



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

August 2, 2021

Chair of the Chesapeake Bay Preservation Area (CBPA) Board, Mr. Jester called to order the CBPA Board Public Hearing at City Council Chambers, City Hall Building, Virginia Beach Municipal Center, on Monday, August 2, 2021 at 10:00 a.m.

The first order of business was to approve the finding and variance conditions of the July 8, 2021 CBPA Board Public Hearing. A motion was made by Mr. Jones and seconded by Mr. Burnette 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 JULY 8, 2021 FINDINGS AND VARIANCE CONDITIONS ON AUGUST 2, 2021 AS FOLLOWS.

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

All CBPA Board Members present voted as above with Mr. Wallace being absent from the approval of the July 8, 2021 Findings and Variance Conditions and Requests for Withdrawal, only.

Mr. McCune was absent from the August 2, 2021 CBPA Board public hearing.



Property Owner & Applicant **Anthony & Cynthia Disilvestro**
Address **1680 Godfrey Lane**
Public Hearing **August 2, 2021**
City Council District **Lynnhaven**

Agenda
Item

1

Parcel GPIN: 2409-23-0703
Accela Record: 2021-CBPA-00027
Applicant's Agent: Robert Simon - Waterfront Consulting, Inc.
CBPA Board Action: APPROVED WITH 11 CBPA VARIANCE CONDITIONS ON AUGUST 2, 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 total impervious cover for the site is below the 17 percent. Given the impervious development of the residential lots along this reach of the Lynnhaven River and the encroachments that have been granted to property owners along Haversham Close, Dey Cove Drive and Bay Point Drive, the Board is of the opinion that the proposed improvements would not convey any special privileges that have not been provided to other owners of property.
- 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 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 as conditioned. However, the Board commends the applicant for correcting the detrimental erosion that was occurring along the northern portion of the lot and the removal of trash and debris that accumulated along the tidal shoreline and the boring of the sewer line and not installing a septic system.
- 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 impervious development of the residential lots along this reach of the Lynnhaven River and the encroachments that have been granted to property owners along Haversham Close, Dey Cove Drive and Bay Point Drive are similar if not more when reviewed for encroachment into the 100-foot RPA and overall impervious cover of the lot.

- 5) As a means to manage towards a no net increase in nonpoint source pollution load the Board is of the opinion that approval of the stormwater management plan currently under review by Staff when approved, implemented correctly, and maintained offers merit towards the variance request not being a net increase in nonpoint source pollution.

Board Conditions:

- 1) This variance and associated conditions **are in addition to** the conditions of the CBPA Board variance granted December 20, 2017.
- 2) All additional materials excavated for the installation of the proposed improvements associated with this variance request and the removal of both berms along the adjacent properties' driveways shall be removed from the site and disposed of in a lawful manner.
- 3) The proposed paver parking area shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 4) Upon granting of this variance, a revised stormwater management plan shall be submitted to the Department of Planning and Community Development, Development Services Center for review and approval within 90 days from the date of this hearing. Once the plans have been approved, a **CBPA / CIVIL permit** must be obtained within 90 days. All required stormwater management facilities and buffer restoration must be installed or in the process of installation within 90 days after issuance of the building permit.
- 5) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance granted December 20, 2017, specifically the required buffer restoration shall be documented on the revised stormwater management plan. Documentation shall describe the health and functionality of said requirements. Prior restoration requirements shall be installed if not present.
- 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) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 8) 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.
- 9) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance associated with this variance.
- 10) The conditions and approval associated with this variance are based on the exhibit plan prepared by Chesapeake Bay Site Solutions, signed April 5, 2021 by Gregory O. Milstead. 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.

- 11) Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: 2,913 square feet x 200 percent = 5,826 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.

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 Mr. Jones, seconded by Mr. Steier, to approve the variance as modified by condition 2 and the addition of condition 11 from those conditions provided in the Staff report specific to this variance request. All present voted for the motion.

AYE	7	NO	0	ABSTAIN	1	ABSENT	1
BARRETT-MCDANIELS		YES				MCCUNE	ABSENT
BURNETTE		YES				STEIER	YES
FRANCE		ABSTAIN				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					

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



Property Owner & Applicant **Bennett & Elizabeth Thomas**
Address **3016 Island Lane**
Public Hearing **August 2, 2021**
City Council District **Lynnhaven**

Agenda
Item

2

Parcel GPIN: 1499-17-0438
Accela Record: 2021-CBPA-00041
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 19 CBPA VARIANCE CONDITIONS ON AUGUST 2, 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 redevelopment of the lot is consistent with improvements constructed on adjacent properties and the proposed improvements associated with this variance request do not require removal of any existing vegetation, nor will it encroach further seaward than existing improvements on 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 subject lot and home was created and constructed prior to October 1, 1989, prior to the adoption of the CBPA Ordinance.
- 3) The variance is the minimum necessary to afford relief because the 100-foot RPA encumbers the entire lot with Long Creek to the north and a canal to the south. No trees will need to be removed, and in this regard, the proposed improvements are in the most logical locations.
- 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 buffer on this lot is largely comprised of grass with some mature canopy trees (several live oaks) and some buffer landscaping along the eastern and western property lines in addition to a salt marsh to the north along Long Creek. The applicant's request requires no vegetation to be removed. This request will require the establishment of additional vegetation within the buffer to aid in the capture of runoff from the proposed improvements.

- 5) Landscaping will be installed to mitigate the impact of the additional impervious surface within the RPA Buffer. The improvements will be mitigated with additional landscaping that should aid in slowing the velocity of stormwater leaving the site while also allowing for the absorption of any additional runoff. These modifications are a buffer towards a means of managing towards a no net increase in nonpoint source pollution load.

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) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance granted November 25, 2019, specifically the required buffer restoration 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: **771 square feet x 200 percent = 1,542 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 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.

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

- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 5 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) The proposed circular portion of the driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 15) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 16) Gravel downspout intercepts and/or gravel dripline intercepts shall be provided as a means of erosion and sediment control for stormwater run-off from the proposed improvements.
- 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 \$176.68 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.

- 18) This variance and associated conditions **are in addition to** the conditions of the Board variance granted November 25, 2019.
- 19) The conditions and approval associated with this variance are based on the exhibit plan dated June 30, 2021, prepared by Painted Fern Landscape Architecture, signed June 30, 2021 by Jessica Nelson. 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 representing the applicant of the property located at 3016 Island Lane appeared before the Board.

A motion was made by Mr. Jones, seconded by Mr. Wallace, to approve the variance as modified by removing condition 18 from those conditions provided in the Staff report specific to this variance request. All present voted for the motion.

AYE	8	NO	0	ABSTAIN	0	ABSENT	1
BARRETT-MCDANIELS		YES			MCCUNE		ABSENT
BURNETTE		YES			STEIER		YES
FRANCE		YES			WALLACE		YES
JESTER		YES			YOUNG		YES
JONES		YES					



Property Owner & Applicant **Mark Epley & Dawn Morgan**
Address **633 Chesopeian Trl**
Public Hearing **August 2, 2021**
City Council District **Beach**

Agenda
Item

3

Parcel GPIN: 1497-59-4154
Accela Record: 2021-CBPA-00042
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 18 CBPA VARIANCE CONDITIONS ON AUGUST 2, 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 1955 prior to the Chesapeake Bay Preservation Act and 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 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. The CBPA buffers cover over 100% of the lot.
- 3) The variance is the minimum necessary to afford relief because the owners have designed the improvements in the area deemed to be the best area to minimize site impacts in the critical buffer areas. The Board agrees that, based on the topography of the site, the proposed location of the pool is suitable, but offers that the impervious cover of the lot should be decreased to 33.5%.
- 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.

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) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the required buffer restoration 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: **1,236 square feet x 200 percent = 2,472 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, 6 understory trees, 12 large shrubs, and 18 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.

- 5) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 6) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.

- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area, and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 10 feet from improvements.
- 10) Construction limits along the seaward portion of the project shall lie a maximum of 10 feet seaward of improvements.
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) Impervious cover will be at 33.5%.
- 15) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 16) ****** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$283.25 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.
- 17) This variance and associated conditions **are in addition to** the conditions of the Board variance granted September 26, 2016.
- 18) The conditions and approval associated with this variance are based on the exhibit plan dated April 15, 2021, prepared by WPL, signed June 30, 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.

Billy Garrington of Governmental Permitting Consultants representing the applicant of the property located at 633 Chesopeian Trail appeared before the Board.

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	8	NO	0	ABSTAIN	0	ABSENT	1
BARRETT-MCDANIELS	YES					MCCUNE	ABSENT
BURNETTE		YES				STEIER	YES
FRANCE		YES				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Property Owner & Applicant **Aaron McLellan**
 Address **2114 Maple Street**
 Public Hearing **August 2, 2021**
 City Council District **Lynnhaven**

Agenda
 Item
4

Parcel GPIN: 1499-59-7315
Accela Record: 2021-CBPA-00043
Applicant’s Agent: Self-represented
CBPA Board Action: APPLICATION WITHDRAWN ON AUGUST 2, 2021.

A motion was made by Mr. Jones, seconded by Mr. Steier, to approve the withdrawal of the variance request for the property located at 2114 Maple Street. All present voted for the motion.

Mr. Wallace being absent for approval of the July 8, 2021 Findings and Variance Conditions and August 2, 2021 Requests for Withdrawal, only.

AYE 8 NO 0 ABSTAIN 0 ABSENT 1

BARRETT-MCDANIELS	YES	MCCUNE	ABSENT
BURNETTE	YES	STEIER	YES
FRANCE	YES	WALLACE	ABSENT
JESTER	YES	YOUNG	YES
JONES	YES		



Property Owner & Applicant **Saunora & Leslie Prom**
Address **4113 Cheswick Ln**
Public Hearing **August 2, 2021**
City Council District **Bayside**

Agenda
Item

5

Parcel GPIN: 1478-92-2170
Accela Record: 2021-CBPA-00045
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON AUGUST 2, 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 location of the proposed improvements within the 50-foot landward buffer provide merit towards the variance application not conferring upon the applicant any special privilege or convenience not accorded other owners of the property in 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 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 proposed improvements, as situated in the rear yard, proximity to the existing residence, and entirely within the landward buffer, provides merit towards the variance request being the minimal 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 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.

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) The conditions of the existing Chesapeake Bay Preservation Area (CBPA) variance, specifically the 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. Displacement of existing stormwater management facilities and all associated vegetation shall be accounted for with the construction of the proposed improvements.
- 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: **1,465 square feet x 200 percent = 2,930 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **7 canopy trees, 7 understory trees, 14 large shrubs, and 21 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) 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 10 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 \$335.72 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 **are in addition to** the conditions of the Board variance granted on October 24, 1994.
- 15) The conditions and approval associated with this variance are based on the exhibit plan dated June 29, 2021, prepared by Chesapeake Bay Solutions, Inc., signed June 29, 2021 by Gregory Milstead. 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.
- 16) The maximum impervious cover of the lot shall not exceed 30 percent or 5,728 square feet above water and wetlands.

Billy Garrington of Governmental Permitting Consultants representing the applicant of the property located at 4113 Cheswick Ln appeared before the Board.

A motion was made by Mr. Jones, seconded by Mr. Wallace, to approve the variance as modified by the addition of condition 16 from those conditions provided in the Staff report specific to this variance request. All present voted for the motion.

AYE	8	NO	0	ABSTAIN	0	ABSENT	1
BARRETT-MCDANIELS	YES					MCCUNE	ABSENT
BURNETTE		YES				STEIER	YES
FRANCE		YES				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					