



**MINUTES  
CHESAPEAKE BAY PRESERVATION AREA BOARD  
VIRGINIA BEACH, VIRGINIA  
MARCH 27, 2017**

Vice Chair Mr. Martin, called to order the **Chesapeake Bay Preservation Area Board** meeting in the City Council Chambers, City Hall Building, Virginia Beach Municipal Center, on Monday, March 27, 2017.

A motion was made by Mr. McCoy and seconded by Mr. Jones to approve the February 27, 2017 minutes. All voted for the motion. This vote also serves as the official roll call for this meeting. All members were present except Mr. Jester, Mr. Poole and Mr. Sobota.

**BOARD ACTION: APPROVED FEBRUARY 27, 2017 MINUTES ON MARCH 27, 2017**

**AYE 6 NO 0 ABSTAIN 0 ABSENT 3**

|                  |  |
|------------------|--|
| <b>FRANCE</b>    | <b>AYE</b>                                   |
| <b>JESTER</b>    | <b>ABSENT</b>                                |
| <b>JONES</b>     | <b>AYE</b>                                   |
| <b>MARTIN</b>    | <b>AYE</b>                                   |
| <b>MCCOY</b>     | <b>AYE</b>                                   |
| <b>MCDANIELS</b> | <b>AYE</b>                                   |
| <b>POOLE</b>     | <b>ABSENT</b>                                |
| <b>SMITH</b>     | <b>AYE</b>                                   |
| <b>SOBOTA</b>    | <b>ABSENT (Arrived Later in the Meeting)</b> |

**Board Members Present: David France, Arthur Jones, Brad Martin, Wayne McCoy, June McDaniels, and Reese Smith. Mr. Sobota arrived later in the meeting.**



Applicant **Warren and Wendy Smith**  
Address **521 Susan Constant Drive**  
Public Hearing **March 27, 2017**  
City Council District **Lynnhaven**

Agenda  
Item

**1**

**Description: GPIN: 2419-41-8783**

**AGENT: Billy Garrington, Governmental Permitting Consultants**

**BOARD ACTION: DEFERRED FOR 60 DAYS ON MARCH 27, 2017 UNTIL THE MAY 22, 2017 PUBLIC HEARING**

**Billy Garrington of Governmental Permitting Consultants appeared before the Board representing the applicant.**

**There was no opposition present.**

**A motion was made by Mrs. McDaniels, seconded by Mr. McCoy to defer the variance request for 60 days until the May 22, 2017 public hearing. All voted for the motion.**

**AYE 6 NO 0 ABSTAIN 0 ABSENT 3**

|                  |               |
|------------------|---------------|
| <b>FRANCE</b>    | <b>AYE</b>    |
| <b>JESTER</b>    | <b>ABSENT</b> |
| <b>JONES</b>     | <b>AYE</b>    |
| <b>MARTIN</b>    | <b>AYE</b>    |
| <b>MCCOY</b>     | <b>AYE</b>    |
| <b>MCDANIELS</b> | <b>AYE</b>    |
| <b>POOLE</b>     | <b>ABSENT</b> |
| <b>SMITH</b>     | <b>AYE</b>    |
| <b>SOBOTA</b>    | <b>ABSENT</b> |



Applicant **Home Associates of Virginia Inc.**  
Address **4520 Ocean View Avenue**  
Public Hearing **March 27, 2017**  
City Council District **Bayside**

Agenda  
Item

**2**

**Description: GPIN: 1570-62-9263; 1570-62-9282; 1570-62-9198; 1570-62-9150**

**AGENT: Joe Pulley**

**BOARD ACTION: APPROVED WITH 16 CONDITIONS ON MARCH 27, 2016**

**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, as the redevelopment of the property will bring the property more into conformance with the existing R-5R Residential District zoning requirements in terms of lot coverage, parking spaces and setbacks. The request is also reflective of other duplex developments within this neighborhood and throughout the Chesapeake Bay Preservation Areas who are subject to the provisions of this ordinance and are similarly situated.
- 2) The encroachment into the RPA on this parcel is unavoidable and 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 these parcels were 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, and the request has been reduced in terms of the amount of impervious cover. The duplex is in line with other duplexes in this zoning district, in terms of square footage, parking and lot coverage.
- 4) The variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood as the duplex is consistent with other duplexes in the vicinity and throughout Virginia Beach, and not will not be of substantial detriment to water quality due to the combined use of structural and nonstructural best management practices, nor otherwise detrimental to the public welfare.
- 5) The use of both nonstructural (bioretention) and structural (permeable paving system) stormwater BMPs, as a means to manage towards a no net increase in nonpoint source pollution load, is acceptable.
- 6) Finally, the Board attaches to the approval 16 reasonable and appropriate conditions to prevent the variance from causing or contributing to a degradation of water quality.

**CPBA Variance Conditions:**

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance associated with the proposed improvements.
2. 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.
3. 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.**
4. 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 Site Plan submitted to the Development Services Center (DSC) for review.
5. Construction limits shall lie a maximum of 15 feet seaward of improvements.
6. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
7. A 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.
8. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
9. 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.
10. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **430 square feet x 200 percent = 860 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 Dept. of Conservation

& Recreation, Chesapeake Bay Local Assistance: **3 canopy trees, 3 understory, 6 large shrubs, and 9 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.

11. The depth (seaward encroachment into the 50 foot seaward buffer) of the rear deck/patio areas shall be reduced by 3 feet.
12. Under deck treatment of sand and gravel shall be installed, if applicable.
13. 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.
14. **\*\*As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$98.08 and is based on 25 percent of the proposed impervious cover within the Resource Protection Area (RPA). Said payment shall provide for the equivalent of an approximate 107 square feet, 12 inch deep oyster shell plant within the Lynnhaven River Basin.**
15. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
16. The conditions and approval associated with this variance are based on the exhibit plan dated November 28, 2016, prepared by Site Improvement Associates, signed February 21, 2017 by Coleen Hudson Sisk. 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.

**Joe Pulley appeared before the Board representing the applicant.**

**There was no opposition present.**

**A motion was made by Mr. McCoy, seconded by Mrs. McDaniels to approve the variance with the 16 conditions listed above. All voted for the motion.**

**AYE 7 NO 0 ABSTAIN 0 ABSENT 2**

|                  |               |
|------------------|---------------|
| <b>FRANCE</b>    | <b>AYE</b>    |
| <b>JESTER</b>    | <b>ABSENT</b> |
| <b>JONES</b>     | <b>AYE</b>    |
| <b>MARTIN</b>    | <b>AYE</b>    |
| <b>MCCOY</b>     | <b>AYE</b>    |
| <b>MCDANIELS</b> | <b>AYE</b>    |
| <b>POOLE</b>     | <b>ABSENT</b> |
| <b>SMITH</b>     | <b>AYE</b>    |
| <b>SOBOTA</b>    | <b>AYE</b>    |



Applicant **Thomas and Barbara Joynt**  
Address **1332 Kingfisher Court**  
Public Hearing **March 27, 2017**  
City Council District **Lynnhaven**

Agenda  
Item  
**3**

**Description: GPIN: 2418-12-4863**

**AGENT: Robert Simon**

**BOARD ACTION: DEFERRED FOR 60 DAYS ON MARCH 27, 2017 UNTIL THE MAY 22, 2017 PUBLIC HEARING**

**Billy Garrington of Governmental Permitting Consultants appeared before the Board to request a 60 day deferral as per Robert Simon, the applicant’s representative.**

**There was no opposition present.**

**A motion was made by Mrs. McDaniels, seconded by Mr. McCoy to defer the variance request for 60 days until the May 22, 2017 public hearing. All voted for the motion.**

**AYE 6 NO 0 ABSTAIN 0 ABSENT 3**

|                  |               |
|------------------|---------------|
| <b>FRANCE</b>    | <b>AYE</b>    |
| <b>JESTER</b>    | <b>ABSENT</b> |
| <b>JONES</b>     | <b>AYE</b>    |
| <b>MARTIN</b>    | <b>AYE</b>    |
| <b>MCCOY</b>     | <b>AYE</b>    |
| <b>MCDANIELS</b> | <b>AYE</b>    |
| <b>POOLE</b>     | <b>ABSENT</b> |
| <b>SMITH</b>     | <b>AYE</b>    |
| <b>SOBOTA</b>    | <b>ABSENT</b> |



Applicant **Wendy Earl Revocable Trust**  
Address **1700 Stephens Road**  
Public Hearing **March 27, 2017**  
City Council District **Lynnhaven**

Agenda  
Item

**4**

**Description: GPIN: 2409-43-6752**

**AGENT: David Earl**

**BOARD ACTION: APPROVED WITH THE 8 CONDITIONS ON MARCH 27, 2017**

**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, as the redevelopment of the property conforms to other properties within this neighborhood, which are subject to the provisions of this ordinance and are similarly situated where development has occurred landward of the pronounced top of bank feature.
- 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 parcel was platted and the residence constructed in 1950, 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, given the reduction in square footage and the retreat of impervious cover within the 50 foot seaward buffer for the replacement of the pool deck; and, the minimal disturbance in the 50 foot landward buffer for pathways from existing exterior doors and porches to the pool area.
- 4) The variance is in harmony with the purpose and intent of the CBPA ordinance and will not be injurious to the neighborhood and not of substantial detriment to water quality with the introduction of buffer planting along the seaward portion of the proposed improvements, a minimal increase in impervious cover, and use of stone and sand for the paver patio subbase.
- 5) The proposed improvements facilitate sheetflow in-lieu of deck drains to manage rain water run-off from impervious cover, as a means to ensure a no net increase in nonpoint source pollution load.
- 6) Finally, the Board attaches to the approval 8 reasonable and appropriate conditions to prevent the variance from causing or contributing to a degradation of water quality.

**CBPA Variance Conditions:**

1. A pre-construction meeting shall be held with the CBPA Inspector prior to any land disturbance, including demolition.
2. Land disturbance shall be limited to the area necessary to provide for the proposed use or development.



3. 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. Said silt fence shall be installed as delineated in the field with Civil Inspections.
4. Construction limits shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
5. 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.
6. The area of exposed soil where the previous steps to the pier were located shall be stabilized with an erosion control fabric and vegetative cover in conjunction with the required buffer restoration.
7. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **580 square feet x 200 percent = 1,160 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 Dept. of Conservation & Recreation, Chesapeake Bay Local Assistance: **3 canopy trees, 3 understory, 6 large shrubs and 9 small shrubs.**

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

8. The conditions and approval associated with this variance are based on the exhibit prepared by the applicant and presented 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.

**David Earl appeared before the Board.**

**There was no opposition present.**

**As an item of the consent agenda, a motion was made by Mr. Smith, seconded by Mr. Jones to approve the variance request with the 8 conditions listed above. All voted for the motion.**

**AYE 6 NO 0 ABSTAIN 0 ABSENT 3**

|                  |               |
|------------------|---------------|
| <b>FRANCE</b>    | <b>AYE</b>    |
| <b>JESTER</b>    | <b>ABSENT</b> |
| <b>JONES</b>     | <b>AYE</b>    |
| <b>MARTIN</b>    | <b>AYE</b>    |
| <b>MCCOY</b>     | <b>AYE</b>    |
| <b>MCDANIELS</b> | <b>AYE</b>    |
| <b>POOLE</b>     | <b>ABSENT</b> |
| <b>SMITH</b>     | <b>AYE</b>    |
| <b>SOBOTA</b>    | <b>ABSENT</b> |



Applicant **Godfrey Farm, LLC**  
Address **1510 Godfrey Farm Road**  
Public Hearing **March 27, 2017**  
City Council District **Lynnhaven**

Agenda  
Item

**5**

**Description: GPIN: 2409-21-3090**

**AGENT: Eddie Bourdon, Sykes Bourdon Ahern & Levy**

**BOARD ACTION: APPROVED WITH 18 CONDITIONS ON MARCH 27, 2017**

**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 CBPA who are subject to the provisions of this ordinance and are similarly situated by allowing the proposed lots 3, 4 and 5 to have individual access to the tidal shore.
- 2) The encroachment into the RPA on these lots is based upon conditions or circumstances that have been imposed by the applicant's predecessor in title; however, the performance standards set forth in Section 106(B) of the CBPA Ordinance identify pathways as an allowable modification and encroachment into the buffer.
- 3) The conditions of approval address this request as being the minimum necessary to afford relief as they limit the material, width of the pathway and the removal of existing vegetation due to installation of the pathway.
- 4) The modification of condition 13 of the August 27, 2007 is in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood, nor otherwise detrimental to the public welfare given the conditions imposed by the Board.
- 5) The use of organic material for path construction and limiting removal of vegetation have been made conditions of approval as a means to achieve the no net increase in nonpoint source pollution load requirement.
- 6) Finally, the Board attaches 18 reasonable and appropriate conditions towards preventing the variance from causing or contributing to a degradation of water quality.

**CPBA Variance Conditions:**

1. A pre-construction meeting shall be convened with Civil Inspections prior to any land disturbance, inclusive of demolition and individual construction of associated single family residences.

2. Wire reinforced 36 inch erosion and sedimentation control measures (silt fence) 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.
3. 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.
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. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.
5. Construction limits shall lie a maximum of 15 feet seaward of improvements.
6. The construction access way shall be noted on the site plan, as well as the stockpile staging area.
7. All stormwater from proposed impervious cover shall be conveyed to stormwater management facilities.
8. Bio-retention planting beds will not be allowed within the public right-of-way.
9. Areas that are currently in a natural state, shall remain in a natural state to include the forest floor (leaf litter) left intact. All area currently in a natural state for Lots 3, 4, and 5 shall be identified on each site plan.
10. Individual single-family site plans for lots 3, 4 and 5 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. The conditions of this variance shall be noted on the submitted site plan.
11. Buffer restoration equal to the amount of impervious cover for Lots 3, 4, and 5, shall be installed within turf adjacent to the wood line nearest the tidal marsh. The required restoration shall be in areas currently devoted to turf and shall have a mulch layer of organic material 4" – 6" in depth. Said mulched restoration areas shall be maintained as such and not removed or allowed to revert to turf in the future. In addition to the aforementioned buffer restoration area, a minimum of thirty (30) trees shall be installed per lot (Lots 1 thru 5) within turf zones and shall be comprised of 50% deciduous and 50% evergreen species. Said restoration shall be installed prior to the issuance of the certificate of occupancy and shall be so noted on the site plan.
12. A separate landscape / buffer restoration plan shall be submitted concurrent with the site plan detailing location, number, and species of vegetation to be installed. The landscape plan shall clearly delineate existing naturalized area (forest floor), planting beds, and turf zones.
13. Recordation of this variance shall be referenced on the subdivision plat by the following note:  
*"A CHESAPEAKE BAY PRESERVATION AREA (CBPA) BOARD VARIANCE WAS APPROVED (provide date of variance). THE VARIANCE APPROVAL CONTAINED CONDITIONS FOR ALL PROPOSED CONSTRUCTION. LIMITS OF IMPERVIOUS COVER ARE SHOWN ON THE CBPA EXHIBITS AND ARE ON FILE WITH THE DEPARTMENT OF*

*PLANNING AND COMMUNITY DEVELOPMENT. DEVIATION FROM THE CONDITIONS OF THE CBPA BOARD VARIANCE MAY REQUIRE RESUBMITTAL FOR BOARD CONSIDERATION."*

14. The allowable building envelopes in the Resource Protection Area (RPA) per the August 27, 2007 Chesapeake Bay Preservation Area (CBPA) Board variance shall be delineated on the final site plan including the 50 foot reduction in Lot 5.
15. In the future, if a walkway to the landward edge of the wetland/tidal shore is desired for lot 3, 4 or 5; each walkway for each lot shall be constructed of organic material (mulch, non-compacted gravel, etc.) so as to effectively control erosion. Said walkway shall be a maximum of 4 feet in width and minimal vegetation to the greatest extent practical shall be removed with installation of walkway.
16. It is the opinion of the Board that the approval granted is the maximum number of lots the site can support.
17. This variance and associated conditions **will supersede** the conditions of the Board variance granted August 27, 2007.
18. The conditions and approval associated with this variance are based on the exhibit plan dated May 2, 2016, prepared by WPL, signed January 24, 2017 by Eric A. Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board. Deviation from said conditions during site plan review may require re-submittal for Board consideration.

**Eddie Bourdon, Attorney with Sykes Bourdon Ahern & Levy appeared before the Board representing the applicant.**

**Matt Benton of 2233 Souverain Lane appeared before the board as a concerned citizen.**

**A motion was made by Mr. Smith, seconded by Mr. Sobota to approve the variance as amended (Amended Condition 14 and 15). All voted for the motion.**

**AYE 7 NO 0 ABSTAIN 0 ABSENT 2**

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|------------------|---------------|
| <b>FRANCE</b>    | <b>AYE</b>    |
| <b>JESTER</b>    | <b>ABSENT</b> |
| <b>JONES</b>     | <b>AYE</b>    |
| <b>MARTIN</b>    | <b>AYE</b>    |
| <b>MCCOY</b>     | <b>AYE</b>    |
| <b>MCDANIELS</b> | <b>AYE</b>    |
| <b>POOLE</b>     | <b>ABSENT</b> |
| <b>SMITH</b>     | <b>AYE</b>    |
| <b>SOBOTA</b>    | <b>AYE</b>    |