



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

March 7, 2022

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, March 7, 2022 at 10:00 a.m.

The first order of business was to approve the findings and variance conditions of the February 7, 2022 CBPA Board Public Hearing. A motion was made by Mr. Wallace 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 February 7, 2022 FINDINGS AND VARIANCE CONDITIONS ON March 7, 2022 AS FOLLOWS.

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

All CBPA Board Members present voted as above.



Applicant & Property Owner **Haversham LLC**
 Address **2393 Haversham Close**
 Public Hearing **March 7, 2022**
 City Council District: **District 5**, formerly Lynnhaven

Agenda
 Item
1

Parcel GPIN: 2409-14-6639
Accela Record: 2022-CBPA-00004
Applicant’s Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: DEFERRED AT THE March 7, 2022 CBPA BOARD PUBLIC HEARING TO THE Monday, April 4, 2022 CBPA BOARD PUBLIC HEARING.

A motion was made by Mr. Jones, seconded by Mr. McCune, to defer the variance request to the April 4, 2022 CBPA Board Public Hearing. All present voted for the motion.

AYE	6	NO	0	ABSTAIN	0	ABSENT	3
BARRETT-MCDANIELS	YES				MCCUNE	YES	
BURNETTE	ABSENT				STEIER	ABSENT	
FRANCE	ABSENT				WALLACE	YES	
JESTER	YES				YOUNG	YES	
JONES	YES						



Applicant & Property Owner **Daiva B. Gilman**
Address **3136 Little Haven Road**
Public Hearing **March 7, 2022**
City Council District: **District 8**, formerly Lynnhaven

Agenda
Item

2

Parcel GPIN: 1498-03-8620
Accela Record: 2022-CBPA-00005
Applicant's Agent: Daiva Gilman, property owner
CBPA Board Action: APPROVED WITH 7 CBPA VARIANCE CONDITIONS ON March 7, 2022.

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 neighborhood was developed prior to the Bay Act and all waterfront property owners are equally impacted when utilizing the RPA.
- 2) This variance request is not based upon conditions or circumstances that are or have been created or imposed by the applicant or predecessor in title because this lot was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore portions of this 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, zoning setbacks, and delineated RPA feature within the neighborhood, which appears to be consistent with the findings of the CBPA Ordinance.
- 4) The variance is in harmony with the purpose and intent of this Ordinance and not injurious to the neighborhood, not of substantial detriment to water quality, or otherwise detrimental to the public welfare because the conditioned buffer restoration associated with the proposed improvements, under deck treatment, and retention of existing vegetation of the lot provide merit towards water quality benefits.
- 5) All non-biodegradable debris will be collected and disposed of daily. Filter fabric, sand backfill, and proper grading will mitigate potential erosion 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.
2. For the purpose of reviewing the required buffer restoration, a Single-Family RPA Small Projects Site Plan shall be submitted to the Department of Planning and Community Development, Development Services Center (DSC) for review and approval of the buffer restoration plan prior to the issuance of a building permit. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **960 square feet x 200 percent = 1,920 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **5 canopy trees, 5 understory trees, 10 large shrubs, and 15 small shrubs.**

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

3. Land disturbance associated with the proposed improvements at any given time shall not exceed 2,500 square feet. If at any time land disturbance exceeds 2,500 square feet, Planning Department Staff may issue a stop work order. At that time, a full site development plan in compliance with local and State regulations shall be submitted for review and approval through the Development Services Center (DSC).
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. 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.
7. Under deck treatment of sand and gravel shall be installed.

Daiva Gilman, the applicant and owner of the property located at 3136 Little Haven Road appeared before 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	6	NO	0	ABSTAIN	0	ABSENT	3
BARRETT-MCDANIELS		YES				MCCUNE	YES
BURNETTE		ABSENT				STEIER	ABSENT
FRANCE		ABSENT				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Applicant & Property Owner **Jonathan & Ashley McAchran**
 Address **933 Queen Elizabeth Drive**
 Public Hearing **March 7, 2022**
 City Council District: **District 8**, formerly Lynnhaven

Agenda
 Item
3

Parcel GPIN: 1488-44-9313
Accela Record: 2022-CBPA-00006
Applicant's Agent: Billy Garrington - Governmental Permitting Consultants
CBPA Board Action: DEFERRED AT THE March 7, 2022 CBPA BOARD PUBLIC HEARING TO THE Monday, April 4, 2022 CBPA BOARD PUBLIC HEARING.

A motion was made by Mr. Jones, seconded by Mr. McCune, to defer the variance request to the April 4, 2022 CBPA Board Public Hearing. All present voted for the motion.

AYE	6	NO	0	ABSTAIN	0	ABSENT	3
BARRETT-MCDANIELS	YES				MCCUNE	YES	
BURNETTE	ABSENT				STEIER	ABSENT	
FRANCE	ABSENT				WALLACE	YES	
JESTER	YES				YOUNG	YES	
JONES	YES						



Applicant & Property Owner **Jay & Nancy Cohen**
Address **2549 Torrey Place**
Public Hearing **March 7, 2022**
City Council District: **District 8**, formerly Beach

Agenda
Item

4

Parcel GPIN: 1497-89-1374
Accela Record: 2022-CBPA-00007
Applicant's Agent: Greg Frech - GMF & Associates
CBPA Board Action: APPROVED WITH 14 CBPA VARIANCE CONDITIONS ON March 7, 2022.

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 primary purpose of this variance request is to construct and addition to the existing principal structure that is located within the upper reach of the 100-foot RPA feature.
- 2) The applicant provides that the encroachment into the RPA on this lot is not based upon conditions or circumstances that are or have been created or imposed by the applicant, but rather the buffer zones were made a part of the bay act and these houses were already in place when it was enacted and the hardship that is now on these properties will never go away.
- 3) The variance is the minimum necessary to afford relief because the size and location of the proposed improvements with reasonable encroachment into the 50-foot landward buffer, given that the lot predates the adoption of the Chesapeake Bay Act provides merit towards the variance is the minimum necessary to afford relief.
- 4) The variance request 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 best management practices on the lot provide merit towards promoting infiltration of stormwater, thereby furthering the intent of the CBPA Ordinance with the proposed redevelopment coupled with the retention of existing mature canopy trees within the 50-foot seaward buffer.
- 5) As a means to manage towards a no net increase in nonpoint source pollution load the installation of bioretention planting beds and sand/gravel underdeck treatment in association with the proposed wood deck will be implemented.

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) Stormwater management facilities, BMP mulch bed (2 in total) shall be installed as shown on the CBPA Exhibit.
- 3) A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
- 4) Land disturbance shall be limited to the area necessary to provide for the proposed use or development. Said areas of land disturbance shall be quantified on revised site plan submittals.
- 5) The construction access way, staging area, stockpiling area and contractor parking area shall be noted on the site plan. **Said areas shall be quantified as land disturbance if not occurring on a paved or graveled surface.**
- 6) Wire reinforced 36-inch silt fence, for erosion and sedimentation control measures, shall be installed 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.
- 7) 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.**
- 8) Prior to clearing, grading, demolition or construction, suitable protective barriers, such as safety fencing, shall be erected outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved. These protective barriers shall remain so erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.
- 9) For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
- 10) 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.
- 11) Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.

- 12) Under deck treatment of sand and gravel shall be installed. Said treatment shall be installed under the wood deck and stairs.
- 13) This variance and associated conditions **will supersede** the conditions of the CBPA Board variance granted April 22, 1991.
- 14) The conditions and approval associated with this variance are based on the exhibit plan dated January 17, 2022, prepared by Gallup Surveyors & Engineers, signed David R. Butler by January 17, 2022. 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.

Greg Frech of GMF & Associates representing the applicant of the property located at 2549 Torrey Place appeared before 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	6	NO	0	ABSTAIN	0	ABSENT	3
BARRETT-MCDANIELS		YES				MCCUNE	YES
BURNETTE		ABSENT				STEIER	ABSENT
FRANCE		ABSENT				WALLACE	YES
JESTER		YES				YOUNG	YES
JONES		YES					



Applicant & Property Owner **Lee & Stephanie Clark**
Address **2616 Britannica Place**
Public Hearing **March 7, 2022**
City Council District: **District 5**, formerly Lynnhaven

Agenda
Item

5

Parcel GPIN: 1498-44-5737
Accela Record: 2022-CBPA-00009
Applicant's Agent: Billy Garrington - Governmental Permitting Services
CBPA Board Action: APPROVED WITH 14 CBPA VARIANCE CONDITIONS ON March 7, 2022.

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 applicants use of redevelopment of impervious cover associated with this variance request within the 50-foot seaward buffer provides merit toward the findings of the CBPA Ordinance.
- 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 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 bulk of this proposal is redevelopment over existing impervious cover and that the applicant has situated the proposed improvements in such a way to limit the amount of new impervious cover in the RPA.
- 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 infiltration beds will be installed, riparian buffer will be installed in the seaward buffer all to promote water quality.
- 5) E & S measures will be the first to be installed and last to be removed to halt any erosion during construction, hard surfaces will be utilized for material storage, a single point accessway will be utilized, and vegetated cover will be applied to any denuded areas as a means to manage towards a no net increase in nonpoint source pollution load during construction.

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) 1,590 square feet of buffer restoration shall be installed per the Buffer Restoration Plan provided with the CBPA Exhibit. 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. 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 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 **(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) Under deck treatment of sand and gravel shall be installed.
- 13) No perimeter fill is authorized outboard or seaward of the proposed improvements.
- 14) The conditions and approval associated with this variance are based on the exhibit plan prepared by Gaddy Engineering Services, LLC, signed January 28, 2022 by Michael S. Gaddy. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

Billy Garrington of Governmental Permitting Services representing the applicant of the property located at 2616 Britannica Place appeared before the Board.

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

AYE	6	NO	0	ABSTAIN	0	ABSENT	3
BARRETT-MCDANIELS		YES			MCCUNE		YES
BURNETTE		ABSENT			STEIER		ABSENT
FRANCE		ABSENT			WALLACE		YES
JESTER		YES			YOUNG		YES
JONES		YES					