



**MINUTES
CHESAPEAKE BAY PRESERVATION AREA BOARD
VIRGINIA BEACH, VIRGINIA
JULY 24, 2017**

Chair Mr. Jester, called to order the **Chesapeake Bay Preservation Area Board** meeting in the City Council Chambers, City Hall Building, Virginia Beach Municipal Center, on Monday, July 24, 2017.

A motion was made by Mr. McCoy and seconded by Mr. Poole to approve the June 26, 2017 minutes. All voted for the motion except Mr. Jones and Mrs. McDaniels who were abstained due to their absence from the June hearing. This vote also serves as the official roll call for this meeting. All members were present.

BOARD ACTION: APPROVED JUNE 26, 2017 MINUTES ON JULY 24, 2017

AYE 7 NO 0 ABSTAIN 2 ABSENT 0

FRANCE	AYE
JESTER	AYE
JONES	ABSTAIN
MARTIN	AYE
MCCOY	AYE
MCDANIELS	ABSTAIN
POOLE	AYE
SMITH	AYE
SOBOTA	AYE

Board Members Present: David France, David Jester, Arthur Jones, Brad Martin, Wayne McCoy, June McDaniels, Richard Poole, Reese Smith, and Dennis Sobota.



Applicant Martin and Susan Schildwachter
Address 3113 Blair Circle
Public Hearing July 24, 2017
City Council District Lynnhaven

Agenda
Item
1

Description: GPIN: 1498-12-0614

AGENT: Self

**BOARD ACTION: DEFERRED FOR 30 DAYS ON JULY 24, 2017 UNTIL THE AUGUST 28, 2017
PUBLIC HEARING**

The applicant requested a 30 day deferral.

There was no opposition present.

A motion was made by Mr. McCoy, seconded by Mr. Sobota to defer the variance request for 30 days until the August 28, 2017 public hearing. All voted for the motion.

AYE 9 NO 0 ABSTAIN 0 ABSENT 0

**FRANCE AYE
JESTER AYE
JONES AYE
MARTIN AYE
MCCOY AYE
MCDANIELS AYE
POOLE AYE
SMITH AYE
SOBOTA AYE**



Applicant **Floyd Kuriloff**
Address **310 51st Street**
Public Hearing **July 24, 2017**
City Council District **Lynnhaven**

Agenda
Item

2

Description: GPIN: 2418-78-2682

AGENT: Billy Garrington, Governmental Permitting Consultants

BOARD ACTION: APPROVED WITH 15 CONDITIONS ON JULY 24, 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 this property conforms to other properties within this neighborhood who are subject to the provisions of this ordinance and are similarly situated where redevelopment of existing impervious cover has occurred within the RPA 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 property was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore, placing portions of this property within the RPA.
- 3) The Board is of the opinion that the variance is the minimum necessary to afford relief, given the applicant's redevelopment of existing impervious cover within the 50 foot seaward buffer to the greatest extent practicable with the intent to preserve existing vegetation and land contours so as to effectively maintain the integrity of the buffer area.
- 4) The Board is of the opinion that 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, conditioning the limits of construction specific to existing site features, replacing deteriorating improvements to abate future erosion potential, and utilizing existing topography towards siting proposed improvements.
- 5) The use of nonstructural (bioretention) stormwater BMPs and the preservation of existing vegetation, as a means to manage towards a no net increase in nonpoint source pollution load, is proposed.

- 6) Finally, the Board recommends the following 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 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. 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 Variance Exhibit.
5. 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.**
6. 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.
7. For all trees to be preserved outboard of the limits of construction that are encroached upon, replacement of existing vegetation shall be provided at a 3 to 1 ratio for all unauthorized (damaged or removed) vegetation impacts.
8. Permanent and / or temporary soil stabilization measures shall be applied to all disturbed / denuded area(s) prior to a final building inspection or certificate of occupancy. All disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations.

9. A 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.
10. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
11. 400 square feet of buffer restoration shall be installed within the RPA. 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 to the greatest extent practicable.

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.

12. Under deck treatment of sand and gravel shall be installed.
13. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
14. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
15. The conditions and approval associated with this variance are based on the exhibit plan dated June 1, 2017, prepared by Gallup Surveyors and Engineers, signed June 1, 2017 by Jessica Nelson. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

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

There was no opposition present.

A motion was made by Mr. Poole, seconded by Mr. McCoy to approve the variance with the 15 conditions listed above. All voted for the motion except Mr. Jones who voted no.

AYE	8	NO	1	ABSTAIN	0	ABSENT	0
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FRANCE	AYE
JESTER	AYE
JONES	NO
MARTIN	AYE
MCCOY	AYE
MCDANIELS	AYE
POOLE	AYE
SMITH	AYE
SOBOTA	AYE



Applicant **Timothy Nuckols and Courtney Simons**
Address **400 Putnam Road**
Public Hearing **July 24, 2017**
City Council District **Lynnhaven**

Agenda
Item

3

Description: GPIN: 1477-68-9398

AGENT: Self

BOARD ACTION: APPROVED WITH THE 8 CONDITIONS ON JULY 24, 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 proposal conforms to other properties within this neighborhood, which are subject to the provisions of the CBPA Ordinance and are similarly situated where development has occurred landward of 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, but rather is necessitated by the fact that this parcel was platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore, placing portions of this property within the RPA.
- 3) The variance is the minimum necessary to afford relief, given the expansion of an accessory structure within the 50 foot landward buffer in an area currently devoted to turf.
- 4) The Board is of the opinion that the variance is in harmony with the purpose and intent of this ordinance and not injurious to the neighborhood, as the encroachment into the RPA is consistent with the location of improvements on other properties in the vicinity, and not of substantial detriment to water quality due to the access to and limits of expansion within the RPA in areas currently devoted to turf, nor otherwise detrimental to the public welfare.
- 5) The Board is of the opinion with the proposed improvements situated within an area of flat topography, coupled with the installation of buffer restoration as a means to manage erosion and sedimentation that the proposed improvements should provide for a no net increase in nonpoint source pollution load.

- 6) Finally, the Board recommends the following reasonable and appropriate conditions towards preventing 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. 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. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
5. 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.
6. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **654 square feet x 200 percent = 1,308 square feet.**

Said restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers consistent with the Riparian Buffers Modification & Mitigation Guidance Manual, prepared by Virginia Department of Conservation & Recreation, Chesapeake Bay Local Assistance: **4 canopy trees, 4 understory, 8 large shrubs and 12 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.

7. Under deck treatment of sand and gravel shall be installed.
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.

Timothy Nuckols and Courtney Simons appeared before the Board.

There was no opposition present.

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

AYE 9 NO 0 ABSTAIN 0 ABSENT 0

**FRANCE AYE
JESTER AYE
JONES AYE
MARTIN AYE
MCCOY AYE
MCDANIELS AYE
POOLE AYE
SMITH AYE
SOBOTA AYE**



Applicant **Gary and Denise Maxwell**
Address **3317 Kline Drive**
Public Hearing **July 24, 2017**
City Council District **Lynnhaven**

Agenda
Item

4

Description: GPIN: 1488-88-4288

AGENT: Billy Garrington, Governmental Permitting Consultants

BOARD ACTION: APPROVED WITH 17 CONDITIONS ON JULY 24, 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 area encroached upon for the redevelopment of the property is consistent with other properties within this neighborhood who are subject to the provisions of this ordinance and who are similarly situated with relatively shallow rear yards with a defined top of bank feature where development has occurred within the Resource Protection Area (RPA).
- 2) The encroachment into the RPA on this lot is based upon conditions or circumstances that are or have been created or imposed by the applicant's predecessor in title, as the parcel was platted after the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance.
- 3) The variance is the minimum necessary to afford relief, as Staff has worked with the applicant to situate the improvements proposed within the 50 foot landward buffer so that the most sensitive portions of the buffer are preserved to the greatest extent practicable.
- 4) The Board is of the opinion that 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 by conditioning the limits of construction specific to existing site features, limiting vegetation removal, and utilizing existing topography and areas with existing impervious cover towards siting proposed improvements.
- 5) The use of nonstructural (bioretention) stormwater BMPs and preservation of existing vegetation, as a means to manage towards a no net increase in nonpoint source pollution load, is proposed.

- 6) Finally, the Board recommends the following 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 held with the CBPA Inspector prior to any land disturbance, including demolition. At said meeting, the location of tree protection barriers shall be discussed and delineated outside of the dripline **(to the greatest extent practicable)** of any tree or stand of trees to be preserved adjacent to the proposed improvements. 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
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 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 per the CBPA Variance Exhibit.
5. 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.**
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. 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.
8. 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.

9. Reduce the overall impervious cover of the site by 300 square feet to a maximum of 11,081 square feet or 28.79 percent of the site.
10. Stormwater management shall comply with the requirements set forth within the Code of Ordinances, Appendix D – Stormwater Management.
11. 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. To a reasonable extent, buffer restoration shall achieve the full complement of vegetation consisting of canopy trees, understory trees, shrubs and groundcovers and be applied to areas devoid of a forest layer(s) ((i.e. canopy layer, understory tree layer, understory shrub layer (large to small), herbaceous layer, etc.)). The restoration shall be installed beginning in the seaward portion of the buffer, progress 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 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. In addition, any shoreline abatement initiatives which would involve a living shoreline may be a component of the subject buffer restoration.
12. No perimeter fill, other than the minimum necessary to facilitate positive drainage away from the proposed improvements is authorized outboard or seaward of the proposed improvements.
13. **As offered by the applicant, payment shall be made to the Lynnhaven Oyster Heritage Program concurrent with site plan approval. Payment shall be in the amount of \$449.16 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 490 square feet, 12 inch deep oyster shell plant within the Lynnhaven River Basin.
14. Mature trees exist adjacent to tidal waters, the select removal of lower tree limbs shall be performed thereby permitting sunlight to interface with tidal fringe marsh.
15. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.

16. This variance and associated conditions **are in addition to** the conditions of the Board variance granted November 28, 1994.

17. The conditions and approval associated with this variance are based on the exhibit plan dated May 12, 2017 prepared by WPL, signed June 12, 2017 by Eric Garner. The conditions and approval associated with this variance are based on the Board exhibit prepared by the applicant and presented to the Board, the application submitted and the sworn presentation to the Board.

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

There was no opposition present.

A motion was made by Mr. McCoy, seconded by Mr. Martin to approve the variance with the 17 conditions listed above. All voted for the motion except Mr. France and Mrs. McDaniels who both voted no.

AYE 7 NO 2 ABSTAIN 0 ABSENT 0

FRANCE	NO
JESTER	AYE
JONES	AYE
MARTIN	AYE
MCCOY	AYE
MCDANIELS	NO
POOLE	AYE
SMITH	AYE
SOBOTA	AYE



Applicant **Robert and Melonie Katz**
Address **2105 East Admiral Drive**
Public Hearing **July 24, 2017**
City Council District **Lynnhaven**

Agenda
Item

5

Description: GPIN: 1499-79-6548

AGENT: Self

BOARD ACTION: APPROVED WITH THE 9 CONDITIONS ON JULY 24, 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 Chesapeake Bay Preservation Areas who are subject to the provisions of this ordinance and are similarly situated where minor development encroachments have occurred along this tidal feature of the Lynnhaven River within the 100 foot Resource Protection Area.
- 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 these parcels were platted prior to the adoption of the Chesapeake Bay Preservation Act and the City's CBPA Ordinance, therefore placing portions of this property within the RPA.
- 3) Given the minimal scope of the project, the Board is of the opinion that the variance is the minimum necessary to afford relief.
- 4) The variance is in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood, as the request is reasonable in scope, and will not be of substantial detriment to water quality due to the use of underdeck treatment as a means of permanent erosion and sediment control measures, nor will it be otherwise detrimental to the public welfare.
- 5) The use of both a stone underdeck treatment and buffer restoration are proposed as a means to manage towards a no net increase in nonpoint source pollution load.
- 6) Finally, the Board recommends the following reasonable and appropriate conditions towards preventing 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. 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. Construction limits along the seaward portion of the project shall lie a maximum of 15 feet seaward of improvements. **Within the RPA, exclusive of limits of construction, areas of existing landscaped beds, trees, areas of existing leaf litter or forest floor, and other naturalized areas, such as shoreline vegetation, may not be removed.**
5. The existing planting beds displaced by the construction of the proposed wood decks shall be relocated within the rear yard in areas currently devoted to turf. Said planting beds are in addition to the required buffer restoration conditioned below.
6. Buffer restoration shall be installed equal to 200 percent of the proposed new impervious cover within the RPA: **399 square feet x 200 percent = 798 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: **2 canopy trees, 4 understory, and 6 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.

7. Under deck treatment of sand and gravel shall be installed.
8. It is the opinion of the Board that the approval granted is the maximum impervious cover the site can support.
9. 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.

No one appeared before the Board.

There was no opposition present.

As an item of the consent agenda, a motion was made by Mr. Poole, seconded by Mr. Sobota to approve the variance request with the 9 conditions listed above. All voted for the motion.

AYE 9 NO 0 ABSTAIN 0 ABSENT 0

**FRANCE AYE
 JESTER AYE
 JONES AYE
 MARTIN AYE
 MCCOY AYE
 MCDANIELS AYE
 POOLE AYE
 SMITH AYE
 SOBOTA AYE**