



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

December 6, 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, December 6, 2021 at 10:00 a.m.

The first order of business was to approve the findings and variance conditions of the November 1, 2021 CBPA Board Public Hearing. A motion was made by Mr. Jones and seconded by Mr. McCune 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 NOVEMBER 1, 2021 FINDINGS AND VARIANCE CONDITIONS ON DECEMBER 6, 2021 AS FOLLOWS.

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

All CBPA Board Members present voted as above.



Administrative Business Election of Officers for 2022

Agenda Item

1

Election of 2022 Chesapeake Bay Preservation Area Board Officers

2022 Chesapeake Bay Preservation Area Board Election of Officers

Chair – Dave Jester
Vice Chair – Dave France
Secretary – Casey Jones

2022 Chesapeake Bay Preservation Area Board Members

- Dave Jester, Chairman
- Dave France, Vice Chairman
- Casey Jones, Secretary
- June Barrett-McDaniels
- Bill Burnette
- James McCune
- Michael Steier
- Al Wallace
- Dell Young

A motion was made by Mr. Steier, seconded by Mr. McCune, to elect Mr. Jester as the Chair, Mr. France as the Vice Chair, and Mr. Jones as the Secretary. All voted for the motion.

YES 8 NO 0 ABSTAIN 0 ABSENT 1

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



Applicant & Property Owner **Joel & Emily Nied**
Address **1308 Kildeer Court**
Public Hearing **December 6, 2021**
City Council District **Lynnhaven**

Agenda Item

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Parcel GPIN: 2418-30-6917
Accela Record: 2021-CBPA-00054
Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 14 CBPA VARIANCE CONDITIONS ON DECEMBER 6, 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. To address this finding the applicant's consulting team as revised the location of the proposed swimming pool and patio are to be landward of the 100-foot 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 encroachment into the 100-foot RPA buffer and materials used— gravel and concrete pavers provides merit towards the variance request 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 buffer restoration plan provided gives merit towards water quality initiatives for the infiltration of rainwater runoff given the location of the buffer restoration beds to the existing single-family residence.
- 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 adjacent waterway.

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. Said buffer restoration plan shall be in substantial compliance with the Buffer Mitigation Plan submitted by Painted Fern Landscape Architecture dated November 12, 2021 signed November 12, 2021 by Jessica L. Nelson.
- 3) Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
- 4) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 5) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 6) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 7) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed 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.
- 8) 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.**
- 9) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 10) 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) 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.
- 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 \$473.64 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 November 12, 2021, prepared by Painted Fern Landscape Architecture, signed November 12, 2021 by Jessica L. 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.

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

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



Applicant & Property Owner **Ron Tesnow**
Address **3004 Island Lane**
Public Hearing **December 6, 2021**
City Council District **Lynnhaven**

Agenda Item

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Parcel GPIN: 1499-17-4498
Accela Record: 2021-CBPA-00060
Applicant's Agent: Billy Garrington, Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 17 CBPA VARIANCE CONDITIONS ON DECEMBER 6, 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 that variance requests presented to the CBPA Board are reviewed individually for the merits provided by each request. Given the impervious development of the residential lots along Island Lane and the fact that the lot is encumbered by the RPA buffer from both the front and rear of the lot, the Board is of the opinion that the proposed improvements would not convey any special privileges to the applicant given the location of the proposed swimming pool within the 50-foot landward 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.
- 3) The location and size of the proposed swimming pool given the encroachment of the RPA buffer from two tidal features provides merit towards being the minimal necessary to afford relief as designed. The size of the swimming pool is in keeping with the average size of a residential swimming pool and the proposed patio area is only provided along the landward side of the swimming pool.
- 4) The Board is of the opinion that the introduction of stormwater management with the use of permeable pavers coupled with riparian buffer mitigation in an area with underlying soils that are moderately well drained offers merit towards providing water quality.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the extent of buffer restoration provided with this variance request given the underlying soil condition offers nutrient reduction annually.

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 for review shall be the Buffer Restoration Plan submitted with the CBPA Variance exhibit.
- 3) Buffer restoration shall be installed in substantial compliance with the Buffer Restoration Plan submitted with the CBPA Variance application dated October 26, 2021, prepared by Painted Fern Landscape Architecture, signed November 1, 2021 by Jessica L. Nelson.
- 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. **All areas outside limits of construction shall be left in a natural state to include the forest floor (leaf litter) left intact. Said condition shall be so noted on the site plan. – or - 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) The redevelopment of the driveway, as shown on the CBPA Exhibit 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) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 15) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$355.43 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) This variance and associated conditions **will supersede** the conditions of the CBPA Board variance granted April 23, 2018.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated August 25, 2021 and revised January 4, 2021, prepared by Gallup Surveyors and Engineers, signed August 25, 2021 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

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

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



Applicant & Property Owner **Linda Jean Thorp**
Address **1100 Wishart Point Rd**
Public Hearing **December 6, 2021**
City Council District **Bayside**

Agenda Item

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Parcel GPIN: 1478-87-3935
Accela Record: 2021-CBPA-00068
Applicant's Agent: Self-Represented
CBPA Board Action: APPROVED WITH 2 CBPA VARIANCE CONDITIONS ON DECEMBER 6, 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 as Staff routinely works with property owners to manage riparian resources on their 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 is an approximate four-acre property that has a significant number of canopy trees elsewhere on the property.
- 3) The variance is the minimum necessary to afford relief given the applicant's preservation of the remaining canopy trees on the lot couple with Staff's recommended condition below requiring mitigation for those trees being removed.
- 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 applicant has stated in the Water Quality Impact Assessment (WQIA) that mitigation will be provided and that they will ensure that the tree removal will not disturb the underlying soil conditions.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the applicant intends to use of a crane, as stated by the applicant to Staff during the site visit will minimize 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 conditions shall be submitted to the Department of Planning and Community Development, Permits & Inspections Division for the issuance of a utility/right of way permit for tree removal in the RPA.
2. Mitigation for trees to be removed is required at a 2:1 ratio (10 new canopy trees to be planted). The required mitigation shall be located in the RPA to the greatest extent practicable. 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 release of the utility/right of way permit.

Minimum size at installation for replacement trees shall be as listed below:

- Canopy (matures to a height greater than 35') 1 ½" – 2" caliper.

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

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



Applicant & Property Owner **Lauren Graham**
Address **665 Chesapeake Point**
Public Hearing **December 6, 2021**
City Council District **Lynnhaven**

Agenda Item

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Parcel GPIN: 1497-59-3425
Accela Record: 2021-CBPA-00069
Applicant's Agent: Eddie Bourdon, Esq. - Sykes, Bourdon, Ahern, Levy PC
CBPA Board Action: APPROVED WITH 16 CBPA VARIANCE CONDITIONS ON DECEMBER 6, 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 majority of new impervious cover proposed associated with this variance request occurs within the City's variable width buffer with the encroachments into the 100-foot RPA similar to the other variance requests in the RPA.
- 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 because the lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance and the CBPA buffer covers over 90 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 to minimize site impacts and avoid development in the 50-foot seaward buffer to the greatest extent practicable.
- 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 Lynnhaven River.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the existing shoreline will be enhanced and expanded upon to compliment the site and bioretention

stormwater management will be placed between the improvements and the waterway to capture and treat runoff prior to discharge into 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) 10,000 square feet of buffer restoration shall be installed within the Resource Protection Area (RPA) buffer. Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **12 canopy trees, 12 understory trees, 50 large shrubs, and 75 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) 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) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized within the 50-foot seaward buffer.
- 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 \$2,218.79 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.
- 16) The conditions and approval associated with this variance are based on the exhibit plan dated February 9, 2021, prepared by WPL, signed February 9, 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.

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

AYE	6	NO	2	ABSTAIN	0	ABSENT	1
BARRETT-MCDANIELS		ABSENT			MCCUNE		YES
BURNETTE		YES			STEIER		YES
FRANCE		NO			WALLACE		YES
JESTER		YES			YOUNG		NO
JONES		YES					



Applicant & Property Owner **Carol F Vorhees RT**
Address **685 Thalia Point Road**
Public Hearing **December 6, 2021**
City Council District **Lynnhaven**

Agenda Item

6

Parcel GPIN: 1488-01-6268
Accela Record: 2021-CBPA-00070
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: APPROVED WITH 17 CBPA VARIANCE CONDITIONS ON DECEMBER 6, 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 redevelopment of this lot will provide an approximate 100 square foot reduction of impervious cover within the 50-foot seaward 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 because the lot was originally platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance and the CBPA buffer covers over 90 percent of the lot.
- 3) The variance is the minimum necessary to afford relief because the owners have designed the improvements over existing structures to the greatest extent practicable to maximize the redevelopment and to minimize site impacts in the critical buffer area.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the proposed improvements are in keeping with the development of the neighborhood and adjacent parcels, the 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 Lynnhaven River.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the introduction of buffer restoration and stormwater management facilities seaward of the proposed improvements offers merit towards managing nonpoint source pollution load associated with runoff given that the lot slopes from the street to the Lynnhaven River. Placing

these treatment initiates within the 50-foot seaward buffer maximized capture of runoff potential from all impervious cover on the lot.

Board Conditions:

- 1) A Single-Family RPA Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
- 2) 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.
- 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: **1,090 square feet x 200 percent = 2,180 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.

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

- 7) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 8) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 9) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Said silt fence shall be installed as delineated per the CBPA Variance Exhibit.
- 10) Construction limits shall be contained within the limits of the delineated silt fence per the CBPA Variance Exhibit. **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.**
- 11) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 12) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 13) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
- 14) No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
- 15) ** As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$249.79 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.
- 16) This variance and associated conditions **will supersede** the conditions of the Board variance granted February 27, 2012.
- 17) The conditions and approval associated with this variance are based on the exhibit plan dated August 23, 2021, prepared by WPL, signed October 14, 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. Burnette, to approve the variance with the recommended conditions as provided in the Staff report. All present voted for the motion.

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



Applicant & Property Owner **South Linkhorn Bay Trust, et al**
Address **Lot 196, N. Linkhorn Park Extended, York Lane**
Public Hearing **December 6, 2021**
City Council District **Lynnhaven**

Agenda Item

7

Parcel GPIN: 2418-47-4423
Accela Record: 2021-CBPA-00074
Applicant's Agent: Eddie Bourdon, Esq. - Sykes, Bourdon, Ahern, Levy PC
CBPA Board Action: APPROVED WITH 21 CBPA VARIANCE CONDITIONS ON DECEMBER 6, 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 existing Lot 196 was legally created decades prior to adoption of the CBPA Ordinance; the Lot was zoned for development and use as a residential building lot for decades prior to adoption of the CBPA Ordinance and the Lot was owned by the current owners (i.e. same family) for decades prior to the 1991 adoption of the CBPA Ordinance and for the entire time the CBPA Ordinance has been in place. The provisions imposed upon this lot and its owners by the 1991 enactment of the CBPA Ordinance, if not mitigated by the Board granting the reasonable relief requested would deprive the owners of the use of their property.
- 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 as described in Finding #1 above, the variance request is solely the result of conditions and circumstances created by government action in adopting legislation impacting the property owner's right to develop their property in a reasonable manner. The necessity for this variance has in no way been created by the property's owner (i.e., the applicants). The variance request has taken into account the most critical goals and objectives of the Ordinance to the greatest degree reasonably practicable while balancing the maintenance of the high quality and character of the community.
- 3) The entire waterfront lot has been defined to be in the RPA buffer under the City's Ordinance, along with the entirety of York Lane and approximately 60 feet of depth of the property on the opposite side (east side) of York Lane. With the exception of the southwestern corner of the very modestly sized 2-story residence and the minimal encroachment of an access walkway to the water (i.e., water dependent facility) the overwhelming majority of the proposed development is within the 50-foot landward and 100-foot variable width RPA Buffers.

Minimization of the necessary encroachment into the RPA Buffer is accomplished by an accompanying request for a variance from the BZA for a front yard setback of 41 feet instead of 50 feet.

- 4) Similar relief has been granted by the Board on lots in this neighborhood under comparable historical circumstances, including on York Lane, with resulting residential developments which have not been injurious to the neighborhood (which has continued to see skyrocketing property values and demand for homes) nor have these lots which have been developed with similar relief resulted in substantial detriment to either water quality or public welfare." Given the small size of the parcel, the proximity of the proposed improvements to tidal features to proposed improvements, the Board is of the opinion that the future property owner's maintenance of the site and the applicant's adherence to construction practices designed to protect the site's sensitive natural resources are essential to providing that this request will not be injurious to the neighborhood or harmful to water quality.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load these means are set forth in the submitted plans (permeable pavers, buffer restoration, BMP's, limits of disturbance, tree protection, erosion control measures, etc.) and these will likely be supplemented by additional conditions recommended by City staff.

Board Conditions:

1. A double row of wire reinforced 36" 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 and staked in the field for review by City Staff prior to land disturbance.
2. All construction activities and associated land disturbance shall be contained within limits of the site fence. Exclusive of the 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, in the RPA may not be removed.
3. All trees shall be preserved outboard of the limits of construction unless they have been specifically approved for removal by the CBPA Variance. All unauthorized vegetation impacts (damage or removal) shall provide a 3:1 replacement ratio.
4. 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, as required by the Virginia Erosion and Sediment Control Law and Regulations.
5. The construction access way, stockpiling area and contractor parking area shall be noted on the site plan for review. Said construction access way, staging area, stockpiling area, and contractor parking shall be within the delineated limits of construction and the number of parking spaces provided for contractor parking noted on the site plan.
6. A certified arborist report shall be provided for review and approval during the site plan review process. Said report shall provide written verification as to the disposition of the residual riparian

buffer, those portions of the riparian buffer to be restored, minimal pruning and shoreline maintenance practices, and the methodology for the removal of the fallen tree within the tidal cove. Said arborist report shall provide the necessary requirements to ensure that construction activity is not detrimental to the remaining riparian buffer before, during and after the project is complete.

7. No perimeter fill is authorized outboard or seaward of the proposed improvements. There shall be no grading or fill material placed outboard the limits of construction as shown on the CBPA Exhibit.
8. The Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management. The location of the best management practices and construction of said facilities shall be situated so that the critical root zones of existing canopy trees to be preserved are not compromised.
9. 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.
10. The proposed 4-foot-wide mulch pathway to the edge of water shall be an at-grade pathway. There shall be no excavation or disturbance of the existing riparian buffer canopy tree root system.
11. The construction of the proposed gazebo shall be performed by hand and materials delivered to the area construction manually to limit the encroachment into the RPA buffer.
12. Under deck treatment of sand and gravel shall be installed underneath the proposed wood deck.
13. A separate planting/buffer restoration plan shall be submitted with the required site plan. The planting/buffer restoration plan shall specify the location, number, and species of plant material to be installed as per the required buffer restoration units. 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.
14. Outboard of the delineated areas of turf as shown on the CBPA Exhibit, all remaining impervious area shall be areas of buffer restoration. Buffer restoration areas shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance consisting of 16 understory trees, 16 large shrubs and 24 small shrubs.

The required restoration 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. 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.

15. Moderate maintenance shall be 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 RPA buffer.

16. Where mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be 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 thereby permitting sunlight to interface with tidal fringe marsh.
17. A site plan shall be submitted to the Department of Planning, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
18. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
19. The conditions and approval associated with this variance are based on the exhibit plan dated October 22, 2021, prepared by Gallup Surveyors and Engineers, signed October 22, 2021 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.
20. ****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 \$793.37 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
21. This variance and associated conditions will supersede the conditions of the Board variance granted November 25, 2002.

Eddie Bourdon of Sykes, Bourdon, Ahern, Levy PC representing the applicant of the property located at Lot 196, N. Linkhorn Park Extended, York Lane appeared before the Board.

Eric Gardner, Bay Colony Civic League, appeared before the Board in opposition of the variance request.

Steve Husak, Bay Colony Civic League, appeared before the Board in opposition of the variance request.

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

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



Applicant & Property Owner **South Linkhorn Bay Trust, et al**
Address **Lot 197, N. Linkhorn Park Extended, York Ln**
Public Hearing **December 6, 2021**
City Council District **Lynnhaven**

Agenda Item

8

Parcel GPIN: 2418-47-4423
Accela Record: 2021-CBPA-00075
Applicant's Agent: Eddie Bourdon, Esq. - Sykes, Bourdon, Ahern, Levy PC
CBPA Board Action: APPROVED WITH 19 CBPA VARIANCE CONDITIONS ON DECEMBER 6, 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 existing Lot 197 was legally created decades prior to adoption of the CBPA Ordinance; the Lot was zoned for development and use as a residential building lot for decades prior to adoption of the CBPA Ordinance and the Lot was owned by the current owners (i.e. same family) for decades prior to the 1991 adoption of the CBPA Ordinance and for the entire time the CBPA Ordinance has been in place. The provisions imposed upon this lot and its owners by the 1991 enactment of the CBPA Ordinance, if not mitigated by the Board granting the reasonable relief requested would deprive the owners of the use of their property. The granting of reasonable relief under these circumstances is precisely one of the foundational reasons for the legislative creation and existence of the Chesapeake Bay Preservation Area Board. For these reasons, approval of the requested relief will not confer a "special privilege or convenience" not accorded to other similarly impacted property owners.
- 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 as described in Finding #1 above, the variance request is solely the result of conditions and circumstances created by government action in adopting legislation impacting the property owner's right to develop their property in a reasonable manner. The necessity for this variance has in no way been created by the property's owner (i.e., the applicants). The variance request has taken into account the most critical goals and objectives of the Ordinance to the greatest degree reasonably practicable while balancing the maintenance of the high quality and character of the community.
- 3) "The entire buildable area of this waterfront lot has been defined to be in the 100-foot RPA buffer under the City's Ordinance. The majority of the proposed development is within the 50-

foot landward RPA Buffers. Minimization of the necessary encroachment into the 50-foot seaward portion of the RPA Buffer is accomplished by an accompanying request for a variance from the BZA for a front yard setback of 40 feet instead of 50 feet. Without the setback variance a larger percentage of the development would necessarily be located in the more critical 50-foot seaward portion of the RPA. In addition, the overall impervious cover of the lot as shown on the CBPA Exhibit is 25.8 percent of the lot area above water and wetlands. In addition, the variance request proposes the use of structural best management practices (permeable pavement) as a means towards promoting infiltration of stormwater into the ground [Appendix F, Sec. 106 (A)(3)]. This area accounts for approximately 1,822 square feet or 44 percent of the overall impervious cover of the lot.

- 4) *Similar relief has been granted by the Board on lots in this neighborhood under comparable historical circumstances, including on York Lane, with resulting residential developments which have not been injurious to the neighborhood (which has continued to see skyrocketing property values and demand for homes) nor have these lots which have been developed with similar relief resulted in substantial detriment to either water quality or public welfare.* The Board is of the opinion the variance request provides merit towards being in harmony with the purpose and intent of the Ordinance and will not be injurious to the neighborhood, nor of substantial detriment to water quality subject to the recommended conditions provided in this report.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load these means are set forth in the submitted plans (permeable pavers, buffer restoration, BMP's limits of disturbance, tree protection, erosion control measures, etc.) and these will likely be supplemented by additional conditions recommended by City staff.

Board Conditions:

1. A double row of wire reinforced 36" 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 and staked in the field for review by City Staff prior to land disturbance.
2. All construction activities and associated land disturbance shall be contained within limits of the site fence. Exclusive of the 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, in the RPA may not be removed.
3. All trees shall be preserved outboard of the limits of construction unless they have been specifically approved for removal by the CBPA Variance. All unauthorized vegetation impacts (damage or removal) shall provide a 3:1 replacement ratio.
4. 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, as required by the Virginia Erosion and Sediment Control Law and Regulations.
5. The construction access way, stockpiling area and contractor parking area shall be noted on the site plan for review. Said construction access way, staging area, stockpiling area, and contractor parking

shall be within the delineated limits of construction and the number of parking spaces provided for contractor parking noted on the site plan.

6. A certified arborist report shall be provided for review and approval during the site plan review process. Said report shall provide written verification as to the disposition of the residual riparian buffer, those portions of the riparian buffer to be restored, minimal pruning and shoreline maintenance practices, and the methodology for the removal of the fallen tree within the tidal cove. Said arborist report shall provide the necessary requirements to ensure that construction activity is not detrimental to the remaining riparian buffer before, during and after the project is complete.
7. No perimeter fill is authorized outboard or seaward of the proposed improvements. There shall be no grading or fill material placed outboard the limits of construction as shown on the CBPA Exhibit.
8. The Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management. The location of the best management practices and construction of said facilities shall be situated so that the critical root zones of existing canopy trees to be preserved are not compromised.
9. 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.
10. The proposed 4-foot-wide mulch pathway to the edge of water shall be an at-grade pathway. There shall be no excavation or disturbance of the existing riparian buffer canopy tree root system.
11. A separate planting/buffer restoration plan shall be submitted with the required site plan. The planting/buffer restoration plan shall specify the location, number, and species of plant material to be installed as per the required buffer restoration units. 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.
12. Outboard of the delineated areas of turf as shown on the CBPA Exhibit, all remaining impervious area shall be areas of buffer restoration. Buffer restoration areas shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs, and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance consisting of 20 understory trees, 20 large shrubs and 30 small shrubs.

The required restoration 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. 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.

13. Moderate maintenance shall be 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 RPA buffer.

14. Where mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be 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 thereby permitting sunlight to interface with tidal fringe marsh.
15. A site plan shall be submitted to the Department of Planning, Development Services Center (DSC) for review and approval prior to the issuance of a building permit.
16. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
17. The conditions and approval associated with this variance are based on the exhibit plan dated October 22, 2021, prepared by Gallup Surveyors and Engineers, signed October 22, 2021 by David R. Butler. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.
18. ****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 \$943.93 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for an oyster shell plant within the Lynnhaven River Basin.**
19. This variance and associated conditions will supersede the conditions of the Board variance granted December 23, 2002.

Eddie Bourdon of Sykes, Bourdon, Ahern, Levy PC representing the applicant of the property located at Lot 196, N. Linkhorn Park Extended, York Lane appeared before the Board.

Eric Gardner, Bay Colony Civic League, appeared before the Board in opposition of the variance request.

Steve Husak, Bay Colony Civic League, appeared before the Board in opposition of the variance request.

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

AYE	5	NO	3	ABSTAIN	0	ABSENT	1
BARRETT-MCDANIELS		ABSENT			MCCUNE		YES
BURNETTE		YES			STEIER		YES
FRANCE		YES			WALLACE		NO
JESTER		YES			YOUNG		NO
JONES		NO					



Applicant & Property Owner **Kenneth & Karen Bagwell**
Address **2333 Haversham Close**
Public Hearing **December 6, 2021**
City Council District **Lynnhaven**

Agenda Item

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Parcel GPIN: 2409-05-6860
Accela Record: 2021-CBPA-00076
Applicant's Agent: Joel MacDonald - Ashton Landscaping
CBPA Board Action: APPROVED WITH 6 CBPA VARIANCE CONDITIONS ON DECEMBER 6, 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 that several lots along Haversham Close have accessory structure encroachments into the 100-foot RPA 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 before the CBPA was adopted.
- 3) The variance is the minimum necessary to afford relief because the proposed improvements, as situated in the rear yard provides merit towards being the minimum necessary to afford relief given the small size of the patio area and walkway, and the layout and location of all improvements in close proximity to the existing single-family residence.
- 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 recommended conditions below as a means towards this variance request being not of substantial detriment to water quality.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load buffer restoration will treat stormwater runoff before it enters Broad Bay subject to the conditions of this variance.

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. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **500 square feet x 200 percent = 1,000 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, and 9 small shrubs.**

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

3. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
4. Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed along the seaward portion of the project prior to any land disturbance and shall remain in place until such time as vegetative cover is established. Along the seaward portion of the project the required silt fence shall be installed 5 feet from improvements.
5. Construction limits along the seaward portion of the project shall lie a maximum of 5 feet seaward of improvements.
6. No perimeter fill 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. Burnette, to approve the variance with the recommended conditions as provided in the Staff report. All present voted for the motion.

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



Address of Noncompliance **1680 Godfrey Lane**
 Property Owners **Anthony & Cynthia Disilvestro**
 Public Hearing **December 6, 2021**
 City Council District **Lynnhaven**

Agenda
Item

10

Parcel GPIN: 2409-23-0703
Accela Record: 2021-CBPV-00002
Applicant’s Agent: Robert Simon - Waterfront Consultants, Inc.

Statement of Noncompliance

Deviation from the August 2, 2021 Chesapeake Bay Preservation Area (CBPA) Board Variance conditions.

CBPA Board Determination of Noncompliance

The Board found with the testimony presented at the Show Cause Hearing that the activity, “Deviation from the August 2, 2021 CBPA Board variance conditions” – which is the subject of this show cause action, constitutes a noncompliance to Section 106 of the Chesapeake Bay Preservation Area Ordinance.

Robert Simon of Waterfront Consultants, Inc. representing the applicant of the property located at 1680 Godfrey Lane appeared before the CBPA Board and gave testimony.

A motion was made by Mr. Jones with a second provided by Mr. Steier that a matter of noncompliance from the conditions of the August 2, 2021 CBPA Board Variance did not occur at the subject property.

A substitute motion was made by Mr. Wallace with a second provided by Ms. Young to find the property in noncompliance with the conditions of the August 2, 2021 CBPA Board Variance. All Board members present voted for the substitute motion as follow.

AYE	4	NO	3	ABSTAIN	1	ABSENT	1
BARRETT-MCDANIELS		ABSENT			MCCUNE		NO
BURNETTE		YES			STEIER		NO
FRANCE		ABSTAIN			WALLACE		YES
JESTER		YES			YOUNG		YES
JONES		NO					

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

CBPA Board Action to the Noncompliance

Based on the testimony at the public hearing, the Board found the relative degree of deviation to the matter of noncompliance to be LOW and the environmental impact to the Resource Protection Area (RPA) features to be LOW.

Based off the relative degree of noncompliance and the environmental impact found by the Board, the Board issued no civil charge (\$0.00) to the matter.

A motion was made by Mr. Burnette with a second provided by Mr. McCune. All Board members present voted for the substitute motion as follow.

AYE	6	NO	1	ABSTAIN	1	ABSENT	1
BARRETT-MCDANIELS		ABSENT			MCCUNE	YES	
BURNETTE		YES			STEIER	YES	
FRANCE		ABSTAIN			WALLACE	YES	
JESTER		YES			YOUNG	YES	
JONES		NO					

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