



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

September 9, 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 August 2, 2021 CBPA Board Public Hearing. A motion was made by Mr. Jones and seconded by Mr. France 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 AUGUST 2, 2021 FINDINGS AND VARIANCE CONDITIONS ON SEPTEMBER 9, 2021 AS FOLLOWS.

| YES | 7 | NO | 0 | ABSTAIN | 2 | ABSENT | 0 |
|-------------------|----------|-----------|----------|----------------|----------|---------------|----------|
| BARRETT-MCDANIELS | | | | YES | | | |
| BURNETTE | | | | YES | | | |
| FRANCE | | | | YES | | | |
| JESTER | | | | YES | | | |
| JONES | | | | YES | | | |
| MCCUNE | | | | ABSTAIN | | | |
| STEIER | | | | YES | | | |
| WALLACE | | | | ABSTAIN | | | |
| YOUNG | | | | YES | | | |

All CBPA Board Members present voted as above with Mr. McCune being absent from the August 2, 2021 CBPA Board public hearing and Mr. Wallace being absent from the approval of the July 8, 2021 Findings and Variance Conditions and Requests.



Property Owner & Applicant **Susan & Todd Kletz**
Address **1300 Penguin Circle**
Public Hearing **September 9, 2021**
City Council District **Lynnhaven**

Agenda
Item

1

Parcel GPIN: 2418-31-0664
Accela Record: 2021-CBPA-00049
Applicant's Agent: Billy Garrington Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 8 CBPA VARIANCE CONDITIONS ON SEPTEMBER 9, 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 with the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels.
- 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 originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's Ordinance.
- 3) The variance is the minimum necessary to afford relief because the owners have designed the improvements in the area not to extend beyond the existing encroachments into the buffer areas.
- 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 of the existing condition of the lot, no signs of detrimental erosion, and the installation of buffer restoration.
- 5) Additional bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging to the river as a means to manage towards a 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. 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: **650 square feet x 200 percent = 1,300 square feet.**

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

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

4. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
5. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements.
6. 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.

7. No perimeter fill is authorized outboard or seaward of the proposed improvements.
8. This variance and associated conditions **are in addition to** the conditions of the CBPA Board variance granted June 28, 2004.

As an item of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. McCune, to approve the variance with the variance conditions as provided in the Staff report. All present voted for the motion.

| AYE | 9 | NO | 0 | ABSTAIN | 0 | ABSENT | 0 |
|-------------------|----------|-----------|----------|----------------|----------|---------------|----------|
| BARRETT-MCDANIELS | YES | | | | | MCCUNE | YES |
| BURNETTE | YES | | | | | STEIER | YES |
| FRANCE | YES | | | | | WALLACE | YES |
| JESTER | YES | | | | | YOUNG | YES |
| JONES | YES | | | | | | |



Property Owner & Applicant **Kristina Rae Black Kratovil**
Address **3032 Little Haven Road**
Public Hearing **September 9, 2021**
City Council District **Lynnhaven**

Agenda
Item

2

Parcel GPIN: 1498-24-5156
Accela Record: 2021-CBPA-00050
Applicant's Agent: Billy Garrington Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 14 CBPA VARIANCE CONDITIONS ON SEPTEMBER 9, 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.
- 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 originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance. The CBPA buffers cover over 93 percent of the lot.
- 3) The variance is the minimum necessary to afford relief because the owners have designed the additions and improvements over existing structures to the greatest extent practicable to maximize the redevelopment and the minimize site impacts in the critical buffer areas.
- 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 location and size of the proposed structures offer merit towards the variance being the minimum necessary to afford relief.
- 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 to slow, capture, 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: **1,235 square feet x 200 percent = 2,470 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **6 canopy trees, 6 understory trees, 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 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 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) 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) 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 \$283.02 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall be utilized solely for activities that support the restoration or enhancement of oyster habitats in the City's watersheds, including oyster reefs, oyster beds, or similar related activities that are directly related to restoration or enhancement of oyster habitat in the City.
- 14) The conditions and approval associated with this variance are based on the exhibit plan dated April 20, 2021, prepared by WPL, 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 of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. McCune, to approve the variance with the variance conditions as provided in the Staff report. All present voted for the motion.

| AYE | 9 | NO | 0 | ABSTAIN | 0 | ABSENT | 0 |
|-------------------|----------|-----------|----------|----------------|----------|---------------|----------|
| BARRETT-MCDANIELS | YES | | | | | MCCUNE | YES |
| BURNETTE | | YES | | | | STEIER | YES |
| FRANCE | | YES | | | | WALLACE | YES |
| JESTER | | YES | | | | YOUNG | YES |
| JONES | | YES | | | | | |



Property Owner **Dairus & Denise Auman**
Applicant **EGO Holdings, LLC**
Address **2768 Broad Bay Road**
Public Hearing **September 9, 2021**
City Council District **Lynnhaven**

Agenda
Item

3

Parcel GPIN: 1499-57-0933
Accela Record: 2021-CBPA-00051
Applicant's Agent: Eddie Bourdon, Esq. - Sykes, Bourdon, Ahern, Levy PC
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON SEPTEMBER 9, 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 Board is of the opinion that the CBPA Exhibit provided coupled with the use of materials and stormwater methodology integrating multiple best management practices on the lot offers merit towards the variance request not conferring upon the applicant any special privilege or convenience not accorded to other owners of property in the neighborhood based off the extent of redevelopment proposed to the existing conditions of this lot.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been create 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 proposed improvements to minimize the impact to the Chesapeake Bay. The new home has been placed towards the front & east side setbackline to maximize the redevelopment, to minimize site impacts, and limit development.
- 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 requirement to treat stormwater with the redevelopment of this lot as a viable means towards providing water quality and the applicant has offered a water quality approach towards managing stormwater on a residential lot through the use of green roofs, biorention planting beds, and permeable pavement. These best management practices can provide an annual runoff volume reduction up to 45 percent with beneficial reductions of phosphorous and nitrogen mass load removal annual.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the use of green roofs, biorention planting beds, and permeable pavement coupled with the introduction of

approximately 7,550 square feet of buffer restoration that restores the lack of tree canopy cover on the lot. The Board is of the opinion that the provided best management practices provides merit to minimize erosion and sedimentation potential, reduce land application of nutrients and toxins, and maximize rainwater infiltration.

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 per the layout provided with the CBPA Exhibit – 7,550 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, 11 understory trees, 22 large shrubs, and 33 small shrubs.**

The required 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 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.
- 9) 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.**
- 10) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **of the existing canopy trees to be preserved as delineated in the CBPA Exhibit** 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) 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) The proposed driveway and shall be constructed out of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided and submitted to the Development Services Center for review and approval.
- 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 \$1,051.41 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 August 2, 2021, prepared by WPL, signed August 2, 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.
- 16) A vegetative roof(s) totaling 1,100 square feet shall be provided per the performance standards and design table specified in the Virginia Stormwater Best Management Practices Clearinghouse, Virginia Department of Environmental Quality (DEQ) Stormwater Design Specifications No. 5, Vegetated Roof.

Eddie Bourdon of Sykes, Bourdon, Ahern, Levy PC representing the applicant of the property located at 2768 Broad Bay Road appeared before the Board.

A motion was made by Ms. McDaniels, 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 | 9 | NO | 0 | ABSTAIN | 0 | ABSENT | 0 |
|-------------------|----------|-----------|----------|----------------|----------|---------------|----------|
| BARRETT-MCDANIELS | | YES | | | | MCCUNE | YES |
| BURNETTE | | YES | | | | STEIER | YES |
| FRANCE | | YES | | | | WALLACE | YES |
| JESTER | | YES | | | | YOUNG | YES |
| JONES | | YES | | | | | |



Property Owner **Patricia McShan, et al.**
Applicant **ORP Ventures**
Address **Ridgecrest Lots 15 & 16 Blk 134**
Public Hearing **September 9, 2021**
City Council District **Beach**

Agenda
Item

4

Parcel GPIN: 2417-89-2543 & 2417-89-2428
Accela Record: 2021-CBPA-00053
Applicant's Agent: Eddie Bourdon, Esq. - Sykes, Bourdon, Ahern, Levy PC
CBPA Board Action: APPROVED WITH 18 CBPA VARIANCE CONDITIONS ON SEPTEMBER 9, 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 1925 and consists of 2 platted developable lots, all completed prior to the Chesapeake Bay Preservation Act. The proposed improvements are in keeping with the development of the neighborhood and adjacent parcels and will reduce the development from the 2 lots to 1 lot.
- 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 98% of the lot.
- 3) The variance is the minimum necessary to afford relief because the owners have designed the improvements to minimize site impacts in the critical buffer areas.
- 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 development will be required to have treatment provided between the improvements and the CBPA feature.
- 5) Bioretention stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharging into the CBPA feature 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) 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: **2,555 square feet x 200 percent = 5,110 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, 6 understory trees, 26 large shrubs, and 39 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. 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) A double row of wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be provided and installed continuous along the perimeter of the project. The

required silt fence shall be staked in the field by the applicant's agent prior to scheduling the preconstruction meeting with Civil Inspections. Said silt fence shall be installed as delineated on the CBPA Exhibit.

- 9) All construction activity inclusive of land disturbance shall be contained within the limits of the required silt fence with all areas outboard of the silt fence left in a natural state.
- 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) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval.
- 14) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the porches and stairs.
- 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 \$585.52 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) Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh with moderate maintenance performed consistent with the horticultural practices described in the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation regarding woodlot management to remove invasive vines species that are shading vegetative undergrowth and out competing native plant species within the 100-foot RPA buffer.

18) The conditions and approval associated with this variance are based on the exhibit plan dated July 30, 2021, prepared by WPL, signed July 30, 2021 by Eric Garner, LS. 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.

Eddie Bourdon of Sykes, Bourdon, Ahern, Levy PC representing the applicant of the property located at Ridgecrest Lot 16 & 16 Blk 134, 25th Street, GPIN 2417-89-2543 and 2417-89-2428 appeared before the Board.

A motion was made by Mr. France, 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 | 9 | NO | 0 | ABSTAIN | 0 | ABSENT | 0 |
|-------------------|----------|-----------|----------|----------------|----------|---------------|----------|
| BARRETT-MCDANIELS | | YES | | | | MCCUNE | YES |
| BURNETTE | | YES | | | | STEIER | YES |
| FRANCE | | YES | | | | WALLACE | YES |
| JESTER | | YES | | | | YOUNG | YES |
| JONES | | YES | | | | | |



| | |
|---|-----------------------------|
| Property Owner & Applicant Joel and Emily Nied Address 1308 Kildeer Court Public Hearing September 9, 2021 City Council District Lynnhaven | Agenda Item 5 |
|---|-----------------------------|

Parcel GPIN: 2418-30-6917
Accela Record: 2021-CBPA-00054
Applicant’s Agent: Robert Simon - Waterfront Consulting, LLC
CBPA Board Action: DEFERRED AT THE SEPTEMBER 9, 2021 CBPA BOARD PUBLIC HEARING TO THE MONDAY OCTOBER 4, 2021 CBPA BOARD PUBLIC HEARING.

A motion was made by Mr. Jones, seconded by Mr. Burnette, to defer the variance request to the October 4, 2021 CBPA Board Public Hearing. All present voted for the motion.

| | | | | | | | |
|-------------------|----------|-----------|----------|----------------|----------|---------------|----------|
| AYE | 9 | NO | 0 | ABSTAIN | 0 | ABSENT | 0 |
| BARRETT-MCDANIELS | YES | | | | | McCUNE | YES |
| BURNETTE | YES | | | | | STEIER | YES |
| FRANCE | YES | | | | | WALLACE | YES |
| JESTER | YES | | | | | YOUNG | YES |
| JONES | YES | | | | | | |



Property Owner & Applicant **Michael & Jennifer Newman**
Address **905 Penguin Place**
Public Hearing **September 9, 2021**
City Council District **Lynnhaven**

Agenda
Item

6

Parcel GPIN: 2418-21-9658
Accela Record: 2021-CBPA-00056
Applicant's Agent: Billy Garrington Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON SEPTEMBER 9, 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 extent of redevelopment requested with this variance occurring landward of the 50-foot seaward buffer conforms with the location of improvements on adjacent parcels.
- 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 originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance.
- 3) The owners have designed the proposed improvements to be minimize the impact to the Chesapeake Bay, the new improvements have been placed close to the house to minimize site impacts and avoid development in the 50' seaward portion of the site towards a means for this variance request to be the minimum necessary to afford relief.
- 4) With the encroachment into the RPA being consistent with the location of improvements on other properties in the vicinity, the Board is of the opinion that the variance request is in harmony with the purpose and intent of the ordinance and not injurious to the neighborhood, and not of substantial detriment to water quality due to the recommended conditions provided as a collective attempt to redevelop this lot as a means to enhance rainwater infiltration through stormwater run-off reduction.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the applicant's agent provides that planting buffer restoration and bio-retention stormwater management will be placed between the improvements and the canal to capture and treat runoff prior to discharging into 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) The proposed improvements shall not encroach into the 50-foot seaward buffer of the Chesapeake Bay Resource Protection Area.
- 3) The proposed driveway shall be constructed of a permeable pavement system. A detail of the specific permeable paver system and subbase construction shall be provided site plan submitted to the Development Services Center for review and approval
- 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: **2,262 square feet x 200 percent = 4,524 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 canopy trees, 12 understory trees, 24 large shrubs, and 36 small shrubs.**

The required 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.

- 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. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
- 12) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 13) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 14) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 15) ** 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 \$518.37 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 February 18, 2021, prepared by WPL, signed August 11, 2021, revised to September 6, 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.

As an item of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. McCune, to approve the variance with the variance conditions as provided in the Staff report. All present voted for the motion.

| AYE | 9 | NO | 0 | ABSTAIN | 0 | ABSENT | 0 |
|-------------------|----------|-----------|----------|----------------|----------|---------------|----------|
| BARRETT-MCDANIELS | | YES | | | | MCCUNE | YES |
| BURNETTE | | YES | | | | STEIER | YES |
| FRANCE | | YES | | | | WALLACE | YES |
| JESTER | | YES | | | | YOUNG | YES |
| JONES | | YES | | | | | |



Property Owner & Applicant **Owner John & Diane Domanski**
Address **3089 Yeates Lane**
Public Hearing **September 9, 2021**
City Council District **Lynnhaven**

Agenda
Item

7

Parcel GPIN: 1498-14-9651
Accela Record: 2021-CBPA-00055
Applicant's Agent: Self-represented
CBPA Board Action: APPROVED WITH 5 CBPA VARIANCE CONDITIONS ON SEPTEMBER 9, 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 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 an area currently devoted to turf, do not require the removal of any vegetated riparian buffer, and will not impact the migration of the adjacent vegetated marsh.
- 2) The encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather is necessitated by the fact that this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance; therefore, portions of this property are within the RPA.
- 3) The variance is the minimum necessary to afford relief because the applicant has provided a layout that is cognitive of the existing confined conditions of the lot and RPA feature within the neighborhood and 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 concrete pad and associated 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. 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 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 devoid of mature riparian buffer ecosystem. 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) 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 of the consent agenda, a motion was made by Mr. Jones, seconded by Mr. McCune, to approve the variance with the variance conditions as provided in the Staff report. All present voted for the motion.

| AYE | 9 | NO | 0 | ABSTAIN | 0 | ABSENT | 0 |
|-------------------|----------|-----------|----------|----------------|----------|---------------|----------|
| BARRETT-MCDANIELS | | YES | | | | MCCUNE | YES |
| BURNETTE | | YES | | | | STEIER | YES |
| FRANCE | | YES | | | | WALLACE | YES |
| JESTER | | YES | | | | YOUNG | YES |
| JONES | | YES | | | | | |



| | |
|---|-------------------------------|
| Address of Noncompliance 621 W. Kingston Circle Property Owner Thet M. Kyaw Public Hearing September 9, 2021 City Council District Lynnhaven | Agenda Item <h1>8</h1> |
|---|-------------------------------|

Parcel GPIN: 1488-50-7952
Accela Record: 2021-CBPV-00001
Applicant's Agent: Self-represented
CBPA Board Action: DEFERRED AT THE SEPTEMBER 9, 2021 CBPA BOARD PUBLIC HEARING TO THE MONDAY OCTOBER 4, 2021 CBPA BOARD PUBLIC HEARING.

Board's Action:

The Board found with the testimony presented at the Show Cause Hearing that the activity, deviation from the July 22, 2019 CBPA Board variance conditions with the construction of a wood deck did not constitute a noncompliance of the provisions of the Chesapeake Bay Preservation Area (CBPA) Ordinance.

Based on the testimony at the public hearing, the Board deferred this item to the October 4, 2021 CBPA Board public hearing to be accompanied with an after-the-fact variance request for the expansion of the wood deck.

No civil charge was imposed.

A motion was made by Mr. France, seconded by Mr. Wallace, to defer the variance request to the October 4, 2021 CBPA Board Public Hearing. All present voted for the motion.

| | | | | | | | |
|-------------------|----------|-----------|----------|----------------|----------|---------------|----------|
| AYE | 9 | NO | 0 | ABSTAIN | 0 | ABSENT | 0 |
| BARRETT-MCDANIELS | YES | | | | | MCCOY | YES |
| DREPS | YES | | | | | STEIER | YES |
| FRANCE | YES | | | | | WALLACE | YES |
| JESTER | YES | | | | | YOUNG | YES |
| JONES | YES | | | | | | |