



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

June 7, 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, June 7, 2021 at 10:00 a.m.

The first order of business was to approve the finding and variance conditions of the May 3, 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 MAY 3, 2021 FINDINGS AND VARIANCE CONDITIONS ON JUNE 7, 2021 AS FOLLOWS.

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

All CBPA Board Members present voted as above with Ms. Barrett-McDaniels and Mr. Dreps absent from the June 7, 2021 CBPA Board virtual public hearing.



Property Owner & Applicant **Wesley & Theresa Cummings**
Address **2109 E Kendall Circle**
Public Hearing **June 7, 2021**
City Council District **Lynnhaven**

Agenda
Item

1

Parcel GPIN: 1499-79-6784
Accela Record: 2021-CBPA-00031
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON JUNE 7, 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 R-10 neighborhood is a collection of homes situated around man-made canals. Other neighbors have pools situated similarly to what is being proposed with the project." The Board concurs with the applicant's agent that other owners of property within this neighborhood have constructed similar improvements, however, remains of the opinion that the request to encroach into the 50-foot seaward buffer should be evaluated not only to this finding of the CBPA Ordinance but all of the findings collectively through a reasonably presented request given the extent of encroachment into the 50-foot seaward buffer.
- 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 platted in 1964 and the home built in 1978. The CBPA buffer encompasses most of the property. The situation existed before the CBPA Ordinance came into effect.
- 3) The variance is the minimum necessary to afford relief because the homeowner has owned the house since 2018 and the family has two young boys. The pool is a reasonable size and the deck reconstruction is minimal around the seaward perimeter.
- 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 existing home produces stormwater pollutant runoff that is not currently treated. The project will include stormwater management for both existing and proposed runoff.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load “the stormwater runoff from the property will have improved quality after the project. Stormwater management will be incorporated to achieve pollutant removal.” The Board is of the opinion that the use of best management practices for capturing and infiltrating stormwater runoff coupled with the planting of buffer restoration provides merit towards nonpoint source pollution load treatment.

Board Conditions:

- 1) The maximum overall impervious cover of the lot shall not exceed 7,700 square feet. Said limits of impervious cover shall not encroach further seaward than shown on the CBPA Exhibit.
- 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: **929 square feet x 200 percent = 1,858 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, 10 large shrubs, and 15 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) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 7) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 8) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 9) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 10) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 11) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit.
- 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 \$212.89 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 15) It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated April 30, 2021, prepared by Clark Design Group, signed April 30, 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.

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

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

A substitute motion was made by Mr. Jones, seconded by Mr. France to approve the variance as modified, modifying variance conditions 1, 4 and 14 as provided in the Staff report. All present voted for the substitute motion as follow.

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

The substitute motion failed, and the Board continued to the motion made by Mr. Wallace and seconded by Mr. Steier to approve the variance as conditioned in the Staff report. All present voted for the motion as follow.

AYE	5	NO	1	ABSTAIN	0	ABSENT	2
BARRETT-MCDANIELS		ABSENT			JONES		YES
DREPS		ABSENT			STEIER		YES
FRANCE		YES			WALLACE		YES
JESTER		YES			YOUNG		NO



Property Owner & Applicant **Hollomon Brown Funeral Home,
Bayside Chapel**
Address **3901 Richardson Road**
Public Hearing **June 7, 2021**
City Council District **Bayside**

Agenda
Item

2

Parcel GPIN: 1488-15-9870
Accela Record: 2021-CBPA-00034
Applicant's Agent: Bob Simon - Waterfront Consulting, Inc.
CBPA Board Action: APPROVED WITH 14 CBPA VARIANCE CONDITIONS ON JUNE 7, 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 adjacent parcels." The Board is of the opinion that the proposed encroachments into the 100-foot buffer are minimal with the majority of the proposed improvements situated in the City's variable width buffer of the RPA and RMA to accommodate access to the lot and parking due to the substandard right-of-way.
- 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 additions to the primary structure that avoids substantial encroachment into the 100-foot RPA buffer to the greatest extent practicable.
- 3) The variance is the minimum necessary to afford relief because approximately 91 percent of the overall impervious cover of the lot is located within the City's variable width buffer of the RPA and RMA of the Chesapeake Bay watershed with the overall impervious cover of the lot proposed at 21 percent of the lot above water and wetlands.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the 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) As a means to manage towards a no net increase in nonpoint source pollution load buffer restoration and bioretention stormwater management will be placed between the proposed structures and the top of bank to capture and treat runoff prior to entering the Bay.

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: **1,810 square feet x 200 percent = 3,620 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: **9 canopy trees, 9 understory trees, 18 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 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. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) 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) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 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 \$414.79 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 May 3, 2021, prepared by Chesapeake Bay Solutions, Inc. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

Bob Simon of Waterfront Consulting, Inc. appeared before the Board representing the applicant.

Susan and Ron Dillon, adjacent neighbors residing at 3104 Richardson Road appeared before the Board in opposition of the applicant.

A motion was made by Mr. Wallace, 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 5 NO 0 ABSTAIN 1 ABSENT 2

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

Pursuant to the Conflict of Interest Act, Mr. Casey Jones abstained from the CBPA Board discussion and vote on Agenda Item 2 for the property located at 3901 Richardson Road. The property owner is Mr. Jones employer and the property will be transferred to an executive who is a family member.



Property Owner & Applicant **Richard & Katherine Woodward**
Address **2960 Breezy Road**
Public Hearing **June 7, 2021**
City Council District **Lynnhaven**

Agenda
Item

3

Parcel GPIN: 1499-18-3196
Accela Record: 2021-CBPA-00036
Applicant's Agent: Self-Represented
CBPA Board Action: APPROVED WITH 7 CBPA VARIANCE CONDITIONS ON JUNE 7, 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. Given the impervious development of the residential lots along Breezy Road with most residential structures being built during the 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.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this property are within the RPA, if not the whole property.
- 3) The variance is the minimum necessary to afford relief because it is a modest request for an outdoor permeable paver area within a confined lot.
- 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 amount of additional patio space is being placed in an area that is currently devoted to turf with no mature vegetation being removed for the construction of the proposed improvements.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the introduction of buffer restoration offers merit towards nonpoint source pollution prevention given the minimal scope of the proposed improvements.

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. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
- 2) 800 square feet of buffer restoration shall be installed for the proposed new impervious cover within the RPA. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 2 understory trees, 4 large shrubs, and 6 small shrubs.**

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

- 3) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 4) 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 placed on the landward side of the perimeter fence in rear yard where turf is being removed and replaced prior to any land disturbance and shall remain in place until such time as vegetative cover is established.
- 7) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.

Mr. Josh Girdler of All Things Green appeared before the Board representing the owner.

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	0	ABSTAIN	0	ABSENT	2
BARRETT-MCDANIELS		ABSENT			JONES	YES	
DREPS		ABSENT			STEIER	YES	
FRANCE		YES			WALLACE	YES	
JESTER		YES			YOUNG	YES	



Property Owner & Applicant **Bryan & Mary McCarthy**
Address **669 Chesapeake Point**
Public Hearing **June 7, 2021**
City Council District **Beach**

Agenda
Item

4

Parcel GPIN: 1497-59-2518
Accela Record: 2021-CBPA-00035
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 15 CBPA VARIANCE CONDITIONS ON JUNE 7, 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 re-platted in 2012 as a result of the accretion of property beyond the original plat as recorded in 1955 and the existing building was constructed in 1966, all completed prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.
- 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 was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA ordinance.
- 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. 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 impact of the 50-foot landward buffer along the entire reach of the shoreline as delineated on the CBPA Exhibit for this variance request. Staff is of the opinion that the location and size of the proposed structures offer merit towards the variance being the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to

the public welfare because the 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.

- 5) 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 is of the opinion that the applicant's approach to ensure a no net increase in nonpoint source pollution is acceptable. These management techniques include bioretention stormwater bed plantings within the riparian buffer to slow and treat the on-site stormwater runoff before entering the river.

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: **708 square feet x 200 percent = 1,416 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **2 canopy trees, 4 understory trees, 8 large shrubs, and 12 small shrubs.**

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

- 4) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 5) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 6) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 7) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 8) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 9) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 11) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 12) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 13) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 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 \$162.25 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or**

similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.

- 15) The conditions and approval associated with this variance are based on the exhibit plan dated April 29, 2021, prepared by WPL Site Design, signed April 29, 2021 by Eric A. 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 on the consent agenda, 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	0	ABSTAIN	0	ABSENT	2
BARRETT-MCDANIELS		ABSENT		JONES		YES	
DREPS		ABSENT		STEIER		YES	
FRANCE		YES		WALLACE		YES	
JESTER		YES		YOUNG		YES	



Property Owner & Applicant **Christianne Harmon**
Address **5272 Beaumont Drive**
Public Hearing **June 7, 2021**
City Council District **Kempsville**

Agenda
Item

5

Parcel GPIN: 1466-45-5610
Accela Record: 2021-CBPA-00032
Applicant's Agent: Self-Represented
CBPA Board Action: APPROVED WITH 7 CBPA VARIANCE CONDITIONS ON JUNE 7, 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 improvements are consistent with other homes within the neighborhood.
- 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 house was built in the 1970's prior to the enactment of the CBPA Ordinance and the CBPA buffer encompasses the entire parcel." The Board concurs and 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 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 it is a modest request for an addition of a bathroom and closet for my in-laws so they can live comfortably.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because "the entire property will be designed to achieve stormwater management." The Board is of the opinion that the modest increase in impervious cover will not significantly increase stormwater runoff from the site.
- 5) The existing vegetation along the ditch capture stormwater coupled with the minimal increase in impervious cover for the proposed improvements provides merit towards no net increase in nonpoint source pollution load.

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. Said exhibit and conditions shall be submitted to the Department of Planning, Zoning Division for review and approval prior to the issuance of a building permit. The Zoning Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
- 2) The equivalent of 400 square feet of buffer restoration shall be installed. 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: **1 canopy tree, 2 understory trees and 3 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. Said restoration shall be installed prior to the issuance of the certificate of occupancy or release of the building permit.

- 3) 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.
- 4) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 5) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 6) 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.
- 7) 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.

As an item on the consent agenda, 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 0 ABSTAIN 0 ABSENT 2

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



Property Owner & Applicant **Robert W. & Amy E. Chalfant**
Address **2141 E. Kendall Circle**
Public Hearing **June 7, 2021**
City Council District **Lynnhaven**

Agenda
Item

6

Parcel GPIN: 1590-70-2226
Accela Record: 2021-CBPA-00030
Applicant's Agent: Self-Represented
CBPA Board Action: APPROVED WITH 7 CBPA VARIANCE CONDITIONS ON JUNE 7, 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 improvements are similar to other properties along the same waterway.
- 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 but is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this property are within the RPA.
- 3) The variance is the minimum necessary to afford relief because "the deck is a standard size deck." The Board concurs and offers that the applicant has provided a layout that is cognitive of the existing confined conditions of the lot and delineated RPA feature within the neighborhood, which appears to be consistent with the findings of the CBPA Ordinance.
- 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 there will be minimal land disturbance associated with the construction activities.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the improvements are a minimal sized deck and associated land disturbance and the added buffer restoration offers merit towards nonpoint source pollution prevention.

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. Said exhibit and conditions shall be submitted to the Department of Planning & Community Development, Zoning Administration Division for review and approval prior to the issuance of a building permit. The Zoning Administration Division and/or Permits and Inspections may require additional information that may affect the release of a building permit.
- 2) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **400 square feet x 200 percent = 800 square feet.**

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

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

- 3) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 4) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
- 5) 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.
- 6) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 7) 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.

As an item on the consent agenda, 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	0	ABSTAIN	0	ABSENT	2
BARRETT-MCDANIELS		ABSENT			JONES		YES
DREPS		ABSENT			STEIER		YES
FRANCE		YES			WALLACE		YES
JESTER		YES			YOUNG		YES



Property Owner & Applicant **Eric & Sara Soenken**
Address **3008 Driftwood Circle**
Public Hearing **June 7, 2021**
City Council District **Beach**

Agenda
Item

7

Parcel GPIN: 1497-25-5159
Accela Record: 2021-CBPA-00033
Applicant's Agent: Self-Represented
CBPA Board Action: APPROVED WITH 8 CBPA VARIANCE CONDITIONS ON JUNE 7, 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 positioned on the property to minimize the impact to the Chesapeake Bay Preservation Area." 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 for this variance request. These conditions require that the applicant provide a means for riparian buffer mitigation that would not otherwise be required if the residential lot was located outside of the RPA Buffer.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this lot are within the RPA.
- 3) The variance is the minimum necessary to afford relief because "the improvements were designed to keep out of the Seaward 50 ft buffer." The Board is of the opinion that the applicant has situated to the proposed improvements within a lot that does not encroach upon the most sensitive portions of the lot. In addition, the applicant has provided a minimal pool surround while utilizing existing accessory structures, specifically the wood deck towards an area to gather while using the swimming pool should the Board grant a variance for this request.
- 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 introduction of riparian buffer mitigation in an area with

underlying soils that are moderately well drained offers merit towards providing water quality benefits.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load the applicant provides “that the existing driveway will be used as the construction entrance and staging area.” The Board is of the opinion that the access to the proposed improvements and location within the lot provides merit during the construction phases of this request towards not being an increase in nonpoint source pollution.

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) 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: **1,266 square feet x 200 percent = 2,532 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: **12 understory trees, 12 large shrubs, and 24small shrubs.**

The required restoration shall be located in the 50-foot seaward buffer of the Resource Protection Area, in areas currently devoted to turf or where impervious cover is removed. 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) 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) 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.
- 7) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit.
- 8) 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.

Eric Soenksen, property owner and applicant appeared before the Board.

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