inc. representing the applicant and Anthony Disilvestro, owner of the property located at 1680 Godfrey Lane appeared before the Board.

Marshall Winslow appeared before the Board in opposition of the variance request.

Jane Winslow appeared before the Board in opposition of the variance request.

Susan Carter appeared before the Board in opposition of the variance request.

Al Frazier appeared before the Board in opposition of the variance request.

A motion was made by Mrs. McDaniels, seconded by Mrs. Young, to defer the variance request to the August 2, 2021 CBPA Board Public Hearing. All present voted for the motion.

| AYE | 5 | NO | 1 | ABSTAIN | 1 | ABSENT | 2 |
|-------------------|----------|-----------|----------|----------------|----------|---------------|----------|
| BARRETT-MCDANIELS | | YES | | | MCCOY | | ABSENT |
| DREPS | | ABSENT | | | STEIER | | YES |
| FRANCE | | ABSTAIN | | | WALLACE | | NO |
| JESTER | | YES | | | YOUNG | | YES |
| JONES | | YES | | | | | |

Mr. France abstained due to the Applicant being a client of Kimley-Horn.



Property Owner & Applicant **Gregory & Becky Sawyer**
Address **2920 Gaines Landing**
Public Hearing **May 3, 2021**
City Council District **Lynnhaven**

Agenda
Item

6

Parcel GPIN: 1499-23-2719
Accela Record: 2021-CBPA-00014
Applicant's Agent: Carl Eason – Wolcott, Rivers, Gates
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON MAY 3, 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 as provided in the Staff report, 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 proposed improvements are in keeping with the development of the neighborhood and what has already occurred on adjacent parcels.
- 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 or predecessor in title because the lot has topographic relief and the adjacent wetlands that have an impact on the CBPA buffer on the subject lot are all natural conditions. In addition, the existing vegetative cover along the shoreline and well-kept conditions of the existing upland improvements are in harmony with the findings of the Chesapeake Bay Preservation Area (CBPA) Ordinance and the CBPA Board variance granted in 1996.
- 3) The applicant's agent provides that the variance is the minimum necessary to afford relief because the house was constructed in 1999 in its current location. The only area for expansion/redevelopment is as shown. The proposed development has been limited to the landward buffer. The Board respects the perspective of the applicant's agent regarding the location of the proposed improvements and offer the statement provided by the applicant that the utility drops and associated corridor for electric and communication lines track along the eastern property line and connect to the residence through the center of the existing courtyard with paver patio area.
- 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 proposed improvements are in keeping with the development of the neighborhood and adjacent parcels. The buffer restoration and BMPs will be placed to catch

runoff to improve water quality.

- 5) Buffer restoration and bio-retention stormwater management will be placed between the proposed structures and the top of bank to capture and treat runoff prior to entering the bay as a means to manage towards a no net increase in nonpoint source pollution load. Given the existing topography within the rear yard and the distance the proposed improvements will be from the top of bank feature, the Board is of the opinion that the required buffer restoration would offer merit towards the creation of a riparian ecosystem within the 100-foot RPA buffer and complement the existing landscaping of the lot.

Board 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: **1,040 square feet x 200 percent = 2,080 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, 12 large shrubs, and 18 small shrubs.**

The required restoration shall be located in the Resource Protection Area and landward of the top of bank feature 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.
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. ** 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 \$238.33 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.
14. This variance and associated conditions **will supersede** the conditions of the Board variance granted December 7, 2020.
15. The conditions and approval associated with this variance are based on the exhibit plan dated July 27, 2020 and revised January 8, 2021 prepared by Chesapeake Bay Site 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.

Carl Eason – Wolcott, Rivers, Gates, appeared before the Board representing 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 | 6 | NO | 1 | ABSTAIN | 0 | ABSENT | 2 |
|-------------------|----------|-----------|----------|----------------|----------|---------------|----------|
| BARRETT-MCDANIELS | | NO | | | MCCOY | ABSENT | |
| DREPS | | ABSENT | | | STEIER | YES | |
| FRANCE | | YES | | | WALLACE | YES | |
| JESTER | | YES | | | YOUNG | YES | |
| JONES | | YES | | | | | |



Property Owner & Applicant **Buffy & Jason Barefoot**
Address **4045 Bridgehampton Lane**
Public Hearing **May 3, 2021**
City Council District **Bayside**

Agenda
Item

7

Parcel GPIN: 1488-05-7136
Accela Record: 2021-CBPA-00021
Applicant's Agent: Eddie Bourdon - SYKES, BOURDON, AHERN & LEVY, P.C.
CBPA Board Action: APPROVED WITH 11 CBPA VARIANCE CONDITIONS ON MAY 3, 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 as provided in the Staff report, 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 proposed improvements are in keeping with the neighborhood and do not offer the owners any special privilege or convenience because this lot was created and developed prior to adoption of the CBPA Ordinance and the entire lot is within the RPA Buffers.
- 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 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 is within the Chesapeake Bay Preservation Act and the City's CBPA Ordinance.
- 3) The variance is the minimum necessary to afford relief because the design for the proposed improvement has taken into account the existing grading, landscape, and vegetation to minimize the site impact to the Chesapeake Bay and avoid development in the most sensitive portion of the site.
- 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 proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, however if approved, the proposed redevelopment will be required to have treatment provided between the existing and proposed improvements and the bay.
- 5) The existing areas the owners are voluntarily maintaining as buffers (i.e. were not required to be vegetated buffers pursuant to any CBPA variance) will be enhanced and expanded upon

surrounding the proposed development to complement the existing site conditions as a means to manage towards a no net increase in nonpoint source pollution load.

Board Conditions:

- 1) 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.
- 2) The conditions of the existing 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.
- 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: **681 square feet x 200 percent = 1,362 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: **4 canopy trees, 4 understory trees, 8 large shrubs, and 13 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) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) 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.**

- 7) 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.
- 8) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 9) 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.
- 10) This variance and associated conditions are in addition to the conditions of the Board variance granted April 24, 2017.
- 11) The conditions and approval associated with this variance are based on the exhibit plan dated January 26, 2017, prepared by WPL, signed March 29, 2021 by Eric Garner. 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 of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. France 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 | | | MCCOY | | ABSENT |
| DREPS | | ABSENT | | | STEIER | | YES |
| FRANCE | | YES | | | WALLACE | | YES |
| JESTER | | YES | | | YOUNG | | YES |
| JONES | | YES | | | | | |



Property Owner & Applicant **Cynthia & John Trefry**
Address **2333 Leeward Shore Drive**
Public Hearing **May 3, 2021**
City Council District **Lynnhaven**

Agenda
Item

8

Parcel GPIN: 2500-00-2040
Accela Record: 2021-CBPA-00025
Applicant's Agent: Eddie Bourdon - SYKES, BOURDON, AHERN & LEVY, P.C.
CBPA Board Action: APPROVED WITH 14 CBPA VARIANCE CONDITIONS ON MAY 3, 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 as provided in the Staff report, based on the following findings, as required in Section 110(H) of the CBPA Ordinance:

Board's Findings:

- 1) The applicant's agent provides that 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 was platted in 1958 and the existing building constructed in 1967, all completed prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels."* The Board concurs and offers that the majority of the new impervious cover associated with the redevelopment of this lot is proposed within the City's variable width RPA buffer.
- 2) The applicant's agent 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 is necessitated by the fact that this lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance and the CBPA buffers cover over 95% of the lot.
- 3) The variance is the minimum necessary to afford relief because the owners have designed the additions and improvement over existing structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts in the critical buffer areas.
- 4) The applicant's agent provides that 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 proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the site currently does not offer any stormwater mitigation for the bay, and if approved, the proposed redevelopment will be required to have treatment provided between the improvements and the canal."* The Board is of the opinion that the recommended conditions provided below, specifically recommended conditions 3 and 4, offer best management practices towards water

quality and water quantity management that the existing improvements do not currently provide.

- 5) The applicant's agent provides that *"the existing shoreline will be enhanced and expanded upon to compliment the site. Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the river"* as a means to manage towards a no net increase in nonpoint source pollution load. The Board concurs and offers that the granting of this variance would require those best management practices to remain functioning, as intended, in perpetuity.

Board 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: **2,355 square feet x 200 percent = 4,710 square feet**. At a minimum, 70 percent of the required buffer restoration square footage shall be located in the 50-foot seaward buffer with the remain amount situated on the lot to intercept stormwater sheet flow to the greatest extent practicable in areas that do not impact the critical root zones of the existing canopy trees.

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: **12 canopy trees, 12 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 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 15 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 10) 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.
- 11) 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.
- 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) ** 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 \$539.68 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.
- 14) The conditions and approval associated with this variance are based on the exhibit plan dated February 25, 2021, prepared by WPL, signed March 25, 2021 by Eric Garner. 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 of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. France 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 | | | | MCCOY | ABSENT |
| DREPS | | ABSENT | | | | STEIER | YES |
| FRANCE | | YES | | | | WALLACE | YES |
| JESTER | | YES | | | | YOUNG | YES |
| JONES | | YES | | | | | |



Property Owner & Applicant **Winnie Musa & Jeffrey Piper**
Address **1116 Bruton Lane**
Public Hearing **May 3, 2021**
City Council District **Lynnhaven**

Agenda
Item

9

Parcel GPIN: 2418-27-9575
Accela Record: 2021-CBPA-00022
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 14 CBPA VARIANCE CONDITIONS ON MAY 3, 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 as provided in the Staff report, 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 home was built and the lot recorded many years prior to the adoption of the Bay Act which creates a justifiable hardship since avoidance of the buffer is not possible many other homes in the vicinity have been redeveloped in a similar fashion since adoption of the Act.
- 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 Act was adopted in 1990 and existing properties like this are now required to meet certain performance standards that properties directly across the street do not have to comply with thus the Owner did not create the hardship it was there once the law was adopted never to be removed.
- 3) The variance is the minimum necessary to afford relief because the existing impervious cover and the proposed impervious cover are the same amount and this is being achieved through the redevelopment of the lot to the greatest extent practicable and removing a small amount of existing impervious cover to make sure the net result is zero new impervious cover.
- 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 Act was adopted to improve water quality by reducing runoff and protecting riparian buffer areas. The applicant has very little new impervious cover, the lot is in a natural state and stormwater treatment will remain via the retention of the natural vegetation post construction.
- 5) The applicant agent provides that a means to manage towards a no net increase in nonpoint source pollution load strict E&S measures during all phases of construction are very important

since this is when silt can enter adjoining waters. Stockpiling on existing hard surfaces and leaving areas that are natural undisturbed along with additional buffer restoration will ensure there will be no net increase in nonpoint source pollution.

Board Conditions:

- 1) All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan.
 - 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.
 - For all naturalized areas, established forest floor area and existing planting beds outboard of the limits of construction that are encroached upon, replacement of existing natural or vegetated area (square footage) shall be provided at a 1 to 1 ratio.
- 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) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 4) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 5) 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.
- 6) 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.**
- 7) 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.
- 8) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit.
- 9) 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.
- 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) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 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) ** 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 \$88.68 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.
- 14) The conditions and approval associated with this variance are based on the exhibit plan prepared by Gaddy Engineering Services, LLC, signed March 24, 2021 by Michael 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. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

As an item of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. France 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 | | | MCCOY | | ABSENT |
| DREPS | | ABSENT | | | STEIER | | YES |
| FRANCE | | YES | | | WALLACE | | YES |
| JESTER | | YES | | | YOUNG | | YES |
| JONES | | YES | | | | | |



Property Owner & Applicant **Malania Haga & Ryan Dunlap**
 Address **1028 Michaelwood Drive**
 Public Hearing **May 3, 2021**
 City Council District **Lynnhaven**

Agenda
Item

10

Parcel GPIN: 1488-55-3453
Accela Record: 2021-CBPA-00023
Applicant’s Agent: Beth Anne Campbell - MidAtlantic Surveying and Land Design
CBPA Board Action: DEFERRED AT THE MAY 3, 2021 CBPA BOARD PUBLIC HEARING TO THE THURSDAY, JULY 8, 2021 CBPA BOARD PUBLIC HEARING.

A motion was made by Mr. Jones, seconded by Ms. Barrett-McDaniels to defer the variance request to the THURSDAY, July 8, 2021 CBPA Board Public Hearing. All present voted for the motion.

| AYE | 7 | NO | 0 | ABSTAIN | 0 | ABSENT | 2 |
|-------------------|----------|-----------|----------|----------------|----------|---------------|----------|
| BARRETT-MCDANIELS | | YES | | | | MCCOY | ABSENT |
| DREPS | | ABSENT | | | | STEIER | YES |
| FRANCE | | YES | | | | WALLACE | YES |
| JESTER | | YES | | | | YOUNG | YES |
| JONES | | YES | | | | | |



Property Owner & Applicant **Christina & David Burchett**
Address **1257 Tanager Trail**
Public Hearing **May 3, 2021**
City Council District **Lynnhaven**

Agenda
Item

11

Parcel GPIN: 2418-30-7135
Accela Record: 2021-CBPA-00024
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON MAY 3, 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 as provided in the Staff report, 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 property is a previously developed waterfront lot, and any improvements in the back yard will be located within the 100' CBPA buffer. Similar developments to this have been permitted.
- 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 lot was recorded well before the CBPA Act. The removal in 2015 of the prior pool closer to the water allows for this more environmentally sensitive development.
- 3) The variance is the minimum necessary to afford relief as conditioned in the Staff report.
- 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 stormwater management improvements from 2005 will be confirmed and supplemented, the project will result in a new improvement of stormwater quality.
- 5) The bioretention BMPs and buffer restoration will treat the stormwater that runs off the property today and will provide environmental benefits to mitigate the impervious cover as a means to manage towards a no net increase in nonpoint source pollution load.

Board Conditions:

- 1) The maximum impervious cover of the parcel shall not exceed 8,098 square feet or 31 percent of the lot above water or wetlands.

- 2) The proposed walkway between the pool deck and pave deck shall be constructed of organic material (mulch), and maximum of 4 feet in width, with steppingstones not to exceed 50 percent of the path area.
- 3) 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.
- 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) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **1,700 square feet x 200 percent = 3,400 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, 18 large shrubs, and 27 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 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.
- 11) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 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) ** 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 \$389.58 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.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated April 22, 2021, prepared by Clark Design Group, signed April 22, 2021 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 said conditions during site plan review may require re-submittal for Board consideration.

Billy Garrington of Governmental Permitting Consultants and Brad Martin of Clark Design Group appeared before the Board representing the applicant.

Staff read into record a letter of opposition received by Rebecca Morrison, an adjacent property owner to 1257 Tanager Trail.

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

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



Property Owner & Applicant **Abby & Brenda Horwitz**
Address **1308 Wren Place**
Public Hearing **May 3, 2021**
City Council District **Lynnhaven**

Agenda
Item

12

Parcel GPIN: 2418-13-9225
Accela Record: 2021-CBPA-00026
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON MAY 3, 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 as provided in the Staff report, 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 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 been granted so the approval of this request will in no way confer any special privilege to the current owners.
- 2) The applicant's agent provides that 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 buffer zones were made a part of the Bay Act and these houses were already in place when it was enacted and the hardship that is not on these properties will never go away."* The Board concurs with the applicant's agent 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 applicant's agent provides that this variance is the minimum necessary to afford relief because *"the minimum necessary 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 acknowledges the statement provided by the applicant's agent and is of the opinion that the applicant has demonstrated an understanding of the CBPA Ordinance findings with the proposed size and layout of the improvements given the shape of this lot and impact of the 50-foot seaward buffer along the entire reach of the shoreline as delineated on the CBPA Exhibit for this variance request.

- 4) The applicant's agent provides that this 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 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."* As stated above, the Board is of the opinion that the applicant has demonstrated an understanding of the CBPA Ordinance findings with the proposed size and layout of the improvements given the shape of this lot and impact of the 50-foot seaward buffer along the entire reach of the shoreline.
- 5) The applicant's agent provides that *"strict erosion and sedimentation control measures do more to halt non-point source pollution, stockpiling materials on existing hard surfaces, single point access way and revegetating any denuded areas all help to limit pollution from entering the adjacent waters"* as a means to manage towards a no net increase in nonpoint source pollution load. 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 to turf and integrating the revegetation of a riparian buffer into the design plan. Staff offers that the introduction and placement of buffer restoration should be accomplished in a manner that preserves the existing established shoreline and is cognitive of potential tidal flooding and storm surge elevations on the lot.

Board Conditions:

- 1) The proposed pool house shall be reduced 176 square feet and shall not encroach any further seaward with the reduction in size.
- 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 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: **1,704 square feet x 200 percent = 3,408 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: **8 canopy trees, 8 understory trees, 16 large shrubs and 24 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 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
- 10) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit.
- 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) 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.
- 15) ** 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 \$390.50 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.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated April 1, 2021, prepared by Gallup Surveyors & Engineers, signed April 1, 2021 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. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

As an item of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. France 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 | | | | MCCOY | ABSENT |
| DREPS | | ABSENT | | | | STEIER | YES |
| FRANCE | | YES | | | | WALLACE | YES |
| JESTER | | YES | | | | YOUNG | YES |
| JONES | | YES | | | | | |



Property Owner & Applicant **Boyd Melchor & Deona Oliver**
Address **1244 Crystal Lake Circle**
Public Hearing **May 3, 2021**
City Council District **Lynnhaven**

Agenda
Item

13

Parcel GPIN: 2418-88-7136
Accela Record: 2021-CBPA-00028
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 11 CBPA VARIANCE CONDITIONS ON MAY 3, 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 as provided in the Staff report, 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 redevelopment and proposed improvements are similar to those constructed on adjacent lots.
- 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 *"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."* The Board concurs and offers that subsequent plats were recorded due to the vacating of interior lot lines thus limiting the development to a single-family residence.
- 3) The variance is the minimum necessary to afford relief because the request is *"a small expansion with the necessary redevelopment of existing impervious cover."* The Board concurs and offers that the applicant has provided a layout the is cognitive of the existing condition of the lot and delineated RPA feature.
- 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 proposed improvements do not drastically increase impervious cover of the lot.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the redevelopment of existing impervious cover and expansion of accessory structures occurring within the area of the lot with relatively flat topography provides merit towards managing land disturbance.

Board Conditions:

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. A Single-Family RPA Small Projects 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. Land disturbance associated with the proposed improvements at any given time shall not exceeds 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).

2) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **574 square feet x 200 percent = 1,148 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 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.

- 3) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 4) 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.
- 5) 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.**
- 6) 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.

- 7) Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
- 8) 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.
- 9) 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) This variance and associated conditions **are in addition to** the conditions of the Board variance granted June 23, 2008.

Billy Garrington of Governmental Permitting Consultants appeared before the Board representing the applicant.

A motion was made by Mr. Steier and a second provided by Mr. France to defer the application to the June 7, 2021 CBPA Board public hearing.

A substitute motion was made by Mr. Wallace and a second provided by Mr. Jones to approve the variance. All present voted for the motion.

| AYE | 4 | NO | 3 | ABSTAIN | 0 | ABSENT | 2 |
|-------------------|----------|-----------|----------|----------------|----------|---------------|----------|
| BARRETT-MCDANIELS | | NO | | | MCCOY | ABSENT | |
| DREPS | | ABSENT | | | STEIER | NO | |
| FRANCE | | YES | | | WALLACE | YES | |
| JESTER | | YES | | | YOUNG | NO | |
| JONES | | YES | | | | | |